SENATE—*Thursday, February 4, 1993*

(Legislative day of Tuesday, January 5, 1993)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable PAUL D. WELLSTONE, a Senator from the State of Minnesota.

The PRESIDING OFFICER. Today's prayer will be offered by the Reverend Richard C. Halverson, Jr., Falls Church, VA.

PRAYER

The Reverend Richard C. Halverson, Jr., of Falls Church, Virginia, offered the following prayer:

Let us pray:

Almighty God, let the words, "In God We Trust," which are etched in stone over the doorway of the floor of this Senate, be inscribed in the hearts of those who enter here: "In God We Trust." But who shall we say You are in whom we are to trust? And how are we to know You, unless You reveal Yourself to us? You, Lord, are omniscient, omnipotent, omnipresent. You are invisible, immutable, incomprehensible. We have but a frail understanding of Your divine attributes. And not one of us holds all of the truth.

Forgive us for too quickly judging others who have a different understanding of You. Give us patience with one another, as each person seeks to find You in their own time and way. And open our eyes to see the light in Your Light. "In God We Trust." Cause us, Lord, to put our trust in Thee, not in ourselves, nor our ways; not in our leaders, nor our plans; not in our institutions, nor our resources.

Teach us Thy wisdom, as written, "It is better to trust in the Lord than to put confidence in man. It is better to trust in the Lord than to put confidence in princes." (Psalms 118:8,9).

Lead us, Lord, in following Thy admonition and promise to "Trust in the Lord with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge Him, and He shall direct thy paths." (Proverbs 3:5–6).

In times like these, when we need to clearly see Your plumb line of divine justice and righteousness, inspiring us to circumspection to heed Thy warning, "There is a way that seemeth right unto a man, but the end thereof are the ways of death." (Proverbs 16:25).

We ask this in the name of Jesus Christ, who made the astounding claim that to see Him was to see the Father, and to trust in Him was to do the work of God. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 4, 1993.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PAUL D. WELLSTONE, a Senator from the State of Minnesota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 11 a.m., with Senators permitted to speak therein for not to exceed 10 minutes each.

PARTNERSHIP WITH THE PEOPLE

Mr. PRYOR. Mr. President, during a 5-month period almost 2 years ago, I had the opportunity to watch official Washington through the lens of C-SPAN and other news shows. For those 5 months, I was on the outside looking in.

That "view from the other side" gave me a new perspective on Washington, a better understanding of the frustration voters feel, and a renewed commitment to help the system to make life better for the average American.

In 2 weeks, the new President will deliver his State of the Union Address. Today, I want to take a moment to reflect on the State of the people in this great country of ours.

In particular, I want to talk about the frustrations, the worries, and the future facing what I call the "core of America"—our elderly citizens, our taxpayers, and our working families who are challenged each day to make ends meet.

First, America's elderly.

We face a growing elderly population and we must prepare now to meet the needs of this population. If we delay, it will be too late.

While the elderly face some unique challenges—like paying their bills on fixed incomes—they have much more in common with Americans of all ages.

Like other taxpayers, our senior citizens are frustrated with an impersonal and unresponsive Federal Government that seems bent on wasting their tax dollars.

Like American business owners, our seniors are angry about skyrocketing health care costs and runaway prescription drug prices.

And like many of our children, many of our senior citizens are going hungry in this land of plenty.

Another group that we, in Congress, must look out for is the American taxpayer.

They see a bloated $1.5 trillion Government. They see bureaucracies that often provide bad service and ignore their needs.

They are frustrated by excessive regulation, piles of paperwork, and overzealous IRS agents.

And they feel lost and disconnected in the maze of big Government.

Finally, there are the working Americans:

The working family, husband and wife, worried about paying the rent, health care costs, saving for retirement and educating their children;

The working poor, putting in more hours each day, but still living in poverty; and

The small businessowner, struggling to stay ahead of a weak economy. Worried about rising insurance premiums and endless Government forms. For them, there is no COLA.

These people deserve our help and support. They need change in Government and new ideas. They need a creative Congress to help them meet their everyday challenges.

In the next few minutes, I want to lay out some of the major areas where I believe we must focus our efforts to make change work in the everyday lives of the American people.

AMERICA'S POCKETBOOK

No issues mobilize the American voter like those that affect our pocketbook.

In then Governor Clinton's campaign "war room" was a sign on the wall that read "The Economy, Stupid." It was his success at framing and focusing on economic issues that brought a Demo-

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

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crat to the White House after a long-seated Republican administration.

And it will be this issue upon which Democrats and all of us will be judged over the coming years.

The downsizing of corporate America and our post-cold-war military complex is having a dramatic effect on the lives of the American worker. High unemployment levels and feelings of uncompetitiveness have crept into the mindset of the American worker.

Now, workers sense that we must change—before change passes us by. And the Government must become the people's partner—not their adversary—in meeting that change head on.

Between 1992 and 1997, 1,000 jobs a day will be lost due to defense reductions.

Where will the people go? And if we retrain them, for what type of job? These are just a few of the questions we face.

But, if we intelligently reinvest our defense savings, by promoting economic development in defense-dependent communities, and seeking avenues leading to high-technology, high-wage jobs then we will emerge from the down-sizing stronger and more vibrant than ever.

Last year, the Senate Defense Transition Task Force made a strong start at meeting these challenges head on.

This year, together with an aggressive, strong administration, I believe Government will help propel our workers, our communities, and our industries into a prosperous post-cold-war era. We can and must do it.

I believe another area of potential dynamic growth is in the small business arena. In an era of corporate down-sizing, small businesses continue to be key generators of new jobs and represent well over one-half of all jobs in the private economy.

It is interesting to note that the real explosion has been in minority-owned small businesses. During the 1980's, minority small business ownership increased 65 percent.

I might also add that in my State of Arkansas, the latest studies show that women-owned businesses saw an increase of 45 percent in just 1 year, with receipts of those businesses rising 88 percent. And this is just a small part of a larger national trend.

Truly, if there is a community that naturally cuts across all ethnic, religious, and gender bounds, it is the small business community.

So, what can Government do to encourage growth in small business?

In the coming weeks, I will introduce, along with my distinguished colleague from Missouri—Senator DANFORTH—a small business package that will improve the capital formation opportunities of small businesses. It will contribute to the preservation of family owned businesses. And it will eliminate many of the unnecessary traps that ensnare the small business person.

When we talk about people's pocketbooks, we must talk also about the farmers who feed our people.

American agriculture is a $950 billion segment of our economy. It must be treated as such in any economic plan.

American farmers know that economic growth for their industry is largely dependent upon opening up commodity markets overseas. Their growth is crippled, among other things, by Japan's trade barriers to United States rice and by Europe's treatment of oilseeds.

Congress will need to work hard with the new U.S. Trade Representative to break open foreign markets. We also must take tough legislative actions when negotiations fail. Free trade has a nice ring to it, but fair trade should be our actual goal.

We also must address the onslaught of regulations and redtape that encroach upon farmers' ability to manage their farms. Decisions are made in agencies other than USDA that too often result in an increase in the farmer's overhead or a decrease in his right to property. Until we can ensure more profitability for farmers, this is not acceptable.

HEALTH CARE REFORM

The health care crisis is perhaps our greatest domestic challenge of this decade. We must tackle it; we must not postpone it.

Why the richest economy on this Earth is unable to meet the basic health care needs of its people, is a question that we should never have to ask. To be unable to deal with the problem is a defeat we must never concede.

Americans spent $817 billion last year on health care alone. That is $2.2 billion each day—$26,000 each second. And each year, as costs soar, we get less for our money.

For the 35 million Americans who do not have basic health care insurance, becoming sick is something to fear.

Middle class families fear that illness will strike and destroy their hard-earned savings.

Young entrepreneurs who want to start a new business, cannot because they fear losing their health coverage, or because private insurance is simply out of reach.

Many families have loved ones with a preexisting condition—arthritis, cancer, heart disease, or a handicapped child, and they find the insurance companies won't sell them a policy. Or if they do, the cost is prohibitive.

The fears of these people should steel our resolve and give us the direction and the strength to do what the skeptics say we cannot.

Days before the Presidential election, 41 Senate Democrats pledged their commitment to then-Governor Clinton to craft a package of health-care reforms—comprehensive reforms that will guarantee the right of every American to basic health care—changes that will free working Americans from the fear of rising health care costs.

I will be focusing my energies on several specific issues during this debate. These include the issues of prescription drugs, long-term care, and rural health care.

PRESCRIPTION DRUGS

While Americans across the Nation suffer because they cannot afford to pay the cost of filling their prescriptions, the prescription drug industry has, repeatedly and consistently, boasted recordbreaking profits—profits that far exceed any Fortune 500 industry.

While millions try to stretch their medications by skipping doses or splitting pills in half, jeopardizing their health, the drug companies continue to inflate their prices at a dizzying rate—three, four and five times the general rate of inflation.

And while the drug industry continues its practice of spending more on marketing than on research, four out of five elderly citizens must choose between food or heat and filling their prescription.

And all the while, American taxpayers subsidize the most profitable industry in the world by giving the drug companies billions of dollars in tax credits.

The drug companies say they need their big prices for new research and development. But the truth is that they routinely take advantage of research that is done in Federal laboratories—such as NIH. Laboratories that American taxpayers pay for. Yes, you and I. We pay for their research and today, they spend more on marketing drugs than for research.

And what do we get for our money? The highest prescription drug prices in the world.

For years, the drug companies have had programs to give away free drugs to people who cannot afford them. But, for obvious reasons, they have kept these programs a secret. I call them "America's best kept secret."

Well, Ray Brady on the CBS Evening News broke the story one evening in October—the story that the Special Committee on Aging wanted the American people to know about these programs. Seconds later, the phones began to ring and they have been ringing ever since.

From every region of the Nation, the plea was one: "Please, help me with my prescription drugs!"

This past fall, and even as we speak today, we have sent out some 65,000 pamphlets to Americans everywhere telling them how they might apply and how they might come under the free drug program.

Additionally, last year, legislation I introduced was brought to the Senate floor—the Prescription Drug Cost Containment Act.

It was a simple idea. If drug companies do not keep their price increases within the general rate of inflation, then we scale back their tax breaks.

The drug companies won that battle, but now we will be fighting on new turf. This President of the United States understands the message. Over 40 national organizations, who supported this fight, understand the message. Any person who has ever paid for a prescription drug, understands the message.

Prescription drugs must and will be a part of health care reform.

LONG-TERM CARE

Just as we must attack runaway prescription drug prices, we must also remember the issue of long-term care.

Often, we think of long-term care as a problem just for old people. But in fact, some estimate that between 9 and 11 million Americans need chronic care—and one-third of them are under the age of 65.

The need for long-term care can arise from growing old, from illness or accident that can strike at any age, or from the disability of a child, spouse, or family member. One study found that a majority of Americans have already faced a long-term care crisis with a family member or friend, or expect to in the next 5 years.

And, as we as a nation grow older—as the baby boom nears its retirement years—America's long-term care needs will become ever more pressing. Now is the time to prepare for this need. Before we face a national crisis. But right now, the answers are few.

Only a handful—the very wealthiest—can afford the $30,000 a year or more it costs for nursing home care. Medicare pays for only 2 percent of nursing home costs. And Medicaid, while paying 41 percent, is available only to those who are destitute, or who become impoverished by spending-down their lifelong savings.

It is my belief that we should explore cost-effective ways to deliver long-term care services, like home-based supportive services. We must move away from the old notion that long-term care necessarily means expensive institutional care.

Right now, we can take measures to improve the long-term care insurance market. Significant and positive steps that will not add a single penny to the deficit, but will add a whole host of consumer protections for those who wish to buy insurance protection.

This Congress, I will introduce legislation—the Long-Term Care Consumer Protection Act—to make sure that long-term care policies meet the needs of American consumers, that policies do not contain overly restrictive limitations, and that abusive practices in their marketing are stopped.

RURAL HEALTH CARE

In undertaking the health care reform challenge, we must also recognize an important fact—that making people eligible for health care is sometimes not enough.

Seventeen million Americans live in rural communities—1,930,000 in Arkansas alone. For these Americans, the problem is simple: Doctors are scarce and hospitals even scarcer.

To make matters worse, a recent survey found that one-quarter of all the physicians practicing in small communities plan to retire or leave the area in the next 5 years—leaving their patients in a medical lurch.

And to add to these troubles, some Federal programs actually discourage doctors from practicing where they are needed most. Efforts to draw doctors to rural areas are up against a powerful trend—a trend toward high-technology, high-paying, big-city hospital care.

We need to stop using taxpayers' money to subsidize the training of more costly medical specialists than our country needs. And, we must change Medicare's current practice of paying rural physicians less. It makes no sense why—for the same services—a doctor in rural Arkansas should be paid less than 90 percent of the national average, while a doctor in Los Angeles is paid over 110 percent.

I ask—is this wise use of taxpayers' money at a time when hundreds of communities do not even have a doctor to call on for a broken leg, a stroke, or to have a baby?

Last week I introduced a package of bills aimed at reducing the rural doctor shortage and making better sense of the way Medicare pays its doctors and hospitals. I invite my colleagues to join this effort to assure that rural Americans do not receive second-class care.

AGING

The health care problems I just outlined are challenges that all Americans share, young and old.

But, for older Americans, there are some other issues that have not received the attention they deserve. Among them are: Maintaining the economic security of the elderly and exploring ways to enrich the lives of older and young Americans alike by tapping into the powerful potential of mentoring.

SAFEGUARDING THE ECONOMIC SECURITY OF OLDER AMERICANS

Many retired Americans today face an uncertain financial future. They have found their savings depleted by rising health care costs. And their pensions and retiree health benefits are jeopardized by hard economic times and the closure of thousands of businesses nationwide.

The security they have counted on—the promises that were made to them—are now on the rocks.

Today, more than ever, we need assurances that those who wish to work and who have the skills can continue to do so despite their age, because age discrimination, like all forms of intolerance, is an evil that has no place in our society.

Full implementation of the Age Discrimination in Employment Act, as well as the Older Worker Benefit Protection Act—a law that prevents discrimination in employee benefits—is more important than ever before.

We will be looking at these issues at the Senate Aging Committee and watching how well the EEOC [Equal Employment Opportunity Commission] is doing its job in enforcing the anti-discrimination laws.

I plan to oversee the speedy implementation of the Older Americans Act Amendments of 1992, to ensure that programs vital to helping our Nation's seniors to help themselves are preserved. Of particular interest will be the amendments which I introduced to improve nutrition and transportation services for seniors. Additionally, I will introduce legislation to clarify language in the Food Stamp Act pertaining to SSA's processing of food stamp applications. We must improve access to benefits which have proven to be so crucial to the health and welfare of needy older Americans.

Something else is jeopardizing the lives of thousands of Americans—the growing delays faced by people who apply for Social Security disability benefits. I have learned that unless we act now, by the end of this year, over 1 million Americans could still be waiting to hear decisions on their claims. They may have to wait up to 7 months. These bureaucratic delays are not reasonable and they certainly are not acceptable.

We must prevent the tragedy that happened to June Herrin—who told her story at an Aging Committee hearing. This 57-year-old woman developed a heart condition and became unable to work. In waiting for her benefits—and it took almost a year—she lost her home and her dignity and was left to live in her car, without food and shelter. What an inexcusable tragedy.

We, in Congress, must give the Social Security Administration the financial support and the tools it needs to make the system work again. Then we must expect the agency to work with efficiency, accuracy, and excellence to make sure that what happened to June Herrin will not happen again.

MENTORING

So often we talk only about the special needs of older Americans. We all but forget the many good things that older Americans have to offer—their wisdom and talents, and all their experiences of life and work.

There is an idea that the Senate Aging Committee is exploring right now—bringing the generations together through an idea called intergenerational mentoring—senior citizens volunteering their time and talents to help youngsters at school and

in their communities. This idea even has the attention of big business. Recently, the Marriott Corp. did a study and they found something wonderful—that millions of seniors would volunteer—if simply asked.

Our challenge ahead will be to find and promote the best ways to take advantage of the vast talents of older Americans—for the good of millions of youngsters yearning for direction, guidance, and companionship. The potential is exciting and endless.

GOOD GOVERNMENT

Mr. President, our Government affects all of our lives profoundly. It researches disease, develops cures, and tests new drugs. It provides for our Nation's security, and it protects all of the freedoms that many before us have died for. It educates our children. It builds our roads and bridges. It investigates and punishes law breakers. And it carries out thousands of other important tasks that we take for granted.

So now, when the expectations from Government are higher than ever before, the pressure is greatest for Government to do better work for less money. And I believe any budget cuts should first come from waste, not from services.

So where do we start? One fight is the examination of the Government's runaway use of outside contractors and consultants. In 1992, some $10 to $20 billion was spent on so-called consulting services and contracting services.

I would like to be able to tell the American taxpayer exactly how much is spent on these services, and what the services went for. But despite my efforts since 1979, no one in this town can or will tell me the answer. I will work with Leon Panetta, OMB Director, to force agencies to assess the cost-effectiveness before hiring contractors.

By allowing these fundamental questions to go unanswered, Government has created a huge and invisible shadow bureaucracy whose continued growth will remain unchecked. Not only are huge dollars at stake, there is also the very real possibility of serious conflicts of interest going unexposed, allowing critical decisions to be made using tainted information and advice. New ways to protect against conflicts of interest can and must be found.

In addition to services, the Government also buys goods. And of course, waste and inefficiencies occur throughout this process.

One area well known for inefficient spending is in defense. In 1993, we will spend $290 billion on defense and a major part of that tab will be on weapons systems. The potential for waste in purchasing weapons systems is great considering the complexities and the enormity of these systems.

The airborne self-protection jammer [ASPJ] is a prime example of a weapon system which took on a life of its own even though it was a miserable failure from the beginning. Before we finally killed ASPJ last fall, the Navy had spent $2 billion and 16 years developing a system that could have endangered the lives of our pilots using this radar-protection jammer.

Diligent, impartial and honest testing of these weapons could have saved the taxpayers of America billions of wasted dollars on this particular weapon.

The presence of the new administration offers new opportunities to review wasteful procurements and establish more efficient purchasing practices. There is much work to be done.

Also, Government must be accessible to people. Tapping into all of the programs designed to help Americans is beyond the reach of most.

For example, there are presently 125 Federal employment training programs. These programs received some $16 billion in 1991; 65 of these programs provide employment training for the economically disadvantaged. As the General Accounting Office concluded, "These myriad programs do not function as a comprehensive, cohesive system, but often operate in isolation."

Programs like these must be consolidated and streamlined. I want to bring Government officials together with the people they are meant to serve and, once again, we must do it now.

Making sure Government works for its people also includes protecting the people from the Government. This protection need not cost large sums of money. It simply requires vigilance, and commitment.

For instance, until the first taxpayer bill of rights passed in 1988, no legislation in the history of the Congress ever recognized the rights of the taxpayer in dealing with the awesome power of the tax collector, the IRS.

In carrying out its mission, the IRS will make mistakes, and some IRS employees will overstep their bounds. Our laws must reflect this reality by providing safeguards to protect the taxpayer from the devastating effect of these mistakes and misdeeds.

In the coming weeks, Mr. President, I will reintroduce the taxpayer bill of rights two, which was included in both tax bills that were approved by Congress last year but vetoed by then President Bush. T2 as we call it, builds on the original bill and carries the message that taxpayers are to be treated with respect.

Finally, Congress must clean up and organize its own House. We must rethink our Byzantine budget process and our confusing and burdensome committee system. We must come to grips with an ethics process that is swift and fair in order that we restore the credibility of the Congress with the people.

The newly named Joint Committee on Organization of Congress just began a year long effort to address these issues. I am proud to be a part of this bipartisan and bicameral effort. Its work is critical to the ultimate progress we hope to achieve.

THE NECESSITY OF CHANGE

The goals I have set in this talk today all involve change—dramatic change from the business as usual mentality within our Government.

Skeptics say that we cannot change our system. They say that to find a better way is not possible; that a new way will not work.

But in this past election, the people spoke loudly for change. Now lawmakers must come together and heed their call. And we must look beyond the skeptics that divide the debate and slow down the progress toward reform.

Mr. President, we must defy those skeptics. We must show anyone who says a better way is not possible—that they are wrong, totally wrong.

We should never admit nor concede we cannot do better. We can do better. We will do better and, Mr. President, we must do better.

I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, Senator SIMON, from Illinois, is recognized to speak for not to exceed 30 minutes.

Mr. SIMON. I thank the Chair.

(The remarks of Mr. SIMON pertaining to the introduction of Senate Joint Resolution 41 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized.

Mr. KRUEGER. I thank the Chair.

(The remarks of Mr. KRUEGER pertaining to the introduction of Senate Joint Resolution 41 are location in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Utah is recognized.

Mr. HATCH. I thank the Chair.

(The remarks of Mr. HATCH pertaining to the introduction of Senate Joint Resolution 41 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is conducting morning business. Senators can speak for up to 10 minutes.

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Mr. LEAHY. I thank the Chair.

(The remarks of Mr. LEAHY pertaining to the introduction of S. 309 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. 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 Arkansas is recognized.

Mr. BUMPERS. I thank the Chair.

(The remarks of Mr. BUMPERS pertaining to the introduction of S. 31, are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LUGAR. 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 Indiana is recognized.

(The remarks of Mr. LUGAR pertaining to the submission of Senate Resolution 64 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. I thank the Chair.

(The remarks of Mr. GRAMM pertaining to the introduction of S. 315 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE BALANCED BUDGET AMENDMENT

Mr. GRAMM. Mr. President, we have had colleagues come to the floor today and talk about the balanced budget amendment to the Constitution. I am very fond of saying that balancing the budget is like going to heaven: Everybody wants to do it; they just do not want to do what you have to do to make the trip.

Let me say that I intend to work this year to get a vote on the balanced budget amendment to the Constitution. We are going to vote on a debt ceiling here probably the first week in April. And when the bill collector is at the door, I cannot think of a better time to get people to sit down around the kitchen table and look at this problem.

I remember when the debt ceiling was voted on, when I first had come to the House, the majority leader at the time got up and said that we had no choice except to pay our bills and that to be debating the debt ceiling was basically abrogating our responsibilities. I responded to that by saying, well, the analogy is good that people have to pay their bills, but the analogy collapses thereafter. It collapses because in every family in America, when people run up too much debt, they are forced to sit down around the kitchen table, get out the credit cards and the butcher knives, cut up the credit cards, write a budget, and make hard choices. That never seems to happen in the Congress of the United States.

In fact, throughout our Nation, in virtually every business and household, in every State and local government in the land, we have had in the last 4 or 5 years a retrenchment, a restructuring. That has yet to happen in the Federal Government. It seems to me that when the debt ceiling comes up in April, that is the perfect time to write a new compact with the American people. And that compact with the American people could not be stronger, could not be more important than to adopt a balanced budget amendment to the Constitution.

Some of my Democratic colleagues say this is not the right time; that we need to give our new President a chance. I remind those same colleagues that when Ronald Reagan was President, I was a leader in the effort to bring the balanced budget amendment to the floor of the House. It was adopted in the Senate. It failed in the House on a very close vote.

When George Bush was President, I worked to bring the balanced budget amendment to the Constitution to the floor of the Senate. It failed on a filibuster that was led by the Democratic leadership. It was not that I did not want to give George Bush a chance. It was not that I did not want to give Ronald Reagan a chance. It was that I wanted to give them a hand; that I wanted to give them a vehicle to help force Congress and to force the President to make hard choices.

So I do not buy into this logic that because we have a new President, the old problem has magically gone away. I think we need a balanced budget amendment to the Constitution to force us all to make tough choices, choices that will be unpopular. These are choices that—quite frankly—we have all proven that, in the absence of a binding constraint, we will not make.

So I look forward to having the opportunity, when the debt ceiling comes up, to debate this issue. We have a consensus balanced budget amendment that was written on a bipartisan basis toward the end of the last Congress. It failed in the House by 9 votes, when 12 people who cosponsored it and went back home and told people how great it was, under pressure voted against it. It failed here in the Senate, when we offered it, by two votes when we tried to break the filibuster.

I think when the debt ceiling is back before us; when the bill collector is at the door; when, perhaps, we are sobered concerning our problems in paying the bills of the Nation, that is the time that we ought to be voting on the balanced budget amendment to the Constitution. And I look forward to having that opportunity.

I thank the Chair for his indulgence. I know we are moving into the time to consider the family leave bill.

GAYS IN THE MILITARY

Mr. GRAMM. Mr. President, let me say that I want an opportunity to vote on the issue of gays in the military. No issue in the last 2 years has gotten more attention from the people who pay my salary, the working men and women of Texas, than this issue.

What we are asking on the Republican side of the aisle is to have an opportunity to present our resolution and to have an up-or-down vote. I think that is a reasonable request. The purpose of the Senate and the Congress is to do the people's business. I think the people want this addressed. I look forward to having an opportunity for the Democrats to present their sense-of-the-Senate resolution. From what I have seen of it, I view it as largely meaningless. I intend to vote for it. But then we will have a real vote on real policy, to set out a policy that requires a decision based on the facts, that does not prejudge that decision—as I believe the President unwisely has done—and that will ultimately result in a joint decision by the Congress and by the President.

I believe that we can settle this issue today. I hope we will not delay family leave and other issues that will come before us in an effort—which I believe will fail, in any case—to deny us an opportunity to vote on this issue.

I am determined that we are going to have a vote. And if it means that nothing ever passes the Senate until we have an opportunity to cast that vote, until every Member of the Senate has a chance to say yes or nay, then I am willing to do that.

But I do not think that serves the public interest. I think we are ready to vote. We are ready to set a time limit on the debate, and simply have the debate and make the decision.

I thank the Chair for his sufferance. I yield the floor.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. 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. GRASSLEY. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

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

Mr. GRASSLEY. I thank the Chair.

(The remarks of Mr. GRASSLEY pertaining to the submission of Senate Resolution 64 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I ask to proceed in morning business for a period of 10 minutes.

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

The Senator from Idaho is recognized.

Mr. CRAIG. I thank the Chair.

(The remarks of Mr. CRAIG pertaining to the introduction of Senate Joint Resolution 41 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. I ask unanimous consent that I may speak for 5 minutes and my remarks placed at the appropriate place in the RECORD.

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

NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. DORGAN. Mr. President, other speakers on this floor have discussed our problems in this country describing what we may have caused and what others may have caused. And I admit that many of the economic problems in this country are problems that we have caused ourselves and we are going to have to fix ourselves.

But I would like to bring to the attention of the Members of the Senate today a problem in international trade that is something that we have not caused but something that has caused significant harm, financial harm, to producers in this country.

The reason I am interested in this subject is that we in this country find ourselves in the position from time to time of producing a good product and trying to compete in an international marketplace and discovering that rules are unfair to our producers.

I would like to talk just briefly about the North American Free-Trade Agreement and especially about our trade situation with Canada. We are now in the process of talking about NAFTA, the Mexican agreement in which Canada was a participant.

Some years ago, we decided to have a free-trade agreement with Canada. At the time, I was serving in the United States House, on the Ways and Means Committee, and we were involved in the legislation to establish a free-trade agreement with Canada. At that time, Ronald Reagan was President and Clayton Yeutter was the Ambassador for Trade. And when they brought to us an agreement with the Canadians that they had negotiated calling for a United States Free-Trade Agreement, I raised a lot of questions. Because, I said, you know the way you have negotiated this it looks to me like it is not going to be fair to our side, and you would expect our negotiators to be wearing our uniforms and playing on our team and at least negotiate a trade agreement that represents our economic interests.

They said, no, Mr. Congressman, you are all wrong about that. You are worried about grain and various kinds of marketing of grain up in the northern Great Plains. Do not worry about it. You are wrong to be concerned about it.

In fact, Mr. Yeutter said—and the President then subsequently said in a statement to Congress accompanying the bill—Mr. Yeutter said first in that letter, I will guarantee that we are not going to have a problem here.

"The administration agrees with the committee"—these were questions I raised in the House—"that the interests of both countries are better served through a cooperative, mutually beneficial approach. One indication of such an approach by the Canadian Wheat Board would be the volume of shipments to United States in future years relative to recent years and that continuation of its counterrestrictive policy regarding the granting of export license to producers."

The point that Mr. Yeutter was trying to make and President Reagan subsequently made is that we have an agreement with the Canadians. They are not going to flood grain across our border.

The reason I was concerned about it flooding across our border is they did not get rid of the deep rail subsidy for transporting grain in Canada with this agreement.

So the result was much grain in Canada that is hauled with a deep rail subsidy; it competes against our grain and we cannot compete. It is unfair competition.

So Mr. Yeutter promised and President Reagan promised: This is not going to happen. We have a mutual understanding with the Canadians; this is not going to happen.

I would like to tell you what has happened since that time. We passed the free-trade agreement—not with my vote. I voted against it in the U.S. House, but it was passed. Let me describe what has happened. And most of you understand this is an arcane issue that does not mean very much.

You go home tonight and eat some elbow macaroni. Where does the macaroni come from? It comes from semolina flour. Semolina flour is used to produce the macaroni, the pasta. Where is the semolina flour coming from? Durum wheat, 80 percent of which is raised in North Dakota. Durum wheat produces semolina flour, which produces the pasta. So when you eat lasagna tonight, very likely you are eating something from the plains of North Dakota in the form of durum wheat that became flour and then pasta.

Let me call to your attention, Mr. President, a chart that shows back when the United States-Canada Free-Trade Agreement was negotiated, and when Mr. Yeutter and President Reagan said: Do not worry about a flood of grain coming across. It is not going to happen. Back then we had no durum wheat coming from Canada into this country. Shortly after that the Canadian Wheat Board, which controls all shipments of wheat from Canada, began to increase the amount of durum wheat coming into this country. You will see what happened in 1986 and 1987, 1987 and 1988, 1988 and 1989, 1989 and 1990, and 1990 and 1991.

All through this process I was complaining to the U.S. Trade Ambassador and the negotiator, saying: Do you not see what is going on here? This is terribly unfair trade. It is taking millions of dollars out of the pockets of American producers, who cannot compete and should not be expected to compete in unfair trade.

Finally, here in 1990 and 1991, the U.S. Trade Ambassador, lo and behold, discovered, yes, indeed, this was unfair; it was a problem, and they would take action. So a complaint was filed under the United States-Canada Free-Trade Agreement provisions, and a binational panel was established to rule on this dispute.

Guess what? Even after the complaint was filed, the Canadians continued to increase the flow of durum wheat from Canada into this country.

Just to show the unfairness of this, during this period someone came to North Dakota, Bowman, ND, who was married to a Canadian. She came down for Thanksgiving, and was going to go back home after having a nice visit in Bowman, ND. And then she wrote me a letter.

She asked her father if he would give her a couple of sackfuls of clean grain from spring wheat, Hard Red Spring wheat, because she liked to bake fresh bread. So she was going to take a few bags of spring wheat back to Canada to make some bread.

She drove up with her husband back to Canada and got to the border. The folks at the border said: "What is in the back seat of that car?"

"Wheat," she said, "a couple of sacks of wheat. I am going to grind it up, up there in Canada, and bake some whole wheat bread. It is from the family farm."

"Sorry; you cannot take two grocery sacks of wheat into Canada. You cannot take any wheat into Canada. Do you have a license?" they said.

You cannot get two sacks of American wheat into Canada. At the same time, millions and millions and millions of bushels of Canadian Durum, unfairly subsidized, were coming into our country, coming into our pasta plants, displacing the market for our producers because our producers could not compete.

That, Mr. President, is unfair trade.

Next Monday there will be a ruling on this issue from the binational panel. I do not know what the ruling is at this point. But I know this: The ruling is not going to solve this problem, because it is very unlikely the Canadians are going to comply with price transparency, disclosing prices so we know what is happening with respect to this trade.

This chart describes what is wrong with those who chant about free trade. Yes, I suppose you might call this free. But it sure as heck is not fair to somebody on our side of the border who raises a crop and expects to be able to compete in a market that represents fair competition.

This problem has become exacerbated just in recent months. From August to December 1991, you will see what came in. August to December, 1992; this is during the dispute. This is after the United States filed a complaint.

The Canadian Wheat Board has continued to target our market, and it is not just in Durum. Now it is also in other areas—barley—in this same period. You will see what is happening; barley shipments from Canada.

It is also in spring wheat. Take a look at the spring wheat shipments.

Obviously, that is a much bigger crop. So it is a smaller percentage. But the fact is, in Durum, 20 percent of the domestic use of Durum is now coming in our back door from Canada, most of it unfairly subsidized. And, at the same time, we are taking Durum and trying to move it around the rest of the world with a deep export subsidy, trying to move it around to market it. And then we get it through the back door from up North.

Just in the past month or two, when we were trying to get rid of a damaged crop—we had moisture-damaged grain, a lot of wheat from this past harvest. We were trying to move ours from our country to Russia, for example, in various ways. Guess what happened? The Canadian Wheat Board decided they would allow farmers to sell to them, buy it back, and truck it across the American border so that we would get an influx of damaged grain from Canada at the very time we were trying to move our damaged grain out of this country and move it off the market. There is something wrong here.

This afternoon, I am meeting with the new U.S. Trade Ambassador and I want to present this information to the U.S. Trade Ambassador. My hope is that after 12 years of this mantra chant about free trade that really does not mean anything—because free trade does not mean anything if it is not fair—after 12 years of that, my hope is that we will finally—finally—have a Trade Ambassador and trade negotiators who will stand up for and represent the best economic interests of the American producers.

No, I am not asking for protectionism. I am not suggesting we close our borders. I am saying that when it comes to American producers, we ought to be expected to compete with others around the world, but we also ought to insist the competition be fair. Why is it every time our negotiators go into a negotiation, they seem to come out on the short end of the stick?

What happened to those shrewd Yankee traders? You know, we were a nation of shrewd Yankee traders, the history books tell us. Where are they? Why do we get trade agreements that are so fundamentally unfair to us? Why do we get trade agreements that trade off the economic concerns of people who produce real new things, like farmers who produce real new wealth, and provide advantages on the other side for the investment bankers and big financiers in this country who, in my judgment, have not done a lot to move America ahead?

The answer, it seems to me, is that is where the economic power has been. But maybe we ought to understand that this country is going to move ahead, this country is going to progress, when we decide to place value on people who produce real new wealth. That is what is going to move this country ahead, when we place value on that production and we say to them: What you produce, you have to compete across the world with, so what you ought to do is produce the best, and market it at the best price.

And they say to us: Well, even if we do that, if the rules are unfair, we lose.

That has been falling on deaf ears here in Washington. And that is why it is time for trade negotiators to begin to stand up for the economic interests of American producers. Not to protect them, but simply to guarantee to American producers that when they compete, we will insist the competition be fair.

My hope is that with the information about the Canadian shipments—and this is only one piece of a large puzzle—the Trade Ambassador will initiate discussions immediately, even outside of this binational panel, to say to the Canadian Government, the Trade Minister, the Wheat Board, and others that we will simply not accept nor will we stand for this kind of targeting of our market which places our producers at an unfair disadvantage.

I know all of this represents charts and graphs and data, and so on. But it also represents macaroni and income, and a livelihood and a family farm. That is, in the final analysis, what it represents.

Even more importantly, it represents the ability of this country to move ahead. We will move ahead when we produce goods which we can sell around the world at a decent price in a competitive arena in which the competition is fair. There is nothing wrong with American producers. We can compete—and win—with any other producer in the world. But we cannot do it with our hands tied behind our backs. And we certainly cannot do it if the rules are not fair.

Mr. President, my hope is that with a new administration and a new determination to move this country ahead in a whole range of areas, that we will begin to see solutions to problems of this type.

I intend to continue work that I have done for 3 or 4 years on this issue, and I look forward to the cooperation and interest of other Members of the Senate.

Mr. President, I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota [Mr. CONRAD] is recognized.

Mr. CONRAD. Mr. President, I rise to congratulate my colleague on his first speech, his maiden speech on the floor of the U.S. Senate and just say that from North Dakota's interest, he could not have focused on a more important subject than the question of trade and whether or not we are going to have fair trade policies affecting this country.

Mr. President, my colleague, Senator DORGAN, who has been a forceful advocate of fair trade when he was a member of the Ways and Means Committee on the House side, brings that same interest, that knowledge base over to the Senate, and we are lucky to have him here. My State is lucky to have him here. This body is lucky to have him here because they do not come any better than Senator DORGAN.

Let me just say to my colleagues that I think you will find over the coming days and weeks and months that we have somebody who has joined this body who is going to make a special contribution. There are not many people who are as productive as Senator DORGAN and not as many people who have as clear a vision of what needs to

be done to get this country back on track. One of the key components of doing that is fair trade practices for this country. He has highlighted, I think, in a very compelling way for us today the issues that are at stake and what needs to be done.

So I just want to say welcome to my new colleague from North Dakota. I think this Senate is going to be a better place because he is here and to say to my colleagues, we have a new partner in the U.S. Senate who is going to make a difference for this country and certainly for my State. I thank the Chair and 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. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be permitted to proceed for 10 minutes as if in morning business.

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

Mr. DOMENICI. I thank the Chair.

EXCESSIVE GOVERNMENT SPENDING

Mr. DOMENICI. Mr. President, I come to the floor to talk about two issues today, and let me discuss one that is on the front burner these days. It has to do with the deficit, and short-term stimulus.

Mr. President, speaking for myself as one Republican—and I sense for a growing number of other Republicans—I am coming to the conclusion that what we need most from our new President, since he has overwhelming party control of the House and significant control in the Senate—in a sense, he is kind of dealing the cards. I am coming to the conclusion that what we need is to address excessive Government spending because it is excessive spending that is creating the deficit.

Now, there are those who would like to fuzz that up, but the truth is that the tax base in the United States has not changed much since the late seventies. In fact, the way we look at it, it is still about 18 percent of our gross domestic product—where it was 5 years ago. It was about 18.5 then. It is now about 18.6.

What is changing is that spending, in comparison to our gross domestic product, is at 23-plus percent and the Congressional Budget Office says in 6 years it will be 24 percent. They also tell us unequivocally that, during the next 5 years, 93 percent of the spending increase will come from the entitlement side of the ledger, led particularly by Medicare and Medicaid and not necessarily by all of the entitlements. So I have said, let us get those under control and leave Social Security out because it, indeed, is an entrusted entitlement.

But the point I want to make today is that we need to see, first and foremost, a long-term, enforceable, credible spending reduction plan. Why do we need that? We need that, Mr. President, because the problem with the American deficit is spending increases. In fact, just a few days ago the Governors, at their national conference, addressing spending reductions over an 8-year period, borrowed from the Nunn-Domenici CSIS strengthening America report, which the occupant of the chair so graciously chose to introduce in the RECORD and speak affirmatively about. They chose the part of that report, that says deficit reduction should require $2.70 in spending savings for every $1 in revenue increases.

But they also said it should be first things first. So what we need—and I believe we are coming to that on our side of the aisle—is to see long-term permanent enforceable spending cuts because the problem is spending.

Having said that, I want to address for a moment the notion of stimulating the American economy over the short term. I have come to the realization and conclusion—and I believe there is a growing number on our side of the aisle who feel the same way—that you have to link any short-term stimulus, to a long-term deficit reduction package that is credible and enforceable. We would be sending the wrong message if we signal an increase in the deficit and we do not send a signal of decreasing it over the long-term. Without long-term deficit discipline, long-term interest rates could rise and bringing them down, is really what drives growth and long-term investment in America.

Let me make one last observation about our short-term stimulus that I think has escaped the attention of most Members and the American people.

Mr. President, by definition, whatever the Government spends that the Government does not pay for is a stimulus. That is the definition. That is the Keynesian idea. If you have taxes coming in to pay for a $300 billion budget and you increase spending to $400 billion, the extra hundred is stimulating the economy. Mr. President, we have the largest stimulus in American nonwar history, $320 billion this year.

So you see when we speak of 20 or 30, it seems to me we are not really talking about anything significant because the deficit is 10 times that, and maybe more, already in this deficit-laden American fiscal policy.

The economy is already growing. Why it is not creating jobs will not be addressed by a stimulus of $20 to $30 billion. A lack of job growth is a function today of other dimensions that we ought to really analyze.

Last, we must look at the tax situation in our country. I have just said to the Senate, that I have come to the conclusion that we need a significant enforceable, multiple-year spending reduction program on the table. But when you look at the tax situation, I have come to the conclusion that the Tax Code of the United States is centered on an income Tax Code that is antigrowth and antijobs in its incentives. This is because it does not cause Americans to want to save or invest. Rather, it encourages spending and borrowing.

And long-term, the antipathy, in our kind of economy to growth, prosperity, investment, and jobs is excessive spending and excessive borrowing.

So I believe we ought to be looking at a Tax Code change of big proportions. Don't just change the income tax law from the way it is now, but abolish it. Put a new system in place that does not penalize investment and savings. This is done by giving tax relief to people who save and invest. Certain thresholds would be established to make it fair by retaining progressive tax rates.

So I rise today to try to make clear, where this Senator is coming from, and hopefully in a spirit of cooperation where a lot of us on this side are going in our thinking. We hope to see long-term multiyear, real spending cuts, and hope to see them as soon as possible because spending is the problem—not the fact that we are not taxing enough. That is not the problem. The problem is we are spending too much. Spending is not going to decrease in proportion to our tax take or our gross domestic product unless we reform certain programs that are growing out of control.

Mr. President, I said I will make two points. That finishes the part I have to say about stimulus, about deficit reduction and what comes first, and what causes it.

MEDICAL LIABILITY REFORM IN MANAGED COMPETITION

Mr. DOMENICI. Mr. President, I would like to speak to an issue of medical liability reform as part of any new reform health care delivery system, including managed competition.

Mr. President, I believe we will really miss the boat in a serious way if as part of this reform we do not get to the issue of medical liability being determined by juries across America without any limit on what they can award. I think the time has come to realize that this method of establishing the quality of health care and the appropriate standards of delivery is ludicrous, for it is not objective, it is not scientific. It is clearly filled with emo-

tion. It is biased by big adverse effects that nobody is responsible for.

So I have a detailed statement here asking my colleagues to seriously consider the approach which I introduced last year which I will refine that says because the Federal Government is now involved in most of the health delivery one way or another, tax laws or Medicare or Medicaid, and will be more involved in setting standards and other things when we are finished with reform, we, at the national level, ought to mandate arbitration with realistic caps, and insist that the medical profession is part of that, set a new system of policing their own. I believe there are billions of dollars to be saved if we do that as part of real reform.

My statement goes into detail, talks about as best we can, how these kinds of jury verdicts are setting standards, that are clearly not consistent with science and good delivery, but are costing an inordinate amount of money; not bringing negligence under control at all. In fact, I believe arbitration will bring it under control more readily. In fact, I think there will be more arbitration cases than there are current jury cases. They will go quickly. They will be based on science, based on good testimony, science on both sides, and will get over quickly, and they will be reasonable. That will begin to be a much better analysis of how we ought to be cautious in the delivery system to take good care of our American people and others who are part of the health care delivery system.

MEDICAL LIABILITY REFORM IS CRITICAL TO HEALTH CARE REFORM

Again, I want to speak for a few moments about a subject that I believe will be critical to the success or failure of health care reform: Changing our medical liability system.

Clearly, the most difficult issue in health reform is how to slow the growth of health care costs.

CBO now projects that we will spend $1.7 trillion, or 18 percent of GDP, in the year 2000 if we don't enact significant reforms.

We argue and discuss for hours on end whether competition or regulation will be more effective in controlling health care costs.

And I think that is a very critical debate.

But regardless of where we fall in that debate, we must also include in reform significant changes in how we determine liability for negligent medical care.

Without such changes, neither regulation nor competition will be able to eliminate the costs of defensive medicine—doctors and hospitals will still perform unneeded treatments and procedures to protect themselves in case they get sued.

Recently, the Washington Post reported on a new study by Lewin-VHI that estimated we could reduce our health care bills by as much as $76 billion over the next 5 years by reducing defensive medicine.

That will not solve our whole problem, but we cannot afford so much waste anymore.

REPLACING JURIES WITH SCIENCE

What causes defensive medicine?

The main culprit is our jury system for determining tort liability.

Doctors and other health providers practice by fuzzy standards that are set in large measure in courtrooms by lay juries.

These juries hear cases that are filled with human tragedy and high emotion—and the defendants are well paid doctors and insurance companies.

Clearly, the tendency of these juries is to expect health providers to do everything possible for the patient, regardless of cost and regardless of science evidence on the efficacy of the treatments.

Doctors understand this process, and they practice medicine accordingly.

They do whatever they think a jury would expect them to do, whether or not it is good medical practice.

To get at the heart of defensive medicine, we must eliminate juries from this process and decide medical negligence in arbitration or other objective forums where scientific evidence can set the standards.

THE DOMENICI BILL AND MANAGED COMPETITION

Last year, I introduced a bill to do just that.

S. 1232 would have taken nearly all of our medical liability claims out of the courtroom and put them into binding arbitration.

My bill also allowed scientifically developed medical practice guidelines to determine the standards by which health providers would be judged in arbitration.

This approach is absolutely consistent and, in fact, reinforces the principles of managed competition.

Managed competition works if consumers can buy health insurance plans based on how well those plans deliver high quality care at a low price.

But to lower their price, health plans must be able to eliminate unnecessary and inefficient care.

And they will not be able to do that if juries keep setting the standards based on emotion rather than science.

For managed competition to work, therefore, I believe it must include provisions for deciding liability in arbitration with new, more precise standards.

My bill also includes constraints on the awards that arbitration panels can make, which are important.

But constraints alone will not do the job.

The key is to get the cases out of the courtroom and into settings where science can rule the day.

REINTRODUCING THE DOMENICI APPROACH

Frankly, I believe others in the health reform debate are beginning to see the merits of my proposal.

Last year, House Republicans introduced a health care bill that included my approach to medical liability.

When we return from the upcoming recess, I will reintroduce my bill with some slight modifications to make it fit more easily into the context of managed competition.

I hope many of my colleagues will join with me in that effort.

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

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

ORDER OF PROCEDURE

Mr. JOHNSTON. Mr. President, I ask unanimous consent that it be in order for me to proceed as if in morning business for not to exceed 5 minutes.

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

The Senator from Louisiana is recognized.

Mr. JOHNSTON. I thank the Chair.

(The remarks of Mr. JOHNSTON pertaining to the introduction of S. 318 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Chair, in his capacity as the Senator from Nebraska, suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. KASSEBAUM. 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 Kansas is recognized.

Mrs. KASSEBAUM. I thank the Chair.

(The remarks of Mrs. KASSEBAUM pertaining to the introduction of S. 325 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

BOSNIA AND HERZEGOVINA: THE ATROCITIES CONTINUE

Mr. PRESSLER. Mr. President, life in Bosnia and Herzegovina continues to deteriorate. There is little food, water, heat, and electricity in most areas of the former Yugoslavia. While Cyrus Vance and Lord Owen have switched venues from Geneva to New York to negotiate settlements of the ethnic conflicts in the region, life for the Bosnian Moslems and Croats has, at best, improved little.

Because of firm opposition to rewarding the evil aggression of the Bosnian

Serbs, I and four of my colleagues recently sent a letter to Secretary of State Christopher, urging him to deny Bosnian Serb leader Radovan Karadzic a visa for entrance into the United States. We believe that allowing Karadzic into the United States sends a wrong message—a message condoning the atrocities his government is committing against the Bosnian Moslems and the Croats. After all, according to the State Department, Mr. Karadzic is a suspected war criminal. Despite our efforts, the State Department allowed Karadzic to enter our country.

According to the Immigration Act of 1990, a visa applicant can be denied entry into the United States because of international terrorist activity, membership in a totalitarian organization, or if the Secretary of State believes entry into the United States would have adverse foreign policy consequences. The Serbian ethnic cleansing, rape, and brutal totalitarianism provided more than enough evidence to justify Karadzic's exclusion. Still, the State Department allowed this aggressor to enter into the United States.

Mr. President, I support peace in the Bosnian region. However, we must win a true peace, not force a false peace. I do not condone rewarding the territorial gains of an aggressor through the Vance-Owen peace plan. Until he and his marauders are brought to justice, I will not support Karadzic's presence in the United States.

In a separate letter to U.N. Secretary General Boutros Boutros-Ghali, I urge him to have the U.N. Commission on Experts question Mr. Karadzic while he is in the United States. The world needs to know the extent of Mr. Karadzic's participation in Serbian war crimes in Bosnia. The process of justice must not take a back seat to the prospects for peace.

Mr. President, I ask unanimous consent that both my letters to Secretary Christopher and Secretary General Boutros-Ghali be printed in the RECORD at the conclusion of my remarks.

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

U.S. SENATE,
Washington, DC, February 1, 1993.

Hon. WARREN CHRISTOPHER,
Secretary, Department of State, Washington, DC.

DEAR MR. SECRETARY: We have learned that Radovan Karadzic, leader of the Bosnian Serbs and a suspected war criminal, is seeking a visa to enter the United States. We are writing to urge strongly that Mr. Karadzic's visa request be denied.

According to the Immigration Act of 1990, Mr. Karadzic could be denied entry because of international terrorist activity; membership in a totalitarian organization; or if the Secretary of State believes entry into the United States would have adverse foreign policy consequences.

There is more than enough evidence to justify exclusion. Mr. Karadzic has presided over the greatest systematic violation of basic human rights in more than a generation. Violence in Bosnia-Hercegovina has claimed the lives of more than 200,000 citizens. Tens of thousands of Bosnian women have been raped. Ethnic cleansing has uprooted more than 1.5 million people. There appears to be no limit to the senseless genocide imposed by the forces controlled by Mr. Karadzic. It is for these atrocities that the United States State Department has listed Mr. Karadzic as a potential war criminal.

Now Mr. Karadzic intends to travel to New York to cement the territorial gains of his aggression. Though we support efforts to achieve peace in Bosnia-Hercegovina, we strongly oppose any agreement that legalizes military aggression. Such an agreement cannot last. Just as important, we strongly oppose any attempts to negotiate peace agreements with potential war criminals, such as Mr. Karadzic. Peace is not a substitute for justice.

For these reasons and pursuant to the Immigration Act of 1990, we urge you to deny Mr. Karadzic's visa application. However, should the United Nations insist that Mr. Karadzic be granted a visa, we urge that his entry be conditioned on his being questioned by the United Nations Commission on Experts, recently established to gather evidence on possible war crimes in the former Yugoslavia.

The world must learn the extent of his involvement in the horrific crimes perpetrated by the Serbs against Bosnian Croats and Muslims, and against humanity itself.

Thank you for your prompt attention to this vital issue.

Sincerely,

ALFONSE D'AMATO.
BOB DOLE.
DICK LUGAR.
LARRY PRESSLER.
JESSE HELMS.

U.S. SENATE,
Washington, DC, February 3, 1993.

Secretary General BOUTROS BOUTROS-GHALI,
The United Nations,
New York, NY.

DEAR MR. SECRETARY GENERAL: As you well know, Bosnian Serb leader Radovan Karadzic will be present at the United Nations as part of the peace talks mediated by Cyrus Vance and Lord Owen.

I support any and all attempts to achieve real peace in the Bosnian region. However, I do not condone any peace plan that rewards violent aggression. Mr. Karadzic's involvement in the atrocities committed in Bosnia-Hercegovina has prompted the United States Department of State to list Mr. Karadzic as a potential war criminal.

The process of justice must not be sacrificed in the quest for peace. You have demonstrated a commitment to justice with the establishment of the U.N. Commission on Experts to investigate war crimes in the former Yugoslavia. As part of that investigation, I strongly urge that the Experts Commission question Mr. Karadzic during his stay in the United States. No doubt his testimony would be crucial to the investigation.

Mr. Secretary General, real peace in Bosnia-Hercegovina will not be achieved unless justice is brought against the war criminals who brought the horrors of rape, murder and ethnic cleansing to the Bosnian people. For this reason, I hope the United Nations will question Mr. Karadzic extensively on his alleged involvement in this senseless genocide.

Thank you for your attention to this vital matter.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOX SCORE

Mr. HELMS. Mr. President, the Federal debt run up by the U.S. Congress—stood at $4,177,801,340,225.78 as the close of business on Tuesday, February 2, 1993.

Anybody remotely familiar with the U.S. Constitution is bound to know that no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States. Therefore, no Member of Congress, House or Senate, can pass the buck as to the responsibility for this shameful display of irresponsibility. That dead cat lies on the doorstep of the Congress of the United States.

During the past fiscal year, it cost the American taxpayers $286,022,000,000 merely to pay the interest on deficit Federal spending, approved by Congress, over and above what the Federal Government has collected in taxes and other income. Averaged out, this amounts to $5.5 billion every week, or $785 million every day, just to pay the interest on the existing Federal debt.

On a per capita basis, every man, woman, and child owes $16,264.96—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt averages out to be $1,127.85 per year for each man, woman, and child in America. Or, looking at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

What would America's economic stability be today if there had been a Congress with the courage and the integrity to operate on a balanced budget? The arithmetic speaks for itself.

A SALUTE TO WILLIAM F. "BILL" FARMER

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to William F. "Bill" Farmer, Jr., a Frankfort, KY, native who recently retired after 32 years of Federal service.

Mr. Farmer is a graduate of the University of Kentucky, where he received a degree in commerce. He began working for the Senate in December 1964 when he was appointed assistant registration clerk. This position eventually led him to an appointment to registration clerk. In 1969, he left the registration clerk's office to accept a position as assistant editor of the Daily Digest section of the CONGRESSIONAL RECORD.

In 1971, Mr. Farmer joined the legislative staff at the rostrum in the Senate Chamber. For 3 years, he served as

second legislative clerk until he was appointed assistant legislative clerk. In 1980, he was appointed chief legislative clerk. He held this position until he retired.

Mr. Farmer will be remembered by Members of the Senate and staff as the "voice of the Senate." He earned this title after calling for numerous votes and reading many amendments. We will miss his familiar voice, as well as his humorous stories and jokes.

Today I honor Bill Farmer for his dedication to his country, and I wish him future good health and happiness.

TRIBUTE TO SOL LEVITES

Mr. MACK. Mr. President, I would like to take this opportunity to recognize and congratulate one of my constituents, Sol Levites, on receiving the Institute of Human Relations Award from the American Jewish Committee. This prestigious award is being presented to Sol in recognition of his achievements in business, his commitment to intergroup and inter-religious harmony, and his quiet philanthropy.

In 1936, after graduating from McGill University, cum laude, Sol launched a career that has been marked with success. During World War II, Sol participated in the war effort by directing aircraft parts operations. In 1948, he was a cofounder and president of plastics plants in Plattsburgh, NY, and Georgetown KY. In 1972, Sol relocated his base of operations to Sarasota, FL, and has since served as President and CEO of Sun Precision, Inc.

In addition to his successes in business, Sol has always worked to promote a better understanding among people wherever he lived. He has served as president of Temple Beth Israel in Plattsburgh, and Temple Beth Israel in Sarasota. He is a past president of the Sarasota-Manatee Foundation, World Union for Progressive Judaism, and the Weizman Institute. Sol also serves on the executive committees of the Union American Hebrew Congregations, Manasota Industry Council, and Home Instruction Program for Pre-School Youngsters. Sol is the current president of the American Jewish Committee, where he has been a lifelong member.

Sol has enjoyed a successful business career, and a rich personal life dedicated to helping others. I commend for his selfless contributions to society, and am proud to congratulate him on receiving this prestigious award.

CONGRESSIONAL DELEGATES TO THE UNITED NATIONS

Mr. DOLE. Mr. President, our esteemed colleague from South Dakota, Senator PRESSLER, spent a great deal of time at the United Nations during the recent congressional recess. He served along with the Senator from Maryland, Senator SARBANES, as our congressional delegate to the United Nations. Both of our colleagues had the opportunity to participate in the detailed operations of the United Nations. I would like to commend my colleagues for their dedicated service in New York.

A CONGRESSIONAL DELEGATE'S EXPERIENCE AT THE UNITED NATIONS

Mr. PRESSLER. Mr. President, during the recent legislative recess, I had the privilege of serving as one of two congressional delegates to the United Nation's 47th General Assembly. My colleague from Maryland, Senator SARBANES, and I had the opportunity to view, firsthand, the intricate daily workings of the world's peacekeeping organization. While the work was difficult and even frustrating at times, I now have a much greater and more lucid understanding of the positive and negative happenings at the United Nations. I would like to take this opportunity to report to the Senate on some of my recent experiences and activities at the United Nations.

U.N. SPENDING PRACTICES

There is no question that the United Nations is in desperate need of reform. I participated in numerous meetings with U.S. mission staff to discuss U.N. spending practices. I also met with Secretary General Boutros Boutros-Ghali and Under Secretary General for Administration and Management, Dick Thornburgh, on U.N spending and personnel issues. In particular, I digested the contents of the U.N. Board of Auditors audit report for the biennium 1990–91 and the followup conducted by the U.N. Secretariat. Mr. President, to say I was shocked would be a gross understatement.

Let me take a moment to share with you several examples of the kinds of abuse, mismanagement, and fraud outlined in the audit report:

The former director of the International Decade for Natural Disaster Reduction secretariat has been retained on payroll after being removed from the position. The individual continues to collect approximately $140,000 annually.

Computer systems valued at $100,000 were purchased and delivered, but never were used, and are now obsolete.

A U.N. institute was advanced $10,040,882. Of this amount, only $886,000—less than 9 percent—had been authorized by the U.N General Assembly.

Of 5,444 purchase orders issued by the United Nations during 1990–91, only 17 percent were awarded on a competitive basis, notwithstanding U.N. financial rules that require all purchases of $20,000 or more to be subject to competitive bidding.

One example of abuse not covered by the audit concerns independent salary decisions by organizations within the United Nations. The salary scale for U.N. employees is in the range of 10- to 20-percent higher than for comparative positions in the U.S. Civil Service system. Last year, the executive director of the U.N.'s International Telecommunications Union in Geneva awarded 90 percent of its staff a "special pay allowance" amounting to an additional 3- to 4-percent temporary pay increase, which cost the United Nations $1.3 million. The rationale used was that all of these employees had accepted additional responsibilities. The U.N General Assembly approved a resolution condemning this action. Yet even with the General Assembly's rejection, the Secretary General approved the additional pay.

In September 1992, the Washington Post ran a four-part series by William Branigin. The series did an excellent job of documenting the prevalence of administrative abuse in the United Nations. I ask unanimous consent that the Washington Post series be printed in the RECORD immediately following my remarks.

(See exhibit 1.)

Mr. PRESSLER. After studying this issue carefully, it was my honor to deliver the official U.S. position on the audit report in two speeches before the U.N. Fifth Committee. I ask unanimous consent that those speeches, together with an article from the Washington Post concerning the first speech, be printed in the RECORD at the conclusion of my remarks.

(See exhibits 2, 3, and 4.)

Mr. PRESSLER. I carried the theme of the great need for fiscal reform at the United Nations to the U.S. Commission on Improving the Effectiveness of the United Nations during a hearing it held on October 23, 1992. I am pleased to have been appointed recently as a member of that commission as it continues its work and prepares to report to Congress and the President later this year.

Identifying the need for reform at the United Nations is the first, easy step. The next and more difficult question is: How can meaningful reform be achieved? Quite simply, Secretary General Boutros-Ghali himself must take the lead to institute reform within the United Nations. He must do so now. The most recent audit is just one source outlining numerous examples of abuse, waste, and fraud. Those responsible should be fired and, where appropriate, prosecuted.

If the United States alone tries to lead such an effort, it will fail. Reform must come from inside the institution. The charge must be led from the very top. First, the Secretary General must mobilize a coalition of support among the developing nations. Second, he must take swift action to end abusive practices and punish those responsible for past abuse. The United Nations has

the information; what it appears to lack is the will to change. Secretary General Boutros-Ghali cannot be blamed for practices tolerated by his predecessors. However, he must distinguish himself by leading the cleanup crew. I'll be happy to help him in the Congress.

THE FORMER YUGOSLAVIA AND KOSOVA

It was my honor to host a lunch at the United Nations with ambassadors from several nations. I brought these leaders together to discuss the situation in the former Yugoslavia. Those attending included Ambassador Thanas Shkurti of Albania, Ambassador Mustafa Aksin of Turkey, Ambassador Tom Richardson, the United Kingdom's Deputy Permanent Representative; Mr. Vasily Sidorov, Russia's Deputy Permanent Representative; and Mr. Jim Xhema, Mr. Harry Bajraktari, and Mr. Bruno Silmaj, three leaders of the Albanian-American community.

The discussion was very lively and focused on the danger that Serb belligerence, first against Croatia and now against Bosnia and Herzegovina, could next be focused on the ethnic Albanian population of Kosova. If past aggression against Croatia and Bosnia is allowed to stand, it is my strong belief that the people of Kosova will be the next target. I will continue to use every means possible to direct the attention of this Nation and the world toward the plight of the citizens of Kosova.

LIBERIA

During one particular meeting, I discussed the situation in Liberia with Ambassador Winston Tubman. Mr. Tubman's family was once a strong part of the Liberian Government. In our discussion, the question arose: Who will respond to the needs of Liberia? Liberia, war-torn and ravaged, continues to plead for recognition from the international community. While its plight is reaching Somalian proportions, Liberia essentially has been ignored by major aid-donor nations.

Inadequate food supplies, unsafe drinking water, and a host of other inhospitable conditions have made life for the Liberians difficult at best. Civil strife, unrest, and the chaos of human suffering spawned by the Taylor junta are the order of the day. The U.N. Security Council's arms embargo on Liberia's warring factions represents long overdue international action. U.N. support for the disarmament of Charles Taylor's regime should continue.

WEST AFRICAN AMBASSADOR MEETING

I visited with several West African Ambassadors while at the U.N. headquarters. They shared some candid views regarding the role of the United States in the region. I believe the United States must clarify its policy in this region of the world. I have questioned the United States role in Somalia. I do not oppose humanitarian aid. However, I am concerned about the precedent we are establishing. A stronger U.N. force could better resolve this matter. Ironically, the West African Ambassadors indicated that limited resources prohibit them from greater participation in Operation Restore Hope. We must work with these nations in helping them develop the resources necessary to police this region of the world.

SOMALIA

While I was serving as a congressional delegate to the United Nations, United States troops and dollars were sent to the Somali humanitarian aid program, Operation Restore Hope. From day one, I opposed the operation's global cost-sharing imbalance. I always have favored feeding the hungry and starving Somalians. However, the cost of Operation Restore Hope has fallen inequitably into U.S. hands.

At the outset of the humanitarian aid project, I wrote to the U.N. Secretary General Boutros-Ghali, urging him to conduct a cost assessment of Operation Restore Hope. I advised Boutros-Ghali to establish an equitable burden sharing system and request formally the monetary support from other wealthy nations in Europe, Asia, and throughout the world. My letter also stressed that something needed to be done to alleviate the crisis in Somalia. However, because of serious economic problems in the United States—a huge budget deficit, a growing number of homeless people, senior citizen concerns and many other needs and problems—I continued to plead that the United States not be forced to foot the bill for Somali humanitarian aid. Mr. President, I ask unanimous consent that this letter to Secretary General Boutros-Ghali and a second, followup letter to him be printed at this point in the RECORD.

(See exhibits 5 and 6.)

CENTRAL AMERICA

Mr. PRESSLER. Another issue I discussed at the United Nations was the situation in Central America. In early December, I spoke on behalf of the United States regarding the peace processes evolving in Central America. Secretary General Boutros-Ghali has promoted the regional peace process and supported the fulfillment of peace accords in El Salvador. The constructive developments toward democracy in the Central American region have not been unnoticed. Mr. President, I applaud Secretary General Boutros-Ghali's leadership in furthering peace and democracy in this region. Also, I ask unanimous consent that my speech to the U.N. General Assembly on the situation in Central America be placed in the RECORD following the conclusion of my remarks.

(See exhibit 7.)

INDIGENOUS PEOPLES

Mr. PRESSLER. I had a wonderful opportunity to speak at the United Nations on behalf of the United States in launching 1993 as the International Year of the World's Indigenous Peoples. The power of indigenous peoples' movements and the United Nations appreciation of that power was obvious at the Indigenous Peoples U.N. ceremonies. Two native Americans from my home State of South Dakota, Arvol Looking Horse and his wife Carole Anne Heart, were participants in the celebration.

Arvol Looking Horse represents the 19th generation of keepers of the Sacred Buffalo Calf Pipe. The Sacred Pipe is regarded as the center of spirituality for the Sioux Nation. As keeper of the pipe, Arvol provides spiritual guidance and support to those seeking to live a religious life. He had the special honor of giving the spiritual prayer marking the opening of the Indigenous Peoples Year. Arvol's and Carole's presence at the U.N. ceremonies added a special and unique element to the events. Mr. President, I commend Arvol Looking Horse and Carole Anne Heart for their work with the Lakota Sioux Tribe. Mr. President, I also ask unanimous consent that my speech on the Year of Indigenous Peoples be placed in the RECORD at the conclusion of my remarks.

(See exhibit 8.)

AGING/DISABILITY ISSUES

Mr. PRESSLER. I have been troubled by the fact that many of the world's senior citizens and disabled individuals are living in poverty and have little opportunity to improve their situation. I visited with several experts from different regions of the world on this matter. I was most impressed with conversations I had with officials from the Philippines and Chile. Certainly, many of our policies are sound and we are recognized as a leader in these areas. However, it appears we need to designate additional resources for prevention. The quality of life could be improved for many if we were able to prevent Alzheimer's disease or cerebral palsy.

SOCIAL DEVELOPMENT SUMMIT

I had an opportunity to discuss the proposed social development summit with Sandra Parrino, chairperson of the National Council on Disabilities, and, later, with a U.N. staff member, Bob Anthony. The purpose of the summit is to develop new and ingenious ways of fighting global poverty and its associated ill effects. The summit, in theory, is a good idea. However, the United States should be careful that the summit does not turn into a First World/Third World economic summit. It's one thing to spend money on the summit and quite another to ensure that money gets to the poor nations where it actually can do some physical good. As I stated earlier about the need for cost-sharing in the Somalian Operation Restore Hope, the United States should be wary of overextending its financial commitments abroad.

EROS

EROS Data Center, located near Garretson, SD, recently became affiliated with the United Nations. For 20 years EROS has been providing satellite photos to many of our Federal agencies and to researchers throughout the world. I participated in negotiations that resulted in EROS agreeing to provide satellite data to other countries through the United Nations. A U.N. office at the EROS Data Center, the Global Resource Information Database [GRID], will share satellite photos of the Earth with eight other U.N. GRID locations worldwide. These photos will be used to study global changes in the environment.

I met with U.N. officials to discuss the possibility of furthering EROS role at the United Nations. I am pleased to report that groundwork has been laid for expanded utilization of EROS data to determine trends in economic development, population growth, and international trade.

A REPORTER'S U.N. PERSPECTIVE

On one particular day while I was at the United Nations, Chet Lunner, a reporter for the Gannett News Service accompanied me throughout the day to chronicle the daily events of a congressional U.N. delegate. Chet was able to sit in on one of my meetings with the West African Ambassadors, and he was able to witness the ceremonies marking the International Year of the World's Indigenous Peoples. Chet, frustrated by the bureaucracy of the United Nations, detailed his day with me in an article printed in the Sioux Falls, SD, Argus Leader. Mr. President, I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

(See exhibit 9.)

U.S. COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS

Mr. PRESSLER. At the conclusion of my service as a congressional delegate to the United Nations, I had the privilege of being nominated to serve on the U.S. Commission on improving the Effectiveness of the United Nations. The Commission is comprised of two Members of the Senate, two Members of the House of Representatives, eight individuals from the private sector selected by the House and Senate leadership, and four appointed by the President. The Commission will hold at least five public hearings at locations throughout the country. When the hearings are completed, the Commission will prepare a final report for the President and Congress.

The world's peacekeeping body must continue to evolve as the new world order evolves. To succeed in meetings its many obligations with limited resources, the United Nations must initiate fiscal and administrative reform. My experiences as a congressional delegate to the United Nations will serve me well during my service on the U.S. Commission on U.N. Effectiveness. I am very pleased to have the opportunity to continue to play a part in improving the productivity and effectiveness of the United Nations.

EXHIBIT 1

[From the Washington Post, Sept. 20, 1992]

THE U.N. EMPIRE: AS U.N. EXPANDS SO DO ITS PROBLEMS

(By William Branigin)

UNITED NATIONS.—The images are familiar: blue-bereted U.N. peace-keepers performing difficult missions in places like Lebanon and Cambodia, humanitarian relief workers fighting poverty and hunger in the Third World, idealistic, U.N. employees striving to make the "new world order" a reality.

As its new secretary general has observed, "The United Nations has almost too much credibility now."

But behind these images lies an enormous, largely uncontrolled bureaucracy, subject to abuses and deficiencies that impair its effectiveness, a nine-month study of the United Nations by The Washington Post has found. Interviews with current and former U.N. officials on four continents, review of thousands of pages of documents and visits to U.N. program sites yielded these snapshots:

Thousands of refugees in Africa have gone hungry or died because of what relief officials describe as mismanagement, negligence and, in some cases, corruption in U.N. agencies or associated governmental bodies. U.N. food aid and other resources have been pilfered for years by governments and armies with impunity.

Peace-keeping operations, some of which drag on for decades, have become a source of soaring costs with minimal oversight. In a $1.7 billion operation in Cambodia, five times more money is budgeted for newspaper and magazine subscriptions for U.N. troops than for external auditing.

Reports and publications that serve mainly to justify budgets and employment are printed at enormous cost, contributing to the United Nations' image as a huge paper mill. Among the works are voluminous yearbooks published years out of date and esoteric technical studies that go largely ignored.

U.N. offices that dot the globe, such as a "regional disarmament center" in Katmandu, Nepal, often seem to have scant value beyond expanding the organization's worldwide presence. Once formed, U.N. entities hardly ever disband.

Heavy spending on travel and conferences, including Law of the Sea talks in Jamaica in the winter and meetings of the Economic and Social Council in Geneva in the summer, often produce little more than talk and a break from New York weather. Years of negotiation are invested in such endeavors as drafting a "code of conduct" for transnational corporations, without tangible result.

The heads of specialized U.N. agencies and other top officials operate with few checks and balances in the absence of any U.N. standards for management. The system currently has no inspector general, and a Joint Inspection Unit based in Geneva is made up mostly of retired diplomats.

These examples characterize a U.N. system that has grown into what former undersecretary general Brian Urquhart calls "an enormous ramshackle structure . . . a most astonishing concoction." In ways that reform advocates find both absurd and infuriating, the U.N. system appears to have careened out of control. Many of its programs and activities have become redundant or irrelevant. Their main beneficiaries often are the bureaucrats they employ.

The United Nations, its internal critics say, has been self-protecting and self-perpetuating, rather than self-policing. It has proved largely incapable of setting priorities, evaluating program results of eliminating useless make-work. Budgets are opaque and auditing inadequate. Many entities have overlapping functions, but efforts to coordinate them have largely failed.

"There's a hell of a lot of shocking things going on," said Rakiya Omaar, the Somali executive director of the human rights group Africa Watch, which is demanding an investigation of alleged mismanagement and graft in U.N. famine relief efforts. "I think there's a great deal of incompetence, there's a lot of corruption, and there's no accountability."

U.N. Secretary General Boutros Boutros-Ghali, who has promoted reform measures since taking office for a five-year term in January, declined to be interviewed for this series. In an interview published last month in the London-based Arabic newspaper Asharq al-Awsat, however, he said he was battling his own staff in trying to implement unpopular reforms and "restore discipline in an organization where the negligence and fragmentation are widespread."

Describing a recent trip to the Geneva offices of what he called the far-flung U.N. "empire," he said: "I went there and I was attacked. There are thousands of staff. Half of them do not work. I decided to launch a reorganization campaign."

"I told them I do not fear anyone," Boutros-Ghali said, "I will not stay forever. I do not want another term. . . . Don't expect them to be pleased. On the contrary, they will attack me."

Despite broad agreement on the need for reform, abuses within the organization persist and often go unpunished. The chiefs of some autonomous U.N. agencies rule their fiefdoms like autocrats, answering to no one. Regional mafias of U.N. bureaucrats have taken root, consolidating their power through favoritism in hiring and promotions. Recipient governments also routinely plunder U.N. programs, diverting aid from intended beneficiaries with little remonstration from U.N. agencies.

Ronald I. Spiers, an American who served as a U.N. undersecretary general, attributes many of the United Nations' problems to a shortage of management skills in an organization run largely by diplomats. "There has never been efficient management," he said. Of the six U.N. secretaries general so far, "none has been management-oriented. They have been politically oriented."

Bo Jerlstrom, the Swedish deputy director of the Nordic U.N. Project, a group studying U.N. reform, said a lack of accountability in the United Nations "is a systemic problem to a very great extent. We have a governmental system in the U.N. that is not geared to get accountability."

SYSTEM OBSCURES ITS ABUSES

In addition to its high-profile peace-keeping and political functions, the United Nations plays an essential role in setting global norms governing such fields as shipping, telecommunications and civil aviation. The issues of reform and accountability examined in this four-part series, however, stem largely from a part of the system that gets little public scrutiny even as it eats up the great bulk of U.N. resources: the economic, social and humanitarian programs aimed at development, emergency relief and "better standards of life" around the world in accordance with the U.N. Charter.

Clearly, the United Nations employs many hard-working and idealist people. But there are widespread complaints of uneven workloads and poor deployment of manpower. Parts of the system are overstaffed and lethargic, while others, particularly field offices in unpleasant places, are understaffed and overworked.

There's such a bad distribution of the workloads in the U.N. system," a Rome-based U.N. official said. "The bulk of the work is done by perhaps one-third of the employees."

Local employees tend to bear the brunt of disciplinary action, such as criminal proceedings, when fraud or other abuses are discovered, while erring international professional staffers often survive and even advance in the organization. At the same time, U.N. employees who complain about irregularities have found themselves blocked from promotion or forced to transfer to other jobs.

It is a system that tends to cover up its abuses and discourage whistle-blowers. Indeed, most U.N. employees who spoke on these issues did so on condition of anonymity for fear of ruining their careers.

Many expressed concern that disclosing waste and fraud could jeopardize funding from donors and ultimately hurt the people that the agencies are trying to help. But sources both inside and outside the U.N. system generally agreed that reform is imperative.

A European U.N. official, who recently left his agency in frustration after concluding that his anti-corruption efforts had made him an outcast, said reform efforts so far have fallen short of real commitment to creating a more transparent and accountable U.N. system.

"A certain enabling environment . . . allows [fraud] to happen," he said. "The question is not whether you do it or not, but whether you're stupid enough to be caught."

"Basically, there's a lack of determination to combat the sleaze factor," he added. "In an environment where mediocrity has a strong self-protective interest, these things flourish."

U.N. officials who advocate a cleanup in their ranks say that management by the heads of agencies and other top officials has been inept and, occasionally, corrupt. "There is no supervision of any agency on a weekly or monthly basis as you have in a government," said a senior Rome-based U.N. official. Governing councils of agencies' member states are "basically rubber-stamp bodies."

In a statement to a U.N. financial committee last year, the United States expressed grave concern over "the seriousness and number of cases of fraud and presumptive fraud" in the office of the U.N. High Commissioner for Refugees (UNHCR). "Large amounts have been embezzled by UNHCR staff," the statement said.

In reports being released this month, the U.N. Board of Auditors, a group of outside analysts, cites numerous irregularities and "weak internal controls" at U.N. headquarters and subsidiary agencies during 1990 and 1991 in what amounts to an indictment of U.N. management. A 136-page report on the U.N. headquarters and a dozen field offices enumerates irregularities or deficiencies in hiring, cash and property management, internal audits and purchases of everything from project equipment to airline tickets.

At the U.N. Economic Commission for Africa, the report says, an official was dismissed last year after bilking the organization of at least $125,000 through abuses that persisted amid weak management and "apparent laxity or indifference" among his colleagues. It says that submitting contracts for competitive bids has become "the exception rather than the rule," notes repeated overpayments totaling nearly $900,000 for office supplies at U.N. headquarters in New York and reports "excessive" or wasteful payments to senior officials and consultants.

Many anomalies reported by auditors "appear to be recurring" and point to a "lack of determination to enforce regulations and rules and make the heads of units of the organization accountable," the report says.

A recent confidential internal paper circulating in the U.N. Development Program, the system's main coordinating and funding agency for technical assistance, put the problem more bluntly. Citing "a deplorable vacuum of basic ethics" in the system, it noted widespread criticism of "prolific structures, pompous-Byzantine attitudes of ranking officials, operational inefficiency and . . . gross mismanagement of financial and personnel resources."

The 10-page paper listed a dozen cases of corruption involving the development agency's staffers or programs that totaled millions of dollars in pilfered funds.

LOOKING BEYOND THE COLD WAR

For years, the East-West conflict effectively blocked fundamental U.N. reforms. As a result, the system grew steadily more unwieldy. Now, the expanding U.N. role in the world and greater demands on its resources have given reform efforts new impetus.

"The United Nations has to reform itself to be appropriate to new challenges," Russian Foreign Minister Andrei Kozyrev said in an interview. "Yes, the East-West confrontation was the major stumbling block, but when it is removed, other problems remain." Among them, he said, are fears among Third World countries that reforms will hinder them and resistance from "bureaucratic corporate interests."

Some of the waste in the system was directly related to the Cold War, sources said. As an example, several cited the case of the Dag Hammarskjold Library, located in the Secretariat, as the U.N. headquarters in New York is generally known.

Staffed in key posts by Soviets, the library was used to collect information from various research organizations and computer databases on behalf of the Soviet intelligence service, the KGB, a senior U.N. official and U.S. sources said. Documents would be translated into Russian and sent off to Moscow—all at U.N. expense and thus courtesy, in part, of the American taxpayer.

"If you went to the library for a legitimate request, they would look at you like you were from the zoo," one official recalled. A senior staff member confirmed that the library was controlled by the Soviets until 1989, when the directorship was given to a Dutch official.

COUNTING COSTS AND BENEFITS

Founded by 50 countries in 1945, the United Nations currently has 179 members. Initially it employed about 1,500 people. Now the U.N. system—excluding the U.N.-related World Bank, International Monetary Fund and regional development banks—counts more than 51,600 employees around the world, nearly 14,000 of them attached to the New York-based Secretariat and its dependencies. In addition, at least 9,600 consultants were employed by U.N. agencies in 1991, the last period for which figures are available.

Total spending by the U.N. system for the two-year period ending in 1991, including voluntary funds and peace-keeping operations, came to nearly $15.6 billion, of which the United States contributed about $2.6 billion. Since the first U.N. session in 1946, the United States has poured more than $20.3 billion into the system, making it by far the largest contributor.

At present, the U.S. share of U.N. assessed budgets is 25 percent, double that of the next-largest single contributor, Japan, which is assessed 12.45 percent. At present, 44 percent of member states pay the minimum assessment of one-hundredth of 1 percent, and the shares of 16 new members have yet to be determined.

A perennial problem for the U.S. government has been that, since regular budgets of the U.N. Secretariat are approved by a two-thirds majority of the General Assembly, countries that collectively pay less than 2 percent of assessments historically have had enough votes to control passage of budgets. And since the poorer countries are the main beneficiaries of U.N. spending, it has been in their interest to have more organizations, more programs and growing expenditures.

The United States, on the other hand, traditionally has been the strongest critic of wasteful U.N. spending, much of which inevitably comes out of the pockets of American taxpayers.

"There is a measure of built-in irresponsibility that comes with the fact that people who vote for certain measures don't have to foot the bill," said Alan Gerson, a former counselor to the U.S. delegation to the United Nations.

Since the 1980s, the United States has insisted on "consensus budgeting" to reflect the views of major contributors. Washington also has withheld portions of its assessments to protest spending that it opposes for political or fiscal reasons.

Currently, the United Nations is strapped by huge unpaid assessments of $1.75 billion. The United States—which owes about $731 million for the U.N. regular budget plus peace-keeping operations, according to the secretary general's office—is the leading debtor, followed by Russia with total unpaid contributions of $415 million. According to recent U.N. figures, only eight countries are fully paid up.

One project for which the United States is withholding its 25 percent share is a grandiose conference center in Addis Ababa, Ethiopia, for the Economic Commission for Africa, one of the United Nations' five regional commissions and by far the most expensive. Construction of the conference center, project to cost $73.5 million, was approved by the General Assembly in 1984 at the height of the Ethiopian famine when international and private organizations were scrounging for funds to feed starving people.

The fact that the brutal Marxist government of Mengistu Haile Mariam then held power in Addis Ababa contributed to the U.S. refusal to help fund the project. But even since the regime's fall in May 1991, Washington has continued to hold back its share because it views the center as a huge boondoggle far too expensive to build and maintain.

By the end of 1990, the project's rising price tag had reached $107 million, and now no one knows how much it will cost when completed. So far, about $90 million has been appropriated, of which only about $12 million has been spent, but practically all there is to show for it is a huge hole in the ground. Still, the U.N. Secretariat, prodded by African states, insists on going ahead with the center, if only to show that a member state

cannot use nonpayment to stop a project approved by the General Assembly.

BOOKKEEPING FAULTED

The U.N. bodies ostensibly set up to oversee the workings of the system's many branches apparently are scarcely more effective than the agencies they monitor. The Internal Audit Division at the Secretariat in New York lacks the staff, funding and independence to do a more far-reaching job, critics say. It has jurisdiction over the U.N. headquarters and its subsidiary organizations, but not the autonomous specialized agencies that accounted for nearly $5.7 billion of the U.N. system's 1990-91 spending.

In addition, internal audits are confidential, making it difficult for interested member states to exercise oversight.

External audits are performed by the U.N. Board of Auditors, composed of auditing teams contributed by three countries chosen by the General Assembly. The board's reports are public and sometimes cite instances of fraud and other irregularities committed by U.N. agency employees, contractors or governments, but they rely on management to provide such information, and they never identify the offenders and rarely even mention the countries in which the corruption took place.

"They just don't like to embarrass anyone," a U.S. official said. "Yes, they have all these auditors, but they just don't work. There's no question that money is being wasted. They catch maybe 5 percent of what's wrong with the place."

A major part of the problem with the United Nations lies at headquarters in New York, many officials agree. It is here that the principal U.N. organs—the General Assembly, Security Council, Economic and Social Council and Secretariat—are located and where many U.N. programs, policies, conferences, studies and peace-keeping operations are discussed, formulated and administered.

Answerable to U.N. headquarters are major U.N. branches in Geneva and Vienna, the five regional economic commissions and various offices around the world.

"The waste is everywhere," said Dennis Goodman, a former U.S. deputy assistant secretary of state for international organization affairs. "The waste is the mere numbers of people working at the Secretariat in New York. A vast number of them don't do anything useful."

According to U.N. budget officials, at least 70 percent of the Secretariat's regular, assessed budget, which stands at $2.4 billion for 1992-93, pays for salaries and other "staff costs."

Last year, nearly 90 percent of the estimated $7.8 billion in total expenditures by the U.N. system, excluding the multilateral banks, was spent on economic and social programs, as opposed to policymaking, political affairs and peace-keeping, U.N. figures show.

"That money is not getting the results that it should," Goodman said. "The beneficiaries largely are the people who have jobs with the U.N.," he said. "They are talented people, but they are there to preserve a system that has rewarded them."

As a veteran negotiator at U.N. conferences, Goodman said he saw the problems first-hand. "They really don't give a damn what they're negotiating as long as there's something to negotiate," he said, "because that gives them a reason to be in New York or Geneva. The name of the game is the game."

In the system's defense, said Domingo Siazon of the Philippines, who heads the Vienna-based U.N. Industrial Development Organization, "the whole is the sum of its parts. So when they say the U.N. is inefficient, I say it's because the member governments are. They don't govern properly."

"There is certainly some duplication," he said. "There is certainly a good argument for restructuring. And we certainly can be much more efficient [by cutting posts] by at least 20 to 30 percent. However, we can do this first if member states are really serious in wanting to have efficiency, and the price for that is they must yield turf."

A major, and largely unscrutinized, source of spending in the United Nations has been travel, officials who monitor the organization say. Travel costs during the current 1992-93 biennium are estimated at more than $100 million for the U.N. Secretariat alone, a figure that excludes untold millions more in travel spending by the various U.N. agencies. According to the latest audit findings, air tickets bought by the United Nations for employee home leaves from an in-house travel agency at headquarters were up to 55 percent more expensive than available budget rates.

And how do U.N. officials travel to their missions and meetings? Not economy class, if they can help it. Current regulations require most employees to fly economy on flights of up to nine hours, but they are often honored in the breach.

In a report last year, then-Secretary General Javier Perez de Cuellar "welcomed" a General Assembly request to upgrade air travel to business class on all flights to avoid "large groups of [discount] travelers" and "the cramped conditions, excessive noise and inadequate service" of economy class. The report cited a U.N. medical panel's finding that flying economy class "involved certain health risks" because of "limited leg room inaction and dehydration."

WHAT IS THE UNITED NATIONS?

The United Nations is a vast organization designed to promote peace and international cooperation. The U.N. system consists of more than 50,000 staff members and almost 10,000 consultants, with a two-year budget of $15 billion. U.S. taxpayers pay 25 percent of regular budgets. The people of Norway pay the most per person—$13 in 1992—to the United Nations.

The Secretariat carries out the administrative work of the United Nations and is headquartered in New York along with the General Assembly and Security Council. Staff members are international civil servants and take an oath not to seek or receive instructions from any government.

Specialized agencies such as UNESCO and the World Health Organization tackle issues including health, science, aviation and energy. These intergovernmental agencies are related to the United Nations by special agreements. They have their own membership, legislative and executive bodies and budgets, but they work with the United Nations and each other through the U.N.'s Economic and Social Council in New York.

Subsidiary agencies are affiliated with the Secretariat. The three biggest are the massive U.N. Development Program, the United Nations Children's Fund and the U.N. High Commissioner for Refugees.

Peace-keeping operations involving 47,000 troops are underway in 13 countries.

PURPOSES

To maintain international peace and security; to develop friendly relations among nations; to achieve international cooperation in solving economic, social, cultural and humanitarian problems and in promoting respect for human rights and fundamental freedoms; to be a center for harmonizing the actions of nations in attaining these common ends.

GROWTH

The United Nations has more than tripled its membership in the past 47 years.

Staff has grown from 1,500 to 51,000.

Spending has grown to $1 billion per year for the Secretariat, and $15 billion in the 1990-91 two-year budget for the total system, including voluntary funds and peace-keeping operations.

HISTORY

The United Nations was born in the wake of the United Nations Conference on International Organization in San Francisco in 1945. The conference drew up a U.N. charter, which was signed by 50 nations on June 26.

MEMBERSHIP

Today the United Nations comprises 179 members: all the world's nations except Andorra, Kiribati, Monaco, Nauru, Switzerland, Taiwan, Tonga, Tuvalu and Vatican City.

The United Nations System

Secretariat:	*Staff*
1. —Headquarters, General Assembly, Security Council	6,000
2. ECA—Economic Commission for Africa	750
3. ECE—Economic Commission for Europe	189
4. ECLAC—Economic Commission for Latin America and the Carribean	697
5. ESCAP—Economic and Social Commission for Asia and the Pacific	777
6. ESCWA—Economic and Social Commission for Western Asia	289
7. UNCHS—United Nations Center for Human Settlements (Habitat)	328
8. UNCTAD—United Nations Conference on Trade and Development	505
9. UNEP—United Nations Environment Program	639
10. —World Court	120
11. WFC—World Food Council	28
Specialized agencies:	
12. FAO—Food and Agriculture Organization	5,863
13. IAEA—International Atomic Energy Agency	2,193
14. ICAO—International Civil Aviation Organization	777
15. ILO—International Labor Organization	1,795
16. IMO—International Maritime Organization	293
17. ITU—International Telecommunication Union	726
18. UNESCO—United Nations Educational, Scientific and Cultural Organization	2,297
19. UPU—Universal Postal Union	140
20. WHO—World Health Organization	4,680
21. WIPO—World Intellectual Property Organization	409
22. WMO—World Meteorological Organization Geneva	246
Other subsidiary bodies:	
23. UNDP—United Nations Development Program	6,805
24. UNFPA—United Nations Fund for Population Activities	643
25. UNHCR—Office of the U.N. High Commissioner for Refugees	2,000
26. UNICEF—United Nations Children's Fund	5,052

	Staff
27. UNIDO—United Nations Industrial Development Organization ..	1,350
28. UNITAR—United Nations Institute for Training and Research ...	23
29. UNRWA—United Nations Relief and Works Agency for Palestinian Refugees in Near East	173
30. UNU—United Nations University	63
31. WFP—World Food Program	631

P.—Peace-Keeping Forces: Africa—Angola, Somalia, Western Sahara. Asia—Cyprus, Cambodia, Israel, India and Pakistan. Lebanon, Iraq-Kuwait. Europe—Croatia. North America—El Salvador.

What Taxpayer Pays Most[1]

1. Norway.	$12.84
2. United Arab Emirates	9.19
3. Sweden	1.30
4. Denmark.	1.25
5. United States	1.20
6. Kuwait	1.18
7. Iceland	1.18
8. Canada	1.15
9. Finland	1.13
10. Germany	1.11

[1] 1992 U.N. assessed budget.

[From the Washington Post, Sept. 21, 1992]

THE U.N. EMPIRE: IN AFRICA, LOST LIVES, LOST DOLLARS

(By Keith B. Richburg)

LIBOI REFUGEE CAMP, KENYA.—A long row of graves behind a makeshift field hospital in a corner of this dry and desolate camp marks the human cost of United Nations mismanagement.

"Those guys were my friends," said Jusuf Hussein Lohos, a 22-year-old Somali refugee, as he recalled the names of former high school classmates buried there in January. "Every day, maybe 15 persons died. . . . That time, the problem was water and rations. That time, it was very difficult."

According to doctors, relief workers and human rights investigators, thousands of Somalis died in refugee camps early this year in part because of what the sources described as the incompetence, negligence and maladministration of the U.N. agencies and local implementing organizations that are supposed to help the refugees.

Much of the suffering at this remote desert site in northeastern Kenya was for want of a simple borehole—a well with a pump that would have taken two days to install and could have increased the meager supply of drinking water for Liboi's 50,000 refugees. But its construction was delayed for months while the Nairobi office of the U.N. High Commissioner for Refugees (UNHCR) haggled with a local contractor over terms, payments and specifications.

About 300 miles away, at the Dolo refugee camp in southern Ethiopia, conditions were even worse. Somali refugees there died at a rate of 50 a day from January until April as food aid from the UNHCR was diverted to private markets—and U.N. agencies, Ethiopian party officials and Somali clan leaders did virtually nothing to relieve the massive starvation.

Today up to 3,000 Somalis are dying every day, and at least 2 million out of an estimated population of 6 million are said to be in immediate danger of starvation. Meanwhile, the clan warfare that broke out soon after the fall of dictator Mohamed Siad Barre in January 1991 is reducing the country to anarchy. The combination of famine and lawlessness has driven more than 300,000 Somali refugees into Kenya and displaced at least 2 million inside the country.

"What has happened to Somalia is a tragedy and an international disgrace," said Aryeh Neier, executive director of the New York-based group, Human Rights Watch, in recent testimony before the U.S. House Select Committee on Hunger. He charged that "the United Nations and its various organizations have been so monstrously negligent and incompetent that they have played almost no role at all in alleviating Somalia's misery."

"Somalia," Neier quoted a U.N. official as admitting, "is the greatest failure of the United Nations in our time."

LIVES SAVED, LIVES LOST

This latest African refugee crisis lays bare a breakdown of planning, administration and accountability by U.N. agencies, characterized by long delays and confusion in dealing with a growing emergency, and resulting in needless deaths. But it is only one chapter of what many relief workers say has long been a sorry performance by the United Nations in Africa.

Over the years, the United Nations has poured billions of dollars into Africa. There is no doubt that the aid has been urgently needed on a continent wracked by wars, famine, poverty, underdevelopment, disease and recurring refugee crises. Of an estimated 17 million refugees around the globe, about half are African. Of the world's 42 poorest countries, 29 are in Africa. Accordingly, the continent has been the largest regional recipient of U.N. assistance.

The aid has raised agricultural production in some places, improved water supplies, inoculated children against diseases and, by all accounts, saved countless lives. Many selfless, idealistic people work for U.N. humanitarian and development programs in Africa, often under difficult conditions far from their families. The UNHCR often has performed heroically, winning two Nobel Peace Prizes for its efforts.

But thousands of lives and millions of dollars also have been lost, current and former U.N. officials concede, because of the perennial ills of U.N. bureaucracy: waste, mismanagement and, on occasion, outright corruption in U.N. programs.

Often, the sources say, the losses stem from greed or callousness among the governments, armies or armed bands that U.N. agencies must deal with to carry out their programs. These authorities have taken their cuts of relief aid with impunity in return for granting refugees asylum or allowing U.N. workers access to suffering populations. In the UNHCR, those losses are widely referred to as "the price of protection."

"You have no leverage whatsoever in the refugee business," a senior UNHCR official explained. "What are you going to take away? You take your money away and the refugees don't get fed."

Less well known outside U.N. agencies are losses that current and former staffers say have occurred when U.N. employees helped themselves to large amounts of international aid or otherwise profited from donor money. In addition to patronage, unproductive activities, ineptitude and other bureaucratic failings, an investigation by the Washington Post of U.N. accountability in Africa uncovered several cases of fraud.

Across the continent, U.N. officials at various levels have been implicated in diversions of food aid, embezzlement of humanitarian and development assistance, fraudulent procurements, black marketeering, currency exchange manipulation, kickbacks and various other moneymaking schemes. Among the countries in which U.N. investigators found evidence of fraud are Angola, Djibouti, Ethiopia, Kenya, Mali, Uganda and Zaire.

Whether caused by governments or international civil servants, the losses add up to a squandering of U.N. and donor funds, with American taxpayers footing a hefty chunk of the bill. As the leading contributor to the United Nations, the U.S. government normally pays 25 percent of assessed budgets and about 21 percent of the voluntary funds that make up the UNHCR budget. And while virtually all U.N. agencies have been shown to experience such losses to some degree, the UNHCR stands out from the rest because it deals with life-and-death situations.

"The horror stories are not aberrations," said Jeffrey Clark, a former staffer on the Select Committee on Hunger and now a consultant for the private U.S. Committee for Refugees. "Incompetence and evasion of responsibility are pervasive within UNHCR. That incompetence is so severe that it almost borders on negligence of a criminal nature. Then on another layer you have outright malfeasance."

Behind the agency's deficiencies and delays in responding to crises, its officials say, are inherent limitations on its mandate, inadequate staffing in key posts, scarce funding and the need to wait until a crisis erupts before soliciting donations.

"All of these problems are true," Clark said. "But the main problem is the lack of determination to get a handle on these situations and try to prevent these crises from developing. A bad situation is allowed to fester and become a horrible situation, and a horrible situation is allowed to become a catastrophe."

"There is no attempt to replace the inadequate staff that they have so they could correct these situations before they degenerate," he said. "You have too much emphasis on coordination meetings in capital cities, and a reluctance to get out there and get dirty."

SLOW START IN SOMALIA

The United Nations' failure in Somalia began with its slowness in responding to the initial political crisis there, as the country slid into chaos after Siad Barre's overthrow.

With rebels closing in on the capital, Mogadishu, and Siad Barre preparing to flee in January 1991, the United Nations pulled out, as did most foreign diplomatic delegations. Other voluntary agencies, including the International Committee of the Red Cross, Save the Children and Medecins Sans Frontieres (Doctors Without Borders), moved in to help ease the suffering, but the United Nations generally stayed on the sidelines for more than a year. The sole exception was the U.N. Children's Fund (UNICEF), which returned to Somalia on Dec. 24 and resumed full operations in March.

When James Jonah of Sierra Leone, the U.N. undersecretary general responsible for Africa, came to Nairobi this February to launch a new interagency appeal for the Horn of Africa, he testily defended the U.N. decision to withdraw from Somalia. At the time of the pullout, he said, U.N. premises had been looted and personnel were being molested, making it too dangerous to maintain a presence there.

"The U.N. as it is now is not structured for emergency situations," Jonah said at a news conference. He said it was hard to keep U.N. staffers in a place like Somalia. "How do you cover them by insurance?" he asked. "It is very difficult to find a credible insurance company to cover them."

"It's the bureaucratic answer," said Mohammed Sahnoun, the new U.N. special envoy to Somalia and a critic of the organization's performance there. "If you're not

able to operate quickly and you're not able to find people to go into the problem areas quickly, then let's support [non-governmental organizations]. Save the Children has done much better than the U.N.," he said, referring to the London-based relief agency.

"We were absolutely, totally absent," the outspoken former Algerian diplomat said in an interview in Mogadishu. "The U.N. should have intervened, and I do not understand why they didn't. It was a very, very long delay and a tragic delay. And now we are paying the price."

Sahnoun said the U.N. failure to get involved in Somalia earlier may have added to the suffering there. "I saw children dying with my own eyes," he said. "I saw old people dying . . . and there was no assistance. The only U.N. organization which deserves great credit is UNICEF."

"Jonah was the African in charge," Sahnoun said. "He should have drawn the world's attention to Somalia . . . I know the U.N. doesn't like it that I say these things, but it is reality."

The difference between the United Nations and private relief groups, Sahnoun said, is that the latter "work with volunteers, people who can take risks. They really work out of charity and the goodness of their hearts. Our staff, our people, are civil servants. They want [at least] minimum compensation and minimum accommodation."

HORROR IN REFUGEE HAVENS

The UNHCR office in Nairobi was considered a quiet, comfortable post that dealt mainly with legalistic matters. It was headed by Sylvester Awuye, a Ghanaian legal officer who had virtually no experience in handling a major refugee influx.

But as Somalia's victorious rebel coalition splintered into warring factions in mid-1991, refugees began moving across the border into northern Kenya. The trickle soon became a flood, and Kenya was engulfed in a refugee crisis.

For most of the malnourished, dehydrated refugees who began staggering in, the first stop was Liboi, 10 miles from the Somali border. At the time, the area had one borehole to provide water for Kenyan villagers. Another was dug and fitted with a pump, but it soon proved inadequate as refugees arrived by the thousands.

* * * firm in September 1991 to build refugee camps at Walds and Ifo, and Liboi was redesignated as a "reception center." The firm also was supposed to build a second borehole at Liboi, but the project soon became paralyzed by squabbling. The firm complained that the UNHCR constantly changed its mind about what it wanted; the relief agency accused the company of incompetence. The matter is now in the hands of lawyers and has not been resolved.

The result was that, for six months, nothing was done to ease Liboi's water shortage. Refugees were forced to wait in long lines under scorching sun for up to 12 hours a day to receive a couple of quarts of water. Problems with diarrhea and dysentery among the Somalis grew worse, and the death rate climbed.

"Many of these deaths are preventable," Kenyan doctor Erastus Kiratu said here earlier this year when Somalis were dying at the rate of 10 a day. With more water, he said, "we could save many lives."

The German government eventually stepped in and built a second borehole at Liboi in March. Kenya's government settled a dispute with Medecins Sans Frontieres and allowed the group to start working in the camp, and conditions gradually improved.

At about the same time, a team from Save the Children discovered an even greater tragedy at Dolo, a camp in southern Ethiopia near the borders of Kenya and Somalia that had been set up by UNHCR for Ethiopian refugees. In December, thousands of starving Somalis had started streaming into the Dolo area, but Ethopian and U.N. officials largely ignored reports of their plight, private human rights and relief agency sources said.

Soon, 70,000 to 80,000 people were in the camp, about 50,000 of them Somalis, and the rest Ethiopians.

From January until at least April, virtually no food reached Dolo, there was no U.N. presence there, and a nearby UNHCR regional officer did not investigate, said Wllet Weeks, the Horn of Africa director for Save the Children. "A lot of people were just plain starving to death," he said.

Eventually, after months of interagency U.N. bickering over a transport contract, 360 tons of food arrived in the remote area in May, but it was promptly divided up by leaders of Somali clans represented in the camp; officials of a local U.N.-sponsored implementing agency, the Emergency Prevention and Preparedness Group; and Ethiopian government authorities. Hardly any of the food was distributed.

"They obviously made a deal," said Rakiya Omaar, director of the human rights group Africa Watch. The food "was sold on the markets, but it never reached the refugees."

A U.N. official involved in the Dolo situation confirmed that, between January and April, 50 people a day died because of what he called a "hiatus" in deliveries of food, about 90 percent of which was sold on the black market. April, he said, "was a heartbreaking time" because U.N. agencies by then were well aware of the problem. "It should never have reached the stage it did—but it did," he said. "It made people cry."

In May, the Dutch branch of Medecina Sans Frontiers established a feeding program at Dolo, and the death rate began to fall. Now it is down to about 16 people a day, the U.N. official said.

The tragedies in Dolo and Liboi illustrate some major flaws of U.N. relief agencies, particularly the UNHCR, internal critics say.

* * * action can make the difference between life and death, they say, the agency often has behaved like a hidebound bureaucracy, mired in its time-consuming regulations and staffed at top levels by entrenched civil servants with little energy or enthusiasm for grappling with remote emergencies.

"We are still a traditional U.N. agency with an untraditional set of problems, and we haven't been able to bridge that gap," a senior UNHCR official said in Geneva. "The consequence is we react very slowly to an emergency, and that, he a sense, is unforgiveable."

"What happened in Kenya we have seen before in Sudan," he said, referring to the agency's initially slow response to the Ethiopian refugee crisis of the mid-1960s. "Even today, lives are being lost that could be saved. . . . This organization has not woken up to the fact that this is an emergency response organization.

TAKING INSTEAD OF GIVING

Many other shortcomings in the U.N. system go largely unnoticed by outsiders. Often, they are papered over by a system that tends to obscure its faults and by an apparent lack of interest among donor governments in exposing them. The history of U.N. operations in Africa is replete with scams by U.N. employees, sometimes at the expense of destitute refugees.

In Angola in 1986, the UNHCR representative, Diara Boubakar of Burkina Faso, and an administrative officer were linked by auditors to several irregularities that an investigator said cost the agency at least $200,000 over an 18-month period from a program intended to help Namibian refugees.

Among the schemes alleged by U.N. investigators were currency manipulation—pocketing the difference between black market and official exchange rates, in this case up to 8,000 percent, when accounting for purchases—and sending relatives on flights to Europe under the names of refugees. Other alleged irregularities involved the rent and repair of the representative's house and the "loss" of 1,000 tons of cement.

Also implicated in the case was Boubakar's wife, Deolinda D'Almeida, a senior official in the Angolan Ministry of Planning. A memorandum prepared by a U.N. official who documented the case charged that the wife of an unnamed U.N. representative—said by the official to be D'Almeida—was a "facilitator and major beneficiary" of her husband's activities.

After a suspension of nearly two years with full pay, Boubakar was dismissed in 1988. But, according to U.N. officials familiar with the case, ranking Africans in the United Nations intervened to secure D'Almeida a high-level job with the U.N. Development Program in 1989. She is now the deputy resident representative for the program in Botswana.

Boubakar declined to comment on the allegations, but D'Almeida said she welcomed an investigation. She denied any involvement in irregularities and described the UNHCR's treatment of her husband as unjust. She attributed his troubles to a relatively minor discrepancy involving an airline ticket for a U.N.-paid family home leave.

An exodus of Angolan refugees into neighboring Zaire spawned other irregularities in 1985, according to U.N. officials who served there. The number of refugees was overestimated by about 100 percent, and there was too much food coming in for them, said a U.N. source who looked into the affair. "It was a serious scam built on what was presented as mistakes" and apparently benefited some UNHCR officials, he said.

The following year, further questionable transactions were reported. An Austrian UNHCR official, Helmut Langschwert, tried to auction 825 metric tons of supposedly spoiled grain as animal feed. The sale was stopped after a friend of Langschwert's won the bidding and the losers complained that the auction was rigged. A UNHCR official who investigated the deal found nothing wrong with the gain in the first place, but by then, only 300 tons of it was left.

Langachwert declined to return telephone calls or respond to written questions.

Another agency that has been plagued by a history of irregularities, insiders say, is the U.N. Development Program. Like the UNHCR, its scandals have rarely been publicized.

In Mali, for example, a locally hired development program employee embezzled about $560,000 from the government through fraudulent claims for fuel-tax reimbursements. When the fraud was discovered in 1986, an oil company that was also victimized in the fraud, ShellMali, had to repay the Mali tax authorities. The U.N. employee was prosecuted and eventually jailed, but his agency disavowed any responsibility.

The oil company successfully sued the agency for the embezzled amount in a local court case, but the agency invoked diplomatic "functional" immunity in 1989.

"The UNDP is immune from any legal process," said Toshiyuki Niwa, the director of its Bureau for Finance and Administration. "Therefore the case is closed. There was no lost money on our part."

As internal critic argued, however, that the agency's handling of the case hardly encouraged contributions to its programs in Mali, one of the world's poorest countries.

In Nairobi, the development agency in 1989 had to write off at least $368,000 stolen by a local employee a two-year period through a scheme involving payments to phony companies for items that were never delivered. The employee was convicted after a lengthy trial in a Kenyan court and sentenced to jail, but the agency was not found culpable for any administrative failures that might have allowed the fraud to happen.

In other cases, ranking development agency officials who have been implicated in serious irregularities have been let off with mild reprimands, generous agreements to pay back pilfered funds, favorable early retirement settlements or no disciplinary action at all, according to agency sources and a confidential paper on ethics for "internal discussion" within the agency. Among the cases cited in the document are incidents of alleged misappropriation, currency exchange manipulation and other fraud in Malawi, Rwanda, Sierra Leone and Equatorial Guinea as well as in Vietnam, Yemen and at headquarters in New York.

GREED IN GOVERNMENT

Africa's refugee programs are especially vulnerable to abuse because they typically involve moving large amounts of cash or food into chaotic, emergency situations in some of the world's poorest countries. Poorly paid government officials on the receiving end often view refugee programs as burdensome to local populations and feel justified in diverting aid, both for themselves and for government coffers, UNHCR officials say.

The pilferage "has been institutionalized in Africa to a great degree and is probably endemic around the world," said a veteran U.N. refugee official who has served in several African countries. "A lot of governments feel that UNHCR assistance is an integral part of their national budgets."

According to officials of different U.N. agencies, authorities in several countries—including Sudan, Uganda, Ethiopia, Somalia, Zaire, Angola, Cambodia, and Iran—have used a variety of schemes over the years to skim off large amounts of U.N. money. Among the most common have been requiring U.N. agencies to use transport companies controlled by top government officials or their wives, and stipulating unrealistic currency exchange rates, which can increase costs significantly.

"In the last five or 10 years, the worst case was Sudan," a World Food Program official said. A UNHCR source recalled that at one point, when the agency tried to cut program funds there, the government threatened to close its borders to refugees immediately. The threat stemmed not from authorities' concern about maintaining assistance to refugees already in the country, but from fear of losing the U.N. cash flows that benefited their friends and relatives, the source said.

In the late 1980s, Somalia became known to relief agencies as "the black hole of international aid" because of the immensity of the plunder. Field workers estimated that up to 60 percent of emergency assistance was diverted to the pockets or bank accounts of authorities in the Siad Barre regime. But the problem got little publicity, and the United Nations did virtually nothing about it.

More common than outright theft is the exaggeration of refugee populations to bring in more food than needed, relief officials say. The excess, they say, is often sold by government officials for profit. The Siad Barre regime insisted on an "artificial inflation of refugee numbers" to "keep their aid levels high," said Tom Barnes, an American who served as deputy UNHCR representative in Mogadishu. The government's refugee count reached 840,000 at one point, another official said, while relief agencies estimated the total at around 350,000.

"It was an exercise in massive fraud," Barnes said. When he complained about "a perversion of aid" in two other cases, he said, he was warned that he was risking expulsion and, perhaps, his life.

More recently, an American official of UNHCR, Christopher Thorne, was forced to flee Swaziland after he angered local authorities by exposing an apparent scam involving a phantom refugee population, according to U.N. officials familiar with the case. This is their account of what happened:

When Thorne arrived in Swaziland in August 1990, the government was operating a U.N.-supplied feeding program for 12,500 Mozambican refugees allegedly living with Swazi families because of a shortage of space at the Malindza refugee camp expanded to accommodate 20,000, and Thorne decided to have the food that had been distributed in homes handed out at the camp instead. Only 896 refugees showed up.

Thorne then demanded that Swazi authorities let him inspect a warehouse for U.N. food supplies. He found it empty. About 1,800 tons of food, worth up to $4.5 million on the black market in neighboring Mozambique, had disappeared. After Thorne complained, the Swazi press denounced him, a cabinet official threatened him and, finally, in December five armed men attacked his house while he was away on a trip. When the government revoked his diplomatic status in January, Thorne left the country secretly.

Sir George Mamba, Swaziland's foreign minister, denied that any food had been diverted. He blamed Thorne's difficulties on "a lot of misunderstanding" between him and the Interior Ministry and asserted that refugees had written letters to the press "condemning" Thorne for alleged ill-treatment in the camps. An Interior Ministry official in charge of refugees, Priscilla Shabngu, said angrily, "There is no food that got lost in Swaziland."

VICTIMIZED CONTINENT

In the U.N. system, graft and mismanagement plainly cut across the ethnic, racial and cultural lines of the organization's 179 member states. Yet it is also evident—and U.N. officials confirm—that irregularities are especially common in Africa. Several explanations are offered for this.

In part, fraud recurs chronically in Africa because this is where the money is. The largest regional share of U.N. relief and development funds goes to Africa, often under emergency conditions that make monitoring difficult. In the case of the U.N. Development Program, at least 41 percent of total resources are spent in Africa, the largest share of any region.

"Africa is the largest bureau of UNDP, and the most corrupt bureau by far," one veteran official of the development agency said.

In addition, U.N. officers from Africa are usually recruited from elite, pro-government sectors in their countries, where graft is often rife and accountability is nil, U.N. and governmental sources said. Many of these states lack a free press, a credible opposition or other institutions to hold authorities to account.

"In Africa, we never recruited anyone from the opposition," the development agency official said. "We only recruited those who were firmly part of the establishment."

But there is another factor at work, a far more sensitive one for the United Nations as it tries to maintain the delicate balances of a self-described "multicultural organization." According to a number of U.N. officials, regional or national "mafias" within the U.N. system help protect their members' interests and sometimes exert pressure to overlook wrongdoing or mismanagement for political reasons, or in the name of "geographic balance" within the organization.

There is an American mafia, a French mafia, a Danish mafia, but the most active of these cliques, U.N. officials say, is what has come to be known as the African mafia, a loose group of senior African officials in the U.N. bureaucracy who wield enormous influence, especially in recruitment and promotions.

African U.N. officials tend to deny that any such thing exists. "That's an absolute lie," said a high-ranking Tanzanian who did not wish to be identified. "There's no African mafia in the United Nations. I've never seen it."

One of many sources who dispute that view, however, is a black American who has long experience in Africa with a U.N. agency. The Africans came into what they perceived as a white-dominated system and decided to stick together for self-preservation and mutual assistance, he said.

"They banded together, they protected each other, they covered up each other's mistakes," he said. Outsiders, he said, are distrusted regardless of race.

REFUGEES

U.N. High Commissioner for Refugees 1992 projected spending

	Millions
Angola	$13.0
Burundi	4.9
Chad	1.5
Ethiopia	45.3
Liberia	8.0
Mozambique	8.0
North Africa[1]	.4
Rwanda	4.5
Sierra Leone	3.0
Somalia	15.7
South Africa	13.1
Zaire	.3

[1] Western Sahara, Morocco, Mauritania, Tunisia, Libya.

DEVELOPMENT

U.N. Development Program has offices in all African nations except Western Sahara. The 1991 worldwide budget: $1.4 billion, Africa $512 million, Other regions $888 million.

DROUGHT

The International Fund for Agricultural Development raised $500 million from 1986–89 to help the poorest rural people affected by drought in sub-Saharan Africa with food and agricultural aid. In 14 years, it has sponsored 128 projects in 43 African countries.

THE UNITED NATIONS IN AFRICA

The United Nations has poured billions of dollars into Africa. Selfless people have worked to better the lives of refugees, drought victims and the hungry. As the map shows, a vast U.N. bureaucracy has a presence in every African nation. Yet as the fiasco of starvation and death in Somalia shows, bureaucratic wrangling, waste and

mismanagement blunt U.N. effectiveness in Africa. In addition, evidence of fraud has been found in Angola, Djibouti, Ethiopia, Kenya Mali, Uganda and Zaire.

[From the Washington Post, Sept. 27, 1992]

THE U.N. EMPIRE: MISSTEPS ON THE PATH TO PEACE

(By William Branigin)

PHNOM PENH, CAMBODIA.—After two decades of war and upheaval, Cambodians greeted the arrival of the first U.N. peace-keeping troops last November with undisguised joy and relief. Exuberant crowds outside the soldiers' compound would stare at them for hours. Hopes grew that Cambodia was saved at last.

Today the joyous crowds are long gone, and a certain disillusionment has set in. The U.N. operation in Cambodia, launched with so much fanfare 10 months ago, is struggling with the inherent difficulties of one of the world's most intractable conflicts. But it also has brought with it some of the United Nations' own familiar problems of bureaucracy and excess.

A U.N. program to repatriate Cambodian refugees from Thailand has virtually abandoned its original goal of making them self-sufficient farmers. A mine-clearing operation, bogged down in bureaucracy, is still barely underway. Thousands of peace-keeping troops are idle because the demobilization of Cambodia's warring factions so far has been rendered largely cosmetic by the refusal of the largest guerrilla group, the notorious Khmer Rouge, to participate. And U.N. financial specialists have criticized a number of expenditures in the peace-keeping budget as exorbitant.

For many Cambodians, the biggest impact of the operation so far has been a skewed economy. Everything from rents and plots of land to rice, meat and potatoes has soared in price. The crowds that cheered the arrival of the first peace-keepers had no way of knowing that, months later, they would be paying from two to five times more for beef, rice, pork and diesel fuel than they did before—largely because of U.N.-induced inflation.

With a budget of $1.7 billion, the U.N. peace-keeping operation in this war-ravaged country represents the world body's most ambitious such effort to date. In just 18 months, it will cost more than a fifth of the total amount spent by the United Nations on peace-keeping in the previous 46 years.

Cambodia is just one example of the United Nations' peace-keeping problems. As the organization heads into larger commitments in Somalia and Yugoslavia and struggles with its huge mandate here, concerns about the soaring costs of peace-keeping are spurring demands to trim budgets, tighten management and rein in some of the excesses that have dogged the U.N. bureaucracy for years. Chief among the complaints are waste, mismanagement and a tendency to become entangled in endless mandates.

U.N. peace-keeping is generally regarded as a good investment—especially compared with the costs of conflict or with the estimated $1 trillion a year that the world spent on arms in the 1980s. There is little argument, for example, that ending Cambodia's devastating war and ushering in democracy are worthy goals in the interests of stability and prosperity in Southeast Asia.

Since peace-keeping operations often put their members in harm's way, scrutiny of them on management or budgetary grounds is especially sensitive. Over the years, more than 800 people from 43 countries have died in the service of U.N. peace-keeping forces.

Lately, U.N. peace-keeping has become a growth industry. In the last four years, 13 peace-keeping operations have been set up—as many as were formed during the entire period from 1945 to 1987. Five years ago, peace-keeping cost U.N. member states $233 million in assessments. This year the bill is around $2.7 billion, with no indication that the price tag will stop growing.

"COULD REMAIN FOREVER"

In a recent congressional speech, Sen. Larry Pressler (R-S.D.) expressed concern about what he called "sticker shock in peace-keeping costs" and called for "a brake against U.N. overspending" on such operations. Currently, the U.S. share of U.N. peace-keeping budgets is pegged at 30.4 percent, but Congress has no say in determining where such missions should be deployed, how much they should cost or how long they should last, he said.

"There is no sunset law for peace-keeping," Pressler said. "Once peace-keepers are assigned, they could remain forever."

U.N. Secretary General Boutros Boutros-Ghali said in a recent lecture that he was "taking a close look at the costs of existing peace-keeping operations, especially the older ones." He said budget cuts were in the works for the U.N. Interim Force in Lebanon, deployed since 1978; the U.N. Disengagement Observer Force, posted in the Golan Heights since 1974; and the U.N. Truce Supervision Organization, stationed in the Middle East for more than 40 years.

He also suggested a reappraisal of peace-keeping operations that drag on for decades, consuming hundreds of millions of dollars, while negotiations remain deadlocked. In Cyprus, for example, he noted, a U.N. force has been deployed since 1964 with no apparent progress toward solving the island's conflict. In Kashmir, a small team of U.N. military observers has been monitoring a cease-fire line since 1949.

Although peace-keeping operations traditionally have accounted for a relatively small share of total U.N. spending, they have been important symbols of the world organization's primary original mission: preventing conflict. But because the Security Council's five permanent members, including the United States, the Soviet Union and China, hold veto power in the Council, Cold War considerations blocked many opportunities for U.N. intervention. Since the United Nations was founded in 1945, an estimated 20 million people have been killed in more than 100 major conflicts.

There have been some complaints about the management of peace-keeping operations over the years, but they apparently have made little difference.

In Namibia, the U.N. Transition Assistance Group, set up to oversee a cease-fire and supervise an election in the African territory, raised U.S. concerns last year when it "donated" U.N. property worth nearly $26 million to the new government at the end of its mission instead of keeping it for future operations. Accounding to an inventory, the property included $18.3 million worth of "transportation items," notably 1,400 four-wheel-drive station wagons, sedans and pick-up trucks.

U.S. diplomats who monitored the operation had little doubt about the beneficiaries of the U.N. largesse. "U.S. taxpayers should not be required to provide new equipment every time the U.N. sets up an operation, only to have it given away to local government officials," a memorandum on the donation said.

In Somalia, a new peace-keeping operation got off to a rocky start last month amid intense criticism of the performance of U.N. relief agencies there. According to private relief officials, a U.N. technical team assigned to scout territory for possible food distribution that would be protected by U.N. troops spent 10 days flying around Somalia but failed to consult voluntary aid groups that have been working inside the country for months and took too long to make its "assessments" while people starved.

The United Nations now plans to send 3,500 troops to help guard food shipments and supervise a cease-fire for six months at a projected cost of $130 million.

NUMBER OF MISCALCULATIONS

Here in Cambodia, questions about the peace-keeping mission are multiplying as the operation hits snags and its timetable slips. Member governments that pay the bills want to know how the United Nations is managing the venture and spending the money.

Parts of the operation are lurching forward. Refugees are returning, and money is flowing into the country. But U.N. sources and other officials say the effort also has been marked by confusion, delays, profligate spending and some questionable deals.

In an upcoming report on Cambodia, the human rights group Asia Watch says that U.N. plans for repatriating refugees "were grounded in a number of miscalculations." It describes the U.N. Transitional Authority in Cambodia (UNTAC) as engaged "in a race against time" driven by a U.N.-sponsored peace plan that has promised "too much, too quickly." Human rights safeguards have been compromised, it says, and "information given to refugees has been constantly revised, sometimes in a "misleading" way that has tended to "undermined faith in the U.N."

Despite the urgency of the U.N. deployment and the shortness of its timetable, the report notes, the U.N. special representative in Cambodia, Yasushi Akashi of Japan, did not arrive until nearly five months after the peace plan was signed in Paris last October. Even now, it says, mine clearing, once a top priority, "has barely begun."

"The Cambodian people are very disappointed" with the U.N. peace mission, said Prince Norodom Ranariddh, the son of Cambodia's head of state and leader of one of its four rival factions. "They expected much more." Some hopes were too high, he said, but the U.N. mission also has been slow in carrying out its mandate.

The harshest criticism has come from the Khmer Rouge, whose brutal rule from 1975 to 1979 caused the deaths of more than a million people. The radical communist group recently said it had lost confidence in Akashi and called for his resignation.

The Khmer Rouge, ousted by Vietnamese invasion forces and replaced with a government loyal to Hanoi in January 1979, has been waging a guerrilla war ever since. Fearful of losing its followers, it has refused to join the demobilization phase of the peace plan on grounds that the U.N. mission has not verified the withdrawal of Vietnamese "forces" from Cambodia or taken control of the Phnom Penh government's police.

'EXCESSIVE' COSTS

The U.N. peace mission in this country of 8 million people is charged with monitoring a cease-fire and helping govern the country in preparation for national elections in 1993 under the Paris peace plan. To fulfill that mandate, it plans to deploy 19,500 troops, military observers and civilian police and 1,020 international staffers, plus thousands of local employees.

Besides the $1.7 billion cost of the peacekeeping mission, an additional $800 million in voluntary contributions has been solicited to finance reconstruction of the country and repatriation of refugees.

Of the budget for the U.N. peace mission in Cambodia, only $120,000 is earmarked for external auditing. By comparison, nearly $2.5 million is set aside for "contractual services for laundry, dry cleaning, tailoring and haircutting." The mission also plans to spend more than $1 million for televisions and video equipment, $600,000 for newspaper and magazine subscriptions and $200,000 for U.N. flags and decals, its budget shows.

Some U.N. sources say the allocations reflect the relatively low priority attached to oversight. "We would feel more confident that the money was being spent wisely if [the U.N. peace mission] had stronger auditing," one U.S. official said. Having just two internal auditors working on it, he said, was "just not adequate."

In a report on the Cambodian operation in May, the U.N. Advisory Committee on Administrative and Budgetary Questions expressed concern about the external auditing and cited costs that it considered "excessive" in many areas. Of $234.5 million budgeted for "premise and accommodation," for example, $67.2 million is earmarked for "upgrading of tent accommodation for military contingents," it noted. The report said this amount was too high because most of it applies to only 9,600 U.N. military personnel. Six contingents are scheduled for withdrawal by October, it added, and the troops are subject to rotation.

Citing budget allocations of more than $92 million for the purchase of 8,044 vehicles—in addition to those accompanying troop contingents—the committee said the ratio of vehicles to staff was too high and that "unit prices should be considerably lower."

So far, the main beneficiary has been Toyota, which is supplying most of the jeeps and double-cabin deluxe pickup trucks that now clog the streets of Phnom Penh. Chrysler, which had been competing for the business, was awarded a token contract to supply about 30 jeeps.

Perhaps the most controversial deal to date has been a contract to supply more than $50 million worth of fuel, oil and lubricants to the U.N. peace mission in Cambodia. The contract was awarded in August to a secretive Singapore-based company, Continental Offshore. Neither the firm nor the U.N. procurement office would divulge its ownership.

The U.S. Commerce Department took an interest in the deal because Mobil, based in Fairfax, VA., had been competing to supply the oil products as part of a rival group. U.S. officials raised questions about Continental Offshore's ownership and its ability to service the U.N. mission, citing Singapore records that they said showed a weak financial position. They said U.N. officials had rejected Mobil's partner, the British firm Inchcape, as too small although it has much higher net assets of more than $750 million.

The managing director of Continental Offshore, Clive Fairfield, said the firm won the contract because it has experience in Cambodia and an "infrastructure for distribution" there. He declined to discuss Continental Offshore's size or identify its owners, saying only that it is a "private" company "set up in trust." He said the firm already had been supplying oil products to the United Nations in Cambodia since last November under accords reached with "no bidding."

According to Leon Bloch, a procurement officer at U.N. headquarters in New York, other competitors "didn't have the structure for delivery" of the fuel inside Cambodia and the U.N. peace mission "was convinced that this outfit [Continental Offshore] can do the job." He said the United Nations had investigated the company, but he dismissed questions about who owns it.

"The U.N. gives an award to the lowest bidder," Bloch said. "This is the lowest bidder, and I don't see what the problem is."

MONEY TO BE MADE

As some Cambodia-watchers see it, part of the problem for the U.N. peace mission lies in the very nature of the country, where official corruption has long been endemic and conflict of interest is not recognized as a problem. Cambodians say officials of the government of Prime Minister Hun Sen have been among the main beneficiaries of the outlandish rents paid by U.N. personnel for houses and offices. Public anger at perceived corruption in the sale of government-owned land, buildings and factories to private interests boiled over in December when students took to the streets in protest.

According to Cambodian and foreign diplomatic sources, there have been persistent reports that private money from Southeast Asian countries has been flowing in to buy up land, including areas around the renowned Buddhist temple complex of Angkor Wat. Some of it reportedly has been channeled through military officers serving with the U.N. mission, diplomats said.

Not surprisingly, U.N. provisions ranging from spare tires to bottled water occasionally have wound up on the black market.

In volunteering to serve in the peace mission here, the thousands of military, police and civilian personnel are driven by a mixture of motives. For some it is altruism or an intense interest in the country. Others come mainly for the money.

According to U.N. figures, $346 million—20 percent of the budget for the U.N. peace mission in Cambodia—is allocated to salaries, staff costs and per diem payments to mission personnel. Military observers, civilian police and international staff members receive per diem "mission subsistence allowance" payments of up to $145 a day on top of their salaries. For many, these largely bankable payments, which are meant to cover lodging and meal expenses, serve as a major incentive for joining the U.N. force.

Asked recently why he volunteered for Cambodia, a Uruguayan naval officer rubbed thumb and forefinger together in the universal sign for cash. In four days here, he said, his per diem would pay him the equivalent of his normal monthly salary back home, and he figured he could bank 80 percent of it—nearly $3,500.

Noting that estimates of the total per diem payments come to about $227.5 million, the advisory committee called for a review of the rates.

For residents of Phnom Penh and other areas, one of the most criticized aspects of the U.N. presence has been its effect of driving up prices.

In a country where per capita income is about $150 a year, the United Nations has been shelling out $6,000 a month and more for houses in the capital. Topping the list of rental properties is a concrete building with 36 rooms, for which it paid $26,500 a month—about three times higher than estimates of its normal market value even with the current U.N.-inspired inflation.

In the provincial town of Mongkol Borei recently, the U.N. mission swooped in and without checking rates with any of the nongovernmental aid agencies based there, rented a house for $2,000 a month. The aid agencies, which had been paying $200 to $300 a month for their premises, were promptly hit with demands by their landlords to hand over $1,000 a month and more or move out.

A HARSH HOMECOMING

Steep prices, especially for land, also are affecting resettlement prospects of refugees returning from camps run by Cambodian factions opposed to the Phnom Penh government.

As part of the overall peace plan, the United Nations is repatriating most of the 360,000 Cambodians who have been living in the camps inside Thailand, some for as long as 13 years.

The $116 million program, financed separately from the peace mission's budget and carried out by the U.N. High Commissioner for Refugees (UNHCR), has been portrayed as a major success. So far, about 100,000 Cambodians have returned.

But behind the scenes, there has been considerable criticism, both from returnees and refugee officials. Promises about the availability of farmland turned out to be false, many returnees have been practically abandoned inside the country, and the United Nations has become bogged down in confusion and inertia in dealing with a major obstacle to safe repatriation: the presence of hundreds of thousands, if not millions, of land mines.

When the repatriation started at the end of March, under pressure from Thai authorities, the UNHCR was promising about five acres of farm land per family to help the returnees put down new roots in Cambodia.

The agency paid a French company, Spot Image, $675,000 to identify settlement areas by satellite—using funds that had been provided by the French government. Some officials, however, called the project a waste of money, because it could not measure two critical factors: the presence of mines and the willingness of local officials to accommodate the returnees.

With trouble looming, the UNHCR in late May dropped the land promises and offered the returnees other options, including cash grants of $50 per adult and $25 per child plus food for a year. The change led to a violent protest at the largest Thai camp, but the refugees eventually accepted it.

Many Cambodians took the cash and sought out relatives in their home villages. But others have been simply dropped off by roadsides in western Cambodia as the UNHCR races to move as many people across the border as quickly as possible.

"I'm in despair right now," said Ly Voun, 45, a returnee, as he camped out with his wife and three children under blue plastic sheeting near the village of Prey Leou in Battambang Province. A trained mechanic originally from Kandal Province near Phnom Penh, he said he received about $23 and only enough wood to build half a house. In any case, he said, he cannot afford the $1,500 demanded by a village leader for a plot of land.

"I don't know what to do," Ly Voun said. "I'm very angry and disappointed with the way the U.N. has handled the whole thing. Look at me, I live under a tree and there's no land where I can stay. In the whole country, they can't even find me a place to live."

The situation has alarmed some UNHC officials in Cambodia and opened a rift in the organization about how much should be done to help the returnees reintegrate. So far, critics say, the agency is acting mainly as a transport service.

Especially critical to the repatriation is the removal of the land mines that have

maimed one out of every 236 Cambodians, giving this country the highest proportion of amputees in the word.

According to the peace mission's budget, $14.7 million is allocated for mine-clearing programs, including equipment, services and operating costs. Boutros-Ghali has reported plans to train 5,000 Cambodians to clear mines by the end of the year. However, the mine-clearing operation has been mired in legal wrangling over liability, the extent of the U.N. mandate and how to disburse the funds.

As a result, just a small fraction of the mines have been removed, fewer than 800 Cambodians have been trained in mineclearing, and only about 100 of them have actually started work for teams organized by the French military and private groups such as Halo Trust and Handicap International. Frustrated with the inactivity of the past 10 months since the United Nations landed in Cambodia, the U.S. government has put up some of the money to fund mine-clearing operations.

'PRINCESS' PAYS PRICE

Along with its soldiers, its bureaucracy and its Midas touch, the United Nations has brought a few other problems into the picture. Added to the perennial plague of official corruption have been new levels of greed and vice in the frenetic get-rich-quick atmosphere. Production has spread, and children who once sold maps to foreigners are now peddling pornographic videotapes.

It all became too much recently for Jean-Marie Bertron, a French entrepreneur who started the popular Cafe No Problem here earlier this year. Last month, he sold his share in the profitable gathering place and left the country in dismay. Perhaps the United Nations would save the country after all, but for Bertron, the huge operation had brought an unwelcome change.

"The U.N.," he lamented, "has turned a princess into a hooker."

U.N. PEACEKEEPING FORCES

	Annual cost (millions)	Date deployed	Current strength
U.N. Truce Supervision Organization (UNTSO) set up to monitor Arab-Israel armistice agreement	$31	1948	300
U.N. Military Observer Group in India and Pakistan (UNMOGIP)	5	1949	40
U.N. Peace-keeping Force in Cyprus (UNFICYP) [1]	[2] 31	1964	2,200
U.N. Disengagement Observer Force (UNDOF) between Israeli and Syrian armies in the Golan Heights	42	1974	1,300
U.N. Interim Force in Lebanon (UNIFIL)	157	1978	5,800
U.N. Iraq-Kuwait Observation Mission (UNIKOM)	65	1991	549
U.N. Angola Verification Mission (UNAVEM II)	72	1991	440
U.N. Observer Mission in El Salvador (ONUSAL)	52	1991	543
U.N. Mission for the Referendum in Western Sahara (MINURSO) scheduled operation has run into political problems	200	1991	375
U.N. transitional authority in Cambodia (UNTAC)	NA	1992	19,500
U.N. Protection Force (UNPROFOR) deployed in Serb-inhabited regions of Croatia	400	1992	16,000
U.N. operation in Somalia, (UNOSOM)	[3] 23	1992	550

[1] Only U.N. operation paid for by voluntary contributions instead of through assessments against all U.N. members
[2] Troop-contributing countries absorb an additional $60,000,000.
[3] For 6 months.

Source: United Nations.

[From the Washington Post, Sept. 23, 1992]

THE U.N. EMPIRE: NORTH AND SOUTH STAND WORLDS APART ON REFORM

(By William Branigin)

JAKARTA, INDONESIA.—At a summit meeting of the 108-nation Nonaligned Movement here this month, the assembled presidents and prime ministers of the disparate group found common ground with U.N. Secretary General Boutros Boutros-Ghali and the world's major powers on at least one broad proposition: The United Nations urgently needs reform.

But in speech after speech, it became clear that the reforms sought by the developing world are quite different from those advocated by industrialized countries, especially the United States.

As the nations of the globe seek to define the "new world order" in the aftermath of the Cold War, the United Nations is shaping up as a major ideological battleground. The East-West conflict may be over, but an intensified North-South struggle appears to be looming between industrialized and developing countries. One of its first tests appears likely to be U.N. reform.

"We're not on the same frequency," said Abdulrahman Gara, a delegate from Nigeria. "In the new world order, everyone has his own idea," added his colleague, Jonathan Ndagi.

For the developing states, reform means upgrading the authority of the 179-member General Assembly, gaining increased representation on the Security Council, curtailing the veto rights of the five major powers and expanding U.N. economic and social programs.

For the industrialized world, however, it means curbing the growth of those programs, streamlining the bureaucracy and eliminating waste, duplication, mismanagement and corruption.

Boutros-Ghali has tried to overhaul the U.N. headquarters in New York, but his efforts have stirred concern—and some stiff opposition—among staff members. But even the limited cuts in high-level posts announced to date have been partially offset by the creation of new positions and the awarding of lucrative consulting contracts to top officials who lost their jobs.

As part of its version of U.N. reform, the Nonaligned Movement, the world's largest political assembly of developing countries, agreed during its summit meeting here to establish a "high-level working group" to develop proposals aimed at the "revitalization, restructuring and democratization of the United Nations system."

Berating "those who seek to preserve their privileged positions of power" in the United Nations, a lengthy final communique called for a review of "the veto powers which guarantee an exclusive and dominant role" for the five permanent members of the U.N. Security Council—the United States, Russia, China, Britain and France.

The developing countries, which make up two-thirds of the United Nations' membership, view the council as an outmoded product of World War II that inadequately represents their interests. The North, on the other hand, considers the main problem to be the General Assembly—two-thirds of whose members are developing nations. In the view of the industrialized nations, the General Assembly is burdened by time-consuming debates, repetitive resolutions and an unwieldy annual agenda of more than 150 items.

"There are enormous difficulties in reforming an organization of this kind," said Russian Foreign Minister Andrei Kozyrev in a recent interview in Manila. "It is a very, very delicate and painful process," added the former Soviet U.N. specialist, who has written extensively on the world body. "There is a lot of resistance, especially from the Third World and some other countries."

The split between North and South "is the major hazard for the U.N. now," said Brian Urquhart, a retired undersecretary general from Britain. "It's very difficult to move forward while the gulf is growing."

Ultimately, the major powers must agree to some changes in the Security Council if it is to maintain its authority with the U.N. membership at large, said Ronald I. Spiers, a former undersecretary general for political and General Assembly affairs who advocates U.N. reform.

Spiers described Third World proposals to eliminate the permanent members' veto as a "quixotic aspiration" and said he opposes expanding the council beyond the current 15 members. But he said the council could be reorganized to include "semi-permanent" or rotating memberships to better represent the major developing countries. He suggested that Japan and the European Community could each be given a permanent seat instead of Britain and France.

The General Assembly, Spiers said in a telephone interview, "would have greater power if it could discipline itself. It has dissipated its force and influence by trying to cast too wide a net."

'IT'S THE OLD-BOY NETWORK'

Caught in the middle of the reform debate is Boutros-Ghali, a former Egyptian foreign minister now in his ninth month as U.N. secretary general. He has inherited the unpopular task of trying to curb the excesses and trim the bloat of the world body amid increasing demands for its services.

Now he faces pressures from all sides: the developing world that claims him as one of its own, the industrialized countries that pay the organization's bills, the U.N. staff members who want to keep their paychecks and privileges, reform advocates and private groups that want to end U.N. abuses and shore up accountability.

So far, his efforts appear to be falling well short of what many U.N. and other officials say is needed. In fact, some of them say, substantial reforms ultimately may prove impossible to achieve.

"To really reform, you have to do something that is absolutely undoable in a bureaucracy: You have to clean the place out," a senior U.N. official said. "To do something meaningful, you have to scrape away 45 years of barnacles, and that's a lot of barnacles."

Rakiya Omaar, the Somali director of the human rights group Africa Watch, said: "I don't think there's any chance of reform from within. . . . Even if you get a real reformer at the top—and I think Boutros-Ghali is sincere in wanting to reform—I think there's too much vested interest in the U.N. to let him have his way."

In an interview last month with the London-based Arabic daily Asharq al-Awsat, Boutros-Ghali said high-level staff cuts and other reform efforts had brought him under constant attack from "power centers within the U.N."

"I am in the process of restructuring the Secretariat," he said, referring to the U.N. offices, councils and commissions housed at headquarters in New York. He added, "This does not mean that I will succeed."

Citing a need to "restore discipline" and rein in waste in the organization, he gave this example: "An undersecretary flies and travels on what grounds? He wants to go on a promenade. So he pretends that he is going on an inspection mission. I gave instructions that no one can travel without my permission."

Boutros-Ghali said he was told "that if I succeed in abolishing two posts it will be an

enormous achievement. I abolished 15 posts, and I will continue to do so."

In a speech to U.N. employees this month, he said his references to staff reductions applied "only to top-echelon posts." He sought to reassure staff members that they would not lose their jobs and that he would soon try to improve "conditions of service," including salaries and long-term recruitment.

According to budget figures, a net total of 12 top-level positions at New York headquarters have been eliminated so far, leaving the Secretariat with 36 undersecretaries general and assistant secretaries general. Boutros-Ghali also has merged several departments and revamped the unwieldy U.N. chain of command, cutting the number of officials reporting directly to the secretary general from at least 38 under his predecessor to fewer than 10.

But controversial new high-paying consultancies or stipends for several removed officials have negated part of the savings and stirred debate about an "old-boy network" inimical to U.N. reform, internal critics say.

Especially controversial, apart from these arrangements, has been the appointment in March of Joseph Verner Reed, President Bush's former protocol chief, to a specially created senior U.N. position as a new undersecretary general and "special representative for public affairs."

Among Reed's main duties are raising funds and organizing celebrations to commemorate the 50th anniversary of the United Nations in 1995. The appointment is widely seen as the result of "pressure from the White House," as one former top U.N. official put it, to give the President's friend a job.

"It looks bad for the United States, after pushing for a reduction of posts, that they created a high-level post to accommodate this guy," a U.S. official said. "It's a non-job that was created for a high-ranking American and has been an embarrassment."

Reed rejects criticism that the post was not really necessary and duplicates functions of the U.N. Department of Public Information. In a telephone interview, he pointed to his hectic schedule attending such events as the recent inauguration of the president of Ecuador and the opening of the World Space Congress in Washington on behalf of the secretary general.

"I'm not only an ambassador-at-large, but a utility fielder for him," Reed said. He said he was chosen in part because, as a former U.S. ambassador, U.N. undersecretary general and White House protocol chief, "I know a broad spectrum of leaders around the world."

Another subject of controversy has been what U.N. sources describe as a series of special financial arrangements benefiting Virendra Dayal of India, a former undersecretary general and chief of staff of Boutros-Ghali's predecessor, Javier Perez de Cuellar. Dayal's post was eliminated in the shakeup earlier this year—about 18 months short of his retirement age. Rather than assign the career U.N. official to another, possibly lower-ranking position, the United Nations reached an "agreed termination" that, combined with pension payments, allowed him to cash out with a total package close to $500,000, according to U.N. insiders.

Then Dayal received a fee of about $50,000 for assembling a report titled "An Agenda for Peace," a series of proposals on strengthening U.N. peace-keeping capabilities, U.N. sources said. Now, they said he has a consultancy lasting into 1993 that pays him at undersecretary general level to work on special projects. A Sept. 14 U.N. press release said Boutros-Ghali has designated Dayal as a special envoy to South Africa, but it made no mention of payment.

A 1982 General Assembly resolution prohibits contract or consultancy payments of more than $12,000 in any calendar year to former staff members receiving U.N. pension benefits.

Dayal did not respond to written questions about his severance and subsequent payments, and the secretary general's office declined comment.

"It's the old-boy network," a U.N. official said. "People get bounced out of one job and appear back in something else."

Two other high-ranking bureaucrats recently landed lucrative consulting contracts with the United Nations after their jobs were eliminated in March as part of the streamlining, U.N. officials said. One now earns about $18,000 a month, double his previous U.N. salary, the sources said.

The U.N. rules on consultancy payments are "violated all over the place," one official said. The latest cases, he said, are "the tip of the iceberg."

"If they're going to reform this place, they shouldn't just go after these hungry Third Worlders," another U.N. official said. They should also go to the top."

LACK OF OVERSIGHT

Policing the top echelon of the United Nations has always been difficult. In the ranks of executive directors of specialized agencies, undersecretaries general and assistant secretaries general, "the incumbents are not accountable to a monitoring body of any kind," said a 1990 study on U.N. reform by Urquhart, the British former undersecretary general, and Erskine Childers, a retired U.N. senior official. Unlike most governments, they added, "the U.N. system has no uniform provision for gross inadequacy or malfeasance in office."

Nor does it have, up to now, an inspector general empowered to audit finances, assess programs, ferret out wrongdoing and act as an independent check on the system.

One proposed reform, recommended by the United States, is to replace the Geneva-based Joint Inspection Unit and the Internal Audit Division at New York headquarters with such an office, combining their functions into a stronger, more coordinated inspectorate.

A key figure in this and other reform efforts is Undersecretary General Richard Thornburgh, a former U.S. attorney general and Pennsylvania governor who was appointed by Boutros-Ghali in March to head the Secretariat's Department of Administration and Management. He has been battling to eliminate some professional positions and shift others into relatively understaffed areas such as peace-keeping.

"Unfortunately, we've got a bad situation around here," said one official involved in the effort. "There are some cases of employees who haven't done a stitch of work in years," but they are hard to get rid of because they have permanent contracts and none of their failings has been documented by management, he said.

"The status quo here is something that people truly want to protect," he said. "When you want to take away a position, it's like taking away a first-born child."

Historically, staff cuts in the United Nations have been hard to make—and tough to check. In the 1980s, the United Nations agreed under U.S. pressure to reduce staff by 15 percent, an objective it says has been largely accomplished. However, according to U.S. officials, some U.N. offices use various ruses, such as hiring employees on a contract basis for 11 months of the year, to keep them off staffing charts and conform to the requirements.

Besides his proposal to install an inspector general, Thornburgh is recommending a "strict code of conduct" for Secretariat members, a coordinated procurement system, the "tightening of disciplinary and termination procedures" and closer supervision of field operations and official travel as part of an overall plan to "increase control and upgrade integrity" in U.N. operations.

He also suggests a review of procedures used to prepare budgets for peace-keeping missions and a "moratorium" on further worldwide or regional conferences before 1995.

"Clearly, his [Boutros-Ghali's] desire is to streamline the organization, eliminate redundant activities and positions, and to reduce the number of duplicative activities and turf battles that are alleged to characterize the organization," Thornburgh said in an interview. Regarding mismanagement, waste and corruption in the U.N. system, he said that "to the extent those problems exist, the initiatives that have been undertaken for restructuring and reform are designed to address them."

Whether Boutros-Ghali succeeds in his reform plans depends largely on the General Assembly, which must approve the abolition of senior positions. According to U.N. officials, such reductions set a worrisome precedent for developing countries, which generally favor the "strengthening"—that is, expansion—of U.N. programs and funding.

They may have little to worry about in view of the latest budget estimates for the two-year period ending in 1994. According to a U.S. analysis, the budget provides for about 50 new jobs and real budget growth of about $19 million.

Although this increase is relatively small, it represents a symbolic departure from the "zero real growth" U.N. budgeting insisted upon by the U.S. government as a condition for paying assessments in full. At present, U.S. law allows the administration to withhold 20 percent of assessed U.N. contributions if budgets are not reached by an adequate "consensus"—meaning with U.S. approval.

REDUNDANCIES REMAIN

The next major challenge in U.N. reform, experts say, is to eliminate worthless or redundant activities and get rid of entire entities that have outlived their usefulness.

"There is no question of a need to pull this system together," said Urquhart, who is now with the Ford Foundation after a 41-year U.N. career. But overhauling the wider U.N. system, notably the specialized agencies, presents tremendous problems, he cautioned. "There are huge vested interests there."

Indeed, abolishing components of the system is one thing that the United Nations has proved chronically unable to do.

Siegfried Schumm of Germany, a member of the United Nations' Geneva-based joint inspection Unit, noted in a 1988 report that the General Assembly in a series of resolutions in the 1970s had called on the secretary general to identify "marginally useful activities" for termination "without further delay" so that resources could be channeled into higher-priority areas.

In 1981, after what was termed an "indepth high-level review," the secretary general's office identified less than $25 million worth of low-priority activities. But action was postponed until the next year, when a new

report proposed actual cuts of less than $4 million.

Equally disappointing, Schumm's report said, were repeated efforts over nearly 40 years to get the United Nations to evaluate the results of its programs in a meaningful way to find out what was actually accomplished. In 1986, after a decade of work, the Secretariat unveiled "a new built-in self-evaluation system," the report said, but even that was never fully implemented.

In an update in May this year, Schumm told two U.N. committees concerned with programs and budgets that, essentially, nothing had changed. The latest evaluation reports "appear to maintain the status quo in almost all respects," he said. Noting that his 70-page 1988 study was the eighth one by the joint Inspection Unit dealing with program evaluation, Schumm, evidently frustrated, told the committees not to bother asking for any more reports.

The inspection unit itself has come in for its share of criticism. In fact, according to officials who monitor U.N. management, Schumm is the only current inspector whose reports have been of any real value.

Established in 1968, the unit has 11 autonomous inspectors with broad investigative powers. Its mandate is to check on efficiency in the U.N. system and the proper use of resources. But it hasn't been an aggressive watchdog, critics say.

"It was one of those American ideas that went bad," said a U.N. delegate who monitors the group. It was originally intended to be like the U.S. General Accounting Office, he said, but ended up as a body of mostly elderly retired diplomats or political appointees with "no special skills for the job."

The inspectors, nominated by their governments, represent different regions, earn $110,000 a year and serve in a personal capacity, which means that "they can do anything they want," the delegate said.

The unit currently has 29 employees and a two-year budget of $7 million. Last year, it issued four reports. One of them concerned "grade overlap" in Geneva, a problem of currency-exchange rates that basically means that some secretaries paid in Swiss francs earn more than professionals paid in U.S. dollars. Another study, currently being prepared by a Polish inspector, examines how the U.N. Secretariat takes care of its artwork.

In a telephone interview, Schumm acknowledged criticism that "we're not very efficient" and said a U.N. cost-benefit analysis of the unit was "disastrous for us." He said it was up to member states to put forward better-qualified and younger candidates.

"I have nothing against ambassadors and such people, but I have serious doubts whether they're equipped to deal with technical problems," said Schumm, 63, a former German treasury official. "You can't ask some people who are over 70 to do highly technical jobs."

In a meeting with U.N. budget analysts in June, participants said, the inspectors lobbied for a salary increase.

REFORMS: NORTH VS. SOUTH

Most countries agree that the United Nations needs reform, but leaders of the industrialized Northern Hemisphere and the developing lands of the South hold diametrically opposite views of what changes should be made and how they should be implemented. The Cold War conflict of East and West may be over, but in the "new world order," an intensified North-South struggle is developing, and U.N. reform may become a casualty on the ideological battleground.

THE SOUTH'S AGENDA

For the developing states, which make up two-thirds of the United Nations' membership, reform means:

Upgrading the authority of the General Assembly.

Gaining increased representation on the Security Council.

Curtaining the veto rights of the five permanent members of the council—the United States, Russia, China, Britain and France.

Expanding economic and social programs.

THE NORTH'S AGENDA

For these countries, including the United States, priorities include:

Reforming the 179-member General Assembly, which is viewed as being captive to an unwieldy annual agenda, time-consuming debates and repetitive resolutions.

Streamlining the bureaucracy.

Eliminating waste, duplication and mismanagement.

Rooting out corruption.

Curbing U.N. economic and social programs.

[From the Washington Post, Sept. 23, 1992]

THE U.N. EMPIRE: 17-YEAR REIGN OF CHAIRMAN OF WATCHDOG PANEL QUESTIONED

(By William Branigin)

UNITED NATIONS.—The Advisory Committee on Administrative and Budgetary Questions is a little-known but highly influential appendage of the U.N. General Assembly. It serves as the watchdog for the U.N. system, and its chairman, Conrad S.M. Mselle of Tanzania, ranks as one of the most powerful men in the organization.

But who watches the watcher?

In 18 consecutive years on the committee, 17 as its chairman, Mselle has built a comfortable niche for himself. What started out as an honorary position has evolved during his tenure into a highly lucrative one with the pay grade, if not the title, of an undersecretary general. Nominally answerable to the General Assembly, rather than the U.N. Secretariat, he has campaigned over the years to ensure his repeated reelection to the post, which is virtually immune from oversight of its compliance with the Secretariat regulations it is supposed to monitor.

Established in 1946, the committee examines and reports on the budgets of the United Nations and all its agencies. It also oversees promotions of U.N. employees, the creation of new posts and the establishment of pay grades. It reviews the budgets of peacekeeping operations, in addition to those of the U.N. specialized agencies. Unlike most other U.N. committees, the 16-member group meets in closed sessions.

"The [committee] is the body that enforces that discipline there is," said a former U.S. member.

"It is becoming more and more powerful," a current member said, adding that nearly all of its recommendations "are accepted as they are proposed."

Mselle now receives a salary of more than $120,000 a year. In addition, he gets a special annual allowance of $8,000, a U.N.-paid trip home to Tanzania every year, and U.N. pension and health benefits. Concurrently, he ranks as an unpaid ambassador in the Tanzanian every year, and U.N. pension and health benefits. Concurrently, he ranks as an unpaid ambassador in the Tanzanian delegation to the United Nations and has represented his country in General Assembly debates.

When Mselle became committee chairman in 1975, the post paid an annual honorarium of $25,000. Two years later, the stipend doubled. A year after that, it turned into a U.N. salary, with benefits, that has risen sharply. None of the other committee members is paid by the United Nations.

"Mr. Mselle presides over discussions" of his own salary and benefit package, which is sent on to the General Assembly for formal approval, said one delegate who has served on the committee for several years. "Nobody dares to try to reduce his benefits, because we have the person in front of us who is the beneficiary."

After years of being reelected by the committee to one-year terms as chairman, Mselle pushed through a new rule providing for a three-year term in 1988 and was reelected late last year. Amid some dissatisfaction about his efforts to keep the chair indefinitely, the committee has since moved to impose a six-year term limitation.

In an interview, Mselle stressed the committee's independence from the Secretariat and likened his position to that of U.S. congressmen in terms of immunities and separation of powers. Defending his long tenure, he said, "The tradition is that you don't change the chairman too quickly, otherwise you lose your institutional memory."

RELATIONSHIP WITH ASSISTANT

Especially controversial among some committee members is Mselle's relationship with his assistant, Mary Elizabeth Browne, originally of Barbados. Committee staff members and others said that the two have lived together for years as a couple and have a son, although Mselle said they are not married.

Browne joined the committee's small permanent staff before Mselle became chairman, according to committee staff members. She now serves as a personal assistant to the chairman. In a 1987 promotion, U.N. personnel records show, she reached the United Nations' highest nonprofessional rank of G7, which pays her about $54,000 a year.

According to U.N. staff rule 104.10, a spouse, among other close relatives, "shall not be assigned to serve in a post which is superior or subordinate in the line of authority to the staff member to whom he or she is related" and must not participate in administrative decisions "affecting the status or entitlements" of the related staff member. The rule makes no mention of common-law marriage or a non-marital relationship.

Asked about the issue, Mselle said: "The chairman of the advisory committee is not a staff member of the United Nations, so he is not governed by the staff rules. I'm not a staff member, and I'm not governed by it."

He denied any nepotism, or that he even supervises Browne.

In a meeting in May, a participant said, Mselle told the committee that, unlike its other employees, Browne "works exclusively for the chairman."

Several U.N. officials and delegates said that the relationship between the chairman and Browne violates the spirit, if not the letter, of the staff rule and thus raises questions about the committee's credibility as the main oversight body for the U.N. system.

Jules Corwin, the committee's executive secretary since 1985 and a committee staffer since 1973, said he had concluded after reviewing Mselle's personal situation that there was "no violation of the spirit or the letter of staff rules" because he—not Mselle—took responsibility for all decisions about Browne's status. "Her pay, her promotions, her leaves are all reviewed by me," Corwin said.

Anthony Mango, who served as the committee's executive secretary from 1970 to 1985 said he was responsible for hiring Browne.

Later, he said, he became "aware of rumors there was a personal relationship between them."

"Whilst I was executive secretary, the chairman never did anything that would have interfered with propriety or the behavior of people in the office," Mango said. He added that during this tenure as executive secretary, "there was a consensus among the members [of the committee] that there was nothing wrong with what was happening."

A European delegate who serves on the committee said that, at least in recent years, the situation has been the subject of "all kinds of informal discussions" among committee members. "Personally, there are many of us who have been trying to do something about this for many years," the committee member said.

"PUZZLED" BY TRAVELS

Members of the committee also have questioned some of its recent travels. In its latest trip, most of the committee, led by Mselle, and three staffers, including Browne, flew to the Netherlands, Denmark and Switzerland in May. The official purpose of the three-week trip was to visit the World Court in The Hague and a U.N. Children's Fund warehouse in Copenhagen before attending meetings in Geneva with representatives of various U.N. agencies.

Corwin said the visit to The Hague was requested by the court. But one delegate said some members of the committee were "very puzzled" about the need to go there to discuss pension benefits for retired judges. Another called the first two legs of the trip "a nice little junket." Several members complained in meetings about the itinerary, the timing and a failure to consult them before planning the trip, participants said.

The journey by 14 committee members and three staff employees, including business-class air fare and U.N. per diem payment of up to $302 a day, cost more than $100,000—at a time when the United Nations is in a financial crisis.

The chairman and his spokesman vigorously defended the utility of the trip and described all the committee's travels as cost-effective.

According to U.N. officials and delegates, Mselle has a strong hold on the powerful committee, and U.N. officials have been reluctant to challenge him about perceived improprieties.

"Everyone looks the other way. * * * He should be held to a higher standard," said a committee member.

The United States also has not confronted Mselle, in part because Washington has regarded him as highly knowledgeable about budgetary matters and generally responsive to U.S. concerns about reining in U.N. spending, according to U.S. officials.

Mselle and other top U.N. officials "don't think the rules are meant for them," a committee member said. "That really in a nutshell is what's wrong with the United Nations."

[From the Washington Post, Sept. 22, 1992]

THE U.N. EMPIRE: LENGTH, STYLE OF LONG REIGN AT ISSUE

AGENCY HEADS DRAW CRITICISM

ROME.—In the United Nations system, the heads of autonomous agencies often wield enormous power and heavy checkbooks. When they travel, especially in countries that receive their aid, they are usually treated like visiting chiefs of state.

Sometimes, however, they give the impression that their power, perks and privileges have gone to their heads. According to officials of U.N. agencies, member governments and private organizations, problems in the U.N. system often start at the top.

Here are some examples.—WILLIAM BRANIGIN.

At the Rome-based Food and Agricultural Organization, the U.N. system's biggest specialized agency with a total payroll of more than 7,700 people and biennial spending of $1.3 billion, Director General Edouard Saouma of Lebanon has ruled with an iron hand for 17 years.

It has been a reign marked by accusations—from the United States and other Western governments—of mismanagement, patronage and abuse of power. Since the FAO was founded in 1945, it has spent about $10 billion on programs to end world hunger, with mixed results. Critics say that more than half the budget is spent in Rome, where the FAO occupies a six-story marble building and annex near the Colosseum. The headquarters once housed dictator Benito Mussolini's ministry in charge of his African colonies.

Soon after taking office in 1975, Saouma began lobbying to change FAO statutes that limited the director to one six-year term. Now nearing the end of a third term, Saouma has been accused by former FAO officials of dispensing FAO jobs and project funds, especially from a murky Technical Cooperation. Program at the director's discretion, to help ensure his reelection. Saouma's spokesmen deny the charge.

Saouma's critics describe him as imperious and sometimes petty, behaving in ways that have affected the agency's operations. He engaged in a running feud with the director of the World Food Program, James Ingram of Australia, who retired earlier this year.

This institutionalized bickering, as former Ethiopian relief commissioner Dawit Wolde Giorgis has called it, reached disastrous proportions in 1984 during the Ethiopian famine over an urgent request from the World Food Program for 26,000 metric tons of food to feed more than 700,000 starving people. The shipment required Saouma's approval.

According to a book by Dawit and other published accounts, which were confirmed by U.N. sources, Saouma withheld his approval for 20 days while demanding that Ethiopia recall its assistant delegate to the FAO, Tessema Negash, over alleged personal slights. In a meeting with Dawit, Saouma accused Tessema of "conspiring" with the World Food Program and African officials to "defame" him, and he approved the emergency food aid only when Ethiopia agreed to withdraw the delegate, Dawit wrote in his 1989 book, "Red Tears."

During the delay, at least 34,000 people died at shelters and distribution centers, Ethiopian relief officials estimated. Saouma declined to be interviewed for this story. A spokesman for Saouma, Richard Lydiker, called the charge "completely fallacious" and said it has been denied by the director general and other involved officials.

UNHCR: TAKEN TO TASK OVER TRAVEL

The United States High Commissioner for Refugees, Jean-Pierre Hocke of Switzerland, resigned in late 1989 amid accusations by the Danish government and U.N. officials that he had misused more than $300,000 in refugee education funds for entertainment and first-class air travel for himself and his wife.

Hocke, a former top official of the International Committee of the Red Cross, denied any wrong-doing.

But there was little doubt that his allegedly high-handed stewardship of the agency had alienated many staffers and prompted leaks of damaging documents that led to his downfall.

In 1988, he had caused a furor by ordering the burning of all 139,000 copies of the agency's magazine "Refugees," because of an article that criticized the refugee asylum commitment of West Germany, a major donor.

One of Hocke's problems was inherited from his predecessor, Poul Harting of Denmark, whose tenure was marked by the emergence of what some insiders termed a "Danish mafia."

A fellow Dane who ran a travel agency in Copenhagen was brought on board to handle Hartling's travel at UNHCR and later became the chief procurement officer. Questionable deals that resulted in losses to the agency prompted an investigation of his sudden unexplained wealth, agency officials said.

The travel specialist subsequently stopped coming to work from his home across the border in France and was fired for "abandonment of post," agency officials said. Another high-ranking Dane was accused of falsifying an education grant claim and was eventually dismissed, officials said.

NATIONS OBJECT TO SPENDING

In Paris, the controversial tenure of Amadou Mahtar M'Bow, of Senegal as director general of the United Nations Educational, Scientific and Cultural Organization prompted the United States to withdraw from the agency in 1984 and Britain and Singapore to follow suit in 1985.

Citing "excessive politicization, poor management and long-term lack of budgetary restraint," Washington noted at the time that about 80 percent of the organization's regular budget was spent at its plush Paris headquarters, where M'Bow maintained a penthouse apartment. Before the American withdrawal, a team of U.S. auditors received permission to examine agency records. But a week before its scheduled arrival, a fire at the headquarters destroyed tons of documents. French police ruled it arson but never found who was responsible.

M'Bow withdrew a reelection bid in 1987 after 13 years at the agency's helm, but the United States has declined to rejoin, citing a lack of significant reform under his successor, Federico Mayor of Spain. A senior agency official disputed that assessment, saying the agency has "had no choice but to reform" because of budget constraints and that management now "is in much better shape." He noted, however, that "whenever we try to eliminate something, there's a constituency that cries foul."

Washington maintains that mismanagement, wasteful spending and perks continue, with little to show for the agency's total biennial budget of $720 million, and that Mayor spends too much time traveling. During his first four years in office, he chalked up 168 official visits totaling more than 16 months of travel, agency records show.

An aide to Mayor, Tom Forstenzer, denied that he travels excessively. "That's the nature of the job," he said.

MANAGEMENT CRITICIZED

World Health Organization Director General Hiroshi Nakajima of Japan came under fire in August after he abruptly dismissed his deputy, Mohammed Abdelmoumene of Algeria. A spokesman for Nakajima said a letter from the director to the agency's staff attributed to move to Abdelmoumene's announcement that he intends to challenge Nakajima for the agency's top post in an election next year.

It was the latest example of what U.N. sources and U.S. officials have called an autocratic leadership style that has disrupted the organization and prompted the United States, among other countries, to back Abdelmoumene. U.S. officials charge that Nakajima has mismanaged the agency, isolating himself from its professional staff. With more than 6,000 employees and consultants, WHO spends upwards of $1.4 billion biennially.

In June, the Russian government-run newspaper Rossiskaya Gazeta reported that Nakajima, an avid art collector, had been caught trying to smuggle six valuable icons out of the country. Yuri Bulakh, the head of the Customs Anti-Contraband Division at Moscow's Sheremetevo Airport, said customs officers confiscated the six icons in July 1991 but let Nakajima go because he had diplomatic status. The icons were returned to the Russian Orthodox Church, Bulakh said.

In a brief statement issued Aug. 24, the health agency quoted two Russian officials as calling the case "an unintentional misunderstanding of customs regulations." It said Nakajima had "legally purchased" the icons in rubles "at a total cost of $150" and was "neither questioned nor searched nor detained" when customs officials confiscated them.

Littaua, Nakajima's spokesman, said, "I don't think there was any intention of smuggling."

[From the Washington Post, Sept. 20, 1992]

ONCE CREATED, AGENCIES REFUSE TO JUST FADE AWAY

UNITED NATIONS.—When Ronald I. Spiers first came to the United Nations in 1955 as a young officer in the U.S. delegation, he initiated a study on a hot topic of the day. Thus was born the U.N. Scientific Committee on the Effects of Atomic Radiation.

Spiers thought the group would do its study, issue a report and disband. So when he returned to the United Nations in 1989 as an undersecretary general, he was, in his words, both "amused and outraged" to find the committee still in business after 34 years. Based in Vienna with a small permanent staff and budget, it continues to hold annual conferences of scientists from 21 countries.

"It still issues a report every year, and every year the General Assembly commends its report," Spiers said. "I asked my colleagues what it does, and not one had the slightest idea." He added, "I never thought it would go on so long. It was just kind of a self-perpetuating thing."

Called UNSCEAR (pronounced "unscare"), the radiation committee essentially summarizes and evaluates reports by U.N. member states and agencies. It defends its relevance and opposes proposals to fold it into the International Atomic Energy Agency, another U.N. agency based in Vienna. This would "compromise the mandate of UNSCEAR," said Burton Bennett, the committee's secretary. He argues that the IAEA's job is to promote the peaceful use of nuclear energy, while his group studies the dangers.

The committee is one tiny facet of a U.N. system in which, over the years, hundreds of permanent agencies, commissions, conferences, committees, programs and other entities have been tacked onto the world body. In the United Nations, it seems, old committees never die. But they don't fade away, either. Even after they have served their purpose, they keep soldiering on.

DOTTING THE GLOBE

Many U.N. organs perform vital functions. But others, sustained chiefly by bureaucratic vested interests, have become mired in what U.N. critiques euphemistically call "marginally useful activities." Often, they measure success by the number of conferences they hold or reports they produce.

These bodies defend their endeavors as "very effective, necessary and unique," as one reform study noted dryly. And they continue to employ staff, consume budgets and occupy offices around the globe because U.N. members cannot agree to get rid of them.

Some entities seem geared to giving member states a U.N. office to call their own.

Among the outposts in the far-flung U.N. empire are "regional centers for peace and disarmament" in Nepal, Togo and Peru; a U.N. International Research and Training Institute for the Advancement of Women in the Dominican Republic; a United Nations University in Tokyo; a University for Peace in San Jose, Costa Rica; and an office of the U.N. special representative for the Law of the Sea in Kingston Jamaica.

Regional "economic commissions" also fly the U.N. flag in Addis Ababa, Ethiopia; Amman, Jordan; Santiago, Chile; Bangkok, and Geneva. They employ more than 2,700 people and spend more than $286 million biennially in assessed contributions, yet auditors regularly have criticized some of their programs as ineffectual.

Some bodies, such as those created to work toward the independence of Namibia or the eradication of apartheid in sports, persist even when their reason for being evaporates. Others promote "decades" or "years" to stay in business. All of it costs money.

This year, for example, is International Space Year, brought to you by the Outer Space Affairs Division at U.N. headquarters in New York. No fewer than a dozen "decades" are also in progress.

The International Decade for Natural Disaster Reduction, now in its second year, has already been dubbed the "disaster decade" by critics who accuse its secretariat of waste, mismanagement and lack of productivity. Last year, organizers took in more than $2 million in pledges, spent half on salaries and travel and banked most of the rest, records show. The United States donated $250,000, and Marilyn Quayle is among the dignitaries on the decade's "special high-level council" of advisers.

Some once-vital cogs in the U.N. machinery have become anachronisms. The U.N. department responsible for trusteeship and decolonization, for example, has been rendered largely irrelevant by its own success; more than 80 former colonies have been admitted to the United Nations since 1945. Of 11 "trust territories" originally administered by states with U.N. supervision, only a fraction of the last one is left. The tiny Pacific island of Palau has been unable to decide its fate and remains under U.S. jurisdiction.

But the department still employs at least 56 staffers and accounts for $9.5 million in the 1992-93 U.N. budget, including more than $114,000 to send up to nine persons on "visiting missions" to Palau for two weeks a year.

A special committee still oversees 18 "non-self-governing territories," including Bermuda, the U.S. and British Virgin Islands, Guam, American Samoa and Pitcairn Island. It spends nearly 88 percent of its $618,000 biennial budget to visit the territories and attend various "consultations," then issues annual reports based largely on press clippings and passes polemical resolutions.

"To read their stuff, you'd think half the world was still under colonial rule," one U.S. official said.

Also clinging to bureaucratic life despite the demise of their mandates are two bodies devoted to studying and regulating multinational companies. Earlier this year, the U.N. Center on Transnational Corporations, with a biennial budget of $12.8 million, was downgraded to a division and lost its director but otherwise has remained largely intact. The center and an intergovernmental commission have spent 15 years drafting a still-unfinished "code of conduct" for transnational corporations. Critics say the project has tended to discourage foreign investment.

Another outfit, the 26-year-old U.N. Institute for Training and Research (UNITAR), has been financially strapped for years because of dwindling voluntary contributions for its troubled program. The United States, which put nearly $8 million into the agency, stopped donating in 1985. Now the institute has a Manhattan building that it cannot sell, offices in Geneva, Rome and Nairobi, and U.N. debts of $10 million—of which more than $9 million were never authorized by the General Assembly. But it gets a hefty U.N. subsidy for its $2 million-a-year budget.

"Our idea is that it should just end," a U.S. official said. "It doesn't really do anything and has no particular value. Of course, nothing ever ends in the U.N."

TALK-SHOP EXCESSES

One of the most controversial bodies has been the U.N. Conference on Trade and Development, known as UNCTAD. First convened in 1964, it became a permanent Geneva-based organization aimed at promoting international trade, especially the exports of developing countries. Its assessed budget for 1992-93 stands at $90.5 million.

The organization says it has reformed itself to curtail what it now acknowledges were talk-shop excesses in the past. But some critics say it remains little more than a costly debating society.

"If UNCTAD were to go out of business tomorrow, nobody except the people who work for it would know the difference," said Dennis Goodman, a former deputy assistant secretary of state who headed the U.S. delegation to UNCTAD's 1987 conference.

The same could probably be said of the U.N. University (UNU), whose 63 staffers occupy a new 14-story, $100 million building put up by Japan on donated land in Tokyo worth up to $2 billion—nearly enough to cover the current regular budget of the U.N. Secretariat. Lately, the university has been the target of accusations—rejected by its directors—that it lacks accountability and spends most of its money on its own self-contained bureaucracy, with little left over for research and training.

"I've never seen any sign of the UNU having a palpable impact on the outside world," said Leslie Schenk, an American who was the university's chief personnel officer for seven years. He called the university's output "a lot of hot air."—WILLIAM BRANIGIN.

[From the Washington Post, Sept. 20, 1992]

COSTLY PUBLICATIONS RAISE CONCERNS ABOUT RED INK

UNITED NATIONS.—The U.S. government had long been leery about U.N. printing expenses. But it took the arrival of some glossy, 24-page brochures to egg Ambassador Thomas Pickering into action. Washington's envoy to the United Nations fired off a cable asking how much it cost to publish them.

Titled "Standard for Eggs-in-Shell," the brochure issued by the United Nations in Geneva was printed last year on high-quality paper with color photographs of good eggs, rotten eggs, cracked eggs, all manner of

eggs. Although it became an object of some derision in diplomatic circles, the publication—nearly 3,000 copies of which were printed in English—was, as Pickering's cable put it, "no yolk."

"It is appalling that the U.N. would waste its resources by distributing items of limited value to the diplomatic community," the cable said. It noted that the United States repeatedly has urged the United Nations to curtail such "specialized publications," or at least focus their distribution.

Pickering, who completed his three-year posting to the United Nations this year, never got an answer to his question. And, apparently undeterred, the brochure's authors went on to issue sequels on standards for chilled eggs and preserved eggs.

According to U.N. officials and those of its member governments, some of the greatest waste in the United Nations stems from publishing mountains of material of negligible value. A propensity for holding conferences and churning out endless reams of reports has given United Nations a reputation as a huge talk shop and paper mill.

In its current two-year regular budget of $2.4 billion for 1992-93, U.N. headquarters in New York lists nearly $101 million for "public information" and more than $422 million for "conference services." Costs of U.N. publications are paid largely—by not exclusively—out of these two funds.

"The U.N. not only talks a lot, but prints a lot," said David Arnold, a former U.N. official.

Some critics see the blizzard of paper as symptomatic of larger problems: a swollen U.N. bureaucracy and, often, a lack of genuine productivity in which issuing reports becomes an end in itself. U.N. bodies often will spend a year doing a report that hardly anybody ever reads—in any of the organization's six official languages.

"They can produce papers that thick overnight in translation," said Dennis Goodman, a former State Department official and U.S. delegate to the United Nations, gesturing to indicate a sizable stack of paper. "The problem is, they shouldn't be doing it. It's an industry, and they're very good at it. But it doesn't put another meal on anybody's table in the Third World."

The United Nations defends its reports by arguing that member governments constantly request them. However, critics say that many publications are never solicited but seem to be cranked out to justify the existence—and budget—of the offices that issue them.

Despite repeated recommendations to cut back, the U.N. paper flow continues unabated. During a two-year period ending in 1991, the U.N. headquarters and its offices in Geneva and Vienna produced 164.1 million documents totaling 2.12 billion pages, according to U.N. statistics. Printing these tons of documents cost $275 million, a figure that excludes the cost of writing them in the first place and does not account for the millions of other documents put out by the various U.N. agencies.

Even more documents are projected for 1992-93, including some 2,500 technical publications like the egg standards brochure.

Among the costliest publications are the U.N. yearbooks, tomes of more than 1,000 pages that are invariably out of date. Now in production for the 1992-93 biennium, for example, is the issue for 1988-89. "It's the running joke of the organization," a U.N. source said.

Hot off the presses is the latest volume of the "Yearbook of the Human Rights Committee," a 657-page compilation of reports submitted by U.N. member states. The trouble is, it covers the years 1983-84, and a number of the governments—not to mention countries—it deals with have since disintegrated.

THE LAST WORD ON DRIED FRUIT

Then there is the latest page-turner from the U.N. Economic Commission for Europe, a 130-page booklet titled "Standards for Dry and Dried Fruit." A successor to the egg standards series, it contains, among other minutiae, everything you never thought to ask about nuts.

Sample definitions for pistachios: "Shriveled—Kernel which is seriously shrunken, wrinkled and tough. Rancid—Oxidation of lipids producing a disagreeable flavor. Insect damage—Visible damage by insects or animal parasites, or the presence of dead insects or insect debris. Clean—Practically free from plainly visible adhering dirt or other extraneous matter."

A U.S. official who monitors the United Nations said the commission's egg, fruit and other standards are not mandatory and are largely ignored in international trade.

A senior adviser at the commission, Cynthia Wallace, seemed taken aback when asked about the booklets. "I'd never heard of these reports," she said. "That's not what we specialize in here. There are other projects that go beyond dried fruit."

Among the commission's more significant achievements, she said, are a computerized trading system known as "Edifact," a conference of European statiticians and an international transportation accord.

Of the dried fruit booklet, she added, "For some people, that's life and death. For some people, that's a livelihood."—WILLIAM BRANIGIN.

[From the Washington Post, Sept. 21, 1992]

REFUGEE OFFICIAL KEPT JOB FOR YEARS DESPITE ALLEGATIONS, INQUIRIES

(By William Branigin)

UNITED NATIONS.—Shinga-Vele Lukika is something of a non-person these days at the Geneva headquarters of the U.N. High Commissioner for Refugees. The personnel department will not talk about his 17-year career with the agency or the reason for his sudden resignation in October 1991. The institution as a whole, it seems, would rather forget him.

But many U.N. officials know parts of his story, which is pieced together here for the first time.

Lukika's colleagues say his story illustrates how mismanagement, waste and apparent graft can cost donors millions of dollars in funds and relief supplies. It shows how an official can survive and advance in the United Nations, protected by powerful patrons, despite evidence of malfeasance that would be intolerable in a normal bureaucracy.

Lukika, the son of an evangelical Baptist pastor from Zaire, is described by acquaintances as "affable" and "charming." In a telephone interview from Ottawa, where he now lives, he denied any wrongdoing, admitting only to "some weakness in management control."

According to UNHCR officials, he became something of a legend in the agency in the early 1980s when colleagues said that he was running a call-girl ring of African women at headquarters in Geneva.

Lukika called the charge "completely untrue." He added, without elaborating, that "it was a situation created by one of my colleagues. I was a very social person . . . I was too friendly with people."

In any case, Lukika was sent to Uganda in June 1983 as the chief UNHCR representative. Before long, problems began to emerge in the handling of relief, especially food, meant for Sudanese refugees in the north and Ugandans displaced by civil war in other parts of the country. Financial and audit reports in 1984 and 1985 cited, among other problems, the "poor administration" of the Uganda office.

In September 1986, an internal investigation was launched.

The inquiry found that Lukika had ordered the release to private merchants of more than 260 tons of commodities from a UNHCR warehouse. The food, worth more than $400,000, had been donated by foreign governments for delivery to needy refugees. Instead, it was often sold to buyers right at the warehouse and ended up in shops in the Ugandan capital, Kampala.

In addition, nearly 2,000 metric tons of Belgian-donated wheat worth more than $240,000 was sold to a Ugandan milling company at a cut-rate price as part of a murky "commodity exchange" agreement. No such exchange materialized, and the deal ultimately benefited a company with which Lukika was allegedly involved, investigators reported.

In messages to headquarters, Lukika sought to explain the losses by citing incidents of alleged looting at the warehouse. In one such incident, goods worth more than $1 million were reported lost. But the inquiry noted discrepancies between Lukika's explanation and evidence regarding goods transfers.

Hundreds of tons of donated maize and other commodities sat in the warehouse for months instead of being delivered urgently to the refugees. Much of it spoiled, and some was eventually sold as chicken feed, records showed.

At Lukika's instruction, the UNHCR in Uganda purchased large quantities of tools, blankets and other items for refugees at inflated prices from a supermarket in Kenya, instead of obtaining them from a U.N. procurement office in Nairobi, the investigations showed. The added cost from one such transaction came to more than $46,000.

"MIXED" RECORD

Other irregularities involved the disappearance of more than $670,000 worth of agency vehicles, which were apparently sold or given away, the construction of a UNHCR house at more than three times the originally agreed cost and the use of a leased airplane for private purposes, investigators reported.

While the investigation dragged on from October 1986 to the spring of 1987, Lukika lived in Geneva on suspension with full pay.

During this period, the Internal Audit Division at U.N. headquarters in New York told the UNHCR in a confidential memo that Lukika's "gross negligence . . . may have resulted in assets valued at some $400,000 being either lost or unaccounted for." It suggested disciplinary action against him, but noted that the agency's "generally lax enforcement" of rules may have contributed to the situation. The memo also cited Lukika's previous "mixed" record and said he "may not have been a suitable person" to send out as a representative.

A U.N. official familiar with the case said investigators calculated that losses attributable to Lukika came to at least $2.4 million.

Lukika blamed the problems in Uganda on chaotic civil-war conditions, poor record-

keeping and what he referred to at one point during his tenure as the "deplorable understanding" of the office there.

Asked in the telephone interview whether goods had been sold out of the UNHCR warehouse, he said, "In which country today don't you have that?" But he denied benefiting from any irregularities and said he was "totally cleared" by the investigation and reinstated as a U.N. official.

According to U.N. sources, ranking officials in what is widely known as the organization's "African mafia" closed ranks around Lukika, pressing then-High Commissioner Jean-Pierre Hocke to stop the investigation and reinstate him. Two sources said that Antoine Noel, an Ethiopain who then headed the UNHCR office in New York and ranked as a leading patron of the agency's Africans, personally warned the American deputy high commissioner at the time, Arthur E. Dewey, over a lunch in Geneva that he could be killed if he pushed the investigation too far. Asked if he had made such a statement, Noel, contacted in Paris where he now serves as UNHCR representative, said, "Never in my life."

NEW JOB, NEW ALLEGATIONS

Lukika was reinstated in May 1987 and given what one source described as a "makework" job in Geneva while waiting for his patrons to land him a new assignment. Eventually, officials said, the UNHCR ruled that it could prove only "mismanagement" in Uganda, which was not enough grounds for U.N. headquarters to fire him. In 1989, he was posted to Djibouti as the agency's representative.

"I was utterly shocked," said a U.N. official familiar with the Uganda investigation. "For this case alone he could have been summarily dismissed with five minutes' notice." He said the agency soft-pedaled the affair to cover its own failings and avoid an uproar among donors.

Soon, however, the pattern of irregularities began to repeat itself when Djibouti, a sleepy former French colony in the Horn of Africa, suddenly became the focal point of a major aid program for refugees from civil wars in neighboring Somalia and Ethiopia in early 1991.

Large amounts of food aid failed to reach severely malnourished refugees, who languished in poorly run camps with practically nothing. Western ambassadors in Djibouti complained about the situation as the crisis became more acute. Auditors flew in and gathered enough evidence to force Lukika's resignation in October 1991.

In a typically circumspect report on UNHCR scheduled for release this month, the U.N. Board of Auditors said the agency informed it of "a case of mismanagement and misappropriation of a total of $689,359 in a branch office." An auditor and two senior UNHCR officials confirmed that the reference was to the Lukika case in Djibouti.

The board said the UNHCR's losses included seven payments to "fictitious companies" for food and services totaling more than $346,000. It said the representative blamed "inadequate professional staff resources," which meant that he "had to perform both administrative and financial duties" and "was therefore not able to take his annual leave."

In the telephone interview, Lukika charged that local staff members and top officials of Djibouti's refugee relief organization, known as ONARS, were responsible for the irregularities and that he was merely a "scapegoat." He denied any impropriety. "I didn't even really have time to think about personal gain," he said.

The UNHCR is currently withholding Lukika's "separation payment," but his pension is untouchable under U.N. staff rules. Prospects for recovering the losses are "almost nil," an auditor said, adding, "It's a very unfortunate situation."

"As much as a lot of people would like to take him to court, it's just not worth it," an agency spokeswoman said. "We would have to reinstate him with full pay. . . . It takes an enormous amount of money and time."

She appealed for understanding, noting that every big organization has its misfits. "At least we got rid of him," she said. "It took too long, but we got rid of him."

EXHIBIT 2

STATEMENT OF HON. LARRY PRESSLER, U.S. REPRESENTATIVE TO THE 47TH SESSION OF THE U.N. GENERAL ASSEMBLY, IN THE FIFTH COMMITTEE, ITEM 102, FINANCIAL REPORTS AND AUDITED FINANCIAL STATEMENTS AND REPORTS OF THE BOARD OF AUDITORS, OCTOBER 15, 1992

Mr. Chairman, it is a great pleasure for me to be here today. As a member of the United States Senate Foreign Relations Committee, I am also pleased to serve as a Congressional Delegate to the 47th General Assembly. I came before you today to present the United States position with regard to United Nations audit reports.

The United States delegation believes the United Nations must be held to the highest standards of competence and integrity in the management of its programs and resources. We believe the interests of member states are best served when there are assurances that funds provided to the organization are used in the most effective and efficient manner possible. Unfortunately, serious problems in the management of United Nations programs and finances are common. Over the years, the Board of Auditors reports on United Nations accounts have revealed continuing instances of mismanagement, waste, abuse and in some cases fraud. The General Assembly has made concerted efforts to address these problems. However, the secretariat, which is mandated with the responsibility for taking the necessary corrective actions, has not made significant progress toward that end.

Funds and assets managed by the United Nations have grown rapidly, particularly with the expansion of United Nations peacekeeping operations. In light of the significant resources available to the secretariat, the adequacy of existing oversight mechanisms to assure proper administration to the United Nations must be seriously examined. Within their respective mandates, the Board of Auditors, the Joint Inspection Unit, the Advisory Committee on Administrative and Budgetary Questions, and the Internal Audit Division, are charged with these responsibilities.

At the 46th session, the United States delegation underscored the need for enhanced measures to ensure appropriate financial and program oversight. The audit report on the United Nations now before the Fifth Committee leads us to conclude that existing mechanisms alone are unable to administer and safeguard funds entrusted to the organization.

The Board's report on United Nations accounts for the biennium 1990–1991 (A/47/5) identifies serious deficiencies and abuses in program management, use of staff resources, the payment of staff allowances and benefits, and in procurement and property management. Unfortunately, many of the findings in this audit are similar to those reported in the past. We were disappointed that the Advisory Committee could not agree on stronger recommendations aimed at correcting these problems. We do not share the Advisory Committee's belief and trust that the secretariat alone will address these matters in a meaningful way.

In the absence of significant progress, and given the uncertainty which we have about the extent of these problems, the United States recommends that the General Assembly request the Board of Auditors to undertake an expanded audit of the 1990–1991 accounts aimed at a further investigation of the issues raised in the current report. This audit also should take into account recent public revelations concerning mismanagement and corruption in specific United Nations programs, departments and expert bodies. Until such an examination is undertaken, and the results are submitted to the next session, the United States does not believe the General Assembly should approve the results of the audit of the accounts of the United Nations for the biennium 1990–1991.

As a member of the U.S. Senate Foreign Relations Committee, I can assure you that Congress shares the concerns of the U.S. delegation. Without improved performance and measurable progress toward accountability and efficiency, Congress will find it more and more difficult to fund UN programs.

Given the number of significant problems reported by the Board, my delegation will address only those departures from acceptable management standards which we believe should be included in the expanded audit.

Salaries and benefits account for nearly three-quarters of the United Nations regular budget. Abuses in these areas could result in a *significant* loss of resources. The secretariat has acknowledged that existing systems for controlling such expenses are ineffective, but we are told that improvements can be expected only after the integrated management information system becomes operational. This is not a useful rationalization. While a modern computer system can improve financial controls, the absence of such technology does not absolve the secretariat from the responsibility of proper administration of these resources.

At the 42nd session, the Board issued a special report on the adequacy of measures to prevent fraud and abuse in the payment of staff entitlements. The General Assembly endorsed recommendations made by the Board aimed at strengthening existing systems. Member states expected these recommendations to be implemented by the secretariat.

Unfortunately, this does not appear to have occurred. The Board reports serious weaknesses in the administration of education grant and dependency allowance payments. Six years ago, a number of instances of fraud were reported in the payment of these benefits. Although the report does not indicate whether similar cases were identified in 1990–1991, the serious deficiencies which are evident suggest the potential for widespread fraud and abuse. In the absence of full documentation to justify such payments, the U.S. believes that neither the Board nor the secretariat are in a position to confirm that fraud and abuse have not been committed by some United Nations staff.

In view of the serious shortcomings identified, the U.S. believes the expanded audit should include a 100 percent audit of education grant, dependency allowance, housing subsidies and tax reimbursement payments.

As part of this process, the secretariat should obtain from all staff members the documentation required to support payments made during the 1990-1991 biennium. Staff currently receiving these allowances and benefits should be given 30 days to provide the required documentation. If this information is not provided, or if it cannot be verified for its accuracy, payments of these allowances and benefits should be suspended immediately.

The Board reports numerous instances of abuse and poor judgment in personnel management. The most serious example relates to the decision to maintain on the payroll of the International Decade for Natural Disaster Reduction the former director of the Decade despite his dismissal from the post. We would like to know the justification for this arrangement and whether it is continuing.

Violations of established procedures governing employment of individuals on short-term contracts and consultancies also are reported.

Another area subject to abuse involves the employment of former staff members receiving U.N. pensions who are now employed by the organization with earnings in excess of the $12,000 ceiling established under General Assembly resolution 37/237. At a minimum, we request the secretariat to provide a list of all such individuals employed by the organization during the past year—including those serving as consultants—with an indication of the nature of work performed and the amount of compensation received. In addition, the expanded audit should investigate all contracts involving retired staff with a view toward identifying any violations of the provisions of resolution 37/237.

The audit also reveals serious defects in the organization's staffing control system. This problem is detailed in paragraphs 169-171 of the report. It would appear from the audit report that the secretariat cannot match personnel and payroll records with the approved staffing table. As a result, the actual number of staff on the payroll may exceed approved levels. Paragraphs 193-196 indicate that a number of supernumary staff were on the payroll of the United Nations Office in Vienna. In the Board's view, maintaining such staff on the payroll undermines the staff cut mandated in resolution 41/213. It is not clear from the Board's report whether this is an isolated incident or a widespread practice. We believe the expanded audit should examine the use of supernumary staff and other measures—such as the long-term employment of certain individuals on short-term contracts—the secretariat might have used to offset the staff reduction required by resolution 41/213.

The Board's numerous findings with respect to procurement practices are of serious concern to my delegation. The Board observes the continuation of the practice of excluding most contracts from competitive bidding. Less than 20 percent of purchase orders at headquarters were subject to competitive bidding, a serious violation of United Nations financial regulations and rules. The Board also observes that contracts in many cases did not provide adequate specifications for the products or services required. As a result, the organization is likely to be paying higher prices for such goods and services.

Of greater concern, is the possibility that in the absence of competitive bidding, and properly defined requests, significant abuse and fraud could be occurring. As I mentioned before, continuation of such non-competitive practices absent a pressing emergency need will inevitably make it more difficult for supporters of the United Nations, like myself, to defend UN funding. The expanded audit should review procurement practices and decisions, including those relating to peacekeeping operations.

The 46th General Assembly again urged the Secretary General to institute strict procedures to control non-expendable property. Such procedures are absolutely essential as the organization purchases large numbers of vehicles, as well as expensive telecommunications and office equipment. Unfortunately, the secretariat has not responded seriously to this request. The secretariat's new standards for managing non-expendable property exclude 99 percent of all such property from inventory counts. The U.S. supports the Board's recommendation that the definition of non-expendable property be revised to increase the amount of property subject to annual physical counts. Without strict controls, member states cannot be certain that valuable property purchased by the organization is being adequately safeguarded. The expanded audit should report on corrective actions taken by the secretariat to improve property management, as well as property losses not yet fully documented.

Other established financial regulations of the organization continue to be ignored by the secretariat's. The most serious example reported by the Board relates to the secretariat's decision to provide UNITAR with nearly $9 million in cash advances without the authorization of the General Assembly. We are unconvinced that UNITAR provides tangible benefits to all member states. The U.S. and other delegations have repeatedly called for the closure of the Institute. Therefore, authorization of these funds should be considered in the context of the 47th session's decision to abolish the Institute as presently constituted.

In addition to the financial problems identified in its report, the Board makes a number of observations concerning the ineffectiveness of U.N. programs, fragmented organizational structures, and the absence of work load standards for determining staffing levels. We are pleased to see the Board's recommendation that the build-up of unnecessary administrative functions should be avoided when establishing new institutions. This recommendation is consistent with our Unitary UN concept that seeks to avoid unnecessary overlap and duplication of existing activities. To date, the secretariat has been unable, or is unwilling, to undertaketh necessary corrective actions. In view of the ongoing process of restructuring, the expanded audit should more thoroughly examine these matters and provide timely and specific recommendations for implementation in the course of future stages of the reform process.

We also were pleased to see the Board's findings and recommendations on peacekeeping grouped together to bring such activities into sharper focus. We encourage the Board to continue this practice and expect future reports to devote greater attention to peacekeeping operations and management.

The Board's findings with respect to the Internal Audit Division suggest that the secretariat does not take seriously the need to enforce strict financial controls. The Board observes that the secretariat ignores internal audit findings and does not ensure that corrective actions are implemented. My delegation was particularly troubled by the Board's observation that the recurring nature of some of these problems was due to "the lack of determination to enforce regulations and rules and making the heads of units of the organization accountable for their decisions and actions."

The United States believes that fundamental changes are needed in the approach taken by the secretariat with respect to the internal audit function. I am convinced this is also a priority of the U.S. Congress. First, recommendation 39 of the Group of High-Level Intergovernmental Experts should be implemented immediately. This would allow the director of internal audit to report directly to the Secretary General. Second, additional resources should be provided to the Division through redeployment so that qualified auditors can be hired as soon as possible. Finally, the reports of the Internal Audit Division should be made available to the ACABQ which would permit independent monitoring of the implementation of the Division's recommendations.

Another interim step which should be taken to improve oversight concerns the availability of management letters submitted by the Board to the secretariat. At present, these letters are not available to the ACABQ. However, it is our understanding that the findings contained in the management letters are far more critical than those reported to the General Assembly. We propose that these letters be made available to all members of the Advisory Committee throughout the years so that a continuing dialogue can be established between members, the secretariat and the Board.

These changes will provide only a short-term solution toward ending widespread financial and program mismanagement. More fundamental and far-reaching steps must be taken to ensure that funds are being used efficiently, effectively and honestly. In view of the gravity of the current situation, we believe the secretariat should present comprehensive proposals to ensure effective oversight of the organization's programs, operations and finances. Such changes are urgently needed in order for member states to justify to their respective legislatures the resources required to finance the expanding mandates of the organization. In this regard, we welcome the Secretary General's intention to submit to the 47th session a proposal to establish an Inspector General for the United Nations and urge its speedy implementation.

The United States has reviewed the other reports under this agenda item and will make detailed comments on them during the committee's review of individual organizations and programs. At this time, we would like to place on the record our serious concerns regarding the problems identified in the audit report on the United Nations Development Program. Many of the findings of the Board have been reported in the past. Despite repeated assurances from management, progress toward resolving the outstanding issues has been limited or non-existent.

The United States also was troubled deeply by the case of fraud committed by staff members of the United Nations High Commissioner for Refugees. We look forward to receiving further information from the secretariat regarding steps being taken to recover the stolen funds, including from pension contributions, and to institute legal action against the perpetrators of this fraud on a timely basis. We also would like to know whether the administration of UNHCR is investigating the possibility that these individuals were involved in other cases of fraud or presumptive fraud.

Mr. Chairman, the executive branch and the Congress of the United States take very seriously the findings in these reports and

assess very closely the corrective actions taken by the respective secretariats. Future funding levels for each of these organizations and programs will take into account the progress achieved toward the goal of sound program and financial management.

Given the increasing prominence of the organization in world affairs, and the level of its resources, the public and news media have become more aware of and concerned about the management shortcomings of the secretariat. The high expectations which governments and people throughout the world have in the United Nations make it absolutely essential for it to manage its resources responsibly. Thus, the secretariat must respond in a serious manner to the serious deficiencies identified in the U.N. audit report for 1990-1991. We expect the results of the expanded audit, and the actions taken by the secretariat, to provide member states with an opportunity next year to determine whether the secretariat has committed itself to full accountability for the funds it manages and to describe what specific actions are being taken to remedy problems. In these difficult economic times, waste, fraud, corruption and mismanagement will not be tolerated.

Finally, we would like to express to the Chairman of the Board of Auditors, and through him the participating national audit services, our appreciation for the reports before this committee and to assure the Board of the great importance the United States attaches to the audit process.

Thank you, Mr. Chairman.

EXHIBIT 3

STATEMENT OF HON. LARRY PRESSLER, U.S. REPRESENTATIVE TO THE 47TH SESSION OF THE U.N. GENERAL ASSEMBLY, IN THE FIFTH COMMITTEE, ON ITEM 102, FINANCIAL REPORTS, NOVEMBER 6, 1992

Mr. Chairman, I appreciate your giving me this opportunity to make a few brief remarks to the Committee concerning U.N. audit reports.

In my earlier statement, I underscored the serious concerns of the United States delegation with respect to the audit findings on the United Nations.

At the two informal sessions, one of which I had the opportunity of attending, sincere efforts are being made to ensure that the Secretariat responds in a serious manner to the Board's findings. We are greatly encouraged by the commitment of a number of delegations toward eliminating instances of waste, mismanagement and corruption. While the process is not yet complete, we trust that a resolution requiring full compliance with the Board's recommendations will be adopted by consensus. These issues must be addressed by the Secretariat as quickly as possible and in an objective manner. Failure to do so will only undermine the capacity of this great Organization to respond to global problems, and the capacity of its supporters to provide the resources needed for the Organization to meet these problems.

As U.S. Senator and having served in Congress for sixteen years, I can give you my friendly assessment that the impact of the Washington Post series has been enormous on Congress and senior officials in Washington. You should also know that U.N. funding will be more difficult under a Democratic President because a Republican President can automatically bring along Conservative Republican Senators and Representatives who might be more likely to oppose U.N. funding. It is not enough just to say that we will study the problem some more—specific action is needed, and needed now.

An important part of the audit process is to require the Organization to respond to identified weaknesses in its management structure. A concrete action plan is needed now to ensure that the Secretariat addresses these problems on an urgent basis. The U.S. delegation has laid out some actions which we believe the Secretariat and the Board could take to remedy this situation and we have listened closely to the views of other delegations. It is clear to the U.S. that greater testing of internal controls is required. Rather than ask the Board to provide more information on specific cases of mismanagement and abuse, the Board can undertake a complete review and assessment of internal controls to determine their adequacy and whether they are being adhered to in the United Nations.

Even more important than such further contributions by the Board, we must ensure a serious response by the Secretariat to the problems already identified. We are encouraged that Secretary General Boutros-Ghali, and his staff in the Department of Administration and Management, are committed to addressing these longstanding issues. Member states can help the United Nations by passing a resolution that requires an immediate response from the administration. Specifically, the General Assembly should require the Secretariat to provide, at a resumed 47th session, a detailed action plan—indicating the nature of corrective actions to be taken and a timetable for full implementation. This report should include explanations where it does not agree with the Board's recommended solution, and in these cases we expect the Secretariat to provide an alternative proposal. The Board should also be requested to analyze the efficacy of the measures taken and proposed by the Secretariat and submit their findings to the General Assembly.

Unless this body takes a series of specific steps to address these very real issues of mismanagement of the Organization's programs and resources, it will be abdicating its responsibility and placing its credibility in jeopardy. This is said as a supporter of the UN who wants to avoid giving advantage to the critics of the UN.

Thank you, Mr. Chairman.

EXHIBIT 4

[From the Washington Post, Oct. 16, 1992]

U.S. WARNS U.N. IT MAY CUT FUNDS

(By Trevor Rowe)

UNITED NATIONS, October 15.—The United States today accused the U.N. secretariat of having failed to make significant progress toward ending mismanagement, waste, abuse and fraud and warned that it might slash funding of the world body.

Speaking on behalf of the U.S. delegation to the General Assembly, Sen. Larry Pressler (R-S.D.) charged that the secretariat, which administers the U.N. organization, had been "unable, or is unwilling" to take necessary corrective measures.

Pressler cited instances of wrongdoing contained in a series published by The Washington Post last month and in a report by the U.N. Board of Auditors.

He also noted that less than 20 percent of purchase orders at U.N. headquarters were subject to competitive bidding and called the practice a "serious violation" of U.N. financial regulations, adding that "significant abuse and fraud could be occurring."

"Continuation of such noncompetitive practices . . . will inevitably make it more difficult for supporters of the United Nations, like myself, to defend U.N. funding," Pressler said.

"As a member of the U.S. Senate Foreign Relations Committee, I can assure you that Congress shares the concerns of the U.S. delegation. Without improved performance and measurable progress toward accountability and efficiency, Congress will find it more and more difficult to fund U.N. programs," he warned.

The speech was generally critical of audit procedures throughout the U.N. system and Pressler called for an expanded audit of the two-year 1990-1991 period, in which serious abuses had been cited by the U.N. Board of Auditors' report.

A U.S. official said Pressler's speech, which was approved in advance by the State Department, was not intended as a specific personal criticism of Secretary General Boutros Boutros-Ghali, who heads the secretariat. Rather, the official said, it was aimed at the U.N. bureaucracy as a whole.

An immediate reduction in U.S. funding is reportedly not under active consideration at this time. Rather, the threat appears intended to pressure Boutros-Ghali to continue his reform efforts. Pressler said actions taken by the secretariat will be weighed next year by the General Assembly.

"In these difficult economic times, waste, fraud, corruption and mismanagement will not be tolerated," Pressler said.

In his speech, delivered to the General Assembly committee responsible for administrative and budgetary matters, Pressler welcomed an announcement Tuesday that Boutros-Ghali will propose creation of a system-wide inspector general to deal with waste and abuse. But he said more is needed.

He cited a number of cases of possible waste, abuse and fraud. Among them was one documented by The Washington Post involving Shinga-Vele Lukika, an official in the office of the U.N. High Commissioner for Refugees. He was forced to resign after allegations that he had misused U.N. supplies for his own enrichment.

"We look forward to receiving further information from the secretariat regarding steps being taken to recover the stolen funds, including from pension contributions and to institute legal action against the perpetrators of this fraud on a timely basis," Pressler said.

The United States also has criticized the U.N. Development Program for lax auditing procedures as well as for what it considers overpayment of consultants.

Citing from the Board of Auditors' report, Pressler charged that "the secretariat ignores internal audit findings and does not ensure that corrective actions are implemented."

"My delegation was particularly troubled by the board's observation that the recurring nature of some of these problems was due to the 'lack of determination to enforce regulations and rules and making the heads of units of the organization accountable for their decisions and actions,'" he said.

Pressler said that salaries and benefits account for nearly three-quarters of the U.N. budget and that abuses could have resulted in a significant loss of resources. But the secretariat, he said, insists that improvements in oversight systems can be expected only after a new computer system is ready.

"This is not a useful rationalization," Pressler said "While a modern computer system can improve financial controls, the absence of such technology does not absolve the secretariat from the responsibility of proper administration of these resources."

In its report, the Board of Auditors had cited instances of "abuse and poor judgment" in personnel management, including a decision of the International Decade for Natural Disaster Reduction to keep its former director on the payroll although he had been dismissed from his post.

Pressler also called for a list of former U.N. staff members who, while receiving pensions, have been rehired and are being paid more than the $12,000 limit set by the organization for its retirees.

EXHIBIT 5

DECEMBER 2, 1992.

Secretary General BOUTROS BOUTROS-GHALI,
The United Nations,
New York, NY.

DEAR MR. SECRETARY GENERAL: This letter is in regard to the United States assessed financial commitment for Somali aid. I am disturbed by the U.N.'s altered position on the financial assessment for protectorate costs, food aid, and long-term Solmali aid commitments. Recent proposals have targeted the United States as the primary financial supporter of the project. Without the financial involvement of other countries, the United States could be assessed as much as 80 percent of the protectorate costs and the military assistance. There is absolutely no reason for the United States to pay the lion's share of the cost for relief in Somalia.

I ask that you formally request monetary support from Japan, the oil rich Arab nations, wealthy European and Asian countries, and other nations with financial stability. Because this project is largely humanitarian, more countries than just the United States should be involved. Before the United States is stuck with the majority of the costs to aid Somalia, at the very least other wealthy nations should be formally asked to contribute.

I propose the following percentage cost break-down for country to country financial assessments:

	Percent
United States	15
Japan	10
Arab Oil Nations	20
European Nations	40
Asian Nations	15
Total	100

Other countries besides the United States should pledge monetary support for any troop intervention in Somalia. The United States should not be forced to foot a large portion of the bill. Before the United States spends one cent for the Somali project, a full cost estimate should be refunded. The American people deserve that much.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

EXHIBIT 6

DECEMBER 8, 1992.

Secretary General BOUTROS BOUTROS-GHALI,
The United Nations,
New York, NY.

DEAR SECRETARY GENERAL: In letters to you, President Bush, and President-Elect Clinton last week, I asked for a re-assessment of the U.S. role in the Somali aid project. I also wrote to Richard Darman urging the U.S. Office of Management and Budget to conduct a complete financial study of the best case and the worst case scenarios concerning Somali aid projections. My pleas for information have been ignored.

Once again, I request you to re-evaluate the U.S. role in Somalia. To this date, I have seen no cost projections for troop intervention and protectorate aid costs in Somalia. Without an adequate cost assessment and without the economic involvement of more countries, the United States will be assessed an unfair burden of the costs.

Does the United States have a moral obligation to intervene in Somalia? The answer is yes! However, the United States also has a moral obligation to the war-ravaged Liberians, the "ethnically-cleansed" Yugoslavians, and the economically disadvantaged youth of our own nation's inner cities. The precedent set by U.S. aid to Somalia surely will affect the U.S. position in future international struggles.

I reiterate my position that the United States should not fund this project without a complete cost assessment. Why pay for the intervention of U.S. troops when troops from other nations may be more effective? Egyptian or Nigerian troops, for example, would have more in common linguistically and religiously than any U.S. force. With the financial burden of the Somali aid plan placed primarily on the United States, taxpayers in my country deserve the assurance that intervention will be cost effective, and that it will fulfill its humanitarian objectives.

Again, I urge you to reconsider the logistics and the financial responsibilities of the Somali aid operation. The moral obligation is clear. However, the economics and the long-term ramifications of the operation remain cloudy. Until a clarified plan is devised, I believe the United States should remain cautious in its commitments.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

EXHIBIT 7

STATEMENT BY HON. LARRY PRESSLER, U.S. REPRESENTATIVE TO THE 47TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, IN PLENARY, ON THE SITUATION IN CENTRAL AMERICA, DECEMBER 8, 1992

Mr. President, we are pleased to be a cosponsor of the resolution before this assembly recognizing the progress towards peace, democracy, and economic development in Central America. We commend the Secretary-General for his leadership in promoting the regional peace process, particularly in support of fulfillment of the peace accords in El Salvador. We likewise applaud the constructive participation and support of the Governments of Colombia, Mexico, Spain and Venezuela.

We are now nearing completion of the ceasefire phase of the process, marking the formal end of the armed confrontation. The parties are close to implementing the major security-related aspects of the peace accords, with full demobilization of the Farabundo Marti Liberation Front set for December 15. We have every expectation that all the precursor steps to be taken by the government and military on the one hand and the FMLN on the other—together with those actions that flow from it—will take place as scheduled.

With the successful conclusion of the ceasefire, the peace process enters a new, more promising phase. Immediately following demobilization, the FMLN will enter the democratic arena as a political party formally recognized by the proper Salvadoran authorities. Reforms to strengthen and broaden democracy—from judicial and electoral reform to the fielding of the new national civilian police force—can receive the full attention of the parties, interested governments and the international donor community in general. We pledge our support to this reform effort.

El Salvador's economy and society are in a difficult transition from conflict to reconstruction. El Salvador has pressing needs in both the near- and longer-term. Pledges made at last March's World Bank Consultative Group meeting went a long way toward meeting the longer-term requirements. But short-term obligations flowing from the peace accords—to carry out a huge land transfer program, to build a new national civilian police and to enact the electoral and judicial reforms—have created acute short-term financial exigencies. We ask that, wherever possible, governments wishing to assist the reconstruction program examine the possibility of providing quick-disbursing assistance.

Mr. President, this assembly may be aware that my government last week released 54 million dollars of assistance that had been withheld from the Government of Nicaragua for several months. We are acting quickly to have the cash transfer portion of that aid (40 million dollars) disbursed quickly. We fully support the goals of the Chamorro administration and have acted now to help restore confidence that those goals will be achieved. At the same time we believe that, to attract investment, promote growth and help consolidate democratic institutions, Nicaragua itself must do more to establish the rule of law and civilian control over military and police authorities and to fully protect human and property rights.

The United States supports the process of national reconciliation underway in Guatemala and urges the parties involved to redouble their efforts to reach a peaceful settlement. We share the Secretary General's hope for, and dedication to fostering, a political settlement to this long-running civil conflict. We applaud the willingness of both sides to contemplate United Nations involvement in monitoring and verification of an eventual agreement. We urge the parties to do their utmost to conclude a human rights agreement promptly.

Mr. President, with Central America so close to ending all the internal conflicts within the region, the stage is set for further, rapid progress in other areas: Reduction in the size of military budgets and forces, regional integration on the basis of free and open trading regimes and structural reforms that will free up national resources for productive investment. These and other objectives are being addressed in the esquipulas process by the Central American Presidents. We wish them success at the meeting that begins December 11 in Panama.

Many of these goals are also the focus of attention of the partnership for development and democracy (PDD), which brings the Central American governments together with three Latin American neighbors, the OECD nations and various international organizations into a single forum dedicated to supporting the process of democratization and development in the region. The PDD completed a very successful meeting October 15–16 in San Salvador, meets next in Tokyo in March. We are pleased by the progress made in this forum to date and invite the international community's attention and support to its important work.

The nations of Central America are rapidly approaching a day when the entire region is at peace thanks in large part to the commitment and dedication of the United Nations and the parties. It has been a long and arduous task, but the end result serves as a testament to the important role of the United Na-

tions and as a tribute to the men and women who never lost sight of their goal: Peace. Thank you, Mr. President.

EXHIBIT 8

STATEMENT BY HON. LARRY L. PRESSLER, U.S. REPRESENTATIVE TO THE 47TH SESSION OF THE U.N. GENERAL ASSEMBLY, IN PLENARY, OPENING CEREMONIES FOR THE INTERNATIONAL YEAR OF THE WORLD'S INDIGENOUS PEOPLE, DECEMBER 14, 1992

Thank you, Mr. President. I have the honor to speak for the United States of America on the occasion of the launching of the International Year of the World's Indigenous People, to be celebrated in 1993. It has been enlightening to listen to the diverse voices of indigenous people from around the world. My government hopes that the International Year will serve its cause in concrete, constructive ways.

Mr. President, fellow delegates, my government respects and protects the rights of all its citizens. We are committed to ensuring that members of indigenous groups are fully able to exercise their human rights. Nevertheless, we are aware that there are many obstacles that sometimes complicate our efforts to guarantee complete enjoyment of these rights. We recognize particularly the social problems that plague some members of the world's indigenous groups. Although in principle the United States does not support the establishment of international days, years, and decades—since we believe scarce UN resources can be better directed to concrete programs—we hope that the International Year of the World's Indigenous People will serve as an impetus for greater attention to the unique problems of the indigenous people. We pledge to continue to work with various indigenous groups toward overcoming these problems and obstacles together.

Mr. President, I would like to call to the Assembly's attention a few of my government's efforts to work with indigenous people in making sure their rights are fully protected. We know our efforts are not perfect, but we believe they are a good beginning.

For example, my government is committed to upholding the ideals of Native American Self-Governance. To promote these ideals, the United States Government has carried out the following actions:

In the past four years, working directly with tribal leadership and through their direction, we have implemented the Self-Governance Demonstration Project Initiative. Under Self-Governance, the tribes have more flexibility to determine their own priorities and use government resources they receive to address those priorities as they see fit;

We have signed landmark self-governance compacts with 17 tribes, enabling them to administer their own budget and program operations with a minimum of federal participation. There are currently 17 tribes operating under negotiated agreements with the Department of Interior; this number is expected to expand to 30 by 1994;

We have a new policy to govern the protection and treatment of sacred objects and human remains on federal lands. This policy affirms the right of tribes and other American Indian groups to determine the treatment of Indian remains.

The United States government has made education a top priority. In pursuit of our goal of a better education for every Native American child, we have:

Established an early childhood/parental involvement pilot program in government-financed schools;

Provided funds for a comprehensive review of each school every four years to improve accountability to parents, school boards, and tribes;

As a result, in the past four years, through specific goals and objectives, achievement test scores of students in government-run schools have increased by 10 percentage points.

Some problems affect all segments of our society. Native Americans are not immune. Therefore we have moved to further curb child abuse and neglect in Native American communities by:

Initiating a mandatory policy for all employees of the Bureau of Indian Affairs to report suspected incidents of child abuse or neglect;

Starting a program to train line supervisors and school principals in the detection to child abuse;

Developing clear, strong guidelines on how to respond to child abuse reports.

We have taken additional steps in other important areas that affect the social well-being and health of our Native American citizens.

For example: We made grants in 1990 ranging from $11,000 to $50,000 to each of 15 tribes and Alaska native groups for cultural heritage preservation projects;

We signed an agreement to coordinate actions of U.S. government agencies and the Indian Health Service to enhance protection of the environment and human health through pollution control on Indian lands;

We established 14 departmental negotiating teams to resolve water rights claims of Indian tribes. Thus, in the last four years, we have made major strides in the negotiation of Indian water resources disputes. Through the establishment of the water rights negotiation teams, which bring all parties to the table, we reached a significant number of agreements aimed at protecting and enhancing Indian water rights and resources.

Mr. President, my government believes these and other actions demonstrate the strong commitment of the United States to the goals of the International Year. In the words of the Honorable Joc De La Cruz, Chairman of the Quinault Nation: "For the first time in the history of communication between Indian tribes and the United States Government, we have a real bilateral relationship on important issues of national policy! The fundamental principle of democracy, the consent of the governed, has finally been applied in practice to Indian Country. Certainly [this] . . . is not a perfect process, but it has provided that bilateral decision-making can work between tribes and the United States."

Thank you, Mr. President.

EXHIBIT 9

[From the Argus Leader, Dec. 14, 1992]

PRESSLER SEEKS U.N. SHAKE-UP

(By Chet Lunner)

The towering U.N. complex in New York conjures up powerful symbols of peacekeepers, noble causes, a sacrosanct haven in a world of conflict and wars.

But to South Dakota Sen. Larry Pressler, a 1992 congressional member of the U.S. Mission here, the United Nations can seem a thoroughly frustrating place, a bottomless bureaucratic pork barrel bursting with U.S. tax dollars.

"One's blood pressure can go up around here," Pressler said in an interview in the delegates' lounge. "I could not survive in this environment."

Pressler and Sen. Paul Sarbanes, D-Md., are the two members of Congress currently posted to the United Nations. A bipartisan pair is sent by the president each year, with the House and Senate taking turns. They operate as permanent delegates, give speeches and generally represent the U.S. position in the nearly non-stop diplomatic whirl of meetings, lunches, dinners and receptions.

After about a month's service as a delegate, Pressler, a member of the Senate Foreign Relations Committee, clearly does not expect to pursue diplomacy as a career.

As a delegate, he has given official U.S. speeches—cleared word-for-word by the State Department—on the rights of indigenous peoples, issues in Latin America and Central America. But Pressler-as-senator has also issued harshly critical statements blasting what he sees as massive U.N. mismanagement and an unfair reliance on the United States for financial support.

Pressler knows that his brief visit, complaints or otherwise, is unlikely to make a difference with an entrenched bureaucracy.

"I don't want to claim that I've made any great differences. But I've gotten firsthand information on just how bureaucratic this place is," he said. "There are people who retire from the U.N. at age 50 with full retirement, and then become a consultant for $140,000 a year. There's a Third World system around here. Once you're in it, you're taken care of. It's stealing."

He attributes many of the U.N. problems to cultural differences.

"In their countries, frequently government service is a chance to get rich," Pressler said of the officials from the smaller, undeveloped countries. "So, once they get on the U.N. payroll they usually forget about their home country. And, there's no way that anybody can get fired around here, that's another thing . . . and the retirement program and the salary structure of the U.N. are higher than our Civil Service."

Pressler has written letters, made speeches, complained to Secretary General Boutros Boutros-Ghali, and said he will offer amendments to foreign aid bills in the upcoming Congress to seek audits of U.N. operations, creation of an effective inspector general's office and other oversight measures.

"Overall, some good things do happen. A lot of children in the world are inoculated because of U.N. programs. That's one thing that works," Pressler said. "A lot of programs don't work. But we've got to make it better somehow."

TRIBUTE TO JOE SWEAT

Mr. SASSER. Mr. President, I rise today to pay tribute to my friend Joe Sweat of Nashville. Joe is the executive director of the Tennessee Municipal League, an office in which he has served since 1982. In addition, Joe is a member of the board of directors of the Tennessee Chapter of the American Civil Liberties Union and is the executive secretary of the Catholic Public Policy Commission of Tennessee.

Since the fall of communism in Eastern Europe, and what was once the Soviet Union, Joe Sweat has been a missionary of Democracy. Beginning in 1990, he volunteered his expertise in democratic local government to the Bulgarian Parliament as it framed a constitution for a newborn democracy.

In Poland, Romania and Hungary he has promoted democracy, fair elections and civil rights.

Joe Sweat's efforts to sow democracy in Eastern Europe continue to this day, Mr. President, as he has recently lectured throughout the newly independent Ukraine. Working with the National Democratic Institute for International Affairs—the NDI—Joe taught local officials about democratic local government and political parties. As a journalist, Joe reported on the mission of the NDI in the Tennessee Town and City. Mr. President, I am pleased to present this inspiring article to the Senate today for inclusion in the RECORD.

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

[From Tennessee Town and City, Dec. 21, 1992]

NEW FREEDOM FIGHTERS ARE YOUNG PEOPLE WITH IDEAS ON MAKING DEMOCRACY

(By Joseph Sweat)

KIEV, UKRAINE.—The United States is involved in another world war this Christmas. Once again, young Americans are on the front lines, fighting for freedom. But this time, ideas are the ammunition.

These young American freedom fighters are people like Sarah Farnsworth. While many women her age are preparing for the fancy holiday parties back in the states, Sarah each day will leave her small apartment here in Kiev, to spend long hours promoting democratic government.

"It was a once in a lifetime chance," Sarah said recently, without the slightest bit of hesitation in her voice. "I have not regretted making the decision to come here."

She says that despite the fact that Kiev, during the holidays, is a far cry from what we have come to expect in the United States. This city is not awash in tinsel, bright lights, bells ringing and recorded carols blaring from loud speakers.

In fact, one does not see any sign of a neon light in Kiev any time during the year. The streets are dark at night, and drab all the time. And the economy is too much in a state of collapse to allow much singing.

But these young Americans don't seem to mind. Their joy seems to flow from something far more important than tinsel and lights. Sarah Farnsworth is the Ukrainian Field Program Officer for the National Democratic Institute For International Affairs (NDI), a Washington, D.C., agency with one major goal: promoting democracy around the world.

"The NDI program here in the Ukraine," Sarah Farnsworth said, "offered me an opportunity to work with young and emerging political parties in a country that has just become free from the Communist system."

NDI is active throughout Eastern Europe, working feverishly to grow democratic government in the withered, barren fields of collapsed Communism. Typical of NDI's work is the recent seminar here in KIEV on "Local Governance and Local Politics."

The staff assembled for this seminar was typical of the type of dedicated, bright, well-educated young Americans working for NDI. In addition to Sarah Farnsworth, they included Josh Freeman from NDI's Moscow office, and Janna Moskin and Matthew Tiedemann from the NDI Washington office. All of them speak fluent Russian, and some have added Ukrainian.

Overseeing this energetic pack of democracy missionaries is Ambassador Nelson C. Ledsky, a seasoned U.S. State Department veteran. He has retired after many years of service throughout the world to become NDI's Senior Advisor and Program Manager for the former Soviet Union.

The international team assembled to conduct the Kiev seminar also was typical of the way NDI uses experienced experts in government and politics. Each participant brought his own experiences to share with the Ukrainian local government and political party officials. The participants included:

Roger Appleton, head of the Policy Unit of the Wandsworth Borough Council in London, England.

Peter W. Kohnert, Division Chief and Assistant Director of the Ministry of Finance in Germany's Brandenburg region.

John L. Krauss, former deputy mayor of Indianapolis, and now senior fellow at the Center for Urban Policy and Environment in the School of Public and Environmental Affairs at Indiana University.

Paul Offner, senior legislative assistant for humans services in Sen. Patrick Moynihan's office.

Wallace Rogers, former chairman of the Eau Claire, Wisc., city council and now a community development consultant.

Joseph Sweat, executive director of the Tennessee Municipal League.

Gerard Woertman, member of executive committee of the Christian Democratic Appeal in Holland.

Thomas Volgy, former mayor of Tucson, Ariz., and acting head of the political science department at the University of Arizona.

These participants worked for four days with the Ukrainian local officials, political party leaders and journalists. The subjects included:

1. Functions and responsibilities of local elected officials and local political parties.
2. Structures of local government.
3. Local government and citizen participation.
4. The politics of privatization.

The seminars were long and there were many questions. The language barrier made the days even longer, although NDI typically used translators so expert that they translated simultaneously through earphones as each person spoke.

However, the driving force of the program was the spirit of ambassador Ledsky and his young charges.

"It is an historic time to be here as Ukrainians struggle to dismantle a system and overcome incredible obstacles set in place for over 60 years," Sarah Farnsworth said. "The Communist system, quite frankly, ruined their economy, suffocated their national identity and spirit.

"Observing what is happening here, I have gained a new appreciation for our country's democratic processes and the parties which I had always taken for granted."

The Kiev airport terminal is a colorless, dilapidated, hulk of a building with about as much cheer as a shelter for the homeless. But as we flew away from it recently, many of us saw it as a gateway of hope.

We knew that through it, and the other crumbling capitols of the old order, would continue to pass wise men like Nelson Ledsky and young Americans like Matthew Tiedemann, Janna Moskin, Josh Freeman and Sarah Farnsworth.

That was enough to convince us the United States would win this new war, this war where ideas fly and tear into minds made hungry for a better life. It also convinced us that in this season, in particular, we could look forward to peace on earth.

CHARLES A. MACHEMEHL, JR., RECEIVES REBUILDING AMERICA AWARD

Mr. HEFLIN. Mr. President, I rise today to pay tribute to Charles A. Machemehl, Jr., who was recently awarded the CIT Group/Industrial Financing Rebuilding America Award, for his lifelong contributions to the repair and maintenance of America's infrastructure. I have known Charles Machemehl for many years. I have worked with him over the years on a variety of infrastructure-related matters of great importance to our country. He has been an effective and tenacious advocate for increased Federal investment in our infrastructure.

Charles Machemehl has served as chairman of the American Road & Transportation Builders Association; a member of the executive committee of the National Aggregates Association; a member of the board of trustees of the National Stone Association's Center for Aggregate Research; a member of the Federal Highway Administration's National Research Council/Transportation Research Board; a member of the board of directors of the American Concrete Pavement Association; and chairman of the highway division of the American Society of Civil Engineers. These are just a handful of the leadership positions Mr. Machemehl has held in the infrastructure sector.

Mr. Machemehl has had a long and distinguished career at Vulcan Materials Co., one of my State's largest corporations, where he currently serves as vice president of marketing and business development. I have also known Mr. Machemehl through his service to our country in another area. Mach, as his friends call him, was also a brigadier general in the Air National Guard.

Mr. President, I ask unanimous consent that an article which reviews some of Mr. Machemehl's many accomplishments and his numerous contributions to the advancement of surface transportation in our Nation be inserted into the RECORD. I know my colleagues join me in congratulating Mr. Machemehl on receiving the "Rebuilding America Award."

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

ARTBA'S NEW CHAIRMAN: CHARLES A. MACHEMEHL, JR.

When Charles Machemehl, Jr., ARTBA's 1990 chairman, commits to something, he commits for the long haul. He reaches the upper echelons of whatever he attempts. For example, Machemehl has turned an Air Force ROTC commission into the silver star of an Air National Guard brigadier general.

Mr. Machemehl's tendency to reach for the heights started in high school, where he graduated as valedictorian. Later at the University of Texas, he played on the

Longhorns' football team for three years, served as class secretary, and graduated in 1957 with a B.S. in civil engineering.

Today, as vice president, marketing and business development of the Construction Materials Group of Vulcan Materials, Charles Machemehl remains committed to the highest goals in his field.

After his tour of duty in the Air Force, he earned a M.S. in civil engineering at the University of Texas while working as the pavement engineer for the Air Force in a civil service position at Bergstrom AFT in Austin. "In 1964, he joined the Portland Cement Association as an engineer, advising engineers and architects on the uses of portland cement in concrete pavements and water resource facilities. In 1968, he joined Vulcan Materials Company as construction materials engineer in the research and development laboratory, again advising engineers, architects and contractors on the uses of stone, slag, sand, gravel, asphalt and other construction materials.

Machemehl soon moved up Vulcan's organizational ladder as assistant to the vice president of sales, then sales manager for Georgia, and finally to his present position, which he has held since 1980.

For the two preceding his retirement from the Air Force, Machemehl served as assistant adjutant general for the Alabama Air National Guard. He is also the recipient of a number of military awards, including the Air Force Meritorious Award (1983), and the Legion of Merit (1988). In 1982, the 117th Air National Guard Wing, which he commanded, was selected the number one civil engineering unit in the Air National Guard.

He has been a Jefferson County deputy sheriff and a member of Toastmasters, Green Valley Country Club, Dunwoody Country Club, and St. Luke's Episcopal Church in Birmingham.

A familiar face in the road and transportation construction materials industry, Mr. Machemehl has made dozens of speeches and presentations to industry groups. He has also published articles in trade magazines, such as Stone News, and in National Crushed Stone Association manuals. Over the years, Mr. Machemehl has been an activist in his profession, holding membership in a number of national and state engineering societies and surveying associations, including ARTBA, where he has served as a director and, most recently, as vice chairman.

Machemehl is a registered professional engineer in the states of Texas, Alabama, Georgia, Florida, Louisiana, and Mississippi. He is a registered surveyor in three states.

In spite of his many professional and military commitments, Mr. Machemehl has found the time to be a family man. He is married to the former Sonya Ray Clark and has one son, Dr. Charles A. Machemehl, III, an Atlanta orthodontist. As is fitting for the father of a boy, Mr. Machemehl has been a scoutmaster in the Boy Scouts and a Little League baseball coach.

Mr. Machemehl sees his term as ARTBA chairman at a critical time for the road and transportation building industry. The transportation industry is part of a larger network, including automobile manufacture, that accounts for about 20 percent of this country's Gross National Product. In view of the staggering number of jobs provided by transportation-related industries, ARTBA intends to continue and to strengthen its role in influencing the allocation of funds for transportation concerns.

"We would like to see the federal government's share of the funds allocated for road building and transportation raised considerably, but the president and his advisors want state and local governments to contribute a larger share," Machemehl says. "Of course, the federal government's primary concern these days is reducing the budget deficit, so the two needs, highway funding and deficit reduction, are in direct conflict. ARTBA will try to influence the federal government to increase funding through user fees. If the user fee trust fund is removed from the budget process, funds earmarked for transportation-related industries will have no effect on the budget deficit.

"The need for more funding is crucial. Even if the federal government increased its share from the present level of $14 billion to as much as $40 billion annually, it would only be enough to maintain our roads and transportation facilities at their present level.

"This new funding legislation is extremely important. To leave the major share of funding to the states is not the best way to go. If we're going to have the safest highways and transportation facilities we possibly can, the federal government needs to become the major provider of funds."

Mr. Machemehl sees a benefit to the latest budgetary debate facing the federal government.

"Senator Moynihan from New York has called attention to the use of the Social Security Trust Fund to make the federal deficit seem smaller than it really is. I think we'll see that trust fund removed from the deficit reduction picture, along with funds that are earmarked for the Highway Trust Fund.

"I don't think we should rely on the so-called "Peace Dividend" to provide the additional funding we'll need for transportation in the years to come. As a military man, I would say we need to maintain a strong defense in this country until there is concrete evidence that the Russians have begun to dismantle some of their strategic as well as their conventional forces.

"And even if that were to happen soon, I believe much of the savings that could be realized from a reduced military budget would be spent in other ways, such as reducing the federal budget deficit."

Funding for transportation is ARTBA's number one concern in the upcoming year, but Machemehl also lists two other pressing issues: environmental concerns and labor relations.

"There are so many new regulations that affect how contractors build highways and transportation facilities. We have to work hard to make sure those rules and regulations remain fair, and to communicate these regulations to our members. And, of course, the increasing level of regulation directly affects the cost of transportation-related construction."

In the area of labor relations, Mr. Machemehl and ARTBA will continue to recommend methods by which contractors can establish drug-control programs.

"We're also very concerned with the labor supply for the next decade. We've got to train more minorities and women for jobs in our industry. ARTBA can be instrumental in helping its member companies design recruitment and training programs that will ensure the workforce we will need to accomplish the tremendous increase in transportation facilities for the 1990's is available."

DEATH OF JOHN MARTIN O'CONNOR

Mr. LIEBERMAN. Mr. President, Connecticut has suffered a terrible loss this week with the death of John Martin O'Connor, a 35-year veteran firefighter in New London, who died in the line of duty.

He was respected and loved by the people of New London, and all of us owe him a great debt of gratitude. He was a quiet hero and family man who loved his work and served as an example for many who followed in his footsteps.

John O'Connor gave his life in the line of duty, and it is a tragic reminder of the risks involved in being a firefighter. It is reported that the fire he was fighting when he died was allegedly set by a drug addict who was upset with an elderly man who refused to give him money for drugs. Three other people also lost their lives in the fire. Every day, men and women like John O'Connor put their lives on the line, with tremendous and selfless courage, to protect all of us.

Mr. President, I ask that the following article, written by Stan DeCoster of The Day of New London, be printed in its entirety in the RECORD. It illustrates how the life of John O'Connor touched the lives of so many others in their community. Somehow, our sadness over the passing of this brave man is eased by reading about his good works.

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

[From The Day of New London (CT), Feb. 3, 1993]

FALLEN FIREFIGHTER WAS "GENTLEMAN" AND "HERO"

(By Stan DeCoster)

NEW LONDON.—John O'Connor walked into Jack's Place on Montauk Avenue at 10 a.m. Monday and ordered the usual—an English muffin and a coffee. Then he pulled out a picture of newborn Jerry John Theiler—his seventh grandchild—and showed it off to waitresses and anyone else who would look.

Slightly more than 12 hours later, O'Connor was dead, believed to be the first New London firefighter ever to die in the line of duty.

"He was quite guy," said Joe Caulfield, working the grill at Jack's Place during Tuesday's noon rush. "He would sit right over there. You couldn't ask for a better gentleman. What a down-to-earth guy."

O'Connor, widely regarded as a dedicated firefighter and family man, collapsed at the scene of the Monday night fire that claimed the lives of three others inside a Truman Street apartment building. An autopsy conducted Tuesday at the chief medical examiner's office in Farmington concluded that O'Connor, 63, had died of a heart attack.

John Martin O'Connor established a reputation during his 35 years as a paid New London firefighter as a steady worker who frequently served as a role model for younger members of the department, according to Fire Chief Ronald Samul.

O'Connor, in fact, had helped break Samul in 23 years ago.

"I'll remember him as a professional firefighter who I wanted to emulate," Samul said. "And that's how I'll remember him—as a professional."

O'Connor had a minor heart problem but had passed a physical within the last year

and had done a number of things to stay in good shape, including giving up smoking and changing his diet, the chief said. He would munch on carrots, broccoli and other "rabbit food" while his fellow firefighters would eat greasy grinders, Samul added.

Firefighters may retire at 57 or 60, depending on their pension plan, or they may seek an extension to work to 65, Samul said.

TO SOME, A HERO

"He was a very strong, rugged guy who didn't look his age and would always be in the thick of things," said Mike Myshka, a 39-year-old firefighter, as he scrubbed down O'Connor's truck, Engine 11, at fire headquarters.

"He is definitely a hero in my book," Myshka said.

Those who knew him best said O'Connor didn't particularly stand out in a crowd. They said he simply reported to work regularly, worked hard, and then returned to his home at 36 Parkway South to be with his family. He loved the New York Giants, Guthrie Beach in the summer, attending theatrical productions at the Garde Arts Center, and working in his yard.

A daughter-in-law, Suzanne O'Connor, said that every summer he had a green expanse of weedless lawn and a vegetable garden that were the envy of the neighborhood.

"And he was always sweeping the driveway," she said. "In the summer, he would get on me for shaking the beach towel all over the driveway."

She said he also kept delaying retirement because he loved his job and the camaraderie of the firehouse. "We kept teasing him about when he was going to retire. He kept saying, 'In a couple of years, a couple of years . . .'"

She said that O'Connor and his wife, the former Florence Pearson, were scheduled to fly to Paradise Island in the Bahamas next week for a vacation.

Grace Chapman, a niece who lives in New London, heard the sirens Monday night. Later, about midnight, the telephone rang.

"I heard the sirens about 10:30 and I wondered if Uncle Jack's working, stuff like that," said Ms. Chapman, who was O'Connor's godchild. ". . . Then when the phone rang, I knew something was wrong."

At 1 a.m. Tuesday, Ed Hallissey, the battalion chief who had watched O'Connor fall to the ground, found a moment in his truck outside Bank Street headquarters. Visibly upset, he shook his head from side to side, unable to talk.

"I didn't want it to be," Hallissey said several hours later. "I knew what it was and I just didn't want it to be."

Still Hallissey said O'Connor was fortunate in one respect. "If you have to go, that's the way to go—fast," he said. "I wouldn't want John to linger on and suffer. In that respect, God was good to him."

O'Connor, who usually worked out of the South End Firehouse on Lower Boulevard, was moved up to serve as an acting lieutenant Monday night at Bank Street headquarters.

CIRCUMSTANCES UNCLEAR

There was some confusion regarding the exact circumstances surrounding his death. Initial reports suggested O'Connor had been hit by a live electrical wire. The autopsy, however, found that he had died of natural causes, from "atherosclerotic cardiovascular disease."

"He was out on the street and he was just starting to set up," said Samul. "It doesn't appear that he was struck by a wire."

But Gary Batch, president of the city firefighters' union said reports persisted that a live wire may have hit O'Connor or near where he had been standing.

"Whether it (the heart attack) was brought on by the electrical wires or not is an open question," Batch said. "The autopsy shows a heart attack; it doesn't say what caused it."

Batch said he expects 1,000 or more firefighters, some from as far away as Portland, Maine, will attend O'Connor's funeral on Friday.

O'Connor started working as a part-time substitute in 1953. Five years later, he joined the force as a paid professional.

"He was a very quiet, very nice person," said retired City Manager C. Francis Driscoll. "He was Mr. Dependable. He was a good, solid employee and a good, solid firefighter.

"John O'Connor did his job and he did it well."

The mood at the city's firehouses was understandably subdued Tuesday. At the Lower Boulevard station. Peter Gilmore and John Weigel—firefighters with more than 30 years of service each—sat quietly.

"I'm sure that pulling up to that fire his heart was pumping 10 times faster than normal," Gilmore said.

Samul said news of O'Connor's death is still sinking in.

"We've all read the stories and watched the tapes of firefighters in other cities dying in the line of duty," he said. "Still, when it strikes home, it's hard to accept."

RAPE OF BOSNIA AND HERZEGOVINA

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that a copy of a letter that was sent on February 1 to Madeleine Albright, U.S. Ambassador to the United Nations, regarding the systematic use of rape in Bosnia and Herzegovina be inserted in the RECORD. The letter was signed by myself, Senators DOLE, MIKULSKI, LEAHY, KENNEDY, AKAKA, PRESSLER, SASSER, BRYAN, D'AMATO, BRADLEY, JEFFORDS, DURENBERGER, KRUEGER, FEINGOLD, PELL, RIEGLE, MURRAY, Congresswoman PELOSI, and Congressman GEORGE MILLER.

The letter lays out a series of recommendations for action at the United Nations. It calls for the establishment of an international war crimes tribunal to prosecute rape as a war crime and a crime against humanity under international law. It asks Ambassador Albright to ensure that the U.N. Commission of Experts is adequately funded, thoroughly investigates the perpetrators of rape, and that its membership will be expanded to include a woman.

It also asks Ambassador Albright to work toward the goal of explicitly recognizing rape as a violation of human rights, that perpetrators must be held accountable, and that the U.N. World Conference on Human Rights will include violations of women's rights in its proceedings.

Mr. President, this letter is in line with a resolution that I along with Senator DOLE and 14 Members of the Senate introduced last week. That resolution, Senate Resolution 35, currently has 28 cosponsors and has been referred to the Senate Foreign Relations Committee. I urge all my colleagues to join us as cosponsors.

Mr. President, the systematic rape of women in Bosnia is a war crime and a crime against humanity. The perpetrators of these crimes should be prosecuted in an international war crimes tribunal. I hope that Ambassador Albright will make this issue a high priority at the United Nations.

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

U.S. SENATE,
Washington, DC, February 1, 1993.

Hon. MADELEINE K. ALBRIGHT,
U.S. Representative to the United Nations, New York, NY.

DEAR AMBASSADOR ALBRIGHT: As you take on your new responsibilities as the United States Ambassador to the United Nations, we would like to take this opportunity to express our deep concern about systematic rape in Bosnia.

It is our hope that you will work vigorously in the United Nations to advance the following recommendations. First, we hope that you will work with the United Nations to ensure that rape as a tactic of warfare—a war crime and a crime against humanity under international law—will be prosecuted under an international war crimes tribunal established by the United Nations. Second, we hope you will work to ensure that the United Nations Commission of Experts is adequately funded, thoroughly investigates the perpetrators of rape, and that the commission membership is expanded to include a woman with relevant expertise among its membership. Third, we hope you will urge the United Nations humanitarian efforts to include medical and psychological treatment for rape victims. finally, we hope you will work with the United Nations Commission on Human Rights toward the goal of explicitly recognizing that rape is a violation of human rights, that perpetrators must be held accountable, and that the United Nations World Conference on Human Rights will include violations of womens rights in its proceedings.

As you are no doubt aware, thousands of women and girls have been raped in the conflict in the former Yugoslavia. According to a wide range of investigators, while some abuses have been committed by all sides in the conflict, the vast majority of these crimes have been committed by Bosnian Serb soldiers against Bosnian Muslim women and young girls. In many cases, after raping these women, Serb soldiers allegedly brutally murdered them. Other Muslim women reportedly have given birth to or are pregnant with the children of their Serb rapists, and will bring these children into a society that sees them as permanent outcasts. Still countless other Muslim women and girls face a future tortured by their memories of violence.

These rapes cannot be brushed aside as an incidental effect of total warfare. An interim report on rape commissioned by the European Community concluded that "rape cannot be seen as incidental to the main purposes of the (Serb) aggression but as serving a strategic purpose in itself." The recently released State Department Report on Human Rights for 1992 also said that "massive systematic rape, committed by Bosnian Serb military units and prison guards, was used as

an extension of 'ethnic cleansing' to terrify the population."

Therefore, the perpetrators of rape in the former Yugoslavia should be tried in an appropriate international war crimes tribunal established by the United Nations. We hope you will press the United Nations to establish such a tribunal to ensure that war crimes and crimes against humanity, including rape, will be prosecuted.

As you know, on October 6, the United Nations Security Council approved a resolution requesting the Secretary General to establish an impartial commission of experts to examine and analyze information relevant to violations of international humanitarian law in the former Yugoslavia. Secretary General Boutros Boutros-Ghali established a commission, and, on October 26, appointed 5 members to that commission. This commission will gather evidence that could be used to prosecute those responsible for crimes against humanity in an international war crimes tribunal. A separate Security Council resolution, 798, specifically denounced the rape of Muslim women by Bosnian Serb soldiers."

While we are pleased that a commission has been established, we are dismayed by reports from representatives of the United Nations that the commission has not been funded. We do not see how the United Nations can take the necessary steps to ensure that justice will be served if the United Nations commission charged with the mission of providing information and evidence about potential war crimes has not been adequately funded. To that end, we urge you to work to ensure that funding will be provided for this commission.

We also urge you to ensure that commission members give a high priority to investigating the perpetrators of rape. While all war crimes and crimes against humanity must be prosecuted, rape is a brutal, hateful crime that is often ignored despite its terrifying effect as a tool of war and terror.

To facilitate this investigation, we believe it would be appropriate for qualified women with relevant experience to be appointed to this commission and would urge you to press this issue at the United Nations. U.N. Secretary General Boutros-Boutros Ghali has appointed five men with significant international experience to the U.N. Commission of Experts. In light of the unique perspective that women bring to the issue of rape and the extreme sensitivity of this issue, however, we believe it would be appropriate for women to be appointed to the Commission. Regardless, qualified women experts should be integrally involved in the commission's work.

In addition, as we have called for in Senate Resolution 35 and House Resolution, 32, we ask that you use your office to ensure that, to the best of its ability under the circumstances, United Nations humanitarian efforts in the former Yugoslav Republic include adequate medical and psychological treatment for rape victims in this war. Reports indicate that women and girls who have been raped and beaten are not receiving adequate attention from relief workers.

Finally, we urge you to work with the United Nations Commission on Human Rights for the passage of a resolution explicitly recognizing that rape is a violation of human rights and calling on the United Nations World Conference on Human Rights to include violations of womens rights in its proceedings. We understand that the next meeting of the United Nations Human Rights Commission is in February. This type of U.N. resolution would send an additional and important signal about the sentiment of the international community against the systematic violations of human rights.

We wish you luck in your endeavors at the United Nations and hope you will make the issues we have raised a high priority. We look forward to working with you on these and other matters in the future.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business?

If not the Senate will now resume consideration of S. 5.

FAMILY AND MEDICAL LEAVE ACT OF 1993

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 5) to grant family and temporary medical leave under certain circumstances.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Republican leader is recognized.

AMENDMENT NO. 15

(Purpose: To limit the period for which a public employer may be required to provide family and medical leave)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 15.

Mr. DOLE. 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 15, between lines 4 and 5, insert the following:

(g) LIMITATION ON LEAVE ABOVE CALCULATED COST.—

(1) LIMITATION.—Notwithstanding any other provision of this Act, no employer shall be required to provide a greater period of leave than the period calculated under paragraph (2)(B) to any eligible employee of the employer during the applicable calendar year.

(2) CALCULATION.—Each employer shall calculate, for the 1993 calendar year and for each subsequent calendar year—

(A) the average cost to the employer of providing leave in accordance with this title over such calendar year to an eligible employee who takes such leave; and

(B) based on such average cost, the period of such leave that the employer can provide for $7.30 per eligible employee taking such leave during such calendar year.

(3) ADJUSTMENT.—In the case of any calendar year beginning after 1993, the dollar amount contained in paragraph (2)(B) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 for the calendar year, by substituting "calendar year 1992" for "calendar year 1989" in subparagraph (B) thereof.

On page 40, between lines 21 and 22, insert the following:

"(g)(1) Notwithstanding any other provision of this subchapter, no employing agency shall be required to provide a greater period of leave than the period calculated under paragraph (2)(B) to any employee of the employing agency during the applicable calendar year.

"(2) Each employing agency shall calculate, for the 1993 calendar year and for each subsequent calendar year—

"(A) the average cost to the employing agency of providing leave in accordance with this subchapter over such calendar year to an employee who takes such leave; and

"(B) based on such average cost, the period of such leave that the employing agency can provide for $7.30 per employee taking such leave during such calendar year.

"(3) In the case of any calendar year beginning after 1993, the dollar amount contained in paragraph (2)(B) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-off-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 for the calendar year, by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof.

Mr. DOLE. Mr. President, this amendment is a simple amendment. It is one I think both sides are familiar with.

My colleagues on the other side of the aisle say their legislation costs very little. I have heard numbers ranging from the assertion that S. 5 is a money maker for business to assertions that it costs about $7.30 per employee per year, or 2 cents per day.

Whatever the actual numbers, the other side of the aisle continually stresses the costs are modest; the bill will not force one job to be cut or one other fringe benefit to be reduced.

My personal opinion is the legislation costs much more; that, in fact, it will force employers to cut many jobs or other more desirable employee benefits, such as cost-of-living increases or part of the employer-paid contribution for health insurance, to pay for this mandate from Washington.

The point is, contrary to what my colleagues on the other side of the aisle think, not all businesses are the same. I readily acknowledge for some businesses S. 5 may not be a big deal to comply with. There are a lot of big corporations that already provide such benefits; in many cases, better benefits. But for many other companies, particularly smaller ones in the 50 to 100 employee range, this legislation could make the difference between keeping their doors open and competing in a tough marketplace, and having to cut staff and operations.

Because of this, I believe it is important to put a cap on the amount that business must spend in complying with S. 5. It is only fair. And it is an approach consistent with the fact that my colleagues on the other side of the aisle have insisted for 7 years that the cost of their mandate is minimal.

Accordingly, my amendment provides that businesses subject to the act's requirement are only required to provide leave of up to $7.30 per employee taking leave in any calendar year. That is 2 cents per day. This number comes from the sponsors of the legislation, who like to rely on discredited studies, so there should be no objection to its use and no objection to this amendment. This amendment merely codifies some of the statements that have been made on the floor. It seems to me it would give the employer some assurance, and would also give the employee some assurance that they might still have a job.

If there is a willingness to go up as high as $9.50—there have been more recent studies—certainly, I would be happy to modify my amendment. But I also would be interested in exploring with anybody whether or not we could get an exemption for companies that are losing money. If they are losing money, or if they are being forced to lay workers off, I do not know why we want to add additional costs.

We just met with the President of Boeing Corp. They are about to slash, nobody knows for certain, maybe up to 20,000 jobs. Some of those, many of those, would be in the State of Kansas. Most of those would be in the State of Washington.

So we have a lot of workers who are worried about their jobs at Boeing and Beech and Sears. They are the latest casualties of job cuts.

The key point is if we are going to pass a one-size-fits-all mandate on American business, then we ought to acknowledge and cap the amount that such businesses are required to spend in complying with the law.

I met with the Governors this week, Democrats and Republicans, and one thing they complained about, the Presiding Officer has been a Governor, are all these mandates we pass in Congress. We do not send any money. We just say the States ought to do this; let them figure out how to pay for it.

The States do not, in most cases, have a financial surplus. We know we do not have a financial surplus. Now, we are going to say to businessmen and women: We are going to mandate this program. One size fits all; it all comes from Washington. Much of the work force does not benefit.

In my State, I think 44 percent of the employees work for companies with 50 or fewer employees. So half the employees are not going to benefit, in any event.

We have 71 companies in our State with 50 employees. I will bet when this bill passes there will be 71 companies with 49 employees, so they are not going to be subject to the act. Somebody is going to lose their job. We have about 580 companies in my State with 50 to 60 employees. I would guess, with all the pressure business is facing, they may want to reduce below 50 so they are not subject to the act.

So there may be some ways to game this legislation, and not in the sense of taking advantage, but to stay in business, and not to lose money. So it would seem to me we ought to be doing something for American business. That is what this is for, as well as the employees. And to make certain we are going to have some idea of what it is finally going to cost the American businessman or businesswomen, and what it may ultimately cost many of the employees who may lose their jobs because this legislation passes.

Mr. President, I am aware of the fact that I probably do not have a majority for this amendment. So I will be pleased to accept a voice vote on this amendment.

I have one additional amendment where I will ask for a rollcall vote.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I tried to buy off the minority leader earlier with 2 cents, but he rejected that bribery, so he might not offer this amendment. Let me briefly, in response to it, I see my colleague, the junior Senator from Kansas, is on the floor as well. Senator KASSEBAUM and I went back and forth for the good part of a day, dueling over studies and costs.

There have been a number of studies done by the General Accounting Office and by private organizations and consultant groups, by Cornell University, the Small Business Administration, and Buck Consultants, to name three that come to my mind immediately, without having the names of all of the organizations that have tried to assess this.

The Senator from Kansas, the junior Senator from Kansas [Mrs. KASSEBAUM], rightfully points out that there are different cost estimates in all of these.

We have had studies and testimony from private industry—from AT&T, for instance, and the Aetna Insurance Co.—who made an analysis on what the impact would be for their own companies.

Their conclusions were, in the case of Aetna, that recently adopted family leave policy, that it actually saved them $2 million a year in reduced hiring costs and retraining costs. AT&T estimated the savings for them was something in the neighborhood of $15 million a year for the same reasons.

Other studies have indicated, the Small Business Administration said that the cost of this proposal is always substantially less than the cost of firing someone, hiring someone new, and retraining him.

The General Accounting Office came back a year or two ago and said it was $6.70, I think, per covered worker per year. They recently changed that number the other evening to $9.50 per covered worker per year. They identified that increase having to do with the increased cost of health care as well as the number of increased people in the work force.

What we have merely tried to point out with these numbers is not to try to fix some absolute number, but merely to try and demonstrate as part of the debate that the cost of this is marginal and that the benefits are significant. But I have never attempted to suggest that there is an absolute number upon which I am convinced there is an absolute impact, either in terms of what it would cost the employer within those ranges or whatever benefits would accrue to the employer as a result of studies that have been done by industries which have adopted these policies and who have no interest in necessarily promoting a piece of legislation but merely trying to determine what the impact has been on their bottom line through the independent studies done by industries who adopted these policies.

Last, I will point out there was a study done of some four States which adopted family and medical leave policies. They had been in place, I think, 2 or 3 years, when a study was done of the businesses in those States to determine whether or not the family and medical leave policies in those States had been, one, difficult to implement and, two, what sort of costs had been levied on the businesses as a result of those statutes being passed. The overwhelming majority, and I am talking in the neighborhood of 90 to 95 percent of the businesses, said there was little difficulty in implementation and little to no cost at all.

Again, one can go back and forth on the numbers, and I appreciate immensely the Republican leader's point he is trying to make. I must say I think it would be a mistake for us in any way to try to absolutely affix a permanent number on this. I appreciate the amendment, and I hope this amendment will be defeated. I appreciate the Republican leader's willingness to have a voice vote on this particular proposal.

The PRESIDENT pro tempore. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 15) was rejected.

Mr. DODD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDENT pro tempore. The Republican leader is recognized.

AMENDMENT NO. 16

(Purpose: To limit the period for which an employer may be required to provide family and medical leave)

Mr. DOLE. Mr. President, I send another amendment to the desk and indi-

cate this probably will be the last amendment with reference to family leave. There may be another amendment offered, based on the conversation I had with Senator MITCHELL, the majority leader. We will know definitely within 1 hour. In any event, with reference to this amendment, I think this amendment goes to the heart of the problem of S. 5.

The PRESIDENT pro tempore. Will the Republican leader allow the clerk to state the amendment?

The clerk will state the amendment.

The bill clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself and Mr. WALLOP, proposes an amendment numbered 16.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 53, strike line 1 and insert the following:

SEC. 405. LIMITATION.

(a) IN GENERAL.—Notwithstanding any other provision of this Act or any amendment made by this Act, no employer shall be required to comply with any requirement of this Act in any period for which the employer fails to receive—

(1) Federal financial assistance or a reduction in Federal tax obligations that is sufficient to pay for the cost to the employer of compliance with all applicable requirements of this Act for such period; or

(2) a certification from the appropriate entity of the Federal Government that compliance with such requirements will not increase the expenses of the employer during such period.

(b) DEFINITION.—As used in this section, the term "employer" means—

(1) an employer, as defined in section 101(4);

(2) an employing agency, within the meaning of subchapter V of chapter 63 of title 5, United States Code, as added by section 201;

(3) an employing office, as defined in section 501(h)(1); and

(4) an employing authority, within the meaning of section 502.

SEC. 406. EFFECTIVE DATES.

The PRESIDENT pro tempore. The Republican leader is recognized.

Mr. DOLE. Mr. President, I am advised there could be one additional technical amendment, I say to the manager of the bill, by the distinguished Senator from Colorado [Mr. BROWN]. I am not sure that will be accepted.

Mr. DODD. I do not know what the amendment is. Mr. President, there are some technical amendments we agreed to earlier. I am not aware of any amendment by Senator BROWN.

Mr. DOLE. Mr. President, I have a very brief statement—I do not know how long the Senator from Connecticut may take—I hope we might have consent at some later time, propounded by the manager of the bill, that we have this vote, either up or down or a tabling motion on my amendment, at 1:30, but that would be up to the manager.

Mr. DODD. Mr. President, if the Republican leader will yield, I certainly agree with that. I do not have a long statement to make. But in order to make our colleagues aware, I will at the appropriate time, once the debate is concluded, move to table that amendment. I will ask for the yeas and nays. I am amenable to at 1:30 that vote occurring.

Mr. President, I ask unanimous consent that a vote on or in relation to Senator DOLE's amendment occur at 1:30 p.m., with no second-degree amendments in order thereto.

The PRESIDENT pro tempore. Is there objection? The Chair hears no objection. It is so ordered.

The Senator from Kansas, the Republican leader.

Mr. DOLE. I thank the Presiding Officer.

Mr. President, I do think this amendment goes to the heart of what some of us see to be the problem with S. 5. And whether we like it or not, S. 5 is a mandate. It is a tax on business. In this particular bill, a tax on business that employs 50 or more employees.

There are a lot of businesses in America that are having difficulty right now. We are even hearing talk about an economic stimulus package to create jobs, at the same time we are passing a bill that, in my view, is going to cost jobs. Let me restate what I just stated. I am not sure how many Senators checked with their State labor departments to see how many businesses in the State of Kansas or West Virginia or some other State, Connecticut or New Hampshire have 50 or fewer employees.

In our State, the number is substantial. In fact, about 44 percent of the employees are employed by businesses with fewer than 50 employees, which means they do not get any benefit from this bill. The men and women who are working for a small business are excluded from this bill. I do not fault the manager because I think he would have been agreeable early on to make it lower, but then that gets into whether or not the bill would pass.

But there are a lot of businesses in my State, a small State. We have 71 businesses with 50 employees. In my view, there would be a lot of pressure on employers to reduce their numbers by one so they are not covered by this bill, so they would have 49 employees. We have about 580 businesses in Kansas with 50 to 60 employees and again there is going to be enormous pressure on employers in this day of cost cutting and downsizing businesses to reduce the number somehow to avoid the impact of this legislation because this is a tax on business. This is the first new tax passed in the Clinton administration. We may as well call it a tax; it is a mandate, you have to pay for it, you have to dig it up, you have to borrow it, somehow you have to deal with it. If that is what Congress wants to do, that is how the administration wants to start off with the first piece of legislation being a major tax on business, the businessmen and businesswomen, then I think those who support this bill are probably correct.

We do not have any idea how much harm or how much good this will cause. It sounds good. Watch the television and they put up there 12 weeks of unpaid leave, continue your health coverage, but nobody addresses the other side. What about the businessman or what about the businesswoman who is trying to keep the door open, trying to meet the payroll, trying to create more jobs, what is this going to do? Is this going to be a damper? Let us say somebody has 49 employees and they are thinking of expanding. Why would they expand in the face of this bill? If they get to 55, 65, 75, employees they are covered. Talk about growth, it is not going to happen. Talk about maybe employees losing their jobs, that is a big one. A lot of employees are losing their jobs right now.

As I indicated in the last amendment, in our small State, in Wichita, KS, we can lose up to 6,000 jobs with Boeing very soon.

We have lost 1,700 with Sears, 400 with Beech Aircraft. That is a big, big hit in the Wichita community.

So we believe this is going to cost something. It is going to cost billions of dollars and will cause job cuts or benefit cuts to pay for it.

Now, if we believe the estimates of the Small Business Administration, we are talking about billions of dollars. We are talking about tens of thousands of jobs being lost or not created because of this bill. Remember, losing jobs on the one hand, not creating jobs on the other hand, is going to make a big difference.

If you look to the Joint Tax Committee, not a partisan committee, for the cost of a tax credit to pay for S. 5, then we are told S. 5 will cost $8.8 billion over the next 5 years. That is the tax on business, $8.8 billion. So I guess if you give employees a choice between their jobs and family leave benefits, they are going to pick their jobs.

So it is the view of this Senator we should not be legislating in the dark. Nobody can tell us what this bill is going to cost. Nobody can tell us how many jobs are going to be lost. Nobody can tell us how many jobs are not going to be created. And nobody can tell us the real economic impact of this legislation.

So, as I have indicated—there are about 580 businesses in my State with between 50 and 60 employees, and, as I said, about 71 with 50 employees, and for all those reasons I think there is going to be enormous pressure on management to try to avoid the trigger of this legislation.

It creates a perverse incentive for the employers of those companies to re-

duce the size of their work force without even considering how much this legislation will cost them. And as we all know, it also creates an incentive to cut costs through staff and benefit reductions to pay for the mandate.

So I just wonder—I probably should have had the information; maybe it has already been included in the RECORD. Maybe every Senator who is going to vote on this knows precisely how many employers in their States have 50 or fewer employees who get no benefit, how many have 50 employees, how many have 50 to 60 or 50 to 75. I think if that information were available, there would be great concern on what might happen to these employees if they were cut from the payroll in order to avoid compliance with this bill.

So it seems to me that one thing we can do is to make certain that nobody is going to be hurt, particularly the employee, and until such time as we can answer all of these questions regarding the effects of this legislation, we should either confirm that this bill costs nothing to each business subject to the mandate or provide a way for the legislation to be paid for without saddling business with a new tax.

So this is all this amendment does. In fact, it was called to my attention—I addressed the Governors last week, met with Democratic and Republican Governors, and one of the Governors suggested this might be a good idea because they are up to their ears in mandates. They know what mandates mean to the States. They know what mandates mean to business people in their States.

So what this amendment provides is that the leave program in S. 5 is optional. It is optional for each business, not mandatory, until such time as the Federal Government either, one, certifies that compliance with this legislation will provide no new added cost to the business subject to the mandate or two, provides Federal financial assistance or reduction in Federal tax obligations sufficient to pay for the cost to the employer for compliance.

That seems to be a pretty fair amendment. In other words, this is going to be optional until we certify it does not cost anything or until we pay for the cost either through some assistance or some tax benefit. That way we are not going to lose anybody's job, we are not going to cause any adverse impact, and we are not going to make the unemployment picture—which looks pretty good today but is still unsteady—any worse.

So I just say to my colleagues, if we pass this amendment, it is going to be a signal and a fact that not one single American will wake up when this legislation becomes law and find a pink slip waiting for him or her because the Congress and the administration decided to mandate family leave.

I think that is fairly important, notwithstanding all of the good things that this may do. It is hard to explain to somebody in my State, some businessman or businesswoman who is out there trying to create jobs and opportunities for a lot of people, why the Federal Government, why Washington, DC, reaches down into Russell, KS, or some other small community in Kansas, or any other State for that matter, and says this will be your policy; we will determine it; the Federal Government will determine it.

As I look back to the past election, if there was any message from the American voters, they said they were tired of the Federal Government telling them what to do. They wanted change. They are not getting change with this legislation. It seems to me this is an idea which would at least neutralize that, at least give business men and women a chance, and, if they cannot certify no cost, then we ought to provide some tax relief or some other relief for businesses so, in the final analysis, the employee does not lose his or her job.

I ask unanimous consent that the distinguished Senator from Wyoming [Mr. WALLOP] be added as a cosponsor of this amendment.

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

Mr. DODD addressed the Chair.

The PRESIDENT pro tempore. The senior Senator from Connecticut [Mr. DODD].

Mr. DODD. I thank the Chair.

This amendment being offered by the distinguished senior Senator from Kansas goes right to the heart, obviously, of the legislation in that nothing would be required to be done unless there is a certification by the Government or a tax cut or a direct appropriation. Obviously, certifications are not possible. We are talking about potentially adding to the deficit.

I point out that in the period of the last 3 days, as we have debated this issue, Mr. President, I have continuously made the point that what we are talking about now is a minimum labor standard, and have compared it, as we have since the legislation was initiated, to basic law, Social Security, occupational safety, and health.

I would point out that recently we passed the Americans With Disabilities Act, with which the distinguished minority leader was intimately involved and played a significant role in securing passage of that particular amendment.

There were arguments made on the floor of this body during the consideration of that legislation that parallel exactly the statement just made by the distinguished minority leader. In fact, the distinguished senior Senator from Utah offered an amendment to waive the Budget Act specifically for the purpose of allowing, or requiring the Government to subsidize or to provide tax relief for businesses that incurred costs as a result of implementing the Americans With Disabilities Act.

In fact, we had a vote in this body, Mr. President, on that very measure because the Senator from Utah, to quote him in that debate, said at that time after the vote occurred:

> I think we made a terrible mistake. What we have done is left the public accommodations section alive, without any protection to the small business person. It is just typical of the work we do here in the U.S. Congress. I do not blame the Senator from Iowa * * *
>
> Why do we do it by loading them up with Federal Government burdens in so many ways? This is not an insignificant way. I can see many mon-and-pop stores; I can see many sole proprietorships; I can see many small businesses with just a few employees, who are going to get rid of these employees, add additional costs and burdens.

He goes on. The statement is in the RECORD as of September 7, 1989, when that motion was made. And the motion to amend the Budget Act failed, Mr. President, failing to secure the necessary 60 votes.

I just note that one of those Members who voted against waiving the Budget Act and allowing for the amendment of the senior Senator from Utah to prevail was the distinguished minority leader, who at that time supported the Americans With Disabilities Act, where arguably cost would be similar here. There may be some costs involved.

Again, I do not necessarily agree with that, because I think we have made an effort over the years to point out where we think the benefits are here, based on similar experiences with State legislatures and local municipalities that have adopted family and medical leave legislation.

I do not know specifically, but I am confident that similar arguments were made with OSHA legislation. I presume that when we abolished child labor laws, somebody made the argument there is going to be a financial burden on certain industries as a result of having to replace children in the workplace with adults who would demand more money. You could go down the list of those minimum labor standards that we have collectively determined are in the best interests of this country, everyone's best interest.

We have in the past on two different occasions successfully passed this legislation making the case that this legislation was not a benefit per se but a minimum labor standard, recognizing the demographic changes that have occurred in this country and the absolute necessity not to place working families in the position where they must choose between the family that they want to take care of during a time of crisis and the job they need, unpaid leave, maintaining health benefits so that they can have job security when the family crisis is over with. The fact of the matter is every single day in this country there are people who are placed in that position.

For 7 years with bipartisan efforts we have tried to put together a bill here that would enjoy the support not only of our colleagues in this body, in the other body, but the President as well. Unfortunately, two vetoes have brought us to the position we are in today. Senator COATS, Senator BOND, worked so diligently with me on this legislation, and many others, including the National Federation of Retailers representing a million employers in the country, endorsed fully the legislation just a few days ago.

I believe they would not have done so, Mr. President, had they felt that this was going to impose onerous burdens or onerous costs on the employers in this country.

I do not want to repeat myself but during the course of the previous amendment I made the point that there have been numerous studies done, including a study concluded by the Small Business Administration under the Bush administration, where they analyzed this legislation specifically for costs to employers.

Mr. President, I will quote directly from that report. That report says:

> It is always substantially less costly for an employer to have leave policies and provide job security than it is to go out and hire a new person and retrain them.

That was the Bush administration's analysis of this legislation—"always less costly." I cannot say absolutely they are correct any more than I can say that the GAO is correct.

But we have made a concerted effort, Mr. President, over the years, in working with employer groups and others to minimize the cost here so we would not place burdens on employers. But we have also steadfastly determined and tried to pass a piece of legislation that would be nothing more than trying to achieve some human decency so that that working family today when faced with a crisis will know there is a job waiting when they go back and that their health insurance be maintained. That is not too much to ask.

Hundreds of businesses in this country, regretfully not enough, have adopted leave policies, numerous States have adopted leave policies—municipalities have. There has been substantial analysis of what the cost has been. Without exception the cost analysis of this legislation or similar legislation has been minimal.

So, Mr. President, with all due respect to the minority leader, I have a great regard for him and his efforts in the numerous other areas of legislation, this is not the time to be saying that we are going to gut this legislation. Of course, the first language, notwithstanding any of the provisions of this act, no employer shall be required to provide leave than is included in this legislation unless of course that these provisions requiring for some tax break or a direct appropriation.

The Presiding Officer chairs the Appropriations Committee. We are under a lot of pressure here today to reduce the deficit, to require a direct appropriation in the Congress to businesses, and in order to provide leave for people is something most of us would say is not necessary any more than it was to provide a direct appropriation necessarily for the businesses to clean up the worksites so the workers of West Virginia or Connecticut could have a safe workplace. That is something people ought to be doing. This is something that ought to happen for people.

To say to a family or worker if your child is in the emergency room, intensive care unit, you ought to spend the time with that child, we are not going to pay you during that period, but the job is here, we will maintain the health benefits so you are not financially ruined—as many people have been—or if you have a new child that is arriving, take the time to be with that new child, make that family stronger, come back to the job when you are through. The same would be true of course with a spouse or a parent that you are caring for.

One hundred and twenty-seven nations that are major competitors have moved in this direction and the overwhelming testimony from employers of this country, from businesses who have adopted these policies, have told our committee through 20 hearings, Mr. President, that this legislation was a good idea, and that it helped them, not just their employees, in higher productivity rates, lower absenteeism, higher retention rates.

It would be a great pity as a last effort after 7 years—and I believe this to be the last amendment to be considered on this other than the legislation involving the homosexuals in the military question—that at this last moment after 7 long years and so many fights that we would gut this legislation by requiring tax expenditures or appropriations for something which there is no evidence that substantiates the need for such relief.

So, Mr. President, I yield to my colleague.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas [Mr. DOLE] the Republican leader.

Mr. DOLE. If I may make one point, the Senator is correct. The Americans with Disabilities Act is a mandate. But in that legislation, recognizing the distress it might cause small business, we did provide for tax credits for construction and things of that kind because we recognize again it was another tax on business.

So there was a difference. I will include in the RECORD precisely what the tax relief was for businesses. But there was a recognition, notwithstanding the budget waiver, because we had already had in the legislation, I think it was a bipartisan amendment, adopted which provided relieve through the Tax Code certain businesses who had to comply with construction—installing elevators, ramps whatever it took—with the Americans with Disabilities Act. I will include that in the RECORD in more detail.

But there was a distinction made for that very reason that the Senator from Connecticut pointed out. I would be happy to yield to the Senator from New Hampshire.

Mr. GREGG. I recognize we are running down our time. But I wanted to support the Senator's amendment and say that one of our primary concerns with the Federal Government was unfunded mandates. This clearly is an unfunded mandate bill on especially businesses. Those costs are going to have to be borne by those businesses and we are going to make those businesses not be productive and in the long run it will cost us jobs in this country.

I simply say to the Senator from Connecticut who I have great regard for that if his presentation is accurate that he just made that has no cost, this is a minimal effect, then why not allow this amendment to go forward because as I understand this amendment it states if there is a minimal effect, then the bill can go forward. This is a minimal cost effect if this bill goes forward.

So I think the Senator from Connecticut made a pretty good case for this amendment in saying that this was a minimum cost in this bill.

Mr. DODD. On my own time, Mr. President, if we could use all the time legislating here. We made the case based on the "necessary." There is no reason to include something not necessary. I point out to my friend that a number of States have adopted a number of family medical leave policies and governments know those States have testified in support of this legislation as they have seen it work in their own States.

We have had numerous letters endorsing support from State officials in numerous jurisdictions where many of the concerns were raised about this. But as I said earlier, there is no evidence whatsoever to support this. But the language in the legislation just invites certifications, a whole level of bureaucracy to go forward in these matters. Every time we do something here, we do that, we delay the implementation, create a whole new debate. This is a question of whether or not there is impact.

I think we have demonstrated a bipartisan way—significant work by a lot of people on both sides, one-third of the Republican side of this aisle supports and endorses this legislation. They have some difference on various pieces of it, but they have indicated their support for this, and working with employer groups, National Retail Federation—there is 1 million employers, 20

million workers represented by that organization. It is the largest organization of its kind in the country. They did not endorse this unanimously by the way. There was not a dissenting vote among the executive board. They looked at that legislation very carefully. They did not feel the need for this.

So to have the suggestion sort of, as I say, later than the 11th hour all of a sudden that this kind of provision is needed I think is merely just one more effort here to try to derail.

I respect those that disagree with the legislation or those who do not like the bill. That is a perfectly legitimate position. I would rather hear that than an effort to say we like the legislation, but here is a little idea which we all know the net effect would be, of course, to destroy the bill.

Let us not delude anybody here. At this 11th hour, those who have tried in the last 3 days, and over the last 7 years, are making a last effort to take the legs out from under this bill. That is what it would do. It would be a great tragedy at this hour for us to do that, in my view, and I think in the view of those who have worked so long and diligently on this legislation.

Mr. DOLE. Mr. President, as I said earlier, I would like to clarify the tax provisions included in the ADA to help business comply with the act. I did and do support the Americans with Disabilities Act. But there is one big difference: S. 5, the pending bill, does not provide relief for businesses; it's a mandate. In the case of the ADA, small businesses may elect a credit in an amount equal to 50 percent of the eligible access expenditures that exceed $250. Small businesses have limited resources and require technical and financial assistance to comply with mandates. We helped them in the ADA, I don't see what help we're providing in this bill.

The PRESIDENT pro tempore. The hour of 1:30 has arrived.

Mr. DODD. Mr. President, I move to table the Dole amendment and ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDENT pro tempore. The question is on a motion to table amendment No. 16. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. COATS. Mr. President, on this vote I have a live pair with the Senator from South Carolina [Mr. THURMOND]. If he were here, he would vote "no." If I were permitted to vote, I would vote "yes." Therefore, I withhold my vote.

Mr. SIMPSON. I announce that the Senator from South Carolina [Mr. THURMOND] is absent due to a death in the family.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 67, nays 31, as follows:

[Rollcall Vote No. 7 Leg.]

YEAS—67

Akaka	Exon	Metzenbaum
Baucus	Feingold	Mikulski
Biden	Feinstein	Mitchell
Bingaman	Ford	Moseley-Braun
Bond	Glenn	Moynihan
Boren	Gorton	Murray
Boxer	Graham	Nunn
Bradley	Harkin	Packwood
Breaux	Heflin	Pell
Bryan	Hollings	Pryor
Bumpers	Inouye	Reid
Byrd	Jeffords	Riegle
Campbell	Johnston	Robb
Chafee	Kennedy	Rockefeller
Cohen	Kerrey	Roth
Conrad	Kerry	Sarbanes
D'Amato	Kohl	Sasser
Danforth	Krueger	Simon
Daschle	Lautenberg	Specter
DeConcini	Leahy	Wellstone
Dodd	Levin	Wofford
Dorgan	Lieberman	
Durenberger	Mathews	

NAYS—31

Bennett	Gregg	Murkowski
Brown	Hatch	Nickles
Burns	Hatfield	Pressler
Cochran	Helms	Shelby
Coverdell	Kassebaum	Simpson
Craig	Kempthorne	Smith
Dole	Lott	Stevens
Domenici	Lugar	Wallop
Faircloth	Mack	Warner
Gramm	McCain	
Grassley	McConnell	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Coats, for

NOT VOTING—1

Thurmond

So the motion to table the amendment (No. 16) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. PACKWOOD addressed the Chair.

The PRESIDENT pro tempore. The Senator from Oregon [Mr. PACKWOOD].

CHANGE OF VOTE

Mr. PACKWOOD. Mr. President, yesterday, by mistake, I voted "no" when I meant to vote "yes" on an amendment of Senator GRASSLEY from Iowa.

I have checked with the majority leader—it will not change the vote—and I ask unanimous consent that I be permitted to change my vote on the motion to table amendment No. 3, the Grassley amendment to S. 5, the family and medical leave bill. I wish to change my vote to "aye." As I say, this will not change the outcome of the vote.

The PRESIDENT pro tempore. Is there objection? Hearing no objection, it is so ordered.

Mr. PACKWOOD. I thank the Chair.

Mr. LAUTENBERG. Mr. President, I rise in support of S. 5, the Family and Medical Leave Act of 1993. I strongly support this bill because I believe that parents should not have to choose between staying home with their new or sick babies and their economic livelihood. I am an original cosponsor of this legislation and have cosponsored similar legislation in previous Congresses. Despite the support of overwhelming majorities in the House and Senate during the 102d Congress, President Bush twice vetoed this legislation and the Congress failed to override his veto by a narrow margin. However, this is a new era in Washington and President Clinton has pledged to sign this legislation when it reaches his desk. I am hopeful that this will be the beginning of the end of gridlock in Washington.

It is about time that Americans have a Family and Medical Leave policy. At least 75 countries all over the world have already enacted family leave laws, including all Western industrialized countries. Most of these countries provide paid leave ranging from 12 weeks to 38 weeks. Compared with these laws, this proposal before us is a modest one.

Mr. President, we need this legislation because we live in a new world. Recent data show that over 80 percent of working women are in their prime childbearing years. In addition, less than 10 percent of all families are two parent families where the father is the breadwinner and the mother stays at home to care for the family. The Congress needs to recognize these remarkable changes in our society and pass this legislation to provide minimal job security to new parents and people who are forced to deal with family medical emergencies.

I know there are those who say that this bill will cripple business. As a former CEO of a major U.S. corporation, I can say that this is not true. This bill will put all competitors on the same footing in the United States and with our major foreign competitors. In fact, this bill also exempts small businesses of less than 50 from the provisions of this bill. This exemption applies to 95 percent of all employers. Finally, a recent survey of business executives by the Small Business Administration found that granting an employee unpaid family and medical leave costs less than terminating an employee. The study showed that the cost to a business of granting a worker leave ranged from 97 cents per week to $97.78 per week compared to a total of $1,131 to $3,152 to replace a terminated employee.

Many States have already seen the need for family leave legislation and have enacted such laws, including New Jersey. However, the 1974 ERISA law prevents a State like my own from requiring employers to continue to provide health benefits to employees during their leave. I am happy to say that this legislation will remedy this situa-

tion and working people in my State will be able to take unpaid leave for family emergencies without the fear of losing their health insurance.

Mr. President, I urge my colleagues to support this profamily legislation.

Mr. KERRY. Mr. President, I rise to express my support for S. 5, the Family and Medical Leave Act—legislation long overdue in this country. I am proud to be a cosponsor of this bill because I believe the Family and Medical Leave Act will enable employees to care for a child upon his or her birth or adoption, to care for a child, spouse, or parent who is suffering from a serious health condition or to use the leave when they themselves are ill. The Family and Medical Leave Act also will enable employees to focus on providing needed help, rather than worrying about keeping their jobs. Mr. President, the Family and Medical Leave Act is an example of what we ought to mean when we talk about helping families help themselves.

We should be clear about what the Family and Medical Leave Act will not do. This bill will not encourage employees to leave their jobs because they want a reduced work schedule. Nor will it undermine the ability of an employer to have a stable work force or successfully conduct business operations because employees will frequently take leave. After all, under this bill, workers are being given the ability to use unpaid leave. It is doubtful that workers who are struggling to make ends meet will choose not to receive compensation for a period of time, whether a few days or 12 weeks unless there is a strong need to do so. The workers taking unpaid leave will do so because their family responsibilities necessitate it. And because they will know that they can properly care for their families, it is likely that workers taking leave will be more productive workers before they leave and after they return. Taking leave from a job to care for an ill parent or child is not something that most workers anticipate. Few of us think about adjusting our work schedules for medical emergencies, chronic illnesses, or the addition of a child to a family until that situation is upon us. At that point, all we know is that our child or our spouse or our parent needs us and we must respond. Instead of feeling anxiety over what may happen to a job in the event of a birth or adoption of a child or medical crisis, employees should feel confident that they now will be able to maintain their jobs without sacrificing their families. It is my hope that with the passage of this bill, uniform minimum leave standards will bring the United States in line with the practices of more than 75 other countries that offer family-related leave.

Mr. President, it is important also to note that with the passage of the Family and Medical Leave Act, the first bill passed by the Senate in the 103d Congress, the gridlock that has paralyzed the legislative agenda for years will be broken at least for now and hopefully for the foreseeable future. It is fitting that the bill that breaks the gridlock and demonstrates to the American people that the Congress is serious about addressing the issues affecting the Nation is a bill that will permit millions of employees to be responsive to the needs of their families and productive in the workplace. I congratulate the Senator from Kansas [Mrs. KASSEBAUM] and my colleague, the senior Senator from Massachusetts [Mr. KENNEDY] for their tireless efforts to bring this bill before the Senate quickly in the 103d Congress. I particularly want to express my appreciation to the senior Senator from Connecticut [Mr. DODD]. It is a testament to his persistence that the debate no longer focuses on whether family and medical leave should be guaranteed to employees but how it can best be offered to employees. Mr. DODD is to be commended for his commitment over many years to bringing family and medical leave to workers throughout our Nation.

Mr. LEVIN. Mr. President, I am pleased to be an original cosponsor of the Family and Medical Leave Act of 1993 which would provide up to 12 weeks of unpaid leave for the birth or adoption of a child, or the serious illness of the employee or an immediate family member. This balanced proposal will help our Nation stay in step with the changing needs and structure of the American family.

The sponsors of this legislation have taken great care to incorporate provisions which protect business interests while still providing for family leave, seeking to lessen the burden on businesses, and make implementation of this leave a smoother procedure. This bill exempts businesses with less than 50 employees, or 95 percent of the employers in the United States. For businesses employing over 50 workers, the Family and Medical Leave Act includes a key employee exemption which would allow businesses to exempt the highest paid 10 percent of their work force. This provision would decrease the odds of businesses, particularly smaller ones, from losing upper level employees whose absence could greatly disrupt the flow of business. This bill also defines eligible employees as those who have worked 25 hours per week over the previous 12 months.

The bill also includes provisions to limit damage remedies to double actual losses, and contains good faith exception for employers with reasonable grounds for believing that they have not violated the act. It would also ensure the accountability of employees opting for family leave by requiring medical certification justifying the need for leave for the employee's own illness or illness of a family member. The bill also would require the employee to provide 30 days notice to his or her employer for a birth, adoption, or foreseeable medical procedure. As a member of the Senate Small Business Committee, I am particularly supportive of these proposals.

It has been reported that the Family and Medical Leave Act would impose minimal cost to the businesses it covers. The General Accounting Office [GAO] has estimated that the annual cost would be $9.50 per covered employee resulting exclusively from the continuation of health care benefits during the time the employee is on his or her leave. In a similar study, the Small Business Administration [SBA] has stated that "the net cost to employers of placing workers on leave is always significantly smaller than the cost of terminating an employee." The SBA has concluded that the costs to small businesses would be relatively small. Studies conducted in States which have already enacted family leave laws have shown that employers in these States have been able to adhere to these laws at minimal cost with few problems in implementation.

In the last 25 years, there have been dramatic changes in the composition of the American work force which has increased the need for family leave legislation. Most notable is the significant increase in two-earner and single-parent families. Currently, there are nearly 29 million two-earner families in the United States and 7.7 million single-parent families. This shift in work trends make today's families particularly in need for family leave protection when a parent is needed because of a family illness or the birth of a child.

Similarly, the bill provides leave for employees needing to care for the serious health condition of an elderly parent. Currently, two-thirds of the nonprofessional caregivers for older, chronically ill, or disabled persons are working women. Informal, unpaid caregiving by family members and friends provides 80 to 90 percent of the care for the elderly. Only 5 percent of our Nation's elderly reside in nursing home facilities. As the population of Americans over the age of 65 continues to grow, family caregivers will be more able to provide care at the most critical stages of an aging parent's illness as a result of this legislation.

Mr. President, employees should not be punished because they need time to take care of their families. Children are born. Family members get sick. This legislation provides workers with limited job security in order to deal with the inevitable, unpreventable family occurrences of birth, illness, and death. It is time to support public policies which promote the interest of family. This bill strikes the appropriate balance between the humani-

tarian needs of the family and the business needs of the employer.

Mr. SMITH. Mr. President, I rise in opposition to S. 5, the Family Medical Leave Act of 1993. Although I laud the intentions of my colleagues who wish to provide family leave for such events as childbirth, adoption, and serious illness, I cannot support a Federal mandate on this issue. The senior Senator from Massachusetts [Mr. KENNEDY] has stated that this legislation will help the employee, the employer, and the taxpayer, creating a win, win, win situation. From my perspective, however, all three of these groups stand to lose very important freedoms if this legislation is adopted. This is not win, win, win—it is lose, lose, lose.

First, employees are the primary group harmed by family leave legislation. It is ironic that by providing federally mandated family leave, S. 5 will impair the ability of employees to choose for themselves what other benefits they will receive, if any. This Federal mandate comes without any related Federal funding; thus, it is likely that this benefit will come at the expense of others. Some employees would rather have better health plans or pension policies, but may not be able to have that choice because of this Federal intervention. The greatest irony, however, is that while this legislation purports to provide leave benefits to the less advantaged employees who have not had such opportunities previously, only those who can actually afford to go 3 months without a paycheck will be able to take full advantage of the benefit. Since a great number of the companies that fall into the reach of this new law already provide family benefits voluntarily, the benefits to the employee have been greatly exaggerated.

Second, employers will be harmed by this act. The proponents of family leave legislation have had to strain logic to explain how business owners will benefit from these new measures. Employers may have to cut overhead or raise prices so that they can budget for the possibility of providing 3 months of leave to each and every eligible employee. Supporters have noted that money normally spent on finding and training replacements will be saved with family leave legislation. This might be true if the company can simply do without a given worker for the duration of their leave. If, however, a temporary replacement worker must be found, any savings on training are quickly lost on a worker who will only stay for 3 months. Not all businesses can afford this additional burden, and the Family Medical Leave Act will put those businesses in danger.

The most specious of the bill sponsors' assertions is the claim that family leave legislation will save taxpayers dollars by keeping people off unemployment lines. FMLA may add some measure of job security for existing positions, but it will also add to the cost of each new hire and make employers even more cautious about adding new personnel. Contrary to the proponents' beliefs, this mandate will cost jobs. Any expectations of decreased unemployment figures based on the advent of family leave requirements are misplaced.

The provision of family leave should be encouraged, but not in the context of a Federal mandate. I would have preferred to see the passage of the Flexible Family Leave Tax Credit Act that was recently introduced by Senator CRAIG. The flexible family leave bill proposed a refundable tax credit of up to 20 percent of total compensation for businesses that choose to provide their employees with up to 12 weeks of leave. The essential difference is that the Family Medical Leave Act provides mandates; flexible family leave offers incentives. This is an extremely important distinction.

Clearly, the passage of the Family Medical Leave Act of 1993 is a losing proposition. Unfortunately, it seems that we may soon have the opportunity to prove ourselves even bigger losers. Although the passage of this law was a fragile compromise among factions that agreed upon family leave regulation in principle, the books have not been closed on the issue. Some supporters of the bill are congratulating themselves for their accomplishment while others are restlessly insisting that this bill is only a first step. Demands for legislation such as this to cover all businesses and to provide paid leave benefits instead of unpaid leave are on the horizon. Indeed, the FMLA is just one step—one step in the wrong direction, to be sure. Let the record show my opposition to this sort of unnecessary governmental intervention in the free markets of our society, and my hope that Americans will soon realize the implications of the misguided policies of our Democratic majority.

Mr. KERREY. Mr. President, I am pleased to rise today in support of the Family and Medical Leave Act. I am a cosponsor of this legislation and firmly believe in the need for this reform. I support family leave both as a parent and as an employer and small businessowner.

As a parent, I feel the pull, as do many people, between the demands of work and needs of family. My support for family leave legislation reflects an appreciation of the changing realities of a workplace which must accommodate increasing numbers of working families. Women today, including millions of mothers with small children, are entering the work force in ever increasing numbers.

Nationwide, less than 10 percent of families are made up of married couples with children where the husband is the sole provider. In fact, the work force in the 1990's is 45.5 percent female, and women with young children comprise the majority of new entrants. In my own State of Nebraska, 71.1 percent of all mothers with children younger than 6 are in the work force. Nebraska, in fact, has the highest percentage of any State, of working parents caring for children younger than 6. This amounts to 85,000 children ages birth to 5 with mom and dad working.

In addition to their children, millions of working people must also assume responsibility for their parents. According to the American Medical Association, for every patient in a nursing home, there are three more severely impaired patients being cared for at home. In light of this country's lack of long-term care policy, supporting family members who must temporarily care for the elderly or disabled is critical.

As a businessowner, I understand that healthy small companies are an essential part of our Nation's economy. Because small companies comprise 94.2 percent of Nebraska's business community, they are especially important to the health of Nebraska's economy. In the midst of recession, small business acted as a driving force behind the limited economic growth we experienced. Between 1988 and 1990, 100 percent of the net new jobs in Nebraska were created by small businesses. For these reasons, I have supported flexibility in the implementation of the Family and Medical Leave Act.

The legislation we are currently considering contains numerous provisions to ease the impact on small business. For example, it covers only those employers with 50 or more employees. This provision alone exempts 95 percent of U.S. business and half of all workers. In addition, this bill covers only those employees who have worked for over 1 year and who work an average of more than 25 hours per week. Further, the bill allows employers to exclude their highest paid 10 percent of employees.

Despite the limited scope of this bill, I believe its passage is crucial for one very important reason: The United States has a responsibility to promote the values we hold in common as a Nation. It is clear that we have been neglecting the very people who comprise the backbone of this country, our working families. Our greatest competitors, Germany and Japan both legislate parental leave. Japan provides 12 weeks during which workers are paid 60 percent of their normal salary. Germany provides up to 26 weeks and for workers taking 14–19 weeks, pays them full salary during that time.

I am very concerned, however, that the act be implemented in a responsible fashion. Good intentions become meaningless when Government, in determining regulations, turns intended benefits into unintended burdens. The

family and medical leave policy is a straight forward proposition and I will work to ensure that the implementing regulations be clear, simple, and not burdensome in order to mirror this directness.

Through the Family and Medical Leave Act, we can support our American values. We can nurture our entrepreneurial spirit and support our family structure. America will prevail and continue to lead the world in economic strength, not in spite of the support we provide our working families, but because of it. I am pleased to support a bill that can protect the integrity of the family while protecting the vitality of small business.

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

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BURNS. Mr. President, I ask unanimous consent that I may speak as in morning business for no more than 10 minutes.

The PRESIDENT pro tempore. Is there objection? Hearing no objection, the Senator from Montana [Mr. BURNS] is recognized for not to exceed 10 minutes.

(The remarks of Mr. BURNS pertaining to the introduction of S. 325 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mr. ROBB). Who seeks recognition?

Mr. BURNS. 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.

ORDER OF PROCEDURE

Mr. SPECTER. Mr. President, I ask unanimous consent to proceed for up to 5 minutes as if in morning business.

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

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 332 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

FAMILY AND MEDICAL LEAVE ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. SPECTER. Mr. President, I note my colleagues have come onto the floor since I started this presentation. So I will not suggest the absence of a quorum because I think other colleagues will seek the floor at this time.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the Dole amendment No. 17, and the Mitchell amendment No. 18 in the second degree to the Dole amendment; that there be 4 hours of debate on the Mitchell and Dole amendments, concurrently, equally divided and controlled between the two leaders or their designees; that at the conclusion or yielding back of time, Senator DOLE be recognized to move to table the Mitchell amendment No. 18; that if the amendment is not tabled, the Senate proceed to vote, without any intervening action or debate, on the Mitchell amendment; that Senator DOLE then be recognized to offer an additional amendment in the second degree to the Dole amendment No. 17, as then amended by the Mitchell amendment No. 18, that will be identical to the text of the Dole amendment No. 17; that Senator MITCHELL, or his designee, then be recognized immediately to move to table the Dole amendment No 19; that if the Dole second-degree amendment No. 19 is not tabled, the Senate proceed to vote immediately, without any intervening action or debate, on the Dole second-degree amendment No. 19; that if the Dole second-degree amendment No. 19 is tabled, the Senate then proceed to vote, without any intervening action or debate, on the Dole amendment No. 17, as amended by the Mitchell amendment No. 18; that the bill then be read for the third time; that the Senate then proceed to the House companion, H.R. 1; that all after the enacting clause be stricken and the text of S. 5, as amended, be substituted in lieu thereof, the bill read a third time, and a vote on final passage occur, without any intervening action or debate; and that no amendment, bill, or resolution that relates to the issue of homosexuals serving in the military be in order prior to the earlier of the following: First, July 15, 1993, or second, the conclusion of the hearings that the Senate Committee on Armed Services will hold on the current policy with respect to the service of homosexuals in the military services, as described in paragraph (d)(1) of the Mitchell amendment No. 18; or third, the receipt from the House of a measure dealing with the issue of homosexuals in the military; or fourth, the issuance of any directive by the President on this subject prior to July 15, 1993, which significantly alters the policy as set forth in the White House statement of Department of Defense policy regarding homosexuals in the military, dated January 29, 1993.

Further, notwithstanding this agreement, a relevant amendment by Senator BROWN subject to relevant second-degree amendments, a Pressler technical amendment, and a manager's amendment remain in order prior to third reading of S. 5; and further, that the three amendments listed—that is, an amendment by Senator BROWN subject to relative second-degree amendments, a Pressler technical amendment, and a manager's amendment—be the only amendments in order pursuant to this agreement.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the majority leader.

Mr. DOLE. Mr. President, reserving the right to object, and I shall not object. I have had a conversation with the distinguished majority leader, and it is our hope—although we cannot put it in the agreement—that there will be two rollcall votes in this agreement. One will be on my motion to table amendment No. 18, the Mitchell amendment, and then there will be a rollcall vote on the motion of the majority leader to table amendment No. 19. Beyond that, we would hope there would be no rollcall votes, except maybe on final passage of the family leave bill.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. That is correct, and it is my intention and understanding.

Just so Senators would be aware, what we are talking about here is that Senator DOLE will offer an amendment that has already been at the desk. I will offer a second-degree amendment to it. We will have a period of debate of up to 4 hours. I hope we can conclude it in less than 4 hours, and I have already suggested to the Republican leader that we agree on both sides to reduce the time, and we will attempt to do that.

At the conclusion of the debate, Senator DOLE will move to table my amendment, and there will be a rollcall vote on that. If the motion to table does not carry, then my amendment will be adopted by voice vote as an amendment to the original Dole amendment.

Subsequent to that, Senator DOLE will reoffer the same amendment in the first degree. It will be identical. I will then move to table that amendment.

If my motion to table prevails, that ends the matter and we go to final passage. If my motion to table does not prevail, then Senator DOLE's amendment No. 19 will be adopted by voice vote and then we will go to final passage.

I think I have stated our understanding correctly.

Mr. DOLE. The majority leader is correct. We will do our best on our side to reduce the debate, because of a number of conflicts that are going to be starting at about 6 or 6:30.

I thank the majority leader, and we are prepared to proceed.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the majority leader, as amplified by the two leaders?

If not, that will be the order of the Senate.

Under the previous order, the Chair now recognizes the Republican leader for the purpose of offering an amendment.

Mr. DOLE. Mr. President, I ask unanimous consent that the time start running at 2:30.

The PRESIDING OFFICER. Is there objection? Without objection, the time will be deemed to have begun running at 2:30.

Mr. MITCHELL. Mr. President, I do want to clarify to make absolutely certain that everyone understands, that the other amendments by Senator BROWN, Senator PRESSLER, and the manager's amendment are debatable and we do not have time agreements on them. It is our hope that those can be completed promptly. But for Senators planning with respect to their schedule, under the agreement, those remain to be disposed of. We hope they will be done promptly, but we do not have time agreements on them yet.

The PRESIDING OFFICER. Under the previous order, the time will be deemed to have begun at 2:30 for the purpose of offering an amendment. The Republican leader is recognized.

AMENDMENT NO. 17

Mr. DOLE. Mr. President, I believe my amendment is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. THURMOND, Mr. COATS, Mr. GRAMM, Mr. SMITH, Mr. FAIRCLOTH, Mr. KEMPTHORNE, Mr. WARNER, Mr. LOTT, Mr. MCCAIN, and Mr. HELMS, proposes an amendment numbered 17.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the appropriate place, add the following:

SECTION 1. REVIEW OF DEPARTMENT OF DEFENSE POLICY CONCERNING SERVICE OF HOMOSEXUALS IN THE ARMED FORCES.

A thorough review of all Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, shall be conducted by the Congress before July 15, 1993.

All Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, as in effect on January 1, 1993, shall remain in effect until the completion of this review with respect to the Army, Navy, Air Force, and Marine Corps and unless changed by law.

Any proposed change in this policy shall be submitted by the President in the form of a bill and shall be introduced in each House of Congress by the majority leader in each House. The bill introduced in the Senate, placed on the calendar, be amendable with germane or relevant amendments, and shall be voted on no later than the close of business three days of session after its introduction.

The bill introduced in the House shall also be voted on no later than the close of business three days after its introduction. If both Houses agree to their separate bills, upon receipt of the House bill, if it is identical, the Senate shall be deemed to have passed the House bill in lieu of its own bill and the same shall be transmitted forthwith to the President.

Any conference report shall be nondebatable.

AMENDMENT NO. 18 TO AMENDMENT NO. 17

(Purpose: Military policy with respect to homosexuals)

Mr. MITCHELL. Mr. President, I offer my amendment now at the desk as a second-degree amendment to the Dole amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL] proposes an amendment numbered 18 to amendment No. 17.

Mr. MITCHELL. 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:

Strike all after section 1 and insert in lieu thereof the following:

It is the Sense of Congress that:

(a) The Secretary of Defense shall conduct a comprehensive review of current Departmental policy with respect to the service of homosexuals in the Armed Forces;

(b) Such review shall include the basis for the current policy of mandatory separation; the rights of all service men and women, and the effects of any change in such policy on morale, discipline, and military effectiveness;

(c) The Secretary shall report the results of such review and consultations and his recommendations to the President and to the Congress no later than July 15, 1993;

(d) The Senate Committee on Armed Services shall conduct—

(i) comprehensive hearings on the current military policy with respect to the service of homosexuals in the military services; and

(ii) shall conduct oversight hearings on the Secretary's recommendations as such are reported.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, I will be making a statement later in the afternoon, maybe within an hour or so.

In the absence of Senator THURMOND, who is necessarily absent because of the death of his brother, I am going to designate the distinguished Senator from Indiana [Mr. COATS], to manage the bill on this side and also the time on this side.

The PRESIDING OFFICER. The Chair recognizes the Senator from Indiana as controlling time on that side of the aisle.

Who yields time?

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Indiana [Mr. COATS].

Mr. COATS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized accordingly.

Mr. COATS. Mr. President, it seems like we have traveled a long road. It has not been all that long, but it has been very intense. The debate has been intense, the negotiations have been intense.

I appreciate the majority leader and the minority leader's efforts in working out a situation here today whereby each side can present their argument and a vote can be held on the substance or the merits of the issue before us. On an issue of this controversy and one which has so ignited public opinion, I think it is important that the Senate have an opportunity to debate and vote on the merits of the issue.

We all know that there are a number of procedural ways in which a direct vote can be avoided in the Senate. Those of us who are in opposition to the President's stated change in policy relative to the service of homosexuals in the military believe very strongly that the U.S. Senate and the American people, through their elected representatives, have the opportunity to state their case as to why they do not believe this policy should change, why there should be, before any consideration of a policy change, consultation with the military, hearings before the U.S. Senate, ample opportunity for both sides to state their position on the issue and to explain why or why not the current policy is defective.

When distinguished military leaders, such as General Powell and General Schwarzkopf and many others, have so clearly indicated that this contemplated policy change is absolutely critical to our ability to field the kind of effective national security and military operation to secure the defense of the United States now and in the future, when it is absolutely essential that we examine it carefully before we

move forward; we who support the current policy wanted to make sure we had ample opportunity to make our case.

We will have that opportunity. In the next 4 hours of debate, and in the two votes which will follow immediately after completion of that debate, Members of the Senate will have an opportunity to determine whether or not they support President Clinton's intention, as now implemented under agreement with the Joint Chiefs, to reverse decades of policy which, in effect, have excluded homosexuals from serving in the military or whether that policy is justified on the basis of 200 years of military experience and on the basis of those who have studied the issue thoroughly and on the basis of the testimony that has been received from those who are charged with implementing that policy.

Many of us here in this body have participated in the rebuilding of our military. We watched in the late sixties and seventies as a number of factors undermined the morale of our military, the esprit de corps, our fighting effectiveness. We watched as our Nation's military lost the respect of both friend and foe alike and we joined in an effort, beginning in 1980, to significantly rebuild our military. That effort came to fruition in the Persian Gulf and we saw the remarkable combination of quality people, quality training, and quality equipment brought together in a way that minimized loss of life to American men and women serving in the armed services as well as allied nations who joined us in that effort and remarkable success on the battlefield. This was no accident. This was the result of an extraordinary commitment, bipartisan I might say, commitment to rebuild our military, led by our President, supported by the Congress.

Mr. President, I ask to yield myself 5 more minutes of time.

The PRESIDING OFFICER. The Senator is recognized for an additional 5 minutes.

Mr. COATS. In that effort, we have achieved what most experts and observers claimed is perhaps the most efficient, effective military force in the history of the world. We take great pride in that. Americans take great pride in that. Any policy which our military commanders and leaders say will undermine that effectiveness and that efficiency, we are concerned about any change in that kind of a policy.

I think I could summarize the argument fairly quickly and then save time for my colleagues and hopefully myself to respond to other charges or questions as they arise during the course of this debate. I think I can summarize it best by stating just three essential points.

Many people who serve in the military today share a viewpoint that allowing homosexuals to serve in the military goes against their religious beliefs or moral convictions. Many of our young soldiers entering the military today are from families who hold very strong moral traditions, beliefs and convictions, and strong religious beliefs. Many military people have stated that a change in this policy will, over time, significantly affect our ability to retain many of the people whom we look to today for leadership in the military and will affect seriously our ability to recruit the needed people for the decade ahead to continue to supply the quality of people that we need in our military. Because, on the basis of their own personal religious convictions or their moral convictions, they see this change as creating an atmosphere in which they do not want their sons or daughters to serve, or which they themselves do not feel comfortable serving in.

Second, we fear that the change in policy will significantly reduce our ability to field an effective military force. Perhaps the most essential ingredient in an effective military force, as our military leaders tell us and as sergeants and captains and colonels and generals throughout the ages have said, is an intangible aspect that some define as morale, some define as esprit de corps, unit cohesiveness, discipline. General Powell has spoken to this. General Powell has indicated that change in this policy will undermine good order and discipline.

General Schwarzkopf said it will destroy the military. These are strong words. They need to be heeded. They need to be listened to. That intangible quality say, our field commanders, our sergeants, our platoon leaders, our battalion leaders—that quality is something that is fashioned in an extraordinary way through intense discipline, training, and it is derived on the basis of a unit cohesiveness that is critical to our effectiveness. It is important that we listen to our military leaders when they tell us that this change in policy will affect that in a very dramatic way.

Now, why? Why? Why does allowing homosexuals in the military affect that ability to field an efficient, effective military? Have not homosexuals served in the military, served as good patriots, served with courage, made positive contributions? Absolutely, they have. But there is an essential element here present that is difficult to talk about, no one really wants to talk about, but it must be talked about for us to understand what is at stake. It is a three-letter word called sex.

For the same reason we do not put men and women together in the enforced intimate living situations that we find in our military which is different from every aspect of life—where people live together in barracks, sleep together in tents, shower together in makeshift showers in the desert sands of the Persian Gulf, dress and undress with each other—for the same reason we do not put men and women together in a situation like that because of the sexual attraction element which is one of the most basic of all human instincts and really does not need to be explained in a whole lot of detail—I think everyone understands that——

Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. COATS. That is a tension-creating, conflict-creating, consequence-creating element that destroys morale, that undermines unit cohesiveness and effectiveness.

So we separate men and women. It is a problem but it is not an insurmountable problem.

When we are dealing with homosexuals who by definition have a sexual preference for someone of the same sex and put them in those same intimate enforced living conditions, we reach an insurmountable problem. It is a problem that unit and field commanders cannot overcome.

If the rationale is that we just simply have a behavioral code, then there is no justification or rationale to separate men and women. Because if the orders are simply everyone will be a professional, everyone must restrain their behavior or their conduct and it simply is bad conduct that results in disciplinary action, then there is no basis on which to say that men and women should not be put in the same situation.

The reality that we are facing is that the sexual instinct is inherent in all of us and we are simply tempting beyond individuals' ability to cope with situations—not all individuals but some individuals—when we set up a situation where that sexual attraction element is so present in those enforced 24-hour-day military-living situations.

For that reason, we need to closely examine the consequences of this, the implications of this, the way all of this will affect our military before we change the policy. Our objection is that President Clinton, instead of first getting the evidence and then making a determination about the policy, has insisted on a policy change. And the policy has now changed. And that is the issue before us. I hope we can develop that as we move along.

At this point I believe my time has expired.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, I yield 10 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. SMITH] is recognized for up to 10 minutes.

Mr. SMITH. Mr. President, during the recent Presidential campaign, can-

didate Clinton repeatedly criticized the vigilance of President Bush in defense and foreign policy issues and promised that, if elected, he would focus like a laser beam on economic issues.

But, ironically, shortly after taking office, this beam is being focused by President Clinton at our Armed Forces and it is igniting a blaze of controversy and dissent throughout the Nation.

By acting to overturn the ban on homosexuals in the military, the President I believe has embarked on a very dangerous course, a course which jeopardizes the readiness and the morale of the U.S. military: the best military in the world.

From the outset, let me say I believe it is a grave mistake, both substantively and procedurally. From a procedural standpoint, the President is acting unilaterally, without proper consultation with Congress and against the strong objections of his military advisers, including the Joint Chiefs. In fact, it has been widely reported that President Clinton strategized with gay rights advocates before consulting his own Joint Chiefs as to how to approach this volatile issue.

I find it extremely troubling that someone with no military experience and a controversial record of opposition to past military campaigns can so casually dismiss the input of our Nation's most trusted and experienced military commanders.

The substance of the President's initiative is even more objectionable. The existing policy embodied in Department of Defense directives is based on the concept of military necessity. It states that homosexuality is incompatible with military service, and that the presence in the military environment of persons who engage in homosexual conduct or who, in their statements, demonstrate a propensity to engage in homosexual conduct seriously impairs the accomplishment of the military mission.

Military necessity is and should be the driving issue here and the Federal courts have traditionally accepted the argument that national security concerns demand wide latitude in military personnel policies.

Mr. President, in his attempt to overturn this policy, President Clinton is shifting the focus away from military necessity toward equal opportunity. However, this approach is inherently and fatally flawed. The U.S. military is not designed to be a mirror of society as a whole. It is a unique community of individuals who possess the mental and physical discipline required to excel in an extremely demanding environment, sometimes a life-threatening environment. Civilian standards of equal opportunity are simply not compatible with the military regime. Whether it be rules about weight or hair length, curbs on free speech, or off-duty behavior, the military discriminates in ways that would not be tolerated in civilian society, and it must. This long accepted practice is necessary and appropriate given the unique circumstances which accompany military service. Where the defense of our Nation is concerned, the rights of the individual should never take precedence over the mission and duty of the unit.

There are many compelling reasons to maintain the existing Defense Department policy. Unlike civilian society, military service entails forced association, often in very close, cramped quarters such as on ships, submarines, barracks, or in crude field conditions. Military personnel eat together, sleep together, shower together, and share the same latrines. Privacy and modesty are unaffordable luxuries. Opening the ranks to homosexuals would exacerbate this hardship and transgress upon the legitimate privacy rights of heterosexual soldiers who may find homosexuality offensive and corrupt.

One thing is for certain, by legitimizing homosexuality in the Armed Forces, the President is ensuring that homosexual behavior will, inevitably, become more brazen and prevalent. Promiscuity, already a major health problem in the homosexual community, will likely increase in on-base clubs, local nightclubs, and throughout forces deployed worldwide. While some may dismiss this threat as exaggerated, the reality is that such promiscuity could have a very direct impact on the incidence of sexually transmitted diseases within the Armed Forces.

According to the British Journal of Medicine, the probability of homosexuals contracting sexually transmitted diseases is 20 to 50 times greater than heterosexuals. Lifting the ban on homosexuals will almost certainly increase the incidence of these diseases, including HIV infections, which are the precursor to AIDS. And since soldiers must be available to provide life-saving transfusions in combat, the military's walking blood bank would be endangered.

Perhaps most importantly, the presence of openly gay personnel will undermine morale and unit cohesion. Although today's U.S. military is the best trained, best equipped fighting force in the world, morale is already suffering from massive, ongoing personnel reductions. In addition, the President intends to eliminate 200,000 more personnel in the coming years, which will necessitate widespread involuntary separations. Consequently, morale within the All-Volunteer Force is plummeting, Mr. President, as loyal soldiers with distinguished records of achievement are being forced out of service to meet arbitrary budget reductions. Now, those who survive the downsizing are confronted with what, for many, is the abhorrent prospect of serving in an environment where open homosexuality is tolerated and, indeed, legitimized.

What kind of message is the new Commander in Chief sending to our Armed Forces? While candidate Clinton vowed to be a different kind of Democrat, President Clinton is rapidly establishing himself as a traditional antidefenese liberal. His radical military agenda, featuring meat-ax budget cuts and legitimization of homosexuality, I believe is reckless. And although the Joint Chiefs, rank and file service personnel, and every major veterans organization oppose lifting the ban, the President is callously disregarding their input in favor of the special interests of one community.

Mr. President, simply put, this process is a sham. Although the President has decided to defer final action for 6 months, it is a foregone conclusion that he will, in fact, overturn the ban. He said it. Thus, the so-called comprehensive hearings on this issue which Senator NUNN will chair are nothing more than a formality that will have no impact on the outcome. The President has made up his mind and no sage wisdom or testimony to the contrary will be considered. I, for one, object to it. And judging by the abundance of phone calls, faxes, and letters raining in on Capitol Hill, the American people do, as well. From the State of New Hampshire alone, phone calls are running more than 5-to-1 in opposition to lifting the ban.

As public servants and American citizens, all of us hope that the President succeeds in improving America. But the portrait of the New Commander in Chief that emerges today is disturbing. Instead of approaching this fundamental national security issue in a balanced, statesmanlike manner, the President is acting brashly to advance the radical agenda of one community. His decision to recklessly overturn 40 years of personnel policy is nothing short of arrogant. The consequences may be devastating, yet the President apparently is not giving it a second thought.

What should the American people infer from President Clinton's action? While candidate Clinton was quick to dismiss concerns over his antiwar activities and lack of military service as political hype, the fact remains that, in his first military initiative as Commander in Chief, President Clinton has declared war on his own Armed Forces. This ill-conceived, poorly timed battle hardly assuages concerns over the President's moral authority and leadership qualities. To the contrary, it can only rekindle and amplify lingering concerns from the campaign.

Mr. President, setting aside all of the media hype and competing special interest agendas, this issue boils down to one of military readiness. War is not a game. It is not about what is fashionable, it is not about what is politically correct. It is an ugly, brutal business in which success has no substitute.

Men and women die in war. Fathers and mothers and brothers and sisters and parents and families send these young men and women into combat and many times they die.

Those of us who have served in the military and gone to war know that unit cohesion, discipline, and morale are indispensable components of readiness. Anything that erodes these elements undermines the capability and effectiveness of the force.

If President Clinton would listen to those who are most qualified to comment on this issue, he would know that lifting the ban will open a Pandora's box of trouble. Take for instance, Gen. Norman Schwartzkopf, whose stewardship of Desert Storm earned him a distinguished place in military history. When questioned about lifting the ban, General Schwartzkopf replied that "allowing homosexuals into the military will destroy the military." There is certainly no ambiguity there, and that same sentiment has been echoed throughout the country by the Joint Chiefs of Staff, active and retired military personnel, and a plethora of veterans organizations. It is a sad statement, indeed, that the Joint Chiefs had to specifically request a meeting with the new Commander in Chief in order to have any opportunity to convey the services viewpoint on the issue.

In closing, Mr. President, I urge my colleagues to support the Dole amendment. Allowing homosexuals to serve in the military is prejudicial to good order and discipline, and will undermine morale and unit cohesion. Those who have served in the Armed Forces understand that, in the military regime, homosexuality is not just another lifestyle choice. It is an orientation that is simply incompatible with military service. The Armed Forces oppose lifting the ban. The American people oppose lifting the ban and if the President will not respect the will of the American public and heed their call, Congress must. I urge the adoption of the Dole amendment and yield back the remainder of my time.

The PRESIDING OFFICER (Mr. KERRY). Who yields time? The Senator from Georgia.

Mr. NUNN. Mr. President, first let me state again, as I have often in the last 8 to 10 days, that I do not support the original announced policy of President Clinton. I do, however, support the compromise announced on Friday by President Clinton regarding the Defense Department's policy excluding homosexuals from military service. I am also cosponsoring the second-degree amendment today offered by the majority leader, Senator MITCHELL.

I think everyone ought to be clear what this second-degree amendment does and what it does not do, and everyone ought to be clear about what President Clinton's directive that was announced last Friday does as opposed to his original plan for the Executive order.

Mr. President, the Mitchell amendment does not change the existing policy of the Defense Department excluding homosexuals from serving the Armed Forces. A vote for this amendment is not a vote to permit homosexuals to serve in the Armed Forces.

What the Mitchell amendment does is endorse the 6-month review period of this entire issue which was announced last Friday by President Clinton. What it does is say that neither the Congress nor the executive branch is going to take any final, determinative action on this issue at this time. Instead, both the Congress and the executive branch are going to spend the next 6 months carefully reviewing the basis for the current policy and the consequences of potential changes to that policy.

So my disagreement with my colleagues who have already spoken today and others who may speak on behalf of the Dole amendment is not a disagreement on substance. My strong feeling is we do not need any amendment at this time, and I will enumerate both why I am in favor of the second-degree amendment sponsored by the majority leader and why I do not support the Dole amendment.

Mr. President, the amendment sponsored by the majority leader directs the Secretary of Defense, in close consultation with the civilian and military leadership of the Department of Defense, to conduct a comprehensive review of the current Defense Department policy with respect to the service of homosexuals in the Armed Forces. The Secretary will report the results of his review and consultations to the President and to the Congress no later than July 15, 1993.

The majority leader's amendment also directs the Armed Services Committee to conduct comprehensive hearings on the issue of homosexuals in the Armed Forces, and on any recommendations in this area made by the Secretary of Defense.

If this amendment passes, Mr. President, the Senate will have 6 months to carefully review the Defense Department's policy on excluding homosexuals from the Armed Forces. Frankly, my hope is that once the Senate debates this issue and once we dispose of this issue this afternoon, we will be able to shift Congress' and the Nation's attention for the next several months to the truly important issues that face our country—the issue of economic growth, the issue of jobs, the issue of savings, the issue of deficit reduction, the issue of investment, the issue of health care, and the issue that we now have pending of family leave policy, so important to our children.

Mr. President, let me take a few minutes to discuss what I believe the compromise by President Clinton clearly set forth last week.

First, and most importantly, for the average officer or noncommissioned officer in the field who works directly with our troops, the compromise announced by President Clinton will not make a single change in the way that commander operates in the next 6 months. When there is an accusation or admission of homosexuality, a commander in the field will process the case in exactly the same manner that it was handled before last Friday's announcement.

Under the compromise, commanding officers will continue to process cases for discharge under the current laws and regulations relating to homosexuality. Cases involving homosexual conduct will be processed through actual separation and discharge, in accordance with current policy.

Cases involving only homosexual status—that is, those cases not involving any homosexual acts or conduct, where someone simply indicates they are homosexual—will be processed through all the administrative proceedings: Notice of the allegation; a hearing before a board of officers; review by the separation authority; and approval by separation authority. If the separation action is approved, the person will be separated from active duty.

Let us be clear on this important point. No member of the Armed Forces in the next 6 months who is found to be a homosexual will be retained on active duty under the compromise directive just put into effect.

If the Attorney General suspends the discharge of a person that is engaged only in a status case, if that happens, then that person will be placed in the Standby Reserve—not in a Reserve unit, but in the Standby Reserve—without pay until such time as this policy is concluded one way or the other. Then that individual, if the policy is reversed later, then at that stage that person in the Standby Reserve will be able to apply to return to active duty.

The Standby Reserve includes individuals in a nonpay status who are not affiliated with any unit or position designated for mobilization in the Ready Reserve. Individuals in the Standby Reserve would have the option, upon request, to return to active duty if the policy is change. If the policy is not changed, these persons would be discharged.

In all cases involving homosexual conduct and status, the compromise makes it clear that commanding officers may direct changes in the assignment of personnel during the course of separation proceedings if they determine that such changes are in the best interests of the individual or the unit concerned.

The second major element of the compromise, Mr. President, is that the Defense Department will no longer ask incoming recruits about their sexual

orientation. This is really the only significant change in policy that has taken place. However, the compromise places renewed and appropriate emphasis on informing all military members of the laws and regulations on sexual conduct which apply to them, not just on homosexual conduct but on important issues like sexual harassment. The briefings on military justice, which all recruits are required to receive when they join the military and periodically thereafter, will include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the Armed Forces.

Under the final component of the compromise, the Department of Justice will seek continuances in pending court cases involving former military members who have already been discharged on the basis of homosexuality and who are seeking reinstatement. The continuances will simply freeze those cases, which means they will not get back into the military until the completion of the review directed by the President.

Mr. President, the Armed Services Committee's hearings on this issue will begin next month. As Members will recall from the debate on the defense authorization bill last year, our committee would have held these hearings even without the events of the last 2 weeks. Even if President Bush had been reelected, we would have held these hearings, because I made a firm commitment to Senator METZENBAUM on the floor of the Senate last year, when he had a proposal which would have lifted the ban on homosexuals in the military. I opposed that provision on the floor last year. But I did state to my colleague from Ohio that we would have hearings this year. And we will.

Mr. President, I hope that our hearings will be thorough, fair, and comprehensive. We will receive testimony from the senior civilian and military leadership of the Department of Defense. I also think we ought to hear directly from the people who will be most affected by any change in the current policy, that is, the men and women in our military uniforms who serve in the ranks of our services throughout this country and the world. We will make every effort to hear from those who support a change in the current policy, as well as those who favor retention of the current policy. We will not simply hear from the top-ranking officials, but we will hear from those who will be most vividly affected. We will hear from our enlisted personnel, as well as our young officers.

Mr. President, I start—as I have said many times—from the premise that we should encourage every American to serve his or her country in some capacity. I am a strong supporter of national service. I applaud the patriotism of all persons, including homosexuals, who desire to serve our Nation in the military.

I have no doubt that homosexuals have served and are today serving in the Armed Forces with distinction. But most of them—and this is very important—are not today openly disclosing that sexual orientation.

I also believe, however, that we must give careful consideration to the advice of our military commanders on this subject. Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, has stated that in view of the unique conditions of military service, active and open homosexuality by members of the armed services will have a very negative effect on the military morale and discipline.

I have said for many months now that I agree with General Powell's assessment. I also believe, however, that we have to listen to other points of view, and that is what we will be doing in the Armed Services Committee. I hope all of us on both sides of this issue will be willing to listen to both sides.

Mr. President, every man and woman in this country has a right to be respected. Our Constitution enshrines individual rights and liberties. Our Constitution also underscores the essential role of the U.S. Government in providing for our common defense. When the interests of some individuals bear upon the cohesion and effectiveness of an institution on which our national security depends, we must be very cautious and careful and prudent.

If there is one thing I have learned on military matters in 20 years in the Senate, it is that our Armed Forces will function extremely well if we respect and support their basic requirements for cohesion and effectiveness. Resolving this conflict between individual rights and the basic needs of our military is difficult, but our Nation has had an effective military because we have achieved an acceptable balance. This balance must be maintained.

All of us must recognize the military is not like every other walk of life. Most people—in fact, almost everyone in the military, at one time or another, is called to give up some of their constitutional rights that they would have if they were in society. They do not have full first amendment rights. Anyone who walks in as a private and tells a sergeant what he thinks, fully and completely, everything on his mind, will find out very quickly that the first amendment of the U.S. Constitution does not fully apply in the military.

Anyone who says to the sergeant or chief petty officer at night, when they come into the barracks and ask for an inspection, that they are exercising their rights under the fourth amendment of the Constitution against search and seizure will carefully and quickly be disabused of that full constitutional protection.

And everyone who has served in the military, or even observed, knows that the military gives up a tremendous right of privacy that all of us exercise on the outside. I think all of us have to understand that. And we have to maintain the balance between the constitutional requirements protecting individuals, and the constitutional requirement that we in the Congress maintain armies and navies and protect our national security.

I would like to make this clear: The Joint Chiefs, every member of the Joint Chiefs supports the statement that President Clinton made last Friday. That is the statement that would be overturned by the Dole amendment. But every single member of the Joint Chiefs—to the best of my knowledge, as reflected by General Powell's clear statement—supports the statement that President Clinton made last Friday, which was the compromise.

In General Powell's words, the Joint Chiefs "* * * believe that the 6-month period of time that we have been given to work this issue, to study it, to hear the views of all concerned, and to work with the Congress will give us the time to do this without the press of the current situation on us."

Mr. President, this is a difficult and emotional issue. None of the debate on this issue should be taken as an excuse by anyone in our military services—or, indeed, anyone in our entire country—to engage in unacceptable behavior.

We have the most capable military in the world today because of the strong military leaders who instill good order and discipline throughout the ranks of our military services. Members of the Armed Forces know that violence against people in their own ranks or in the civilian community is incompatible with good order and discipline, and is completely incompatible with expectations of our military men and women.

Physical abuse of homosexuals by members of the Armed Forces cannot and should not be tolerated at any time, any place, by any commander. A strong signal must go out from every military commander from the very highest levels right down through the ranks making sure that every individual in our Armed Forces knows that we in this country condemn any instances of this kind of behavior.

Mr. President, in the coming months I hope that all of the interested parties will participate in a constructive and a deliberate discussion of all the questions raised by potential changes to the current Defense Department policy of excluding homosexuals from military service. I outlined a long series of questions in a speech on the Senate floor last week concerning the consequences of changing the policy in the way the President originally indicated he planned to make the changes.

In a few moments I will outline the questions that will come up if, indeed, we pass the Dole amendment. I have urged from the very beginning that the

President basically be cautious in moving forward, and that he think carefully about these questions before he issues an Executive order.

I also urge my colleagues in the Senate to listen carefully to the remarks I will make in a few minutes outlining the questions which I do not believe have been thought about that would ensue if the Dole amendment passed and became law.

Mr. President, it is up to all of us on both sides of this issue to look before we leap and to make sure we are not guilty of the old saying, ready, fire, aim. We need to aim before we fire.

I believe that the amendment today that is being proposed—I will go over that in detail in a few minutes—if we pass it, we would be guilty of the old saying, ready, fire, aim. We would not know what we are doing. There are just about as many questions that come up that relate to this amendment as there are questions that would have come up if the Executive order had been issued as it was originally envisioned.

Mr. President, I retain the remainder of the time and yield the floor.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. I yield myself 5 minutes of Senator COATS' time.

Mr. President, first let me commend the chairman of the Armed Services Committee for his statement and for the work he has done. Were it not for Senator NUNN, were he not able to slow down or stop the train, I think we would be in a far more difficult position than we are today.

We were initially under the impression that President Clinton did not consult with Senator NUNN or anyone else in the Senate on this issue. However, Senator NUNN has had several meetings with President Clinton regarding this matter but was simply not able to persuade him to defer any Executive action until hearings have been held. In fact, President Clinton has moved ahead despite Senator NUNN's recommendations.

I am not certain that every member of the Joint Chiefs of Staff agrees completely with the position articulated by the President last week. I have tried to contact at least one member, if not more, of the Joint Chiefs of Staff, and they have been, in essence, muzzled. They are not in a position to speak about this issue to anyone. I am not prepared to say they fully support the position of the President, but, nonetheless, he is Commander in Chief. They will either salute him and proceed with his policy or consider resigning in opposition.

Mr. NUNN. Will the Senator yield for a brief observation? I do not mean to say the Joint Chiefs agree with the President's position, including his statement that he planned at some point to move forward with the Executive order. They disagree with that. They do not want the policy changes.

What I intended and hope I indicated was that what they agreed with was the carefully worded directive the President handed down for what would happen over the next 6 months.

Mr. COHEN. I thank the Senator for his clarification. I think we have to be very careful in how this vote is characterized. On one hand, some say that those who support Senator DOLE's amendment are antigay. If you follow that argument, then you would also say that those who support Senator NUNN's or Senator MITCHELL's position are completely for gays in the military. Neither conclusion is warranted. I think that we have to address this as a procedural matter. This is a debate over what is the proper procedure. The President's position has been, or at least perceived by many of us as, you go ahead and hold your hearings; I intend to move forward in July.

That, to me, is not an acceptable position. Frankly, I think we ought to hold hearings first and then decide how to proceed.

President Clinton and I have one thing in common. Neither one of us has ever served in the armed services. For that reason, I think we have to proceed carefully. The President and Congress have an equal responsibility and an equal power in deciding this issue, and must proceed with caution.

The President and I have something else in common. We feel we must root out discrimination wherever we find it. We both know that our society has historically and, to a great degree, continues to discriminate based upon race, sex, age, and religion. We both believe discrimination based on these factors is intolerable and unconstitutional.

At issue here is whether it is permissible to discriminate based upon sexual orientation. This matter is unclear. As Senator NUNN has pointed out, homosexuals have served in the military for years. They are equally patriotic, equally courageous, and equally capable to any heterosexual soldier. That is a given.

As we all know, there is no rational basis for discriminating based on race, sex, age, or religion. Is there a rational basis to exclude gays from the military?

I do not know the answer to this question. I have not served in the Navy or the Marine Corps. I do not know what the living conditions would dictate under those circumstances. I do not know if lifting the ban would have a negative impact upon morale, unit cohesion, and discipline. Maybe we can formulate policies to minimize, if not eliminate, anything that undermines these three very important factors.

During the next several months of hearings I will keep an open mind about whether we can change our policies to accommodate gays in the military without undermining morale, unit cohesion and discipline.

I hope that we will consider the entire spectrum of this issue. During the hearings, we expect to call the Joint Chiefs of Staff and General Powell, who stand in opposition to changing the ban. However, there are other individuals who favor lifting the ban. I hope that they will be included among the witnesses, as well as those who currently serve in the military and those who will serve in the future.

As I have indicated before, I intend to support Senator DOLE but with the forewarning that I am completely open to lifting the ban. I am open to the idea if I can be persuaded that it can be done without compromising the readiness, effectiveness, efficiency and morale of the military.

I yield 5 minutes to the Senator from Wyoming.

Mr. WALLOP. Mr. President, let me echo the comments of Senator COHEN, that the Senate, the Congress, and the country owes the distinguished chairman of the committee for giving us the time and ability to make judgments on this.

Mr. President, there is one thing that many who have not served in the military, and many who maybe even have served in the military, seem to drop in their consideration of this argument. This is not a gay bashing question. This is not a social issue. This is a military policy issue.

Mr. President, I say that among the most important considerations for most Americans in this is to understand that the military of the United States is America's last pure meritocracy. Therefore, it is not the same kind of issue as was—as many have stated—bringing blacks into coequal service in the military.

This is quite different than that. That is unchangeable by the participants. All of us in this country—black, white, Hispanic, and Asian—took tremendous pride in the achievements of the military in the gulf. Since that time, we have commented to each other not how well blacks have performed or Asians, but how well our military performed.

Why do we say that? It is because those in the military are promoted, are maintained in military service on one basis, and one basis alone, and that is their merit, achievement as soldiers, sailors, airmen, male or female; they are kept in service and advanced and promoted solely on the basis of how well they perform. They do not have the Office of Economic Opportunity. They do not have the Justice Department. They do not have anybody else overlooking who gets promoted, who is permitted to reenlist, who is not promoted or is passed over for promotion. It is a judgment, albeit from time to time probably unfair, but mostly not, because the demonstrated capability of

the men and women of the armed services of the United States is based solely on their ability to perform jobs and duties for which they have been enlisted and enrolled.

Mr. President, if you take a behavioral issue and insert it into that equation, and if one is able to claim that one has not been promoted, or one has been passed over for promotion, or one has in fact not be permitted to reenlist, on the basis that one is gay, and we go to the courts and we determine in the courts that that may have been part of the judgment, and all of a sudden merit leaves the whole performance standard of the Armed Forces of the United States, instantaneously that happens. Commanders no longer dare make judgments as to who in their unit is most able and most worthy of promotion. Commanders will suddenly have to make a judgment based on other elements than performance.

Mr. President, this would be catastrophic for a nation downsizing its military forces, for a nation choosing to be capable, but smaller, and the farther we remove capability from the judgment of those who get to say who stays, who advances and who performs what job, the less capable, the less certain America becomes of the Armed Forces that serve it, protect it and project it.

Mr. President, that is fundamentally the issue. It is the issue of being able to promote solely on the basis of performance and not to be able to be challenged in court on the basis of other lifestyle projections.

Mr. President, I want to express my dismay and surprise at the confrontational and uninformed way in which President Clinton has chosen to deal with the issue of homosexuals in the military. This is a curious arena in which to make his first major national security decision; with pressing crises around the world and our forces deployed on missions in Iraq and Somalia, President Clinton has decided to ignore the advice of his uniformed military advisers and perform politically motivated social experiments with the American military. I find it hard to believe that a man with no military experience would so carelessly dismiss the 200 years of combined military experience possessed by the Joint Chiefs of Staff.

In addition to ignoring the Joint Chiefs of Staff, the President also has attempted to usurp Congress' role in regulating the Armed Forces. As article I, section 8 of the Constitution clearly states, the Congress shall have the power to, "make Rules for the Government and Regulation of the land and naval Forces." We should not relinquish that duty to a new imperial Presidency. This is not a simple housekeeping question. Lifting the ban on homosexuals would fundamentally alter military conduct and threaten discipline, morale, and effectiveness.

Congress must be involved in deciding the merits of such a dramatic change before it is implemented. Since the President has already taken preliminary action that amounts to a partial lifting of the ban, it is only appropriate for Congress to now consider this issue.

Under the banner of a compromise within his own party, the President, says he has delayed for 6 months making any changes; but this just isn't so, he has changed the rules, and has no intention of listening to the results of any hearings. If President Clinton assumes that he can simply suspend existing policy while Congress waits patiently he is seriously misguided.

I will support the Republican leader's amendment since, unlike the President's action, it does not prejudge the outcome of congressional hearings and it permits an unbiased 6-month review. I also support the Dole amendment since it requires that any changes to current policy be undertaken in as a change in law. This issue must ultimately be decided by a vote in Congress.

Mr. President, before we vote on this issue, let me express my own views. Homosexuals have the same rights as all citizens in this county, as is proper and just. That is not the issue.

The military is not just another American organization or place of employment. It is governed with a clear goal of providing a means of projecting and protecting American's interests. It is in the business of fighting and winning wars. Federal courts have rejected any constitutional right to serve in the Armed Forces or any right to a military career or to continued service. Service in the military is a privilege that can be ended at any time based on the changing needs of the military.

The core of the argument, supported by the supreme court, is that the military is a specialized form of society drawn from civilian society, and must be free to accomplish its mission. Mr. Aspin has no basis to suggest that the courts will somehow step in and make the change. The district court ruling in California is only a ploy; it will be overturned when it arrives at the Supreme Court as have previous cases for judicially changing military regulations. Supreme Court opinions in the area of military necessity versus individual rights have been clear and consistently in favor of military necessity as the overriding consideration. My colleague, Senator NUNN was right to recall the differences in military and civilian life in his recent statement, when he reminded us that requirements of discipline supersede the rights of free association and some of the rights included in the first amendment.

The High Court has repeatedly sustained the argument that the military must be free to accomplish its mission. Chief Justice Rehnquist's opinion in the Goldman case sums it up well:

> The military need not encourage debate or tolerate protest to the extent that such tolerance is required of the civilian state by the First Amendment: to accomplish its mission the military must foster instinctive obedience, unity, commitment, and esprit de corps.

So, Mr. President, Mr. Aspin should know better than to assume that the courts will somehow lift the burden from the administration to make its case.

The key point here is that military necessity requires stricter standards of behavior and lifestyle. Military readiness is the correct reference in the present debate unless changed by Congress.

Those who favor lifting the ban on homosexuals in the military have sought to shift the frame of reference, from military necessity to equal opportunity. We should not confuse the two concepts or attempt to apply one in a context where it does not fully apply. To do so would undermine the military's long supported right, if not duty, to regulate its society to provide for combat effectiveness.

As Senator COATS recently pointed out in the New York Times:

> Lifting the ban will inevitably mean privileged treatment. Will a base have to provide housing for homosexual couples as it does for families: Will same-sex "dependents" receive medical benefits? Will quotas be required in hiring and promotion?

It this sounds hysterical, consider this portion of a letter to the Superintendent of West Point by an ACT UP member who was a Clinton volunteer:

> Lifting the ban is not enough. * * * We intend to sue in Federal Court as soon as the ban is lifted to insure compensatory representation in the service academies. In particular we intend to get a ruling mandating a set number of places for homosexuals in the Air Force Academy, the Naval Academy, and West Point.

Homosexuals argue that it's not a matter of integrating them into the military since they are already there. Much is made of the apparently distinguished service of selected individuals who came out of the closet. This misses the point: Sure, there are some gays who fit in, but the exception does not prove the rule. Once the sanctions are lifted, they will be free to conduct themselves as they see fit. Even if sodomy is still proscribed, obvious gay behavior will undermine privacy, morale, and discipline.

Nor is the fact that other countries allow homosexuals in the military reason for us to follow suit. In fact, those countries that permit homosexuals to serve in the military have serious problems. Most of them must severely discriminate against them to protect privacy, cohesiveness, and morale. Some do not allow gays to possess security clearances or become officers. Promotion opportunities are limited. Even extremely liberal countries like Holland face serious problems of morale.

Mr. President, the Congress has a duty to the people in the armed services to guarantee policies that protect them and acknowledge the unique nature of the society they voluntarily entered into in order to protect us. As Senators, we have a duty to listen to our constituents, and we have a duty to the Constitution to govern and regulate the Armed Forces.

The existing policy is comprehensive in its reasoning and stands on its own as a tried and tested guarantor of military effectiveness. This policy must be reaffirmed, in my view, in a statutory form, not to condemn anyone or to restrict anyone's rights, but rather to provide for the common defense.

Mr. President, we must be clear about one thing: Military service is a privilege not a right. Access to the military has never been fair. Because victories in combat are achieved by cohesive units, the Armed Forces routinely sacrifice individual interests to ensure unit cohesion. Military service is legally restricted or denied entirely to patriotic Americans who are too tall, too short, too fat, color blind, flat footed, and mentally or physically handicapped in any way. In the civilian world we aggressively seek to protect the civil rights of these groups, but in the military, they simply do not belong.

There are other restrictions; single parents, for example, are not allowed to enlist. This is no reflection on the inherent worth of these people as human beings; they are simply not suited for military service. Professional military judgment and experience indicate that mixing known homosexuals and heterosexuals degrades cohesion and combat effectiveness. It is not the individual qualities of the homosexual, but rather homosexuality itself, which is incompatible with military service.

Mr. President, the administration has tried to cloud the discussion by referring to this as a matter of status versus behavior; that somehow homosexuals can be integrated into service life as long as their behavior isn't against regulations. Mr. President, this explanation is foolish at best, and can be explained by the simple analogy of requiring military men and women to share the same showers and open barracks, yet promising to punish only those who trouble others or misbehave. Status versus behavior is high sounding foolishness, and intentionally confuses the discussion.

If the President feels he can just sign an order and end the problem, he is wrong. Military effectiveness rests on more than commands from above. Men and women risk their lives, but only because they trust their commanders and their comrades—and their commander in chief. Most Americans are uncomfortable with homosexuality in the military; in a September 4, 1992, USA Weekend survey, 67 percent of the respondents wanted the ban to continue. No change in Pentagon policy can change these feelings. A commanding officer who is known to be gay will encounter so much mistrust, if not hostility, that his ability to lead his unit will be severely compromised. All kinds of orders and punishments will not make men and women willingly put their lives in his hands.

And finally, there is the President's clarification on the issue. He now tells us that he doesn't see why homosexuals can't be allowed to serve, it's just that they can't behave badly or act contrary to the law.

I believe this administration has the burden of proof to convince this Nation that the actions they propose would not impair military effectiveness.

Since no one in the administration is willing to listen to any but themselves, Congress must act now to codify the current policy. Any meritorious changes to this standard can then be reviewed and debated in the normal manner of hearings and floor debates and votes on specific changes. In the meantime, we should assure our service personnel that there will be no suspension of the policy or other modification not based on a thorough review and fully debated approach.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I think the question of sanctioning the presence of homosexuals in the military is certainly one that this body recognizes is a difficult and very diverse issue. I think it is an issue that can only be fully addressed with the passage of time and careful deliberation by this body.

At the outset of a new administration, in a Nation beset with a variety of vexing problems, this is certainly not the issue that should have emerged at the top of our collective priority list. Yet, here we are, engaged in a debate today that most of the Members of this body did not seek.

Make no mistake about it, President Clinton, in choosing this issue as his first foray into the defense area, is the one responsible for filling our mailrooms, jamming our switchboards, and overburdening our fax machines with expressions of public opinion and outrage opinion.

I can understand how President Clinton, sensing his miscalculation, would prefer to place the issue on the back burner for 6 months. But the pot was already been brought to boil, so we are forced to deal with it and deal with it now.

In most instances, an individual's private behavior and his or her own private life should certainly not be a Government concern. But when a particular behavior has the ability to adversely affect good order and discipline in our armed services, it suddenly has an impact on one of the Government's principal obligations and constitutional duties, to provide for the common defense.

Mr. President, over the past several weeks, I have listened intently to a number of my constituents, many of whom have served, or are serving, in our Armed Forces. By an overwhelming margin, Alaskans oppose a policy of reversal.

Those who have personally led troops in combat are most adamant in their opposition to lifting the ban. They are alarmed that a President with no military experience has reaffirmed his desire to eventually reverse the current policy, notwithstanding the advice of the Joint Chiefs of Staff based on some 200 years of combined military service.

Mr. President, my position is clear. It is not an issue of rights. I am certainly not critical of those who choose a lifestyle. I think individuals have a right to choose their lifestyle. But serving in the military, Mr. President, is not a right, it is a privilege. Not everybody can serve in the military. One gives up certain rights in going into the military, and I think that is the basic difference, Mr. President. Military service is a privilege, not a right.

I have a great deal of confidence in my colleagues on the Armed Services Committee to examine matters. The hearings that they will be holding clearly will bring to light a vast variety of specifics with regard to this issue.

But as the ranking member on the Veterans' Affairs Committee, I have asked the chairman, Chairman ROCKEFELLER, to convene a hearing on this issue as it impacts the Department of Veterans Affairs, and its ability to serve our Nation's veterans.

I think this is an area that has been overlooked, Mr. President. VA has an obligation to provide health care of our veterans, and this proposal would supply an additional burden.

Hearings before the Veterans' Affairs Committee would give the veterans of this Nation the opportunity to be heard, since this change could well affect them and the level of benefits that they might receive in the future.

For example, Newsweek reported that homosexual men account for over two-thirds of all reported AIDS cases. The AMA, American Medical Association, advises us that 50,000 Americans will die of AIDS this year. If homosexuals have a higher incidence of sexually transmitted disease than heterosexuals, what will be the effect on the VA medical centers as larger numbers of newly eligible homosexual veterans seek care in the VA Health Care System?

Mr. President, we simply do not know.

Under current conditions, VA projects that the costs of AIDS treatment will increase 20 percent per year. If the costs of VA AIDS treatment are further increased by the addition of a high risk population to the veteran population, the Congress will be faced with a choice of making substantial increased appropriations for veterans' health care, or requiring VA to absorb the costs.

Mr. President, there is only one way the VA could absorb the costs—by reducing treatment to other veterans or providing more dollars.

A decision to admit gays to the military will not be a free one. That decision will be paid for in increased funding for VA, or by the veterans VA must turn away in order to care for the new AIDS cases the decision will bring.

I submit that no matter which option we take, the cost will be high.

If additional funding for veterans' health care is available, there is no shortage of urgently needed and unmet needs within the VA Health Care System right now.

According to the CDC 60 percent of the AIDS cases in adult men reported in fiscal year 1992 were the result of men having sex with men. If gay men represent 10 percent to 15 percent of the male population and have 60 percent of the new cases reported, it is clear that the gay population still brings an increased risk of AIDS to the table.

In comparison, 48 percent of the AIDS cases treated by VA have been the result of homosexual contact. VA has treated over 12,000 veterans with AIDS, 6 percent of all AIDS treatment in this country. VA spent $233 million treating veterans with AIDS in 1990. By 1995, that amount is projected to increase to $581 million.

If gays are openly admitted to the uniformed services, we can expect the profile of transmission for AIDS cases in the veteran population to take on the same characteristics as transmission in the male population as a whole.

That is, the percentage of cases due to gay sex will likely increase over time from the 48 percent currently found in the veteran population to the 60 percent found in the general adult male population.

Mr. President, that is a 12-percent increase, and it is reasonable to expect that it would bring with it a 12-percent increase in cost.

If more funding is not available, I do not want to see VA health care professionals in the position of having to decide whether to turn away new AIDS patients or to turn away other veterans because the resources are not available to treat both.

There are other issues as well:

Mr. President, this body does not yet know precisely the effect of AIDS on veterans' insurance programs, but I am developing that information. I predict we will find that the impact is substantial, and that if gays are allowed to serve openly in our Armed Forces the impact will increase. The Senate, the President, and America's veterans should have hard data on this question before a decision on admitting gays to the military is made.

Would the VA become mired in controversy and litigation to determine if gay soldiers' partners are dependents or survivors for purposes of VA benefit programs?

Under the current policy, HIV infections contracted in the military are now considered service-connected disabilities for which compensation is paid. Gladly, there have been relatively few cases. What would be the effect of an open military admission policy for gays?

I would hope that the Veterans Affairs' Committee can hold open, frank hearings on these and other matters, and I trust that our committee chairman and my good friend, JAY ROCKEFELLER, will agree with me and other Members that such hearings for veterans are important in the resolution of this matter of military policy.

Mr. President, it is noteworthy that the American Legion, the Veterans of Foreign Wars, and AMVETS—three of the Nation's largest and most influential veterans organizations—oppose a change in current military policy on homosexuals. Moreover, the Association of the U.S. Army, the Navy League, the Air Force Association, the National Guard Association, the Marine Corps League, the Reserve Officers Association, and the Retired Officers Association are united with veterans organizations on this matter.

Mr. President, it is a certainty that our military forces will be tasked to perform diverse missions in the future, ranging from peacekeeping and humanitarian relief to rapid deployment response and engagement. We cannot risk military capability for the sake of a well-intentioned but misguided notion of social engineering. In a similar vein, we should not take an action that undermines the range of veterans benefits that Congress has so carefully crafted through the years, intended to reward for faithful service those injured in harm's way, and to restore those who sacrificed life and limb for country.

I am pleased to be a cosponsor of the pending amendment with Senator DOLE.

Mr. President, I ask unanimous consent that a list of organizations supporting the ban on homosexuals in the military be printed in the RECORD.

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

ORGANIZATIONS SUPPORTING THE BAN ON HOMOSEXUALS IN THE MILITARY

National Guard Association.
Naval Reserve Association.
The Retired Officers Association.
Retired Enlisted Association.
Non Commissioned Officers Association.
Marine Corps League.
Association of the U.S. Army.
Marine Corps Reserve Officers Association.
Enlisted Association of the National Guard.
U.S. Army Warrant Officer Association.
Fleet Reserve Association.
Jewish War Veterans.
Air Force Association.
Military Chaplains Association.
National Association of Uniformed Services.
Veterans of Foreign Wars.
The Military Coalition.
Air Force Sergeants Association.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I yield 10 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair, and I thank my friend and colleague, the chairman of the Armed Services Committee.

Mr. President, I am not going to take much of the Senate's time today on this matter. I would simply start out by referencing a statement that I made immediately following the very thoughtful, very detailed and reasoned statement made by the chairman of the Armed Services Committee, Senator NUNN. I would reference anyone who is interested to the RECORD of January 27, starting on page S. 757, a statement that I made at that time.

I have had the privilege to serve my country in the armed services and I alluded to that service and some experience that I have had in this particular area. I would simply appeal to all involved to comment on whatever they think are the legitimate merits of the situation, but let us try and keep away from the emotionalism as much as we can.

I want to start out by saluting Senator NUNN, the chairman of the Armed Services Committee, once again working in conjunction with the majority leader, for putting together what I think is a proposal that can go a long ways in solving the problem that exists. And I do not for a minute indicate that there is not a problem.

I would simply say, Mr. President, that since I have had the privilege of serving my country, that does not make me any more of an expert on this, I guess, than any other. So I simply say that I hope that all of us would think back to our experiences, the experience of others, the compassion that I think we have to look to for all involved in this controversy, but, above all else, let us do as we usually do to conduct he business of the U.S. Senate as best we can on factual debate and thought and reason together and not try to inflame people with comments and suggestions that would take this beyond what I think is the responsibil-

ity of the Senate, and that is to come and reason together to try and work out a compromise.

Mr. President, the prospect of lifting the ban on homosexuals in the military has set off a firestorm of controversy. We can all agree on that. Since President Clinton announced his intention to keep his commitment, the matter has consumed the media's attention and touched a nerve in the American public like few issues before it.

As a World War II veteran and a 14-year member of the Senate Armed Services Committee, I hope I bring an informed perspective to this debate on the implications of a change. Still, I have approached the issue with compassion for all those affected, directly or indirectly, one way or the other, on the issue.

Over the last 2 weeks, I have listened closely to the arguments made by both proponents and opponents. I have listened to the concerns expressed by servicemen and women, officers and enlisted. I have taken into account the opinions of heterosexuals and homosexuals, veterans and civilians. I have discussed the pros and cons of the reform with the President himself and other Senators. Like my colleagues, my office has been deluged by hundreds of phone calls and letters from constituents. This outpouring of views from Nebraskans has been a valuable counsel to me as I have considered the advisability of making a change in this area.

Although I must say that, contrary to what some of my constituents have felt, I have never, ever advanced a proposal, nor have I seriously considered, to this moment, at least, and probably will not in the future, the permanent and total lifting of the ban. But there is a lot of reasonable ground in between, I suggest.

The agreement reached between the President and Members of this body, including Senator NUNN and Senator MITCHELL, to postpone the final decision until hearings can be held on the implications and consequences of the change is a wise one. We need to be slow and deliberate about the President's wishes. This study time will provide us with a much-needed cooling off period to better address objectively the concerns raised to date. Similarly, a temporary moratorium on asking new recruits about their sexual orientation and halting final discharge action of those homosexuals currently in the military is in keeping with the President's belief that conduct, not status, should be the determining factor when it comes to military service to your country. I can support this interim policy because it does not limit the existing authority of a commander to reassign any individual service person, heterosexual or homosexual, from a unit who may be a disruptive force to the unit's morale or operation for any reason.

In retrospect, the President in my view should have acted with more deliberation and consultation with the men and women in the services and the Congress. There are many questions to get answered on this subject before a final decision on a change should be made. The first priority of the Armed Forces is the national security of the United States. The military is not designed and should not be used as a laboratory for volatile social change. Congress has a special obligation to those in uniform to fully examine the implications of change on personal privacy and unit cohesion. Our chief concern must always be what is best for the Armed Forces as a whole, not necessarily what is best for the individual. I believe the hearings scheduled next month in the Armed Services Committee will be helpful in sorting out these very complex and complicated matters.

Amid all the emotion that this debate has generated and all the sensationalistic speculation over what changes may mean to our Armed Forces, I worry that less and less attention is being paid to the fundamental pillar of service in the military: the conduct of the individual. Is the essential ingredient. I repeat: The conduct of the individual, regardless of their sexual persuasion. In my view it is premature to draw the conclusions the President has reached. Likewise, opponents of the President's wishes are in error when they elevate an individual's status above his or her conduct and ability to serve in our Armed Forces.

The facts of the matter are that somewhere between 100,000 and 300,000 people now serving in the military are homosexuals. I think we should recognize that whether you are a heterosexual or a homosexual, you do not fit a type that has been so prominently displayed and offered so very often for homosexuals.

For these reasons, I oppose the Dole amendment and support the second-degree amendment before the body. The Congress needs time to work with the President on this complex and emotional issue, and explore in depth the consequences of what we are about.

Codifying now the ban on homosexuals in the military prejudges this study period and, in my view, is inappropriate at this time. There is clearly a time to get things done. There is clearly a time for constructive evaluation.

This is clearly a time for constructive evaluation. This is clearly a time not to rush to emotional judgment. Let us proceed in an orderly fashion, with the Congress not further challenging the President at this juncture, nor the President further challenging the Congress.

Prudent hearings and reasoning together may produce a workable compromise.

I thank the chairman of the committee. I thank the Chair.

Mr. President, I yield the floor.

Mr. COATS. Mr. President, I yield 3 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 3 minutes.

Mr. HEFLIN. Mr. President, I rise today to address the issue of the military's right to make homosexuality a disqualification to serve in the Armed Forces. I do not think that anyone questions the premise that the personnel in military services occupy a different status from the status accorded American nonmilitary citizens. The military is not a democratic institution. The military must operate from an authoritative basis, where discipline and command prevail over a large number of individual rights. Many constitutionally protected rights are not available to its members. It involves a quasi-caste system. An individual's right to freedom of speech, freedom of assembly, freedom of protest, and other fundamental rights are greatly curtailed because of the unique demands of national security.

There is a large body of law that has developed under the provisions of section 8 of article 1 of our Constitution. Because of this body of law, I would like to approach this issue through a discussion of relevant judicial decisions. In my review of the legal history, I am convinced that it confirms my position that the ban on homosexuals in the military should remain in place.

The courts have long recognized the uniqueness of the military. In the case of *Parker* v. *Levy*, 417 U.S. 733 (1974), the Supreme Court noted that it has long recognized that the military is, by necessity, a specialized society separate from civilian society. This difference has led the military to develop laws and traditions of its own during its long history. The Court points out that these differences between the military and civilian communities result from the fact that it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.

Much of the debate on this issue lately has failed to take this distinction between the military sector and the civilian sector into account. Any thoughtful discourse on the matter must give this distinction the utmost consideration. Although the Parker decision was not one concerned with homosexuals in the military, it directly addressed the issue of the rights of the individual in the military, thereby establishing a framework the Court has subsequently used to examine a number of cases involving constitutional claims brought by service personnel.

In the 1981 case of *Rostker* v. *Goldberg*, 453 U.S. 57, the Supreme Court heard arguments from several males challenging, on fifth amendment grounds, the Military Selective Service Act that

required registration for males but not females. The Court ruled that the provision did not violate the fifth amendment, and that Congress acted within its constitutional authority to raise and regulate armies and navies.

For our discussion here today, this opinion provides some helpful insight into Congress' role in this matter. Justice Rehnquist, in delivering the opinion of the Court, noted that a case of this nature was not merely a case involving the customary deference accorded congressional decisions, but rather this case arose in the context of Congress' authority over National defense and military affairs, and perhaps in no other area has the Court accorded Congress greater difference.

This deference to Congress was brought out again in the 1983 Supreme Court decision, *Chappell* v. *Wallace*, 462 U.S. 296. The Court confirmed its earlier position recognizing the unique disciplinary structure of the Military Establishment.

Writing for the Court, Chief Justice Burger noted that many of the Framers of the Constitution had recently experienced the rigors of military life and were well aware of the differences between it and civilian life. In drafting the Constitution they anticipated the issues raised in this case. Their response was an explicit grant of plenary authority to Congress to raise and support armies; to provide and maintain a Navy; and to make rules for the Government and regulation of the land and naval forces.

This framework has been followed in several circuits on matters more directly on point. In *Rich* v. *Secretary of the Army*, 735 F.2D 1220 (1984), the tenth circuit affirmed a district court decision which upheld an Army regulation that discharged petitioner for fraudulent enlistment when Army learned that in enlistment process, the soldier had falsely represented that he was not homosexual.

The court, in its opinion, clearly stated that they did not accept plaintiff's contention that the Army's policy of excluding homosexuals violated his rights under the equal protection component of the fifth amendment. The court noted that—

> A classification based on one's choice of sexual partners is not suspect * * * and even if heightened scrutiny were required in reviewing the Army regulations because they restrict a fundamental right, the classification is valid in light of the Army's demonstration of a compelling governmental interest in maintaining discipline and morale of the Armed Forces.

The seventh circuit came to a similar conclusion in the case of *Ben-Shalom* v. *Marsh*, 881 F.2D 454 (1989). In that case, the court ruled that plaintiff's constitutional rights were not violated by the application of Army regulation making homosexuality or admitted homosexuality a nonwaivable disqualification to service in the military.

This case was directly on the issue of status. The court found that a rational basis standard of review was the correct test to be used in an equal protection analysis, and that the Army satisfied that standard without any difficulty.

Many point to the recent district court decision in California finding the Army's policy unconstitutional. This case, however, appears to be an aberration that will have difficulty on appeal. The judge in that case cites the ninth circuit case of *Pruitt* v. *Cheney*, 963 F.2D 1160, as authority for his decision. The Pruitt case, a case which concentrates on the issue of a summary judgment ruling, only restates the position of other circuits in pointing out that under an equal protection claim regarding a discharge based on status, the correct standard of review is a rational basis test.

The court, in the same opinion, went on to strongly acknowledge that military decisions by the Army are not lightly to be overruled by the judiciary.

Thus, contrary to years of legal precedent, the district judge in California found that the Army had no rational basis, in essence, no legitimate reason for the Army's policy. It is my estimation that the court of appeals will not so easily dismiss the Army's reasons for the regulation.

Mr. President, the military runs on a different system than the civilian sector. We, as a nation, entrust our security to the men and women who serve in our Armed Forces. In their service, they subordinate the rights of the individual in order to serve the whole. It is a system that has served this Nation well for many years.

My opposition to changing the military policy comes from a deference to the opinion of those who work so hard for the interests of our Nation's security. I believe a change in the policy regarding homosexuals in the military would be an error and go against the legal precedent as well as the carefully considered decisions of our military leaders.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. Mr. President, few matters are more vital to America's security than the readiness of the military forces who defend the values which we all cherish.

One of those values, Mr. President, is the protection of individual rights.

Yet even as our new President and Commander in Chief seeks to advance those rights by removing the unfair and outdated ban on gays and lesbians in the military, we hear disturbing voices across the land.

As we listen to those who tell us that gays and lesbians will destroy the military, the simple truth is that this debate is not about military capability at all. It is about irrational fears and prejudices. It is about civil rights and leadership in a democratic society.

The issue today, Mr. President, is simple: Do we move forward as a society, recognizing the talents and dignity of all of our citizens? Or do we allow our differences to pit one American against the other and take this country down a painful road we have traveled before?

The Pentagon tells us flatly that homosexuality is incompatible with military service. As a military leader, the Commandant of the Marine Corps, asked in defending the ban presently:

> How would you react if your son called and informed you that his roommates for the next 2 years were two homosexuals * * *?

This is not the first time the military has had such concerns. I want to quote a 1942 Navy memorandum.

"Men on board ship live in particularly close association," warned a 1942 Navy memorandum. "In their messes one man sits beside another; their hammocks or bunks are close together; in their common tasks they work side by side. * * *"

"How many white men would choose, of their own accord, that their close associates in sleeping quarters, at mess and in a gun's crew should be of another race?" the Navy's top admirals asked.

In 1948, speaking in favor of a measure to guarantee to any American the right to serve in a military unit comprised exclusively of members of his own race, one Member of this body said:

> I know that perspectives are often blurred by the desire to capture the votes of a highly organized and vocal minority.

Some Senators of that era feared that allowing negroes and whites to serve together would have grave public health consequences. "The mandatory intermingling of the races" one said, would be "sure to increase the number of men who will be disabled through communicable diseases."

And Senators in opposition to President Truman's directive insisted that they were in no way opposed to basic civil rights for all. They simply felt duty-bound, Mr. President, to defer to the Pentagon's expert judgment on the issue.

How many of those very same arguments have we heard repeated this year with regard to President Clinton's proposed directive to integrate gay and lesbians in the military?

While the discrimination faced by African-Americans often takes different forms from that faced by gay and lesbian Americans, this much we can say with absolute certainty: The military has no more of a rational basis for banning gays and lesbians in 1993 than it did for segregating African-Americans in 1943.

Old beliefs die hard, Mr. President. But when they stand in the way of equal opportunity for any American, die they must.

Gay and lesbian Americans love their country as much as any other Americans. And like any other Americans, they deserve the choice to be judged on their conduct, character, and capabilities—not persecuted because of their status alone.

Today, Mr. President, those who would keep gays and lesbians out of the military desperately cling to one last straw: the privacy argument.

It is unthinkable, they tell us, that straight men and women could properly function if occasionally forced to share a shower or a bunk with a gay or a lesbian. This last issue, they insist, goes to the very heart of an individual's most personal beliefs.

I can remember when it was just as unthinkable to ask a white American to drink from the same water fountain or swim in the same pool as a black American.

The issue is not privacy, the issue is the invasion of privacy or any other conduct on the part of any soldier or sailor, whether homosexual or heterosexual, that constitutes sexual harassment. If the U.S. military is truly concerned about the environment created by sexual harassment in the ranks, this Senator suggests that the Pentagon start by bringing to full justice those involved in the Tailhook affair and by implementing immediate measures to ensure that standards for sexual conduct and behavior are fairly applied without regard to gender.

But let us for a moment take the Joint Chiefs of Staff at their word—that the presence of openly gay and lesbian soldiers and sailors would destroy the morale and unit cohesion which allow the military to effectively carry out its mission.

We would expect, then, that in wartime—when unit cohesion can literally mean the difference between life and death—the military would be especially vigilant in ferreting out and discharging gay soldiers. But in fact, Mr. President, the record clearly demonstrates that precisely the opposite is true. From World War II through Operation Desert Storm, whenever American Forces have gone into battle the Pentagon has always found a way to keep suspected or acknowledged homosexuals in uniform.

And when in harm's way, incidents like the one related in this week's Newsweek magazine represent the real story of gays in the military:

> On the first night of the Scud missile attacks on American troops in the Persian Gulf, an Army Specialist Fourth Class found himself cramped in a foxhole with three other men. Like many young enlisted men, the specialist had previously confided to the other men, his friends, that he was gay.
>
> During that night in the foxhole, the men huddled together in their suffocating chemical warfare suits. They could not see one another, but to reassure themselves that they were all still alive, each man kept one hand on the other. No one seemed to mind that one of those hands belonged to a homosexual, the soldier remembers—they all had more important things to think about.

Mr. President, we need to think about the important things. It is time for each and every American to ask himself or herself—is it fair to open the closet door in wartime and ask our gay and lesbian sons and daughters to die in their country's uniform, yet in times of peace relentlessly hound them back into the closet and strip away the same uniform they once so bravely donned?

In 1948, the military leadership felt that black and white could not and would not serve together. We now know, Mr. President, that since 1948 millions of white Americans have made such a choice. They have fought, eaten, and slept side by side with African-Americans with no impairment of military readiness whatsoever.

And from those experiences, Mr. President, they have forged an America that is stronger now than at any time in its history. Stronger now because its people are more unified and more respectful of their glorious diversity than ever before.

Despite my disagreement with the Joint Chiefs of Staff on this issue, I have confidence in our military leadership's ability to carry out the orders of their Commander in Chief.

I can even appreciate General Powell's dilemma when he said:

> I've got to consider what you say to a youngster who might come and say, General, in the most private of my accommodations, I prefer to have heterosexuals around me than homosexuals.

This is what you say to that youngster, General Powell. Tell him that he's in our Armed Forces now. Tell him that he's a proud member of the greatest fighting forces in the world.

Remind him that his homosexual platoonmates have also volunteered to give their lives for their country and the values we all hold dear. Remind him that they, like all members of our military, will be held to the strictest codes of conduct and behavior.

But most importantly, General Powell, tell him that the greatest danger he faces is not in his private accommodations. It is from the forces of hate and fear in this country that 40 years ago would have denied to you the opportunity to lead.

Tell him that if he can defeat the enemy within himself he will be ready to confront any enemy abroad. Wish him a long and distinguished career in the service, and tell him that by the end of his 40 years in uniform you hope he will have seen as many changes for the better in our military and the imperfect society it defends as you have in yours.

Mr. President, I stand in support of President Clinton on this issue, and I do not need 6 months or even 6 days to make up my mind. I want to end this baseless discrimination. I would like to see it end now. However, I am prepared to support the amendment that is before us.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, I yield 5 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. LOTT. Mr. President, I want to thank the distinguished Senator from Indiana for yielding me this time and also for the very fine and thoughtful statement he has made both today and in the past on this subject. He has done a good job, and we appreciate his leadership on this issue.

As we listen to this debate across America, one of the things that comes to my mind is who should we really be listening to? There are many elected officials and there are many military men and women who certainly are going to be very thoughtful in their remarks. But who should we listen more to than the most respected military leaders we have in America today? We have a national hero in Gen. Colin Powell, the Chairman of the Joint Chiefs of Staff. We have all admired him for the job he has done, for the things that he stands for, the job he has done in that position. Let us listen to just two of his quotes on the subject:

> It's my judgment, the judgment of the Joint Chiefs, that homosexual behavior is inconsistent with maintaining good order and discipline.

With regard to the question of race, and certainly he feels especially sensitive to this question, he said in the text of a letter to Representative PAT SCHROEDER in 1992 this:

> Skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.

Gen. Carl Mundy, Commandant of the U.S. Marine Corps, said just in December 1992:

> I do support the ban against homosexuals in the military. I believe that homosexual conduct, that the gay lifestyle embodies those things that are contrary to good order and discipline in the military.

That is what two of the most respected military men in the world today had to say on this issue.

Before I get into some more substance, I want to emphasize one point, and I am sure our distinguished leader, BOB DOLE, will emphasize this later on. A lot of people are going to look at this debate and look at the procedure and they are going to say what is really going on? Let me make it clear. After 3 days of struggling, the Republicans have secured from the Democratic leader an opportunity to have a vote on this issue. But let us make clear what that vote is.

If you as a Senator think that homosexuals and lesbians should receive special status in the military, then you need to vote to table the Dole amendment. If, on the other hand, you think that allowing homosexuals in the military will reduce military readiness and effectiveness, you should vote no on the motion to table the Dole amendment. Make no mistake about it, the vote on the question of whether or not to allow homosexuals in the military is a vote that you will cast on the Dole amendment. It will be on a motion to table, but clearly that is where the issue will be decided today. So that the people here in the Chamber and so that those listening and watching will understand, that is the vote, and it will occur today.

Another thing that I have some people say to me when they call is, you are right, have a vote on this issue, make a statement, take a stand but why are you doing it now? Let us not mistake it at all. The Senators did not ask for this, Democrat or Republican. We thought we would be focused on the economy, on economic growth, on the creation of jobs and on how to reduce the deficit and on welfare reform, all very needed, necessary, important things, and yet here we are today voting on the question of homosexuals in the military. Why? It is because the President decided for reasons I do not understand to move immediately on this issue, to take a peremptory action.

Thanks to the efforts of the Senator from Georgia, there were some modifications, but make no mistake about it, the President said, you can have your hearings, but we are going forward; this is a done deal, I am going to remove the ban on homosexuals in the military. He did not consult with his Joint Chiefs of Staff until after he made that decision. He did not really consult with the Armed Services Committee and many others who would like to be heard on this issue on both sides. No, he went forward and said I am going to do it. He modified it a little, but in the end he said, no, July 15, I have my mind made up. This issue is over.

Well, I have a surprise for him. The Congress is involved in this issue.

The PRESIDING OFFICER (Mr. BRADLEY). The Senator's 5 minutes have expired.

Mr. LOTT. Will the Senator yield 3 minutes?

Mr. COATS. I wonder if I could talk the Senator into 2.

Mr. LOTT. I will try 2 and, if I need another one, I will hit the Senator again.

Mr. COATS. All right.

Mr. LOTT. Section 1, article VIII of the Constitution says Congress has the responsibility and obligation to set laws and regulations governing the military. We should be heard on this issue, and we will be heard on this issue.

We are here today voting on this because the President insisted on going forward. This is the wrong thing to do. It is prejudicial; it is before consultation and before hearings. We should lock into place the ban on homosexuals in the military that existed January 1, 1993. Let us have hearings. Let us have discussions. Then let us make a decision, talking with the President, and let us have a vote on it if any modification is justified after July 15. But to make the decision and then have the hearings, the American people do not understand that. I do not understand that.

There are many questions unanswered. You have heard some of them today: Family housing. What do you do about gay partners in the military, health care, blood supply, public displays of emotion in uniform, changes that may be required or requested by homosexuals and lesbians in the Uniform Code of Military Justice, not to mention recruitment, retention, readiness, and all the other military questions that are involved.

We have not thought this through, I say to my colleagues. The President moved too quickly. Let us say, time out; keep in place the law that existed January 1; have the hearings; consider this matter; and then decide with a vote of the Congress on what the final verdicts will be. We have bigger, more important fish to fry. Let us have this vote. Let us lock in the ban now. Let us debate and then decide in July the final decision.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NUNN. Mr. President, I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The distinguished Senator from California is recognized.

Mrs. FEINSTEIN. I thank the Chair.

I rise in support of the Mitchell amendment. I agree with President Clinton's plan to end the policy that prohibits gay men and lesbians from serving in our country's armed services.

As the five Democratic women of this body said in a joint statement last week, "The United States military is filled with brave men and women who risk their lives to defend their country. Competence, courage, willingness to serve one's country—not sexual orientation—should be the criteria for those wishing to enlist."

I note that at least one Federal judge agrees. Judge Terry J. Hatter, in the Central District of California, recently held, in the case of CPO Keith Meinhold, that:

Gays and lesbians have served, and continue to serve, the United States military with honor, pride, dignity, and loyalty.

He goes on to say in his opinion:

The Department of Defense's justifications for its policy banning gays and lesbians from military service are based on cultural myths and false stereotypes. These justifications are baseless and very similar to the reasons offered to keep the military racially segregated in the 1940's.

The simple question is: Should everyone have an opportunity to serve our country in the Armed Forces without fear of discrimination, without blind prejudice? I answer that question with a strong "yes."

Incidents such as the Tailhook scandal illustrate an obvious need for strict enforcement of strong rules of conduct. Clearly, after Tailhook, a reexamination of conduct is in order. Strong rules should be in place and enforced across the board. Therefore, I support Senator MITCHELL's amendment, which allows time to work on a code of conduct which can, hopefully, be applied to all.

In his decision, Judge Hatter also points out that "of all the countries in the North Atlantic Treaty Organization, only the United States and Great Britain ban gays and lesbians from their Armed Forces. On October 27, 1992, Canada's military leaders rescinded Canada's policy of banning gays and lesbians from the Canadian forces."

Heroism, I believe, is a trait that does not know race, color, creed, sex, or sexual orientation. Take, for example, an incident which occurred in San Francisco while I was mayor when a women named Sarah Jane Moore attempted to assassinate President Gerald Ford. She fired one shot, and a man stepped forward and saved the President's life before she could fire a second. That man was a gay man. That man was also a former marine.

It is time, Mr. President, to see that all who qualify can serve in our Armed Forces. Even before repeal of the ban, we know there are thousands of gay men and lesbians who wish nothing more than to serve their country and who are today in the military willing to give their lives.

I remain firm in the belief that America's military is a great fighting force and will be even greater in the days to come.

Thank you very much, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I will be glad to yield 10 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I rise in support of Senator MITCHELL's amendment. We have heard a lot of talk on the floor about different aspects of this particular problem. I was asked a few days ago by another Senator—or it came out in one of our meetings—as to just why the military objects to what the President is proposing and what effect it would have. I responded with something I would like to repeat here

today, that it is not just about civil rights.

Let me repeat, I back Senator MITCHELL's proposal. I think we do have to study this. I think the time has come to study it. And what our investigation in these hearings will result in I, frankly, do not know.

But I think when we take the attitude that the military and the Chairman of the Joint Chiefs of Staff and all the service chiefs are just obstructionist in nature when they object to something like this, that is just not the case.

I used as an example some of my own experience of some 23 years in the Marine Corps. I do not want anybody to interpret that these hearings are going to be slanted in a certain way, or that I will come down a certain way. I am clearly looking for the truth as to what we can do with regard to this problem, and in the extensive hearings we plan to hold we should be able to bring the facts out and decide the direction we need to go.

But let me say this. In preparing people for combat military training prepares people to do some absolutely stupid things, things that just in the interest of self-preservation, nobody in their right mind would normally do. That is what combat is all about. We can talk all day about civil rights and about whether people are capable of doing this or capable of doing something else. Of course, from a civil rights standpoint, if that was all it was, there is not any question about how this would be decided. But is there a civil right for everybody to be in the military? Do we exclude people for certain reasons? Yes, we do. Whether we are in a time when we overcome some of that right now, I do not know. But military training basically teaches people to do things they would not otherwise be able to do just from their own instincts of self-preservation.

How do we make people do that? Well, we do it by a rather circuitous route. We send people to boot camp or recruit training, and what do you do? The first thing you do is you take every civilian vestige away from them, as much as you possibly can. You shave their heads and you take their civies and send them back home or burn them on the spot, and you put them through training where they are degraded as much as they possibly can be without just losing all sense of propriety, the drill sergeant yelling in their faces. Movies are not exaggerating the situation when they show things like that. What you try to do is take people down to a common denominator of that person's body, mind, and psyche and try to divest that person of all civilian retention of the idea of rights, and freedom of speech, and freedom of assembly.

Unheard of. You give up those rights in the interest of what? In the interest eventually, you hope, of winning battles. And what do you do then? Once you have that squad there—and you are with those few people, you start trying to rebuild these people. You remold them along certain lines. You remold them along the lines where hopefully, when they come out of recruit training, they have more loyalty to the people they are with in that squad than anything else, and it even transcends their fear of being hurt, their fear of being wounded, their fear of being killed.

I do not know how many of my colleagues have read the book by James Webb, who was Secretary of the Navy a few years ago, a very decorated combat veteran from Vietnam.

He wrote a book called "Fields of Fire." I was quite taken with it. I sat down to read it several years ago. It is one book I did not put down. I read it straight through until about 4 or 5 in the morning. I think it is the only book that I read straight through in a long time.

His theme in that book was that when people go off to war, they go off, the flags fly, the bunting is out there, the people march, the bands play, they are off to preserve freedom for democracy—all these great thoughts, great things.

It is fine to be dedicated that way. Then you come home from war, and it is the same thing, flags, you hope the parades are there, people appreciate what you have done—"I fought for freedom, democracy," all these sorts of things. But in combat—what did you do in combat?

Jim Webb's theme in that book is that when you are in combat in the infantry in that jungle situation your whole universe is brought down to not great theories of freedom, democracy, things like that. Does a person jump out of a foxhole and take some grenades over to the next foxhole when he is being shot at, think "I will preserve freedom forever?"

I'll tell you what he is interested in. He is interested in survival. He is interested in whether or not the other guys are going to cover him; whether somebody got shot; if he gets wounded, will they come and pull him out of there.

In other words, the whole universe of combat narrows down to a very, very few. You and a few. That is what military training trains people to do.

My first commanding officer in the Marine Corps when I got out of flight training as a brand new 2d Lieutenant in World War II days was Pete Haines. I joined the squadron which was about to get Corsairs and we were training in southern California. Pete, who later became one of my very best friends, was my CO at that time as a marine major.

We were joking in his office one day waiting for a meeting to start, joking a little about the people who were coming back from Guadalcanal—much in the news at that time, how they had done great things; some real heroic activities out there. I was sitting there waiting for the other people to arrive. I said, "what makes Marine training any better than any other?" I was sort of half joking about it. He got very serious. He pointed his finger and said, "Lieutenant, marine training makes a man more afraid of letting his buddies down than he is getting hurt himself." I always remembered that.

I do not mean to restrict it to the Marine Corps here. All training in the military that puts people through recruit training, whether it is Army, Navy, Marine Corps, Air Force, tries to instill in people the kind of camaraderie where people are more afraid of letting their buddies down than they are of getting hurt themselves.

That is stupid by any normal civilian measurement; absolutely 100 percent stupid. Yet that is the very basis of military training.

I think that is why when the Joint Chiefs have some honest concerns, we should listen carefully. I do not know whether I will eventually vote with the Joint Chiefs at the end of all of this or not, or whether at the end of hearings where we really investigated all of this, that the Joint Chiefs may in fact be willing to say, well, OK, maybe times have changed. Maybe we have a new day now in the military; maybe we should consider some of these things that we could not consider back a decade or two decades or four decades ago.

Now, maybe, is a time when we can consider some of these things. We have to look into all aspects of this.

Is it something that I think we should just ignore and say do not worry about it, we will just do it, it is a civil right and that is that? No, because we still need a military, and a military bases its ability to perform on training, small unit training, whether in an infantry squad, or in a squadron with one pilot looking out for another, people diving back in to distract antiaircraft fire—stupid, crazy. I have seen people do that.

That is the kind of loyalty that you are trying to engender.

We have advanced a lot in this area in the last few years. I believe—over the last 15 or 20 years we see people openly gay or lesbian being accepted in jobs and positions. We are not thinking of firing them from those positions. There are people in some top civilian positions in the military who we do not question as to their loyalty, and they are admittedly gay. They do not get fired. We accept that now.

So maybe our attitudes are changing. That is what these hearings have to bring out.

Mr. President, I think I have made most of the points I want to make here. I do think that we have to consider the changing civilian attitude. There have been times in the past when the military was able to lead in some

areas like this, and get an acceptance throughout the whole Nation.

But this is a different thing than, say, color of skin, as I see it. This deals with one of the most basic urges, one of the most basic drives that human beings have.

So I think it is good that we are going to have this series of hearings, where we can have people in to discuss this. Our NATO allies have already been mentioned. Many of them have different procedures on this, different restrictions for people who serve in the military with regard to being gays or lesbians.

I think we need to know other nations' experiences and perhaps then we can better judge on opening up our own situation in this country. A matter of concern is what happens on the bases? I do not want every base commander making his or her own decisions about how to deal with gay and lesbian situations on a base.

For example, some cities now have moved to recognize, in effect to legitimize, gay and lesbian marriages, male to male, female to female. What happens if on a base those people decide that they—since they see themselves as being legally married—claim spousal rights on the base? And do we have retirement benefits then to be passed on to other people? Do they get base housing then? If they have been on the base longer, do they go ahead of other people?

These are things that cannot be left up to base commanders. Policies have to be servicewide, Department of Defense-wide decisions that apply to everybody, as I see it. If we do not do that, we are going to wind up with 50 court cases in Federal courts all over the country.

These are the kinds of things that we need to look into. I think we need to go into this issue with an open mind. My mind in this area is not closed by any means. I want to get the full gamut of people that we can that have a view on this to testify before the committee. It should not be a 1-day or 2-day hearing. We have to take it on and do the best job we possibly can in this area, including seeing how it affects our NATO allies; talking to groups, and training people to see whether in this day and age we really feel we can have unit cohesion with declared gays in the military. Cohesion—that is the military word for this bonding of one combat warrior to another. Can that now apply just as well to a gay as it does to anybody else? Perhaps it can.

I know our time is short. I will not ask for additional time this afternoon, but I will have additional things to say on this as time goes on, and as we get to our hearings.

I thank the Chair.

Mr. COATS. Mr. President, I yield 5 minutes to the Senator from Washington.

Mr. GORTON. Mr. President, the Nation and the Congress of the United States owe a great debt of gratitude to the senior Senator from Georgia [Mr. NUNN].

The President of the United States almost as his first act as President, attempting to keep a campaign promise, unilaterally, without consultation with either the Congress or the armed services, attempted a profound change in the composition, the attitude, and the morale of the Armed Forces of the United States.

The Senator from Georgia stopped that runaway train and has gained for the Nation and for this body a period of almost 6 months in which to examine the profound potential consequences of that proposed action.

This Senator had the good fortune to be in the Senate anteroom when the Senator from Georgia came to report to several of his colleagues, with some elation, the results of his negotiation with the President.

Ironically, during the very time that the Senator from Georgia was reporting on that agreement, the President was announcing that, notwithstanding anything which might take place during the course of that 6-month study, his course of action was already determined. The President announced that it did not matter what people in the military said, what Members of Congress said, what general public opinion was; he was bound and determined to go forward.

It is for that reason, in spite of the very real success of the Senator from Georgia in keeping to a minimum immediate changes and causing the more profound ones not to take place for several months, it is for exactly that reason that it is important for the Senate of the United States to pass the Dole amendment.

The Dole amendment is in strict accordance with the Constitution of the United States, which states:

> The Congress shall have power to make rules for the Government and regulation of the land and naval forces.

The Dole resolution, by codifying the rules with this respect as of January 1, 1993, takes that power now and retains that power in the hands of the Congress. But it gives the President the ability to propose any change he wishes after this period of hearings and requires that we vote both here and in the House of Representatives on those proposed changes—without filibusters, without extended additional hearings—very, very promptly to settle this question. It gives us the 6 months to have the national debate and the hearings on an issue of such importance.

Since the President regards these hearings as hollow, it seems to me imperative, even in seeking the goal that the Senator from Georgia himself seeks, that we pass this particular amendment. This is not an open and shut case or debate in the mind of this Senator.

There have been profound changes in attitudes and customs in the United States as a whole. It is certainly possible that some changes are in order, but they should be changes which are debated in the context of their impact on the Armed Forces of the United States. They should be decided with respect to whether or not he will retain an effective and efficient and a high-morale Military Establishment. It is an issue of which I think the views of all Americans are appropriate, and all Americans should be given a chance to express those views before the decision is made.

But for this Senator, at least, it is an issue to which he will listen with the greatest degree of respect and will grant the greatest weight to the views of the men and women who are in uniform serving in the armed services of the United States, whose lives will be most profoundly affected. This Senator will pay a great deal of attention to the views of General Powell, General Schwarzkopf, and others, including veterans of the United States. But it is the rank and file of the military who will have to live with this decision and whose own personal decisions will determine how effective our military is, and who should be granted the greatest weight in the course of this debate.

But their views can be granted weight, Mr. President, only if we do not make the decision before those views are heard. The President has said he has made his decision. We should, in the exercise of our constitutional responsibility, see to it that he cannot make that decision alone, and we can do that only by passing into law the amendment before us.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I yield 5 minutes to the Senator from California.

Mrs. BOXER. Mr. President, I thank the chairman of the Armed Services Committee for yielding to me.

I rise in support of Senator MITCHELL'S amendment. I feel I must comment on a statement that was made by the Republican Senator from Mississippi [Mr. LOTT] when he said "the only reason this is before us is because President Clinton put it before us." Well, the truth is that, today, we want to vote on the Family and Medical Leave Act, Mr. President, and this whole issue was raised today, even though there has been a compromise already reached on the subject by the President, the leaders of the Senate, and the Joint Chiefs of Staff. So I think anyone who says it is the President who brought this amendment before us today simply is misstating what I consider to be the facts here.

We are ready to pass the Family and Medical Leave Act, and we are ready to

get on with the business that affects the American people, and I think the American people understand, even though they may not all agree with the President on this issue, that this debate should not be raised around the passage of this very important bill. But, in fact, it is here, and I am honored to be part of the debate.

I personally believe that the gay ban continues the policy of deceit. It forces honest men and women to lie about a very fundamental question. Question 27, which asks a potential recruit about his or her sexual orientation, confirms that the policy is a living lie, because thousands of men and women will not answer that honestly, because then they cannot serve their country. And they want to serve their country, Mr. President.

The San Francisco Chronicle, which endorsed George Bush for President, wrote on January 28 of this year:

For the past 50 years or so, gays have had to play an unreasonable and un-American charade. * * * Living with the truth is surely better for morale than fostering secrecy and prejudice.

Mr. President, I would like to share with you and my colleagues a little story. I was visited by a physician who is one of my constituents; a heterosexual, who served very proudly in World War II. And I asked him: "You are a brave man. You fought on the front lines against the Nazis. What is your view on this issue?"

And he said to me very clearly:

Senator, when I was on the front lines, fighting against the Nazis, I did not care if the guy next to me was straight, as long as he could shoot straight.

I think that is the issue that we should be concerned about. We need every qualified man and woman who wishes to serve us. We need them to serve us.

And behavior is the issue, Mr. President, not status. And where else can you control behavior better than in the military, where discipline is a way of life.

I think it is very important to point out that President Clinton has talked very clearly about the need for discipline and a code of conduct that applies across the board.

Mr. President, I think that we waste a lot of money on this issue, $27 million a year, rooting out homosexuals from the military. We need that money elsewhere, or we could save that money.

I also think it is interesting to point out that records show that, in wartime, the military seems less interested in expelling homosexuals. If you look at the numbers, very few are dismissed during wartime. What do we learn from that? When bullets are flying, the military becomes less discriminatory? Mr. President, that is a sad thought. So I think that we must base military service on performance and behavior, not on a person's sexual orientation.

My last point is this, Mr. President: The United States should no longer stand as one of the few allied countries that prohibits homosexuals from serving in their armed forces. We should look to countries like Israel, which allow homosexuals to serve their nation proudly in uniform. Would anyone in this Chamber question the effectiveness of the Israeli military, which faces a daily struggle to protect Israel's borders from attack? If Israel, which faces danger every minute can do it—we can do it.

I am struck by the comparison of some of the comments of my good friends and colleagues in this Chamber, to some of the comments made in 1948 when President Truman decided to end discrimination against African-Americans in the military.

On July 27, 1948, one Representative said:

I predict this (integration) will do more to add to the existing turmoil in our country than anything else that has occurred since 1861. In my opinion it not only will greatly increase tension, strife, and turmoil, but it will diminish the efficiency of our armed services. * * *

On the same day another Representative said:

It is a mistake to attempt to make of the Army, Navy, and the Air Force a means of providing social reforms. Such action cannot do other than injure the high standard of efficiency of this organization.

He added:

In these times of major crises throughout the world it is a mistake to try to provide social reforms for the armed services. The result may be to seriously cripple and impair the full value of these forces. The result may be to injure them at a time when the world looks to us for strength and courage.

They talked then about the chaos that would come about if African-Americans were allowed in the military. They talked about the military not being the place for social experimentation. And yet we know that was the right decision.

So Mr. President, I appreciate the opportunity to participate in this debate. The debate is not over. We will have it again in July. I hope we can get on with it, get on with the problems facing our country.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President I yield 8 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. I thank our dear colleague from Indiana for yielding, and I thank him for his leadership on this issue, which I think is vitally important.

I would just like for the record to show that the Israeli military is one of the most restrictive militaries on the planet in terms of the promotion and participation of avowed homosexuals.

Mr. President, what I want to talk about today is the choice that is before us. Let me begin by talking about what brought us here.

Our President, in the campaign, made a commitment to a special interest group, and that commitment had to do with changing the policy of the military with regard to avowed homosexuals. What the President has said in the first week of his administration is that his first defense priority is forcing the military, against its will, to admit avowed homosexuals.

I believe our first priority should be to the young men and women of the military services who have made us proud and who have kept us free. And that is what the two amendments before us are really all about.

In the case of the amendment offered by Senator MITCHELL, what we have is a figleaf, and a figleaf that will not cover very much. It is a simple sense-of-the Senate resolution that dose absolutely nothing about the policy that the President has put into effect, nor does it in any way restrict the policy that the President may put into effect in the future, nor does it in any way change anything in terms of the policy that we in Congress may carry out, no matter what happens on these votes.

So we have one resolution that is simply a figleaf for those who want to appear to be doing something but who really do not want to do anything.

On the other hand, we have a resolution that seeks to establish a process. It does not seek to judge the decision before the hearings have been held. The major reason we are here is that the President has said not only is he going to change the policy of the military with regard to induction—something he has already done against the expressed will of the Joint Chiefs and the entire commissioned and noncommissioned officer corps leadership of the military—but that we can have a debate, that we can hold hearings, but that no matter what that debate concludes, no matter what those hearings find, that he is going to change the policy.

In short, our President, has said:

Debate and hold hearings, but do not confuse me with the facts, because I have made a campaign commitment and I am going to fulfill it. I have promised a special interest group I will act without regard to the public interest.

What our amendment does is establish in law the policy that existed as of January 1. It then sets up a procedure where we have a real debate—not a phony debate, a real debate—where we have real hearings—not sham hearings—where we gather the facts, where we hear from all sides, and then we set up a procedure whereby the President will make a concrete proposal—not a campaign slogan, not a political statement, but a concrete proposal—as to how to put his policy into effect.

We will then have a debate about that policy. We will bring it to the

floor of the Senate. We will have 3 days of debate. It will be amendable. We will all have an opportunity to have our input, and then the President will get his vote. If he has the votes to change policy, he will prevail. If he does not have the votes to change policy, he will not prevail. But in my opinion, Mr. President, the public interest will be served.

What is our objective here? Well, it seems to me, the two amendments offer two objectives. The objective of the amendment offered by Senator MITCHELL is to put the Congress in a position where we are saying: Do nothing; though we know the President has decided what he is going to do, though we know that our debate is phony, though we know the hearings are a sham, do nothing.

Our proposal is: Set out in law the procedure that the military supports. Have a real hearing, have a real debate, have the President submit not a simple statement of policy but a concrete proposal that deals with the very real problems of forcing the military to induce avowed homosexuals and address the impact it will have on morale, readiness, retention, recruitment—all the things we should be concerned about.

Do not allow a determined minority to prevent the President from having a vote. Set up a procedure where the President will get an opportunity to make the proposal and where Congress will have to vote yea or nay. It is a choice between a policy that takes Congress, and therefore the voice of the American people, out of the debate and a policy that puts Congress in the debate, that guarantees that we will look at the facts, that guarantees that we will have an informed decision, that guarantees that the President and the Congress will hammer out a policy.

Mr. President, that is what this issue is about. There is no doubt about the fact that the President has worked very hard to induce people to vote against this amendment. The basic promise has been that we will hold hearings. But anyone who has read the statements of the President has to be struck by the fact that the President has said, in the clearest possible terms, that his mind is made up and that his mind is not going to be changed.

Our amendment establishes a proceduer whereby we have an opportunity to look at the facts, hold a debate, and make an informed decision. I believe this is the enlightened path. I believe those who are concerned about the finest military the world has ever known, those who believe the burden of proof ought to be on those who would change a policy that is uniformly supported by the leadership in the military, will vote for this amendment.

Certainly, no one can vote against this amendment and say they were undecided on this issue. Everyone in the Senate believes any informed American knows that, unless we act now, no matter what happens in the hearings, no matter what happens in the debate, the President is going to force the military against their will to induct homosexuals.

At that point, if a sizable number of Members of the Senate or House decide to try to override it, we will be in a position where we have to pass a law which can then be vetoed.

So if we want a rational debate, the way to guarantee it is by adopting the Dole amendment which is before us.

I urge my colleagues to look at it and to vote for it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, I thank the Senator from Texas for his statement and support on this issue.

I yield 5 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I would like to thank and compliment my friend and colleague, Senator COATS from Indiana, for his leadership on this issue, as well as Senator DOLE. And I will include Senator NUNN, for I think he has played an important role in stopping President Clinton from making a very significant mistake.

Quoting several military leaders, and quoting Admiral Stockdale, saying: Why am I here? What are we doing? I question why we are debating this particular provision at this time.

The only reason why we are debating this issue is because President Clinton has decided to move forward on it aggressively to fulfill a campaign promise to a special-interest group, without consulting the military and without consulting Congress. I think it is a serious mistake.

The President has overruled the Joint Chiefs who have over 200 years of combined experience. Yet, his first action as Commander in Chief is to totally disregard the statements that were made by the combined Joint Chiefs. I think that is a serious mistake.

I remember during the campaign that President Clinton was saying,

> It's the economy, stupid. The economy is first. We are going to be first in line. We are going to have a laser beam on the issue. That is the issue. And then health care and welfare reform. Those are the real issues that affect America.

But now as President, the real issues he is pushing are parts of a very aggressive agenda to appease the special-interest groups that he made promises to; the special interests that contributed millions of campaign dollars—and I am sure lots of votes—to his election.

I am delighted—I complimented Senator NUNN and Senator COATS—I also want to compliment the American people, because they are the reason why this Executive order is not already totally complete. They are the reason why it slowed down. The American people have spoken against this change in policy, and they have spoken by the millions all across the country.

I can say in my office, we have had thousands of phone calls. Our office has not had phone calls like this—I am not sure in my 12-plus years in the Senate that we have had contacts by our constituents to the degree we have had just in the last week or so.

What about this mistaken policy's impact on the military? What does this do to unit cohesion? What does this do to morale?

Let us look at what some of the military leaders have to say. General Schwarzkopf; he was a hero 2 years ago. He led us to victory in the Persian Gulf war. Here is a quote that he made on September 25, 1992.

> The experience in the Army has been * * * when you have an open, out of the closet, gay or gays within your organization, and that freely admit that, within your organization it tends to break down the cohesion. So it is not a question of a personal sexual expression, it is a question of cohesion within the organization and that is what makes organizations fight.

Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, said:

> It's just my judgment, the judgment of the Chiefs, that homosexual behavior is inconsistent with maintaining good order and discipline.
>
> What do I mean by that? I mean that it's difficult in a military setting, where there is no privacy, where you don't get choice of association, where you don't get choice of where you live, to introduce a group of individuals who are proud, brave, loyal, good Americans but who favor a homosexual lifestyle and put them in with heterosexuals who would prefer not to have somebody of the same sex find them sexually attractive, put them in close proximity, ask them to share the most private of their facilities together—the bedroom, the barracks, the latrines, the showers. I think it would be prejudicial to good order and discipline to try to integrate that into the current military structure, and I think that's the significance.

That is the Chairman of the Joint Chiefs. And I will add one or two others quickly. Gen. Carl E. Mundy, Commandant of the U.S. Marines says:

> I do support the ban against homosexuals in the military * * * I believe that homosexual conduct, that the gay lifestyle, embodies those things that are contrary to good order and discipline in the military.

Finally, one last quote. This is by Adm. Frank Kelso, Chief of Naval Operations:

> I believe the current Department of Defense policy on homosexuality is best for the readiness of our Armed Forces.

That was January 9, 1993.

So the Joint Chiefs have not agreed to the grand compromise. The Joint Chiefs have stated they believe we should maintain present policy.

We have two amendments that are before us. One is the sense-of-the-Sen-

ate resolution by Senator MITCHELL that says we are going to study the issue. It does not say what else we are going to do. And it also changes the policy that we had January 1, because on January 1, we did ask a question that would prohibit gays from serving in the military. So we are already talking about a significant change in policy.

What about the Dole amendment? It is amendment; it is law. It says: Let us go back to January 1. It is a time-out amendment. Let us not change our policy. Let us have at least 6 months. Let us have congressional hearings. Then if we decide after having the hearings we should make a change, then let us make the change and make the change and make it statutorily.

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

Mr. NICKLES. Mr. President, I ask my colleague if I may have an additional 2 minutes.

Mr. COATS. I will be happy to yield to the Senator from Oklahoma an additional 2 minutes.

Mr. NICKLES. I thank my friend, Mr. President.

After we have the hearings, then let us decide what changes should be made. As my colleagues have pointed out, we have constitutional responsibility to the Armed Forces. And so, in the Dole amendment, we provide that Congress will act. We put in expedited procedures. We will act hurriedly. We will take the President's proposal, we will act on it within just a few days.

So the Dole provision says: Yes, Congress; you are going to be consulted. We are going to listen. We are not going to make changes until we hear all the facts, until we hear from all the interest groups on both sides of the issue. And then Congress will act.

Unfortunately, under the Mitchell compromise, President Clinton can make an Executive order. And, unfortunately, he has already stated that is exactly what he wanted to do.

A reporter asked President Clinton on January 29, 1993:

> * * * July 15, this happens, period, regardless of what comes out of these hearings? Is that correct? The ban will be lifted?

President Clinton said:

> That is my position. My position is I still embrace the principle, and I think it should be done. I do not expect to change my position, no.

President Clinton plans on letting the hearings go forward. Then he plans on completing his Executive order, really in total violation of the spirit of listening to Congress, listening to the military, and listening to others with the valued experience who say this might be a serious mistake; that it would seriously jeopardize the quality of our Armed Forces. I do not think we should make that mistake.

The only way we can stop that mistake is by agreeing to the Dole amendment. I urge my colleagues to vote for Senator DOLE's amendment.

To reiterate, Mr. President, over the last week, my office has been flooded with hundreds of phone calls regarding the issue of homosexuals in the military. The majority of my fellow Oklahomans feel the way I do—that the ban on homosexuality in the military must stand.

I feel it is the obligation of the Senate to take a strong stand against President Clinton's unilateral action to repeal the ban on homosexuality in the military. Congress' role in regulating our Armed Forces is set forth in our Constitution. We cannot allow this President to ignore the Constitution and the will of the majority of the American people.

And let's make one thing clear. It is not the Senate who made this an issue. President Clinton chose to make this his issue. From the early days of his campaign, Bill Clinton pledged to repeal the ban on homosexuality in the military. And despite calls from a majority of the American people opposing the lifting of the ban, despite the Joint Chiefs of Staffs' warnings, President Clinton decided this issue should take precedence over the economy, health care, education, or the deficit. To him, keeping his promise to a special-interest group became a matter of principle.

Well, Mr. President, I say President Clinton has chosen the wrong issue. What he calls a compromise is a fraud. The President's announced changes are real and far-reaching. In fact, they predetermine the outcome by assuring that homosexuals will be allowed in the military. The President should have allowed for a 6-month time out with no change at all to the current policy that has worked so well for so long. This would have given Congress time to evaluate and analyze whether changes to the policy were prudent. The President refused to listen to us, just as he failed to listen to the majority of the American people. Which is why we must act now.

There are several reasons why I support the ban on homosexuality in the military. First, I believe that the mission of our military should be, first and foremost, to maintain an unparalleled fighting force. The armed services should not be used as an agent of social change. Second, serving in the military is not a civil right, it is an honor reserved for the select few who contribute to military cohesion and effectiveness. Third, repealing the ban could lead to the creation of a class and culture that would jeopardize the common values and goals so important to mutual trust and unity within a fighting force. For all of these reasons, I support the Dole amendment before the Senate.

I think former Secretary of Defense Dick Cheney stated it best when he said that:

> It is important for us to remember that what we are asked to do here in the Department of Defense [DOD] is to defend the Nation. The only reason we exist is to be prepared to fight and win wars. We're not a social welfare agency. This is a military organization. Decisions we make have to be based upon those kinds of considerations and only those kinds of considerations.

Those who support President Clinton say the military should live by the same rules as those set out for civil society. But history reveals that an effective military should be a culture largely unto itself. The military has its own standards of admission and conduct. The military also has its own legal and judicial system.

Some of these laws would be considered authoritarian and unconstitutional by civilian standards. The military's culture, seen as so strange by civilians in peacetime, provides the necessary foundation to enable our soldiers to fight and win in the chaos, fire, and blood of war. The mission of the military is to maximize efficiency and readiness. How could it be otherwise, because compromising military efficiency could result in the loss of our soldiers on the battlefield. We have to ask ourselves: Is such a risk worth the price?

Others who support President Clinton seem to think that military service is a civil right. They are wrong. There is no right to serve in the military—military service is a privilege for some. Not all people are lucky enough to serve in the military—some are too old, some have health problems, some are too short or have poor vision. Some have mental or physical disabilities.

Many of my fellow Oklahomans and I are not the only ones who believe that the current policy banning homosexuals from the military is reasonable. With their over 200 years of combined military experience, the Joint Chiefs of Staff, or JCS, also agree that the current ban should be maintained. It is disturbing that the President's first policy action as Commander in Chief is contrary to the counsel of his Joint Chiefs.

President Clinton has said on many occasions that status alone in the absence of some destructive behavior should not disqualify people from military service. The President maintains that sexual orientation and sexual behavior are separate issues. But let's examine this argument. Take, for example, the current situation regarding showering and living arrangements.

Female soldiers shower and largely live separately from men. But President Clinton argues that behavior is the only measure of untoward social conduct. By this logic a heterosexual soldier could argue that he should be allowed to shower with female soldiers while promising to keep his behavior in check.

The problem we face here is not the presence of homosexuals in the mili-

tary. Many homosexuals who have served in the military have performed no worse or no better than heterosexuals. The problem is that the creation of an open homosexual class and culture in the military would wreck the close knit military bonds, that is the foundation of military strength in which the taxpayers of this country invest over $280 billion of their hard-earned money every year.

President Clinton's proponents say that our effort to maintain the ban on open homosexuality is the same as attempts made 40 years ago to maintain the noxious policy of racial segregation. This comparison is invalid. Gen. Colin Powell, a soldier who likely saw the worst of our segregated military stated that "skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument." While race is a question of the color of a person's skin, the different sexual identities of homosexual and heterosexuals enforce different lifestyles. Lifting the ban would create numerous practical and legal questions. Would homosexuals in the military be afforded spousal rights, such as housing, as a couple? What about military pensions and family health care.

What about the complications in combat resulting from avowed homosexuality? What about its effect on the emergency blood supply, and the apparent or perceived favoritism among homosexual partners in life or death situations on the battlefield?

Not only do the ranking military officers believe the ban must be maintained, so do a number of military personnel and retired military groups. Twenty-seven military and veterans service organizations support the ban on homosexuals in the military, included among these are: The Retired Officers Association; the Association of the U.S. Army; the Veterans of Foreign Wars; the Marine Corps Reserve Officers Association; the American Legion; the Fleet Reserve Association; and the Air Force Association.

It appears that President Clinton has turned a deaf ear not only to the top military brass but also to those who have served in the ranks.

Finally, some have claimed that it should be no surprise that President Clinton has decided to keep his campaign promise and overturn current policy. But I, for one, am indeed surprised, that President Clinton has failed to deliver on a number of campaign promises he made to the American people—ones that I think mean quite a lot to the majority of the population, including a middle-class tax break, providing an economic plan for putting people first, and cutting the deficit.

This mistaken change in military policy should not go forward. We, in the Congress, cannot jeopardize the quality of our armed services. Again, I urge my colleagues to vote for Senator DOLE's amendment.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. NUNN. Mr. President, I have already made a few comments today about why I favor the Mitchell amendment. I have also explained—I hope rather carefully—what the President's directive that he issued for the interim 6 months while a review is going on does and what it does not do. I will repeat only one important point before I talk about the Dole amendment.

For the next 6 months, every military commander in the field anywhere in this country or elsewhere in the world will proceed exactly as they did a week ago in terms of how they would process the discharge of anyone who is either accused of homosexual conduct or of homosexual status. The President's directive does not change that.

Anyone who stands up and says, "I am homosexual," will be processed, just as they would have been before. They will no longer be on active duty. The only difference is that they will be separated from active duty and placed in the Standby Reserve if it is status only; if it is conduct, they will be discharged completely from all military status as previously existed.

Mr. President, I will oppose the amendment offered by the distinguished minority leader, Senator DOLE. I do so even though there is much that has been said on the other side of the aisle that I agree with. And I certainly appreciate all the kind comments I have had from my colleagues about the efforts I made to really slow the President down and to warn him that there are serious questions here.

I also think that everyone in the Senate ought to realize there are serious questions regarding the Dole amendment. Even though many of these consequences are not intended, I think that the examples I am going to give demonstrate why we need to slow down; why we all need to say that this is a complicated matter; why we all need to say: Let us have some hearings. Let us have legislative counsel look carefully at whatever we decide is going to be the policy. Let us examine the Executive orders, rules, and regulations, and really know what we are doing before we act either legislatively here in the Congress or through Executive order by the President.

In my view, first of all, the minority leader's amendment is not necessary. Most important, though, I believe the amendment could have some serious and unfortunate consequences, most of which the sponsors of this amendment, in my opinion, do not intend.

There are just a few things I want to say about that. There are some serious questions we must ask, and some serious consequences which would occur if this amendment were to be adopted and if it were to become law. I hope everyone will pay heed to exactly what the amendment says. The amendment states:

> All Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, as in effect on January 1, 1993, shall remain in effect until the completion of this review with respect to the Army, Navy, Air Force, and Marine Corps, and—
>
> not or—and—
>
> and unless changed by law.

As we have heard many times today, everything, in effect, that concerns homosexuals—appointment, enlistment, induction, and retention, everything relating to that—is frozen as of January 1, 1993. No changes unless done by law—unless done by an act of Congress.

That sounds easy and simple, Mr. President. But it has far-reaching consequences. Let us look at the precise meaning of the amendment.

First, the amendment concerns three classes of rules: The Executive orders issued by the President, the directives issued by the Department of Defense, and the regulations issued by the military departments. That is the way we proceed beyond the law: Executive orders by the President, directives by the Department of Defense, and regulations by the military departments.

Second, the amendment states that it applies to "all" such rules "concerning the appointment, enlistment, and induction, and the retention of homosexuals in the Armed Forces." This means that any Executive order, DOD directive, or military department regulation which contains material concerning entry, retention, or separation of homosexuals is covered by the amendment and is frozen into law unless changed by law.

Third, the amendment does not say that it applies only to the specific portion of an Executive order, DOD directive, or military department regulation concerning homosexuals. It does not say that it covers only the chapters, sections, or paragraphs of an Executive order, DOD directive, or military department regulation dealing with homosexuality. The fact is that the amendment on its face, applies to all Executive orders, DOD directives, and military department regulations concerning appointment, enlistment, induction or retention in the Armed Forces if any material in the applicable rule—no matter how brief—deals with entry, retention, or separation of homosexuals.

Fourth, the amendment states that "all" of the Executive orders, DOD directives, and military department regulations covered by the amendment "shall remain in effect." The amendment does not say "a part" or "a por-

tion" of such rules shall remain in effect; it says "all" such rules "shall remain in effect." This means that if there is any portion of an Executive order, DOD directive or military department regulation "concerning" homosexuality, then the entire Executive order, the entire DOD directive, or military department regulation will be frozen and can only be changed in the future by an act of Congress.

Mr. President, Members need to understand a key point here: There is no single Executive order, DOD directive, or military department regulation concerning homosexuality in the Armed Forces. It is not tied up in one little bundle. The Executive orders, DOD directives and military department regulations that deal with homosexuality do so only in the context of much broader issues and there are many such issues. There are separate rules on recruiting; there are separate rules on retention; there are separate rules on military justice. Homosexuality is addressed in the context of each one of these broad personnel policy directives, not in a single directive. The amendment does not freeze only those portions of the Executive orders, DOD directives, and regulations that specifically address homosexuality. The amendment freezes the entire text of the Executive orders, DOD directives, and military department regulations in question.

When you freeze all of the rules concerning the appointment, enlistment and induction, and retention of military personnel, you freeze virtually all military personnel management policies from now on, unless changed by law. Under this amendment, every change in these policies from now on—no matter how minor—would have to be considered by Congress. If anyone thinks we have had gridlock around here in the recent past, wait and see what would happen if this amendment becomes law.

Let us look at some specific examples of what this amendment would do.

One of the Executive orders that would be frozen in place by this amendment is the Manual for Courts-Martial. The Manual for Courts-Martial was issued as one Executive Order, No. 12473, in 1984. This Executive order implements the Uniform Code of Military Justice.

The manual sets forth the rules that govern the power of our military commanders to discipline their troops. Every order issued by a commander; every barracks inspection; every fraud, every act of waste, every act of abuse, every nonjudicial punishment proceeding; every court-martial; and every appeal is governed by this manual.

As my colleagues can see, this is the manual. It weighs 7 pounds. It has hundreds of pages. It covers virtually everything that I have said plus hundreds of other items relating to sentencing, relating to commission of an offense, and relating to nonjudicial punishment procedure. It relates to every single thing that you can imagine in implementing the Uniform Code of Military Justice. It has hundreds of pages and detailed text covering every aspect of the court-martial process from investigations through appellate review.

Since the Manual of Court-Martial is an Executive order authorizing a dishonorable discharge for persons who commit homosexual acts, the freeze amendment, as I read it, means that any future changes in the manual would have to be authorized by a new statute. I do not think we want to take that step. For example, the freeze amendment would preclude the President from amending the manual to increase the disciplinary powers of commanders—such as the power to conduct searches, seizures, and inspections—even if our military commanders recommended those changes as necessary to ensure good order and discipline in the Armed Forces. No changes in the manual's rules could be made without a new statute.

I do not believe that is really what the authors of this amendment intend, but I think that is what this amendment does.

Mr. President, there are many other questions about the effect of the amendment freezing all Executive orders, DOD directives and military department regulations on military personnel policy which I do not believe the sponsors of the amendment have fully considered.

The enlistment and appointment regulations set forth standards on critical factors such as education, mental ability, and physical condition for new recruits. If our military commanders determine that military effectiveness requires that any of these standards be raised or lowered, then DOD, as I read the amendment, would be prohibited from amending current rules to change those standards unless they are changed by law.

Separation regulations set forth the criteria for administrative discharges on subjects such as misconduct, drug-related offenses, and civilian convictions. If our military commanders believe that military readiness requires that any of these standards be raised, then DOD, as I read the amendment, would be prohibited from amending current rules to change these standards, unless it is changed by Congress.

What if, for instance, after review of the Tailhook report our Secretary of Defense, in terms of revising the sexual harassment rules and regulations in the Department of Defense, recommends that the President revise the Manual for Courts-Martial to establish sexual harassment as a specific offense and prescribe a penalty for that offense? What if they believe they need to revise DOD's retention and separation regulations to expressly address the problems of sexual harassment? Is this covered by the amendment? In my opinion, it would be.

Mr. President, it has just come to my attention, and I have not read every word of this, but the Navy, for instance, on January 6, 1993, less than a month ago, issued a Department of Navy regulation entitled "Department of Navy Policy and Sexual Harassment." It is dated January 6, 1993—after this freeze—which by statute under this amendment would be January 1.

These are some of the things that this Navy directive covers, which is stated on page 5: Actions, threats or attempts to influence another's career or job in exchange for sexual favors. I ask the authors of the amendment, what about sexual favors requested by a homosexual—would that be covered by the amendment and frozen out? As I read the amendment, there is serious question about whether this whole directive on sexual harassment, that is the Navy's response thus far to Tailhook, would be thrown in the trash can and put out of business by the amendment because it would be a change after the January 1, 1992, date in the amendment which freezes out all new rules. To be absolutely sure you would have to read this new rule and the old rule very carefully to determine the effect of the amendment. The Navy's January 6, 1993, rule also covers physical contact of a sexual nature which, if charged as a violation of the Uniform Code of Military Justice, could result in a punitive discharge. The way I read this, the Navy's January 6, 1993 directive would cover homosexual acts as well as heterosexual and, therefore, this directive could very well be out the window because it would be frozen out by the January 1, 1993 date in the amendment.

Mr. President, I know that is not what the authors intend, but what I am saying to everyone here is what I said to the President last week. Let us examine what we are doing and know what we are doing on this subject and then legislate rationally if we choose to legislate.

Mr. President, even if this amendment were viewed very narrowly, even if my interpretation in the reading of it is too broad—but I do not believe it is and I think most lawyers would agree with my interpretation—but even if we give it a narrow reading, even if every word had been put in this amendment that narrowed it down to absolutely nothing in an Executive order, or nothing in a directive or nothing in a policy except the very narrow term concerning homosexual conduct, we would still have some major problems with this amendment.

Let me just give a few examples in that regard.

This freeze amendment would preclude the President from changing the

Manual for Courts Martial if military commanders, for instance, recommended that the President, the Commander in Chief, deal more severely with homosexual rape and homosexual acts involving service members and minors. After his military commanders reviewed this situation and decided the existing code is not strict enough, if they said, "Mr. President, we want to make it stricter," then he would be precluded unless he came in and changed the law.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NUNN. I yield myself 5 more minutes.

Mr. NUNN. Mr. President, let me give another example. For example, the Manual for Courts-Martial currently authorizes a dishonorable discharge and 20 years confinement as the maximum punishment if a service member is guilty of forcible sodomy. Under the freeze amendment, the Dole amendment, even if our military commanders recommended to the President that a greater punishment is warranted for homosexual rape, he could not authorize any increase in the maximum punishment without a change in the law. I do not think that is really what we want to do here.

Another example: The Manual for Courts-Martial currently authorizes a dishonorable discharge and 20 years confinement if a service member is guilty of sodomy with a minor.

Under the freeze amendment, even if our military commanders recommended to the President that a greater punishment is warranted for service members who commit homosexual acts with minors, he could not do that because he would be frozen in with this amendment if it passed and became law. I do not think that the proponents of this freeze would want to limit the jail time of persons who take advantage of children if the Defense Department determines that a more serious punishment is warranted. I do not believe that is the intent, but that is what this amendment does.

The Manual for Courts-Martial currently provides that the 20-year maximum for sodomy with a minor applies only where the person is under 16 years of age. In other words, the sodomy provision of a 20-year punishment does not apply if it is committed with a 16-year-old. A 15-year-old, 14-year-old, 13-year-old, yes, but not a 16-year-old. If a service member is guilty of committing a homosexual act with a 16-year-old, then the 20-year maximum does not apply.

Under the freeze amendment, even if our military commanders recommended to the President that the 20-year maximum is warranted also for service members who commit sodomy with 16-year-old children, he could not authorize any increase. It would be subject to having to come back to Capitol Hill for a change in the law.

I really do not believe that is what is intended but that is what this amendment does. The freeze amendment also would preclude the executive branch from making any drafting changes that might be needed to improve the likelihood that the current rules on homosexuality in the military could survive legal challenges.

In this court case in California, if it on appeal looks to the DOD lawyers as if we have some problems with some of the existing rules and that they better change those Executive orders and rules and directives, if they decide they want to change those rules so we can survive a court case, this keeps them from doing so.

I can tell everybody here I have seen that happen time after time, where they have to change rules and regulations in order to be able to survive a court case. The Dole amendment, if we pass it, would block that out, making it much more likely that an appellate court would kick out the existing practice which I know the proponents of the Dole amendment would like to keep in the law.

Mr. President, I could go on and on, but I have used up an awful lot of time. Let me just close by saying that it is not an easy task to deal with this subject. That is what I have been saying to President Clinton. I have said slow down, Mr. President. Let us be prudent; let us be cautious. There are a lot of questions that I do not believe the executive branch has thought about.

Now I am saying to my colleagues in the Senate let us not legislate this. We do not know what we are doing here today in terms of the effect of this amendment. I do know that by reading the amendment there are an awful lot of unintended consequences. The very policy you are trying to protect with this amendment may very well be kicked out of court because the executive branch will not be able to make any changes even if those changes are needed to strengthen the directives.

Mr. President, I urge our colleagues to do the same thing I urged President Clinton to do last week, and that is before we fire, let us aim. Let us get ready, let us aim, and then decide what to do. Let us not jump the gun and legislate something we do not know much about and then cause the whole military department to be basically in gridlock in dealing not just with homosexual conduct but with thousands of other things that are in these executive orders and rules and regulations.

Mr. GLENN. Mr. President, will the Senator yield for a question.

The PRESIDING OFFICER. Who yields time?

Mr. GLENN. Mr. President, will the Senator yield for a question.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from Georgia has 35 minutes remaining.

Mr. NUNN. I will be glad to yield.

Mr. GLENN. Mr. President, with regard to the first paragraph of Senator MITCHELL's second-degree amendment where it says, "review of current departmental policy," would it be the opinion of the distinguished floor manager that the Uniform Code of Military Justice would also be included in that review? Because, after all, that is the law that the military lives under when they give up some of their civilian rights.

Mr. NUNN. That is certainly the way I would interpret it as chairman of the committee dealing with it. We would have to look at the law because the law is on the books; it cannot be changed and it is a very material part of it.

Mr. GLENN. It would be the Senator's opinion that a review of departmental policy should include the UCMJ?

Mr. NUNN. That is correct, because policy flows from the law and we have to consider the law if we are going to consider the policy.

Mr. GLENN. A second area. Where it says with respect to the service of homosexuals in the Armed Forces, would it also be the consideration of the floor manager that this would include the Coast Guard, because the Coast Guard is not part of the Department of Defense normally except in times of stress or times of war. That, of course, would come under the Department of Transportation, and they should certainly be considered in that. The Coast Guard is a combat unit when we are at war, as they were in the Persian Gulf in Desert Storm.

Mr. NUNN. I would agree completely with the Senator from Ohio. And he will be helping me chair these hearings as chairman of the manpower subcommittee. We certainly would consider the Coast Guard. They in wartime would be included in the Department of Defense and in peacetime they are included under the Transportation Department. That certainly will be considered.

As a matter of fact, I served in the Coast Guard and the Coast Guard—a lot of people do not know—I am told, had the greatest number of casualties in World War II, more than any other branch of the service. They were very much part of our Armed Forces.

Mr. GLENN. I hope with the colloquy we have had here the Secretary of Defense will consult very carefully with the Secretary of Transportation and with Coast Guard officials to make sure we are including them in any consideration here also, and I thank the floor manager.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from Indiana controls 40 minutes 20 seconds.

Mr. COATS. Mr. President, I yield myself 1 minute and then I would like to yield some time to the Senator from Texas.

The PRESIDING OFFICER. The Senator is recognized for 1 minute.

Mr. COATS. Mr. President, I understand that the Senator from Georgia shares concerns that we have on this side relative to the impact of this change in policy, and that it ought to be studied carefully before policy changes are made. He said let us do nothing hasty; before we fire, let us aim; let us get the answers to the questions that are not answered as of yet; let us make sure we know what the unintended consequences are.

That is exactly what we are trying to do with the Dole amendment. That is exactly what we are asking the President of the United States to do. We are saying to the President of the United States before he takes action, because this is complex, because this has potentially unintended consequences, because this goes to the effect of our military for the future, let us make sure we know all the answers, and let us get Congress involved and let us get the military involved. That is all we are asking the President to do. Hold back on making this policy change on allowing homosexuals in a 6-month period of time to enter the military without reservation before we know what the consequences of that are going to be.

The Senator from Georgia has raised a serious question relative to the impact of this on existing Executive orders or potential changes in Executive orders.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. COATS. I would like to yield 3 minutes to the Senator from Texas to respond.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. GRAMM. Mr. President, I have heard a lot of arguments on the floor before. This is a very interesting one. If we listened to our dear colleague from Georgia, he would say that if we adopt this amendment we are fixing the policy of the Defense Department and creating all of these unintended effects. In fact, let me quote from the President's defense policy regarding homosexuals in the military:

> The current Defense Department personnel policies related to this issue will remain in effect at least through July 15, 1993.

Mr. President, we can always try to come up with ways to argue that problems exist, but I just ask my colleagues to read the amendment. The amendment addresses appointment, enlistment, induction, and retention of gays in the military.

Our dear colleague from Georgia talks about punishment. I see no punishment in appointment, enlistment, induction, and retention. The truth is that the entire fabric of the debate is prefaced on the fact that the President has made a change in policy concerning induction and has frozen that policy into effect until July 15. The real debate is, are we going to continue on a path where a decision is already made, where the debate is phony, where the hearings are a sham, or are we going to establish an orderly procedure to look at the facts and then have Congress participate in the decision?

That is what this amendment is about. That is what the issue is. I am confident that the American people are not going to be confused on that issue.

I yield the reminder of my time.

Mr. COATS. Mr. President, could I get an assessment of what time is remaining?

The PRESIDING OFFICER. The Senator from Indiana controls 36 minutes, 46 seconds; the Senator from Georgia, 32 minutes, 51 seconds.

Mr. NUNN. Mr. President, in response to my friend from Texas, the President can change the directive he issued last Friday at any time. He is not going to change it. But under the rules and regulations he is not freezing this in law. He will be able to make changes and make exceptions if it is warranted in all of these other areas.

The second thing I say to my friend from Texas, the retention section has the sanctions because that is where you have the dishonorable discharge. That is dealing with the retention section that is spelled out clearly in the amendment.

I yield 5 minutes to the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, thank you.

Let me just state at the outset that I intend to support the Mitchell amendment and oppose the Dole amendment. I would like to talk about what I think is at issue in the most fundamental sense. That has to do with whether or not gay and lesbian persons in the United States of America will be accorded equal protection against discrimination, discrimination based upon who they are.

Mr. President, I have talked to a lot of people in Minnesota, veterans organizations, military people, many of whom are very nervous about all this. We are going through changes in our country. Even if I disagree with them, I deeply respect what they are saying to me because I think they are saying it in very good faith and very good conscience. But I do object to an effort, I think unfortunately, by some to—I think—push the wrong buttons and to—I think—really represent a politics of hatred.

Sometimes we can be very generous with the suffering of other people. I have heard people say to me, "Why this issue? Let us get on with the economy, let us get on with health care." Believe me, I know those issues are important. But on the other hand, if we were talking about someone's son or daughter or brother or sister or father or mother, they might feel differently about this.

I think the fundamental question, the subtext of much of this debate and discussion, is whether or not we are going to treat a group of citizens, based upon their sexual orientation, as if they are less than fully human. I want to make it clear as an American Jew that for all too many years Jewish people were treated as if they were less than fully human. I want to make it clear as someone who played a small part in the civil rights movement that for all too many years people of color were treated as if they were less than fully human.

But it is very difficult to quench the fires of human dignity. We will reach a day in our country, and maybe it is going to take an educational effort, but we will reach a day where we do afford equal and fair treatment to all citizens.

That is what this is all about. You know, Mr. President, we are playing with people's lives. It can be a very cruel thing.

Let me just talk about Pam Mindt, from Minnesota. Pam Mindt is a member of the National Guard, also served in the Reserve. Ten medals of honor she has received, written up in the advertisements for the Guard. But she felt not too long ago that she had to step forward and be honest and say she was a lesbian. She could not live with this schizoid existence about not being honest about who she was. As a result, she is faced with the prospect of dismissal.

Mr. President, I want to say this to each and every Senator on the floor. This is my own view and we all have our own view.

I went to the service for Thurgood Marshall. I heard some very stirring words at that service. Those words said sometimes you have to take positions, and sometimes it is not easy, and sometimes it is very difficult, but leadership is not appealing to the fears of people, leadership is not dividing people, leadership is not using people for politics, leadership is not about polarization. Leadership is about calling on people to be their own best selves.

By supporting the Mitchell amendment and defeating the Dole amendment, we take but a small step in that direction. I do not think that is too much to ask of the U.S. Senators when it comes to a basic question of civil rights and human dignity for people in the United States of America—all people, I might add.

Mr. NUNN. Mr. President, I yield to the Senator from Rhode Island 5 minutes and 55 seconds.

Mr. WARNER. Mr. President, is it possible we could rotate from one side to the other? I would thank the distinguished managers if that were possible.

Mr. NUNN. We would be glad to do that. I say to the Senator from Virginia we have been doing that all afternoon. In fact, the Senator from Indiana asked me two or three times to go

ahead and use 2 or 3 because nobody was on the floor.

Mr. COATS. Mr. President, I yield to the Senator from Virginia 5 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 5 minutes.

Mr. WARNER. Mr. President, I thank the managers. I thank my good friend and former boss, the Secretary of the Navy.

Mr. NUNN. Would the Senator from Virginia hold for just one moment? After the Senator from Virginia, I yield to the Senator from Rhode Island.

Mr. WARNER. Mr. President, in September, last fall, the distinguished Senator from Georgia and I in the capacity of managing the annual authorization bill of the Armed Forces, first addressed this issue on the floor of the Senate. At that time, I said—and it was concurred in by the distinguished chairman, Senator NUNN—that this issue is of great importance. It demands the full and careful attention of the Senate and of the House because the issue is very, very important today and will be a decade hence. Whatever decision is made by the Congress will shape the Armed Forces of the United States for a decade hence, beginning from the first day of that decision by the Congress, if the Congress—and I hope it will not—changes the current law.

There may be some modifications. From the very beginning, in my first speech in September, I said the importance justifies our consideration, and there may be some modifications made. But we should go about it in a very slow and deliberate manner. It is for that reason that I support the amendment of the distinguished Republican leader.

ORDER OF PROCEDURE

Mr. President, regrettably, today we have the absence of the ranking member of the Armed Services Committee, Senator THURMOND. He is attending his brother's funeral. Therefore, I would like to read from his prepared remarks and ask unanimous consent that they be printed in the RECORD in full, and that my remarks follow thereafter, and likewise be included in the RECORD in full.

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

Mr. WARNER. Senator THURMOND, were he here, would say: "Mr. President, many in the Congress are troubled with the manner in which the President has dealt with such an important issue which potentially impacts the effectiveness of our Armed Forces. I recognize and respect the role of the President as Commander-in-Chief of the Armed Forces. I also recognize and respect the constitutional role of the Congress to make all laws necessary to raise and support armies and to provide for and maintain the navy. Accordingly, we have both a role, and we"—the Congress—"should both work together to develop a policy"—with our President—"which has as its goal the readiness and effectiveness of our fighting forces." Underline "fighting forces."

Senator THURMOND crossed the beaches of Normandy. More than any other Member of this body, with his long service here in the Senate, he has had a very, very strong and long identity with the men and women of the Armed Forces. Therefore, I believe his words, should be taken and considered very carefully by all.

I ask unanimous consent that the remainder of his remarks be placed in the RECORD.

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

STATEMENT BY SENATOR STROM THURMOND—REFERENCE AMENDMENT TO MAINTAIN THE CURRENT DEPARTMENT OF DEFENSE POLICY REGARDING GAYS IN THE MILITARY

Mr. President, I rise today in support of the amendment to maintain the current Department of Defense policy regarding homosexuals in the military. I regret that the President has chosen to move forward at this time notwithstanding the request of many Congressional leaders, to hold in abeyance any change in the policy until hearings and study could be completed on this complex and emotional issue. His actions last Friday, directing the Department of Defense and the military services to stop asking new recruits if they are homosexual and suspending discharge actions against those who claim to be homosexuals, have set the wheels in motion for the total revocation of the ban. In fact, President Clinton has said he fully intends to issue the Executive Order on July 15 of this year.

If consultation and cooperation are to be effective, they must take place prior to action, not subsequent to it. The President has already acted.

The amendment offered today will only return our Nation to the status quo so that—through hearing, study, and contemplation—the Senate, the President and the Nation can take informed action this summer.

To approve the amendment is to respect the role of the legislative branch as a partner in public policy. To reject the amendment is to reduce the hearings and debate of this body to a sham. We will talk, but the decision will already have been made.

The President's executive order has turned the policy process on its head. In my view, this amendment would only set it right again.

Mr. President, many in the Congress are troubled by the manner in which the President has dealt with such an important issue which potentially impacts the effectiveness of our Armed Forces. I recognize and respect the role of the President as Commander-in-Chief of our Armed Forces. I also recognize and respect the Constitutional role of the Congress to make all laws necessary to raise and support Armies and to provide for and maintain the Navy. Accordingly, we both have a role and we should both work together to develop a policy which has as its goal the readiness and effectiveness of our fighting forces.

Mr. President, this issue is not about the morality of one's lifestyle. This issue is not about civil rights. The issue before us is National Defense. This debate is about the unique aspects of the military environment and the effect changing that environment will have on victory or defeat. We are talking about the lives of our men and women in uniform. There is no greater responsibility on the President and the 535 members of the Congress than to promote the national defense and the well being of the young people who answer their nation's call. If change is to be made with regard to homosexuals in the military, then it should come about only after thoughtful consideration and consultation, and not simply on the basis of a campaign promise. Campaign promises are part of the process. However, there are times when you just have to step back and remember that the responsibility of leadership to this Nation and its 1.7 million servicemen and women supplant what may have occurred on the campaign trail.

Mr. President, I welcome and fully support Senator Nunn's call for hearings on this issue. We need to hear from the military leaders who have dedicated their lives to this country and possess a unique insight into the working of the military. We need to hear from the non-commissioned officers who are the backbone of our Armed Forces and to whom we look for unit cohesion and discipline. We need to hear from the new recruits whether a change in the current policy would have affected their decision to enlist. We also need to hear from those who support a change in the policy. I am willing to listen to all sides and keep an open mind. Perhaps there are some changes that can be made. However we do not know what those changes should be, because we have not had the opportunity to explore the issue. We are dealing with the policy that has been in effect for 50 years. 50 years, Mr. President. A policy that has been accepted by military and civilian leaders of both parties. Before we take the first step on this uncharted course, I submit that prudence dictates we go slowly or we will run the risk of destroying the finest military in the world.

Mr. President, we all know that many gay men and women have been in uniform and have served their Nation with distinction. I am confident that they would continue to do so with or without a change in policy. However, we need to look beyond the individual to the greater whole. Successful military leaders have always emphasized the importance of trust and cohesion as an element of readiness and combat effectiveness. Our military leaders and training instructors—both officers and enlisted—have worked long and hard to create tight bonds among those who must face tough combat situations and meld individuals into the tightly knit teams necessary to accomplish their mission. In view of the antipathy that often exists between heterosexuals and homosexuals in our culture, will the trust, cohension and spirit of teamwork that currently exists in the ranks suffer if open homosexuality is allowed? Will recruitment and retention suffer as a result of the change in policy? Will the prevalence of AIDS in the gay community create unforeseen risks on the battlefield? Will a medic refuse or hesitate to treat a wounded gay servicemember because of the fear of AIDS? Is privacy aboard a ship or submarine an issue? Should we provide military housing and benefits to a married gay couple? How does the unit commander deal with these issues? These are a few of the tough questions that need to be addressed. Frankly, Mr. President, I do not know the answers to these and other such questions. I do not

believe the policy of the Department of Defense should be changed until the members of this body have had a chance to ask, and consider the answers to the many questions we face.

Let us remember that it is easy for politicians to proclaim policy from the comfort of their chambers. It is an entirely different matter for the young lieutenant who has to implement that policy from the spartan and dangerous environment of the battlefield or the close quarters of a nuclear submarine submerged for 90 days. These are the kinds of situations we have a responsibility to review prior to making any changes. Not to do so is a dereliction of our duty to the people who have to live by the rules we make.

Mr. President, in closing, I would like to remind President Clinton that he made another promise to the American people. He committed himself to working closely with the Congress—Democrats and Republicans alike. He wanted to end the divisiveness that he said hindered progress on many issues of importance to the American people. He called for cooperation and not confrontation. Mr. President, there was no initial consultation or cooperation with the Congress on this important issue. This is not a good way to start. If the President is serious about working together on the critical issues facing America—the economy, jobs, health-care reform and the deficit—then I urge him to maintain the present policy on this matter, get on with the hearings and then come together with the Congress and the military to fashion a policy that meets the goal of all Americans—a military force that is prepared to meet the challenges of the 21st century.

Mr. WARNER. Now, with respect to my own remarks, Mr. President, I have spoken to the distinguished chairman of our committee, Mr. NUNN, on several occasions about this issue. I commend him for the courage that he has displayed in the handling of this tough issue, both in consultation with the President and in consultation with leadership of the Senate.

It is not often that the Senator from Georgia and I are on different sides of an issue, but we are on this one. But I told him that it was imperative that a very careful study be undertaken respecting how other nations have dealt with this issue.

I have done my very best in the short period of time we have had to try and gain information about other nations policies and experience on this issue, and I will put in the RECORD a very brief summary of some dozen nations.

This is the best I could obtain, because not much information has been gained; although the Department of Defense has tried. This is not official. But it is the best we can learn. I have spoken with those members of the Department of Defense who have traveled to other nations, who have consulted with the military leaders of other nations with respect to the experience they have had on this issue. They are not forthcoming in terms of the information regarding their learning curve. There are nine nations that prohibit enlistment, and there are some 12 that do not ask questions. But the general theme that I have been able to determine thus far, is that of those nations that do not ask questions, they treat these individuals very differently from the other members of their Armed Forces. Many nations will not give them security clearances. Many nations will not put them in combat units.

I have recommended to the chairman that our committee delegate to several members the task of going abroad to try to learn for ourselves firsthand what the experience of other nations have been, so that when Senators wish to refer to the experience of other nations—and a Senator today has referred to the experience of another nation—we have some hard facts to help guide the ultimate decision of this body.

Mr. President, I ask unanimous consent that two articles from the January 11, 1993, edition of Army Times, along with a summary of policies of NATO nations, be printed in the RECORD at this point.

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

[From the Army Times, Jan. 11, 1993]

IN ISRAEL: THE HARD REALITY

(By Tom Philpott)

HAIFA, ISRAEL.—Yaron, a 30-year-old reserve lieutenant in the Israeli navy, stares thoughtfully at his coffee cup, considering the question.

English is his second language, so he must choose his words carefully. But the greater challenge is sorting out his feelings on the topic raised: his experience as a homosexual in the Israeli military.

Thirty to 60 days each year, Yaron, who would not reveal his last name, commands a Dvora class fast-attack boat, patrolling Israel's coastline with a crew of five active-duty sailors and four to five reservists. "Ten beautiful men," is the way Yaron describes them.

The crew members train to keep their skills sharp and guard against terrorism from the Mediterranean Sea. But how does a homosexual like Yaron handle his duties? How does the crew react: How does the Israeli military accommodate gays in operational assignments?

The questions are keenly relevant given President-elect Clinton's vow to lift the ban on gays serving openly in the U.S. military. Those who support the change answer critics, in part, by pointing to countries like Israel, France and Germany and their perceived success in assimilating gays into the armed forces.

Israel often is cited not only because gays legally can serve openly here, but because the Israeli military is widely viewed as one of the best in the world. Its battle skills have been tested often.

So how do Israel and some of the major NATO countries manage this volatile issue?

A closer look reveals that supporters and opponents of the gay ban alike are clouding the debate with misleading statements. Citing laws and regulations alone is not enough to understand the situation. In many countries, there is a vast difference between what is written and what is day-to-day reality.

THE ISRAELI MYTH

The situation in Israel, a religiously conservative country, might be the most misunderstood. In a recent editorial, The New York Times wrote, "Homosexuals [in Israel's armed forces] are not denied promotion because of their sexual orientation; they are allowed to become career soldiers; they serve in even the most elite fighting units, on critical frontiers."

Reality is quite different. In theory, homosexuals serve here openly without fear of harassment or discrimination. In practice, people like Yaron face many of the same pressures as their counterparts in the United States. Consequently, they are afraid to reveal their sexual preference.

Those found to be gay, or who proclaim their homosexuality, must undergo psychological testing to remain in service. Their files are flagged. They usually are barred from positions requiring top security clearances. Known gays rarely are assigned to combat units and do not serve without stigma regardless of the position they hold. Homosexuality, while no longer legally banned in Israel, still is viewed as abnormal both in the military and Israeli society.

Yet, the Israeli military handles homosexuals delicately compared with the U.S. military, where gays face immediate discharge regardless of assignment, specialty or overall performance. Many here consider such a blanket ban unnecessarily harsh. Homosexuals in the Israeli military do not fear criminal investigation, court-martial or abrupt dismissal. And "gay bashing"—physical attacks against homosexuals—is seen here as a violent American phenomenon.

THE MASQUERADE

Yaron's experience in a close-knit operational unit provides ammunition to both sides in the gay debate. He remains in the closet, even after six years of active duty and six more in the reserves. The masquerade, he says, said, is painful, but necessary. If he reveals his homosexuality, not only would it bother some crewmen, particularly the younger ones who don't know him, but it might upset his squadron commander. The navy has too many reserve officers for too few seagoing billets, so Yaron likely would get a quick transfer to a desk job.

Hiding his homosexuality. Yaron says, he receives excellent fitness reports and considers himself an effective boat captain. Still, he's concerned about the "sexual tension" and how his homosexuality plays off the crew.

"[Navy officials] think if I'm gay that, in an emergency, some of my subordinates won't take my orders . . . that they will be insubordinate. I feel you must trust everyone. It doesn't depend on sexual orientation. I'm very efficient," he says.

But, "you live with the crew 24 hours a day, sometimes away from the beach for a long time. And sailors, they talk all the time about sex."

As a homosexual, he says, "it's very difficult to separate the sexual stress from the special relationship with crew. There are close quarters and sometimes even touching. Lots of times sailors go naked and that is a problem for me. They laugh a lot about opportunities for sex among the crew and, sometimes, for a gay, it's very hard. I can't say, "Stop laughing at homosexual relationships!" "

His situation is different, he concedes, than it would be for a heterosexual officer. He's uncomfortable, for example, with some of the horseplay between crew members. He's bothered that the crew uses slang for homosexual to curse one another. He wonders if some sailors who joke about homosexual relations actually are interested in them. And

he fears showing favoritism toward crewmen he finds physically attractive.

"I can't ignore if I like someone very much. If I'm very attracted or [have] a special relationship, I'll act different. . . . Sometimes they can be confused and don't know the meaning of this connection."

But Yaron emphatically says he would never have sexual relations with a crewman.

"I separate [my] civilian life when I come into the Navy. I act like I'm straight. But sometimes that may cause some trouble because I'm only a human being. I can do my job very good although I feel sexual attraction too."

Asked if all these feelings don't affect his ability to command, Yaron says they make it "very difficult to serve. But they have to give me the opportunity."

Listening to this conversation is Tal Weisberg, a gay reservist in the Israel army and Yaron's friend.

"I switch off my sexuality [on active duty]," Weisberg says. "Not because I want to, but because I am afraid."

Staying in the field for long periods is not much different than being at sea, says Weisberg, who serves in a front-line maintenance unit. When he feels attracted to another soldier, in a group shower for example, he has learned to check his feelings.

"It depends on the character of the person." Yaron says. "If he has a weak character, it's a problem."

WE DON'T HAVE A PROBLEM

Israel has fought five major wars in its 45-year history. Today it faces real or potential enemies on every border and is dealing with the sixth year of civil unrest in the occupied Arab territories. Against this backdrop, the issue of gays in the military is seen as relatively insignificant. And as far as the government is concerned, the less attention paid to it the better.

"We don't have a problem," one government official says, "and we don't want one."

While some Clinton supporters see Israel as an archetype for integrating gays, the government here is uncomfortable in that role.

"It's true that the Israeli army does not discriminate against gays. But it has to be put into a proper context," says Lt. Col. Moshe Fogel, spokesman for the Israeli Defense Force.

That context begins with Israeli society, where the emphasis is on family values and the government is a democratic theocracy. Judaism and religious leaders play a prominent role in setting the nation's agenda. There's no concept here, as in the United States, of separation of church and state.

"We struggle to strike a balance between a modern, pluralistic, secular society and, at the same time, a Jewish state," says Uri Dromi, director of the government press office. Judaism considers homosexuality as "an aberration, something that should not be done and should not be endorsed or acknowledged or credited with the same status as straight people."

Perhaps because these societal pressures are so strong, the Israeli military sees no need to paint homosexuality as a readiness issue. It already has the authority to restrict homosexual assignments and promotions.

A DIFFERENT CONTEXT

This approach to homosexuality fits in well with Israel's concept of universal service. At age 18, all Israeli men and women are drafted. Some exemptions are granted for ultraorthodox Jews and the physically handicapped. But many youths found physically unfit, including the severely handicapped, routinely appeal to a voluntary service board and win spots somewhere in the Israeli Defense Force. Throughout the process, the issue of sexual orientation never is raised.

"If you don't let someone in the Army here, it is a very cruel thing to do," says David Kreizelman, deputy director of the government press office. "Not only do people assume something's wrong with you . . . you're immediately bringing on yourself all kinds of problems."

Military service is a springboard to a successful civilian career here. Military experience is among the first questions asked of job applicants. Those who have progressed steadily or have served in critical positions have an advantage over their peers, particularly for jobs in government or Israel's bustling defense industry. Conversely, young people with no military experience face limited job prospects.

Male draftees must serve three years on active duty. At age 21, a relatively small number enter the small Israeli professional military and the others transfer to the reserves. Reservists drill one to two months annually until age 51. Women must serve two years on active duty. Their reserve obligation ends at age 24.

QUALITY SENT TO COMBAT

Draftees can say where they would like to be assigned, but the military makes final decisions based upon qualifications and service needs. Only top-quality recruits are sent to combat units. The definition of "quality" is based on intelligence, motivation, psychological fitness, education and physical fitness.

Every Israeli soldier begins service as a draftee. There are no service academies or ROTC programs. Eighteen months into mandatory service, standouts can apply to attend a six-month officer course. If accepted, their active-duty obligation is extended another year.

Inductees never are asked if they are homosexual and it is rare that they would volunteer the information, officials say. For one thing, many gay men and women still are unsure of their sexual orientation at 18. Also, because Israel is a religious, family-oriented society, young people who reveal their homosexuality bring enormous pressure on themselves and their families.

"There is a tremendous difference between public acceptance of gays in the U.S. and in Israel," says Reuven Gal, former chief psychologist for the Israeli Defense Force. "Where we stand today is still far, far behind where the U.S. stood even in the early '70s, not to mention where it stands now."

PSYCHOLOGICAL TESTING

While no conscript is asked about sexual preference, anyone who says he or she is gay, or anyone suspected of being gay, is referred to a mental health officer for psychological testing.

Dan Yakir, a lawyer with the Association for Civil Rights in Israel, says the official policy toward gays was set down in a 1983 military order that concludes homosexuality is not a mental disorder, but might pose a security risk.

The aim of the psychological exam is to determine if a soldier's homosexuality is an isolated phenomenon, or whether it's associated with deviant behavior. The test also attempts to measure the "mental strength of the soldier and the ability to cope with stress," Yakir says.

After testing, most homosexuals are permitted to remain in service. But, says Gal, "there will be an indicator in his file that limits him from serving with specific units such as intelligence . . . or in small units where the closeness of living accommodations are so tight and limited it may create problems. They won't send him to a submarine, for example. Other than that, they won't discriminate."

Gal, now director of the Israeli Institute of Military Studies, suggests that, structurally, the Israeli military might be better suited to accommodate gays than is the U.S. military. There is no evidence that homosexuals are less effective in combat than heterosexuals, he contends. Lawrence of Arabia, for example, was one of the most charismatic and dynamic military leaders to serve in the Middle East. The real issue, Gal says, is how openly homosexual members affect the group. In that regard, the Israeli military has an advantage over the U.S. military because it has a smaller and far more stable force.

"The very same group [of recruits] that came in together in August 1989 walks out together three years later," Gal says. "The same four guys in a tank crew will serve together through several wars. They know each other to the guts."

"Suppose you had an Israeli combat unit that has been together two or three years. If suddenly a guy comes out and discloses he is a homosexual, I don't think it would affect unit cohesion. He will be considered based on how good he is as a tanker or as an infantryman," Gal says.

Even making these allowances, gays in the IDF are swimming against strong currents. In December, a gay magazine in Tel Aviv reported a story that reinforced what a stigma homosexuality carries in the top ranks of the Israel military. According to the report, several years ago a top Army officer tried to derail the appointment of Dan Shomron as army chief of staff by alleging that Shomron was a homosexual. Shomron denied the allegation and won the chief of staff position. But he also demanded a full government investigation to clear his name. Military officials confirmed the story, including that investigation found the allegation against Shomron to be groundless.

"The Israel image of a military man, especially a combat officer, is still very much a macho image," says Gal.

FIGHTING FOR CHANGE

The social customs that accompany that warrior image are under attack from some quarters. Liora Moriel, who chairs the Society for Protection of Personal Rights, Israel's only gay rights orgaization, contends the situation for homosexuals in the Israeli military and society is improving.

In December 1991, the Knesset passed a law making it illegal to discriminate against homosexuals in the workplace. Although only elected to the Knesset this past summer, Yael Dayan, daughter of the late Israeli defense minister and soldier Moshe Dayan, already has gotten a subcommittee established to weed out discrimination based on sexual preference.

Despite their strong bias against homosexuality, many Israelis express surprise that the United States, with its reputation for protecting personal freedoms, would ban homosexuals outright from all military assignments.

"I know an officer who visited with Americans units," one Israeli defense official says. "And what did he see? In Marine [Corps] combat units, he saw women getting the same training as men. He saw every type of ethnic background you could ever imagine,

people from walks of life about as different as they could be.

"We see that and we say, 'What problem could you have with homosexuals?'"

[From the Army Times, Jan. 11, 1993]

NATO ACCEPTANCE OF GAYS RUNS FULL SPECTRUM

BONN, GERMANY.—"In working with allies," wrote Winston Churchill, "it sometimes happens that they develop opinions of their own."

The United States' NATO allies certainly have opinions of their own on the issue of homosexuals in military service; these opinions are about as diverse as can be. If the U.S. Army changes its policies from preventing gays to fight to permitting them to do so, it will still remain well within the bounds of accepted allied practice, which ranges from that of the Dutch—where gays in the army are represented by a union—to that of the Greeks—who flatly ban gays from service.

Most U.S. officers who work closely with NATO allies here prefer to avoid confronting the disparate policies directly. Typical was the reaction of NATO military commander Gen. John Shalikashvili, who favors retaining the U.S. ban. Asked to comment recently on the lack of problems reported by the German military, he said, "It's an issue that each nation will have to deal with within its own context, so I would not want to make comparisons."

But another senior American officer added an equally typical comment, "The Germans, the Dutch, the Belgians—they ain't been in a fight lately."

Despite policies that generally are more liberal than the current U.S. ban, nations that allow homosexuals to serve openly have not resolved the problem of fully integrating them into their armies. For example, gays are allowed to serve in the German armed forces, or Bundeswehr. Nor does homosexuality exclude young men from the draft.

And the treatment of gays does not come close to the full equality that homosexuals in the United States are demanding. Gay German officers find paths to promotion blocked, and in some cases have been blocked from access to classified material, according to officials interviewed there. Gay conscripts often find life in the Bundeswehr unpleasant.

Still, German officers said, the sky has not fallen. Problems feared by U.S. commanders have not materialized, and the question rarely has been a major issue in the military of one of the United States' key NATO allies.

From a practical standpoint, the *Bundeswehr*'s prohibition on gays ended in 1969, when West Germany removed homosexuality from its list of criminal offenses. While some military regulations against homosexuality survived for years, in practice, gays have been left undisturbed except in rare cases where they make advances toward subordinates.

TREATED THE SAME WAY?

"Heterosexuals and homosexuals are treated the same way," said Cmdr. Walter Reichenmiller, a spokesman for the Defense Ministry in Bonn.

But the *Bundeswehr* withholds promotions from gay officers on the grounds that they cannot command adequate respect from soldiers, according to Volker Beck, a spokesman for the German Gay League, who added court challenges to the practice have not been successful to date.

Military officials acknowledged that an officer's career can be damaged by open homosexuality.

"It might be affected where they are behaving in a way it becomes obvious," Reichenmiller said. "The respect a military superior needs to lead soldiers might keep him from further promotion, but he wouldn't be degraded."

"What happens practically is that when someone is open about their homosexuality they won't be promoted," Beck said.

Anti-gay violence, lowered readiness, and discipline problems have not been the result in Germany, officials said. "We haven't noticed any problems like that," said Friedrichs, a 30-year veteran. "There were no problems that caused the military leadership any headaches."

"I really have never heard of such a case in my 29 years of military service," said an army pilot, who added he would prefer not to have gays in his unit.

"Morale might be touched a little, but not readiness. I can't imagine that," he said.

OUT OF THE CLOSET, OUT OF THE ARMY

Britain's policy on gays in the military is simple. "When you come out of the closet, you also come out of the army," said Chris Pengelly, a spokesman at the British Embassy here.

And although policies on homosexuals in the military are being challenged and changed in other countries, Britons interviewed in Washington and London said there is little if any sentiment for change in Great Britain.

The question of permitting gays to serve in the British military simply is not a matter of debate, they said. And the fact that Canada and Australia recently lifted bans on letting homosexuals serve, and the possibility that the United States may follow suit, has not prompted the British to question their own policy, they added.

"We think we've got it right," Pengelly said.

The only recent military action on the homosexual front in Britain came this past June, when the British military adopted the policy that homosexual acts that are not against civil law no longer will be against military law. The change means, in Pengelly's words, "They used to be kicked out and prosecuted. Now they are just kicked out."

Actually, the practice of prosecuting gays simply for being gay was abandoned unofficially years ago, said Andre Silverman, a spokesman for the British Defense Ministry. Most homosexual activity among consenting adults was decriminalized in Britain in 1967, he said.

But beyond making current practice into official policy, there has been no move by the British military to embrace homosexuals.

Britain's military leadership contends, much like its U.S. counterpart, that allowing homosexuals to serve would hurt the military.

John Keegan, military editor of *The Daily Telegraph* in London, recently wrote that in the wake of Australia's decision to lift its gay ban, "The moment for experimentation with homosexual military rights is not yet with us, and probably never will be."

According to Keegan, in British army regiments, men serve together for an entire career and homosexuality in such a regiment would be devastating to unit cohesion.

NORWAY: 'NOT AN ISSUE'

Ask Norwegians about what problems result from gays serving in the military and the response is either a puzzled look or surprise at being asked the question.

In a country where women and men serve side by side aboard submarines or roll around naked in the snow to get clean during wintertime military exercises, Norwegians are matter-of-fact about their integrated defense force. That includes the presence of gays and lesbians, who have been allowed to serve openly in the armed forces for the past 14 years.

"Basically, the difference between the United States and Norway is that in Norway, it's not an issue," said Air Force Lt. Col. Ragnar Haugholt, the assistant Army, Navy and Air Force attache for the Norwegian Embassy here. "A lot of what is going on in the United States is based on believing not knowing."

But despite the absence of debate on homosexuals serving in the Norwegian military, the status of homosexual partnerships is currently in flux. A proposal by the ruling minority Labor Party government to allow gay and lesbian couples to marry is expected to pass before spring, officials said. That would make Norway the second country in the world to officially recognize homosexual unions.

With its passage, Norwegian gays on active duty will be able to get living allowances and other benefits for their partners, officials said. Military housing allowances for married couples run about $500 to $600 a month, said Navy Capt. Thor Hallin, naval attache at the Norwegian Embassy here.

There is some concern over the homosexual union proposal, however.

Arne Dahl, the armed forces judge advocate general, said the new law singles out homosexuals and could fuel resentment among Norwegians who may see it as unfairly advantageous treatment.

By contrast, there was little debate over ending the ban in 1979 on homosexuals serving openly in the Norwegian military, said Gro Lindstad, who chairs the National Organization of Lesbian and Gay Liberation in Norway.

FRANCE: A DRAFT DODGE

While homosexuals in the United States fight for the right to serve in the all-volunteer military, gays in France prefer to use their sexual preference to avoid mandatory service, according to government officials there.

"There is no official discrimination against gay men and women as long as they obey the rules of the French armed forces," said Capt. Phillipe Hunter, a spokesman for the minister of defense. "For example, it is not possible to punish somebody because of his sexual life. But if this person makes some sexual harassment upon other members of his unit, he will be in trouble."

Other government sources said the more common practice for French homosexuals is to avoid the 10-month mandatory service required of draft-age youths by claiming their lifestyle is incompatible with service.

"If a young man claims to be a gay in hope of not being drafted, it won't work," Hunter said. "But if his sexual life causes him psychological troubles, he won't be drafted."

Other French officials said homosexuals routinely dodge service that way. "Of people eligible for duty under the conscription law, only about three-quarters of those are medically exempted. And a well-known way of being exempted is declaring you are a homosexual," one official said. "It will not appear on paper that you were exempted for that reason. . . . Everybody is happy."

NATO POLICIES ON GAYS IN UNIFORM

Belgium: Not acknowledged as a relevant issue. Neither conscripts nor volunteers are

asked about their sexual orientation. Homosexuality itself does not exempt Belgians from the draft unless there are accompanying psychological disorders as determined by clinical evaluation. Homosexual conduct between consenting adults off-duty is not punished, but inappropriate homosexual and heterosexual behavior can lead to dismissal from military duty or exclusions from certain units and jobs.

Britain: Homosexuals are officially barred from service, but unofficially the British Defense Ministry says the practice of prosecuting gays simply for being gay is rare. Homosexual acts among consenting adults has been decriminalized in military as well as civilian law as long as it is off-duty.

Canada: Was ordered by the Federal Court of Canada to drop its ban on gays in the Canadian Forces in October 1992. Canadian service members were not required to certify they were heterosexual when they enlisted, but openly gay persons were often discharged or had their transfer or promotion opportunities limited. The files of service members who were either discharged or denied promotion because of their sexual orientation are being reviewed for reconsideration by military authorities.

Denmark: No law or policy. Neither conscripts nor volunteers are asked about sexual orientation. Treated as a personal, private matter.

France: No legislation or written codes. Gays are allowed to serve in the French military as long as they do not harass other members of their units. But gays and lesbians can avoid being drafted by claiming their homosexuality is incompatible with service life.

Germany: Homosexuality cannot be used as a reason not to be drafted, although potential gay conscripts who claim service would be psychologically injurious are evaluated and frequently given alternative mandatory service. Career members of the military who are openly gay do face discrimination, frequently finding promotions blocked and access to top-level classified information denied.

Greece: Homosexuals are banned from military service.

Italy: Homosexuals are deemed unsuitable for military service. During medical examinations, homosexual conscripts will be declared ineligible if found to have behavioral "anomalies" caused by sexual deviations.

Luxembourg: Homosexuals are not precluded from service. Military service is voluntary and enlistees are not asked about sexual orientation. Improper conduct—whether homosexual or heterosexual—is punishable by discharge or court martial.

Netherlands: Basic law prohibits all discrimination, for any reason. A union represents homosexuals in the military. Unwanted advances are treated as improper behavior. Courses in human relations are conducted for commanders and include homosexual issues. Legislation is pending for homosexual survivor benefits.

Norway: Not considered a relevant issue and no one entering the service is asked about their sexual orientation. Unwanted advances by either homosexual or heterosexual service members are treated as improper behavior contrary to good order and discipline.

Portugal: Not seen as a relevant issue. Homosexuals may serve in the armed forces, although conduct may be punishable.

Spain: There are no codes regulating homosexuals in the military. Like religion, sexual orientation is considered a person's own choice.

Turkey: Homosexuals are not permitted to serve openly in the armed services, although they are not asked about their sexual orientation upon entering the service.

Source: Military and embassy officials of each country.

HOMOSEXUAL POLICY MATRIX

	Prohibits enlistment	Does not ask questions	Discharged if found in the service	Does not discharge but discriminates	Permits homosexuals to serve
Belgium		X		X	
Canada		X			X
Denmark		X			X
France		X			X[1]
Germany		X		X[1]	
Greece	X[2]		X		
Italy	X		X		
Luxembourg		X			X
Netherlands		X			X
Norway		X			X
Portugal	X		X		
Spain		X			X
Turkey	X		X		
United Kingdom	X		X		
Australia		X			X
Egypt	X				
Israel		X		X	
Japan		X			X
New Zealand	X		X		
Republic of Korea	X		X		
Saudi Arabia	X				

[1] But may be discharged if inappropriate behaviors are displayed.
[2] Prohibited in "regular" forces.

BELGIUM

Conscripts are not asked about their sexual orientation.

Homosexuality is not a reason for exclusion from the draft unless a significant "psychopathology," determined by a clinical evaluation, exists.

If a serving homosexual is exposed publicly, the member is referred to the medical community to determine if the member should be continued on active duty.

Serving homosexuals may have limited access to confidential documents and excluded from certain tasks and units.

Open homosexual behavior among members of the Armed Forces will not be tolerated and will lead to neuropsychiatric evaluation.

CANADA

Criminal Sodomy laws were repealed in 1969.

Armed Forces was one of the last institutions to maintain a discriminatory practice regarding homosexuals serving in the military.

Government ended the military's policy condoning homosexuals in October 1992.

Previous to policy change, questions were not asked to determine homosexual orientation but when discovered, homosexuals were discharged.

Armed forces have developed an instruction outlining inappropriate sexual behavior prohibited under civil law; not based on specific gender or orientation.

DENMARK

No law or policy regarding homosexuals in the military.

No questions are asked concerning sexual orientation.

Sexual preference is treated as a private, personal matter and is not considered a matter relevant to military service.

FRANCE

No formal, established policy.

No questions asked.

Sexuality is considered a private matter; it is considered rare in French society for homosexuals to declare their status.

Homosexuals may be medically exempted from conscription if they believe that their sexual proclivity causes psychological problems.

Commanders can separate a serving homosexual if the behavior is incompatible with military life.

An avowed homosexual may be allowed to serve if he or she is not causing problems.

May be a problem if an avowed homosexual is serving in a job linked with national security.

GERMANY

Homosexuality was decriminalized in 1969.

No written policy regarding homosexuals serving in the Armed Forces.

No questions asked as part of the conscription or enlistment process; however if a doctor discovers homosexual orientation during the medical exam, the inductee will be eliminated from entry if declared psychologically unfit.

Potential homosexual draftee may be exempted from military service if he states that he cannot control his sexual urges.

Discrimination against serving homosexuals exists.

Practicing homosexuals: Not electable to officer or petty officer ranks on the grounds that homosexuals cannot command adequate respect from soldiers; denied security clearances; and can be removed from the Service, subject to a court decision, if behavior disturbs the military.

Non-practicing homosexuals are not discharged, but are watched and their career advancement is blocked.

GREECE

Homosexuals are not allowed to serve in the "regular" Armed Forces.

Homosexual conscripts who want to serve may do so if they do not "misbehave" but are denied certain duties such as service aboard a warship.

Serving homosexuals who display inappropriate behaviors are discharged.

Homosexual conscripts or enlistees who display "strong homosexual tendencies" during the entry process are not allowed to serve.

ITALY

An administrative policy is in place regarding homosexuals serving in the Armed Forces.

Homosexuality is considered incompatible with military service.

The question of orientation is asked during the induction process.

Homosexual conscripts are medically evaluated and, if found psychologically "normal" they are declared eligible but not desirable, put on a special profile and sent home.

Serving homosexuals, once discovered, are discharged under an administrative procedure.

LUXEMBOURG

Homosexuals are not precluded from military service.

Sexual orientation is not questioned during the entry process.

Sexual orientation is considered a private, personal matter; serving homosexuals are advised to keep it a private concern.

Inappropriate sexual behavior, homosexual or heterosexual, is punishable by discharge or court martial.

THE NETHERLANDS

Since 1974, government prohibits all forms of discrimination within all governmental institutions.

Homosexuals in the military are represented by a union.

Human relations training for military commanders includes homosexual issues.

Unwanted advances, of any kind, are treated as improper behavior.

Per a 1990 study by the Netherlands Navy, intolerance toward homosexuals still exists in the Armed Forces.

Homosexual lifestyle is not accepted by many heterosexual military members.

Baiting, fear, and "unprovable forms of discrimination" still exist.

Many homosexual military members still stay "in the closet."

NORWAY

Regulations and laws do not exist regarding homosexuals in the Armed Forces.

Conscripts are not asked about their sexual orientation.

Homosexuality is not a reason for discharge.

Persons displaying unwanted aggressive behavior are transferred to another unit or Service.

Unwanted behaviors are treated as improper behavior which is contrary to good order and discipline, but homosexuality is not the main issue.

PORTUGAL

Official policy not available; unofficially, the policy is to not allow homosexuals to serve in the military.

Homosexual enlistees and/or conscripts are not accepted into active duty.

If discovered, serving homosexuals are discharged.

SPAIN

The policy to exclude homosexuals from military service was changed within the last two years.

No questions are asked concerning sexual orientation.

Homosexual orientation is no longer a reason for discharge.

Homosexuals discovered engaging in behaviors considered inappropriate are adjudged as would be any offender of the military's Uniform Code of Military Justice.

TURKEY

Homosexuality is forbidden in the Armed Forces.

Homosexual conscripts or volunteers are not allowed to serve.

If discovered, serving homosexuals are discharged and, dependent upon the circumstances, may be charged with the military justice article addressing "disgrace."

UNITED KINGDOM

Britain lawmakers are planning to introduce legislation to decriminalize homosexual activity in the British Armed Forces but will not challenge the policy barring homosexuals from serving.

Avowed homosexuals are not enlisted.

If discovered, serving homosexuals are discharged:

Homosexuals who engaged in activity with a member of the same rank over 21 are involuntarily administratively discharged.

Homosexuals who engaged in activity with someone under 21 or of a different rank are court martialed, then discharged.

AUSTRALIA

Government ended the policy disallowing homosexuals to serve in the Australian Defense Force (ADF) in November, 1992.

Service Personnel are required to refrain from conduct damaging to group morale or professional capability and cohesion.

Unacceptable, rather than unlawful, sexual behavior may be grounds for administrative separation.

ADF has developed an instruction to state ADF policy regarding unacceptable behavior by ADF members and the service action which may be taken as a result.

ISRAEL

The Armed Forces do not exclude based on sexual orientation.

No questions are asked regarding sexual orientation.

Admitted homosexuals can enter the military, but are not accepted for entry into highly classified units.

Although officially accepted, many homosexuals stay "in the closet" due to fears of stunted career growth and social stigma.

JAPAN

No policy, written or otherwise, to prohibit entrance of homosexuals into the military.

Few, if any cases, have been found.

If a homosexual was discovered in the service, he would be disciplined but not discharged.

Homosexuality is contrary to the ethics and mores of the Japanese society.

NEW ZEALAND

Homosexuals are not allowed to enter the military.

If discovered, practicing homosexuals, or those charged with indecent acts, are discharged.

Current policy is under review.

REPUBLIC OF KOREA

Armed Forces are conscript.

Homosexuals are not allowed to enter the military.

Self-proclaimed homosexuals serving in the military are psychologically evaluated and discharged.

Homosexual activity is against the penal code, military members are discharged if found guilty of homosexual acts.

SAUDI ARABIA

Homosexuality is again against Muslin law and is punishable by death.

Existence of homosexuality is not acknowledged since it is contrary to the prevailing religion.

No regulation or policy regarding homosexuality exists for the military since this would acknowledge its existence.

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Senator from Rhode Island [Mr. CHAFEE] is recognized for 5 minutes.

Mr. CHAFEE. Mr. President, as the Senate debates the matter of whether homosexuals should be admitted into the Armed Forces of the United States, I would like to offer a few thoughts, if I might. I approach this debate with the experience of having served as an enlisted man—2½ years on active duty as a marine and then 3½ years on active duty as a marine officer, where I had the privilege of commanding a rifle company, and 3½ years as Secretary of the Navy.

Just as I do not think one needs to have experienced poverty in order to discuss poverty, I do not believe that one has to have served in the military in order to discuss this subject before us. Nonetheless, I do find that my experiences are helpful to my thinking on whether homosexuals should serve in the military.

Mr. President, as a nation, we have accepted the goal of making our armed services reflective of American society. All who are able-bodied and qualified, men and women, people of all races and creeds, may serve. And having served, there are certain benefits that come with that, which they are entitled to. For example, as we all know, having served in the military, one is entitled to additional points on a civil service exam, or is able to receive a VA pension.

It is not totally accurate, as sometimes is suggested, that our sole goal should be a more efficient military. For example, the integration of women into the Armed Forces has required adjustments to be made, adjustments which have taken time, attention, and money. It would have been more efficient, Mr. President, and less expensive for the military not to make the effort to be more inclusive. But the country made the decision that women should be given the opportunity to serve, and that, I believe, is a correct decision. Gender is no longer an issue, but talent, skill, brain power, fitness, and dedication are the criteria.

Now we are confronted with the question of whether homosexuals should continue to be excluded from military service because of their sexual preference. Note, we are not talking about behavior, but we are talking about sexual preference. It turns out that we were excluding a substantial percentage of our population, perhaps 8 percent, perhaps 10 percent, who knows.

I am one who strongly believes that any problems attendant to allowing homosexuals to serve in the military can be minimized. I am certain there would be no noticeable deterioration in the quality or readiness level of the Armed Forces of the United States. In fact, as we all know, there are already many homosexuals who have been private about their sexual orientation, who now serve in the military, and have compiled records of valor. I have seen that myself in my experience. Now those homosexuals serving in the military service should be allowed to come out in the open and, as citizens of this country, be given the opportunity and the privilege to serve their country.

What should be the standard of conduct? It should be the same as for all other men and women in the military. There should be nothing offensive in their conduct. For example, we cannot tolerate the retention of men who harass or molest their female peers. Likewise, the military will not be able to tolerate homosexuals whose behavior intimidates or harasses others. Any kind of untoward sexual behavior, no matter from whom it comes, must not be permitted.

It seems to me, Mr. President, much distortion about homosexuals in the military has crept into this discussion. Some suggestions have railed about and really have reached the preposterous level. I will give you a couple of

examples. The idea that there is suddenly going to be a stampede of gays to enter the military force is ludicrous. So is the implication that the military will find itself battling an epidemic of AIDS, a disease that also hits, as we know, heterosexuals. That assertion makes no sense.

Should there be a careful process of admitting gays and lesbians into the armed services? Of course, there should be. Congressional hearings should go forward as planned, but the purpose of the hearings should not be to determine whether homosexuals should be allowed to enter the military but, instead, how we can go about integrating them in the smoothest way.

Can such integration take place overnight? Of course, it can. But it will have to take place gradually. There will have to be a vigorous effect to sensitize soldiers, sailors, officers, enlisted men, about the kind of behavior that will be expected.

To my mind, this effort is not unlike the aftermath of the Tailhook scandal, whereas, as many will recall, the entire Navy stood down for a day—the entire Navy—so that it could be made clear to all in the military, to all in the Navy, every man, that they cannot harass their female counterparts.

Without question, Mr. President, removing the ban on gays in the military is going to require the support of senior officers. If they are unsupportive of the new policy, then get out. It seems to me we have to all remember we have only one Commander in Chief. My experience has been, however, that when a discussion has taken place on a matter of import in the Navy, and a decision has been reached, that those in command follow the decision. They may not be wildly enthusiastic about it, but they carry it out—in exemplary fashion.

Mr. President, I have great faith in the military leadership of our country, that they will accept the directives of this President with grace.

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

Mr. COATS. Mr. President, I yield 10 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. HELMS. I thank the distinguished Senator and I thank the Chair.

Mr. President, let us get right to the point—no more mumbo jumbo, no parliamentary slight-of-hand. The only amendment before the Senate today that will prevent homosexuals overt entry into the Armed Forces of the United States is the Dole amendment. Any other suggestion is inaccurate.

So, the choice is clear: By supporting the Dole amendment you will be standing with the Joint Chiefs of Staff, with every major veterans' organization, and with literally millions of Americans who understand that anything short of the current ban is a threat to national defense and a surrender to a repugnant and arrogant political movement.

On the other hand, by supporting only the Mitchell amendment, while opposing the Dole amendment, you will be engaging in eyewash by supporting what is called a "nothing amendment" around this place. You will be standing with those who are ready to sacrifice the morale and effectiveness of the world's finest military in the name of a crash campaign and special interest politics.

Do not be misled by all of the talk about waiting around for this hearing or that study. The President of the United States has made clear that he is bound and determined to allow the followers of ACT-UP and Queer Nation to invade the U.S. military. He has said that no matter what this Senate does, no matter what these hearings conclude, he will lift the ban.

Mr. President, as I said in my Tuesday remarks in the Senate, President Clinton is on record, in writing, as "loathing the military." The reasons for his refusal to serve his country in uniform are well known. He has never been through basic training and his only experience with soldiers and sailors is watching them march down the street in a parade.

His determination to invite homosexuals into the armed services can certainly be taken by America's soldiers, sailors, and airman as proof positive that the President is at best insensitive and at worst contemptuous of the military way of life.

President Clinton and his advisers—many of whom have never gone near the uniform and are proud of that fact—have ignored the warnings of General Powell and his service chiefs. Thousands of Americans saw the widely circulated January 18 memo from the new Secretary of Defense to the President. It called for the advice and help of homosexual activists and politicians and disparaged the views of our Nation's highest military leaders. Obviously, the many years of combined combat experience of the Joint Chiefs count for nothing in the face of the radical minority of homosexuals and their allies in the White House.

What is underway here is the governmental stamp of approval on the homosexual lifestyle and that means making sexual orientation a protected class, sanctioning quotas in hiring and promotion, benefits for same-sex spouses and on down the line. Transforming the U.S. military into the radical's social laboratory is the most important first step in the transformation of all of American society.

In conclusion, let me repeat: The choice is clear. By supporting the amendment of the distinguished Senator from Kansas, the Republican leader, Mr. DOLE, you will be standing with the Joint Chiefs of Staff, you will be standing with every major veterans' organization, you will be standing with millions of Americans who have made clear that they understand that any thing short of the current ban is a threat to national defense and surrender to repugnant and arrogant political forces in our land.

Mr. President, I yield back the remainder of my time, and ask unanimous consent that a series of newspaper articles be placed in the RECORD at the conclusion of my remarks

I yield the floor.

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

[From the Washington Times, Feb. 2, 1993]

BLOOMING OF THE FLOWER CHILDREN

(By Richard Grenier)

Wellington said of Napoleon that his presence on the battlefield was worth 40,000 men. And of Waterloo, where he faced a sick Napoleon with an army half his own, he remembered grimly: "It was the most desperate business I ever was in. A damn close-run thing."

The age of warfare and battlefields is over, some say, ignoring Serbs, Croats, Bosnians, Azeris, Georginas, Kurds, Iraqis, Somalis, Cambodians, Angolans * * *. But one can't help but wonder how many men our own commander in chief would be worth on the battlefield. And the grim suspicion comes back: zero. And he might even be worth 40,000 men to the enemy.

Thucydides wrote: "Fix your eyes on the greatness of Athens, and remember that this greatness was won by men of courage, who did not stand idly by when the enemy attacked." And the answer to what men would most want to be has for hundreds and hundreds of years been: brave. Civilizations have come and gone—with widespread worldly desires to be rich, handsome, intelligent, witty, sometimes kind—but in most men's heart of hearts the answer is still: brave.

President Clinton is not a "baby boomer" president (a term rapidly approaching worthlessness), he's our first flower-child president. In his formative years, the "flower power" mind-set at elite universities was at its most pervasive. And this country's flower children, although given to egregious imitations of courage under embarrassingly safe conditions, have never entirely gotten over the virulent antipathy they felt for the men—working class and their educational inferiors—who fought for their country in Vietnam.

These flower children had the most immaculately idealistic reasons for opposing the war. In their mind they were humanitarians, agrarian Socialists, even Mahatma Gandhi. But the suspicion of cowardice lingers, gnawing at them, too. Others fought for their country. They, children of privilege, took educational deferments or fled. And many display to this day an invidious attitude toward the military, which they consider, at best, an alien culture.

During the Gulf war, one had only to hear the press-conference "questions" in plummy Ivy League accents expressing horror that we were bombing a retreating enemy (didn't we bomb retreating Germans in Normandy?), or that our ordnance was only 25 percent accurate (to hit a single target in World War II we had to drop 6,000 bombs).

I submit that President Clinton, who equivocated shamelessly at the outset of the

Gulf war and gave it his wholehearted support only after we'd won, remains a typical flower child, and that in a remote corner of his heart, out of envy mixed with self-justification, he seeks to demean his own military.

In my London days I knew a distinguished English homosexual actor who, drafted into the Royal Air Force at the hour of greatest peril in World War II, burst into tears at the induction center. When he'd not stopped sobbing a week later, the RAF discharged him as plainly unfit to fly out on the great bombing runs over Germany. An intelligent, fair-minded person in other respects, this man could never stop himself from denigrating the course, uneducated Britons whose grim determination to fight for their country had saved him from a Nazi concentration camp. My point being not his homosexuality but his strange ingratitude.

Bill Clinton, I suspect, is such a man. Would he have burst into tears at boot camp if the military had grabbed him during the Vietnam War? I have no idea. But I accuse him, after what is already a record number of broken electoral promises, of sticking to his position on homosexuals in the military out of a probably unconscious urge to demean men in a far rougher profession that his, and who've shown the physical courage he has never shown.

If there's anything to opinion polls, they show Bill Clinton's lifting of the ban on homosexuals supported by many women (not exactly the warrior class), opposed overwhelmingly by men (particularly those who've served), and opposed quite fiercely by the military itself. The armed forces, for those like Bill Clinton who see them only at parades, are not a democracy. Military men are not just another fraction of American society. When the nation is in danger, their mission, at risk of their lives, is to kill and destroy. They are not like other people.

Bill Clinton has never heard a shot fired in anger. He's never spent a day in uniform, never been through basic training or boot camp. These experiences are quite unlike the cheap bonhommie of an MTV party to the music of flower-child Bob Dylan's "The Times They Are A-Changing'." They might horrify him. Bill Clinton claimed in New Hampshire that he could "take a punch." But, given his flower-child predilections, it was an odd metaphor. Can Bob Dylan take a punch? Would Saddam Hussein be frightened if we told him we were sending Bob Dylan after him?

Winning a Rhodes Scholarship was very important to Bill Clinton's political career. In stipulating the qualifications for Rhodes Scholars, Cecil Rhodes cited, immediately after scholastic achievement, "manly outdoor sports." But Bill Clinton, who jogs like an old lady, has never played manly sports.

And those who find it unthinkable that a president demoralize his own military might contemplate the likely behavior as commander in chief of Bill Clinton's soulmate Barbara Streisand (who nourishes senatorial ambitions). Forget Hilary. Think kiss-kiss Hollywood. Think Barbara Streisand.

[From the Washington Post, June 28, 1992]

THE CASE FOR A MILITARY GAY BAN

(By David Hackworth)

Rep. Pat Schroeder of Colorado wanted to give women "equality and opportunity" by making them rucksack-toting grunts. Now she aims at putting homosexuals in the foxholes to "end the final bastion of discrimination."

I cannot think of a better way to destroy fighting spirit and gut U.S. combat effectiveness. My credentials for saying this are over four decades' experience as a soldier or military reporter.

Despite the ban on service by homosexuals, gays have long served in the armed forces, some with distinction. Many perhaps felt no sexual inclination toward their heterosexual fellow soldiers. If they did, they had their buddies' attitudes and the Uniform Code of Military Justice hanging over their heads. Still, I have seen countless examples of inappropriate and morale-busting behavior.

In Italy, for example, in the postwar occupation, a gay soldier could not keep his hands off other soldiers in my squad. He disrupted discipline, mangled trust among squad members and zeroed out morale. In the same unit, the personnel major was gay. He had affairs with ambitious teenage soldiers in exchange for kicking up their test scores. This corrupted the command's promotion system and led to the commissioning of William Calley-like lieutenants not fit to lead combat soldiers.

During my second tour in the Korean War, a gay commanding officer gave combat awards to his lovers who had never been on the line. IN Vietnam, a young captain in my unit was asked by the commander to go to bed with him. This almost destroyed the esprit of a fine parachute unit.

These are not isolated incidents: During my Army career I saw countless officers and NCOs who couldn't stop themselves from hitting on soldiers. The absoluteness of their authority, the lack of privacy, enforced intimacy and a 24-hour duty day made sexual urges difficult to control. The objects of their affection were impressionable lads who, searching for a caring role model, sometimes ended up in a gay relationship they might not have sought.

A majority of American citizens, according to polls, support Schroeder's bill. Many people look at the armed forces as they do the post office, the Bank of America or General Motors—an 8-to-5 institution where discrimination on the basis of sexual orientation is against basic freedom, human rights and the American way of life. If these polls are true, a lot of people don't understand what war is about.

Sure, banning gays from defending their country is discriminatory. But discriminations are necessary when a larger public purpose is being served. Civilian standards of fairness and equality don't apply down where the body bags are filled.

On the battlefield, what allows men to survive is combat units made up of discipline team players, who are realistically trained and led by caring skippers who set the example and know their trade. When all of these factors are in synch, a unit has the right stuff. It becomes tight, a family, and clicks like a professional football team. Spirited men who place their lives in their buddies' hands are the most essential element in warfare. The members of such combat teams trust one another totally.

One doesn't need to be a field marshal to understand that sex between service members undermines those critical factors that produce discipline, military orders, spirit and combat effectiveness. Mix boys and girls, gays and straights in close quarters such as the barracks or the battlefield, and both sexual contact and the consequent breakdown of morale are inevitable.

Many bright people are pushing for the ban to be lifted. I suspect that few if any have been down in the trenches, but I have no doubt their psychological political clout will have considerable influence even if they don't have a clue what combat is about.

Unfortunately, most of the top brass won't sound off. They duck and weave and offer hollow and spurious Pentagonese double-talk reasons for continuing the ban—reasons that only fuel the pro-gay argument. But they have told me in the "G" ring of the Pentagon that they're against it, but sounding off would be the kiss of death, like opposing women in combat—a career killer, you know.

I hope that our lawmakers will visit Quantico and Fort Benning before they vote, and ask Marine gunnery sergeants and Army platoon sergeants what a few gays would do to the fighting spirit of units. These pros told me: Gays are not wanted by straight men or women in the showers, toilets, foxholes or fighting units. They say that in combat young men face death constantly, and what allows them to make it through the hell of it all is a feeling of toughness, invincibility and total trust in their buddies.

My experience with warriors in over eight years of roaming the killing fields in seven wars confirms what these old salts are saying.

A serving lieutenant general recently wrote to me, "Ask Pat Schroeder if she'd like her kids under a gay first sergeant who might use his rank and authority to demand sexual favors from his subordinate 18-year-old kids. We just had that occur in my command."

No doubt advocates of gays in combat units will argue that they don't approve of demanding sexual favors and that the first sergeant deserved what he got—a court-martial. The problem is, all the court-martials and regulations in the world can't prevent the kind of morale problems that a change in the law is bound to create. Sure, the first sergeant is serving hard time at Fort Leavenworth, but Pat Schroeder and the two dozen lawmakers who support her bill must also ask themselves what happened to the morale and fighting spirit of his unit.

[From the Wall Street Journal, Nov. 16, 1992]

SEX AND SAILORS

For someone whose mantra was "it's the economy, stupid," President-elect Clinton has been making a lot of headlines about the issue of sex in the military services. This promises to continue today, with the release of the long awaited report of the Presidential Commission on the Assignment of Women in the Military. Some of Mr. Clinton's political allies are upset by its recommendation against expanding women's combat role.

The President-elect, of course, has already announced his intention of overturning the traditional military ban on homosexuals, and a court has already reinstated a gay sailor. We don't get very excited about this issue; since the services include gays and always have, there are humanitarian reasons for overturning the ban. Given today's climate repeal might conceivably tend to protected gays from normal discipline, but we trust the services could avoid that. Many senior officers are hotly opposed, though, and it would have been a good idea for the commander in chief to consult with them before announcing the change, rather than after.

It's evident that the armed forces have problems with heterosexual issues as well, as the Tailhook incident shows. And a survey sponsored by the presidential commission found that two-thirds of the troops who served in co-ed units say men and women were sexually intimate. It's hard to know what to make of this. Human nature being what it is, men and women who think they may die tomorrow are going to be vulner-

able. The commission wisely steered clear of this tricky subject, but the services clearly have some thinking to do.

The Gulf War, in which 35,000 women served, has naturally weighed heavily on the commission's investigations over the past eight months. It was during a commission hearing in the spring that Major Rhonda Cornum, a flight surgeon and one of the two American female POWS, testified that she was sexually assaulted by an Iraqi during her captivity. The Army has said that the other woman POW was also sexually assaulted.

As the commission deliberations make clear, the question of women in combat is far more than a simple issue of women's rights. In terms of ability, women could easily perform many of the combat jobs in a modern military, which can require more mental acuity than physical strength. Instead, it is a complex question that involves children, unit readiness and military and national morale.

For the most part, the commission makes a sensible case for the status quo. It recommends that women continue to be barred from both ground fighting and combat air missions, but says that they should be allowed to serve on some warships, which would be a first for the Navy. It urges that women not be eligible for the draft.

The commission also takes on the difficult issue of military children, and again its findings are infused with common sense. It recommends that single parents of preschoolers not be allowed to deploy with units going into action or exercises, and urges a policy requiring single parents of children under the age of two to accept assignment to nondeployable positions. It recommends that spouses of military parents not be allowed to enlist. The recommendations apply to men as well as women, though most single parents are of course mothers.

While polls consistently show that Americans are reluctant to put women in combat, many Democratic leaders favor it. Vice President-elect Al Gore wants an increased role for women in the military. Colorado Rep. Patricia Schroeder, who has led the fight for women in combat, has derided the presidential panel as a "political circus." Mr. Clinton has yet to articulate a position on women in combat. He would be wise to heed the recommendations of this commission.

[From Forbes magazine]

HOMOSEXUALS IN THE MILITARY

(By Thomas Sowell)

Controversies over official policies toward homosexuals in the military are not only serious in themselves, but are also painfully revealing as to the kind of thinking—or lack of thinking—by advocates of accepting gays into the armed forces.

Many arguments run along the line that all that legitimately matters is the individual's own job performance. It is one of the signs of the utter unreality of our times that adult human beings could seriously apply this atomistic view of the world to an organization which is the very antithesis of individualism, and in which the stakes are life and death.

Military success or failure—which is to say, the fate of nations—does not depend on individual performance but on group coordination and group morale. Whatever policies emerge in the military must recognize that central fact if they are to deal responsibly with the lives of young people who are put in harm's way for the sake of their country.

It is hard to imagine how anyone who has ever lived in a military barracks can seriously suggest that open homosexuality there will do anything positive for group morale.

No doubt there have been homosexuals in the military before, as there have been homosexuals in many other walks of life. But no one is concerned about what people do privately. It is official acceptance of homosexuality that would make it an intrusion into the lives of other people, as part of everyday barracks life.

Privacy is not to be found in military barracks. Nor are military relations egalitarian relations. Given the rigid hierarchy and the degree of subordination inherent in military life, any form of sexual activity between military personnel is fraught with explosive dangers, even in peacetime.

In combat, when members of a platoon under fire have to depend on each other for survival, what does it do to that unit's cohesion when soldiers know that some of their comrades are lovers, who are likely to look out for each other, rather than the platoon?

Does anyone doubt for a moment that official acceptance of homosexuality will be only a prelude to demands that homosexuals not be "discriminated" against—which is to say, that any adverse decision regarding an individual who happens to be homosexual will be a potential lawsuit?

And does anyone expect either military discipline or morale to be unaffected by all that? Without discipline and morale, what is a military unit but a disaffected mob?

We need not limit ourselves to speculation. As homosexuality has become increasingly accepted on many of our leading college campuses, gays have become another privileged class.

Students have been punished merely for daring to criticize the homosexual lifestyle. On some college campuses, men's toilets have become rendezvous centers for homosexual activity to such an extent that gay activists have published annually updated guides to the best places for such encounters.

Toilets in libraries at Georgetown University, Howard University and the University of Maryland, for example, have made that list. Holes have been drilled in the toilet stalls to facilitate anonymous homosexual activity from Dartmouth to Georgetown to the University of Florida and the University of California at San Diego.

Concentrations of young males in institutions that accept homosexuality have proven to be magnets for gays. Toilets at the University of Florida have attracted gay men from as far as 40 miles away. Are we now to turn the military into another concentration of young males in an institution that accepts homosexuality?

When you can't even go to the toilet without being a witness to or a target of homosexual activity, we are no longer talking about how someone does his individual job. Can anyone imagine how soldiers, Marines or paratroopers are going to react to such situations?

The last refuge of the advocates of admitting gays into the military is to analogize the military's resistance to their past resistance to the racial desegregation of the armed forces. But such analogics are strained, and they certainly do not prove that military leaders are always wrong and politicians are always right.

Are we prepared to bet young people's lives, or the effectiveness of our armed forces, on the presumption that Pat Schroeder knows better than Colin Powell?

No small part of the social problems of this country today derive from three decades of blithe disregard of factors which transcend the individual. Social norms have been waved aside as mere superstitions and public decency has become something regarded as quaint, if not oppressive.

After a chilling string of failures of the 1960s social philosophy in civilian life—deteriorating education, soaring crime rates, disintegrating families, growing drug addiction—zealots are now ready to apply it to the military.

[From the Washington Post, Jan. 31, 1993]

SOLDIERING: IT'S A JOB, NOT AN ADVENTURE IN SOCIAL CHANGE

(By Charles Moskos)

Once thought of as the institution through which citizens—at least male citizens—discharged their basic civic obligation, the military is now coming to be seen as a vast and potent laboratory for social experimentation, in which charged debates over gender roles, homosexuality and national service can not only be addressed but possibly resolved. This lack of clarity about the military's primary function is potentially harmful to the long-term security interests of the nation.

The military's potential role as a vanguard of social progress was established by its successful integration of the armed forces in the years since World War II. Thanks to decisions made by the military leadership in the "time of troubles"—the Vietnam era and the early years of the all-volunteer force—the Army is now rivaled by few civilian institutions in terms of black achievement. The army is still no racial utopia; beneath the cross-race bantering, an edge of tension often lurks. But under the grueling conditions of the Gulf War not one racial incident was brought to the attention of the military police. Certainly the racial climate is more positive than that found on most college campuses today.

It is important to remember, however, that the driving force behind integration of the armed forces was not social improvement or racial benevolence but necessity (notably manpower shortages in World War II and the Korean War) and the belated recognition of the military superiority of an integrated force. Put another way, it was the imperative of military effectiveness that led to equal opportunity, not the imperative of equal opportunity that led to greater military effectiveness.

The issue of women in the military—and particularly in fighting roles—is a more complicated one. Following World War II—in which some 350,000 women performed duties ranging from shuttling aircraft across the Atlantic to breaking enemy secret codes—a 2 percent ceiling on the number of women was set, and most served in administrative, clerical and health-care jobs. This situation remained basically unchanged until the advent of the all-volunteer force in 1973. Finding it difficult to recruit more than a few good men, the military allowed good women to fill the ranks. Today, women make up about 12 percent of the total armed forces and hold virtually all assignments except direct combat roles.

The combat exclusion rule, already opposed by feminist leaders and many women officers, came under renewed attack in the wake of the Gulf War. The performance of the 35,000 women who served in that conflict received high praise from both the media and Pentagon officials. But surveys of soldiers who served in the gulf yield a murkier picture. Forty-five percent of those who were in mixed-gender units reported that "sexual activity had a negative impact" on unit mo-

rale. Over half rated women's performance as fair or poor, while only 3 percent gave such ratings to men. Nevertheless, Congress lifted the ban on women in combat planes, though service regulations effectively maintained the ban.

The usual response to a thorny social impasse is a presidential commission, and, true to form, one was established late in 1991. The 15-member panel (on which I served) took up three areas of consideration. The first was primarily factual. What, for example, were women's physical capabilities, and what would be the cost of modifying equipment or quarters to accommodate a woman's size or need for privacy?

A trickier area concerned questions of how mixed-gender groups would perform in combat. Here definitive answers are harder to come by, because apart from the defense of the homeland, no military force has ever used women in combat roles. Just as difficult to determine were matters related to the last area of concern: culture and values.

In addition to hearing opposing arguments, the commission sponsored a poll to determine whether the American public was willing to accept women in combat roles. Three findings deserve mention. First, the public was split pretty much down the middle on the question of whether the combat-exclusion rule should be lifted. A large majority favored giving women the option to volunteer for combat arms, as long as no woman was ever compelled to assume a combat role. Second, most people believed women already served in combat roles. Third, most respondents were more concerned with family status than with gender limitations. Three-quarters opposed mothers serving in combat; 43 percent felt the same way about fathers doing so.

By contrast with the general public, army women are much more wary about women in combat roles. One 1992 survey found that only 4 percent of enlisted women and 11 percent of female officers said they would volunteer for combat. But like the larger population, most military women favored a voluntary option.

The same survey disclosed that almost all army women—by a margin of 15-to-1—opposed the adoption of uniform physical standards for men and women. Ironically, both feminist and conservatives supported such standards, the former on egalitarian grounds, the latter because they believed uniform standards would reduce the number of women in the military across the board. Focusing on the strength definition of capability, both groups scanted the social and psychological problems that would likely arise with men and women fighting together in life-or-death situations.

Less dogmatic opponents of the combat exclusion rule favor trial programs. Yet even the most carefully prepared trials would not address the biggest question: Should every woman soldier be made to take on the same combat liability that every male soldier does?

True equality should mean that both genders incur the same liability. To allow only women the option of entering or avoiding combat would not only cause resentment among men, it would be hard to defend in a court of law. To allow both sexes to choose whether or not to go into combat would be the end of an effective military.

By a one-vote margin last November, the presidential commission arrived at a surprisingly conservative recommendation: While approving of women's service on most warships (except submarines and amphibious vessels), it advised keeping women out of combat planes and ground combat units. President Clinton has said that he will take the recommendation under consideration, but debate will surely continue.

The vexed issue of homosexuals in the armed forces draws the postmodern military into another heated social controversy. And some of the solutions proposed would present just as great a problem to the military's combat effectiveness as do those proposed in the gender arena.

Up to World War II, the military treated homosexuality as a criminal act, punishable by imprisonment. During the war, service leaders came to adopt a psychiatric explanation of homosexuality: Discovered gays were either "treated" in hospitals or given discharges "without honor." From the 1950s through the 1970s, gays—defined almost always as people who had engaged in homosexual activity—were discharged under less than honorable circumstances. In 1982, in an effort to bring about a more uniform policy, the Department of Defense issued new guidelines that stipulated that service members who declared they were gay would receive an honorable discharge if their records were otherwise unsullied. Those caught in a compromising situation might still receive a less than honorable discharge.

Public opinion polls show that the number of Americans favoring the admission of gays into the armed forces has been creeping upward. A Washington Post poll last week showed the public evenly split on the question but 64 percent of veterans opposed to lifting the ban. A December 1992 poll that I conducted found 78 percent of currently serving soldiers opposed with an astounding 90 percent saying they would be "uncomfortable" sharing a room with a homosexual.

Support for repeal of the ban is strongest among women and whites, and weakest among males and minorities. Without a question, the growing support for ending the ban reflects a generally more tolerant attitude among the general public, but it may also be a sign of how distant most of the citizenry has become from the realities of military service.

Certainly, some of the reasons for excluding gays do not stand up to scrutiny. No evidence exists that homosexuals, under present rules, have been greater security risks than anyone else. If there were no ban, the argument that a gay service member could be blackmailed by threat of exposure would evaporate. Furthermore, no one can prove that homosexuals are any less effective than heterosexual as soldiers, sailors, airmen or marines.

What is at issue today, however, is whether or not declared gays should be allowed to serve in the military. This is different from the question of tolerating the service of discreet homosexuals in uniform (though with some 1,000 gays being discharged each year, it is clear that not all are discreet). To condone discreet homosexuality in the services while opposing the official acceptance of declared homosexuals is to set oneself up for the charge of hypocrisy. And it probably does no good to say that a little hypocrisy may be the only thing that allows imperfect institutions to function in an imperfect world.

Whatever is done, policymakers should think twice before invoking a misleading analogy between the dynamics of racial integration and the proposed acceptance of overt homosexuality. Racial integration increased military efficiency; the acceptance of declared homosexuals will likely have the opposite effect, at least for a time.

At the very least, the lifting of the ban will create a controversy over the issue of privacy, which in turn could make recruitment (particularly among minorities) even more difficult than it is today. Just as most men and women dislike being stripped of all privacy before the opposite sex, so most heterosexual men and women dislike being exposed to homosexuals of their own sex. The solution of creating separate living quarters would be not only impractical but an invitation to derision, abuse and deep division within the ranks.

There is also the problem of morale and group cohesion. Foes of the ban point to the acceptance of homosexuals in the armed forces of such countries as the Netherlands, Sweden, Denmark and Israel. In the Netherlands, an alleged 10 percent of the military is gay (though nine out of 10, studies say, remain undeclared) and a four-day seminar stressing sensitivity toward minorities, including gays, is mandatory in all Dutch services. Harmony is said to reign throughout the tolerant ranks of the Dutch army.

Those who object to the validity of national comparisons charge that the Dutch and Scandinavian cultures are far more tolerant than is mainstream American culture. Furthermore, they say, neither the Dutch nor Scandinavian armies have been in the thick of combat in recent decades.

These objections are partially validated by the example Israel's military, which inducts declared homosexuals. While it is true that gays in Israel are expected to fulfill their military obligation, it is also true that they receive de facto special treatment. For example, gays are excluded from elite combat units, and most sleep at their own homes rather than in barracks.

Despite widespread resistance within the U.S. military, Clinton has committed himself to rescind the gay ban. One can of course argue that the United States now as such a decisive strategic advantage over any potential enemy that it can well afford to advance the cause of equal opportunity at possible cost to military effectiveness. Still, such a risk must be acknowledged. We must decide, for example, whether we will be willing to restore compulsory national service if dropping the gay ban makes recruitment even more difficult than it now is. (Most nations without such a ban do have obligatory national service, the military being an option in many cases.) Unless such realities are faced, we can only hope that our postmodern military never has to face the uncivil reality of war.

[From the Washington Times, Jan. 1, 1993]

NEW MILITARY WAY OF LIFE AND STRIFE

MATTERS OF LAW

(By Terry Eastland)

President Clinton initially seemed to think that lifting the ban on gays in the military would be a strictly presidential matter, achieved through an executive order premised on his constitutional authority as commander in chief. Then his White House discovered that another branch of government, Congress, also has constitutional authority—that of making (as Article I provides) "rules for the government and regulation of the land and naval forces." Thus did Mr. Clinton come to learn that whatever he does on the issue Congress may alter, even totally undo, assuming strength to override a veto.

The prospect of such an early, major political defeat in part explains the president's decision to postpone for six months an execu-

tive order. That decision shifts the balance of power on the issue to Congress, and in particular to Sen. Sam Nunn, Georgia Democrat, who had opposed lifting the ban on gays in the military but now is open to at least some change, and who plans to commence hearings on the matter next month. As Mr. Nunn goes, so goes the Senate and probably the Congress: If Mr. Clinton and Mr. Nunn can agree on a new policy, Republicans in Congress who prefer the old one will have a much diminished chance of legislative success.

In the context of gays in the military the White House's ongoing seminar in separation of powers now must include, thanks to last Thursday's decision by U.S. District Judge Terry Hatter, reference to the third branch of government. It is Judge Hatter who intruded into the debate by striking down the ban on gays in the military and ordering the reinstatement of a Navy petty officer discharged after disclosing his homosexuality on national television.

If the Navy does as the armed forces have in previous cases, it will now ask the Justice Department to appeal Judge Hatter's opinion. But the president is no longer George Bush but Mr. Clinton; he could tell the Navy not to appeal. Consistent with his statements Friday on how he intends to proceed on changing the inherited policy, Mr. Clinton might want to do just that. Still, he cannot be entirely happy with the decision rendered in the Central District of California.

In his remarks Friday, Mr. Clinton said he had not read Judge Hatter's decision. He should. Judge Hatter was a Jimmy Carter appointee, and his opinion fairly invites the new president to reflect on the kind of judges he cannot possibly want to appoint. The opinion distinguishes between homosexual "status" and "conduct"—a distinction Mr. Clinton of course endorses. But consider what else the opinion does.

In holding that the Defense Department's policy banning gays and lesbians, when based "merely on status and conduct" violates the Constitution's guarantee of equal protection, Judge Hatter asked whether the policy is "rationally related to [the military's] permissible goals." In several too brief paragraphs, he concluded it was not. Declaring no "factual basis" for the Pentagon policy, the judge was unwilling to defer—as courts historically have—to military judgment, based on decades of experience, on the advisability of having gays in the armed forces.

Whatever one thinks policy in this area should be, Judge Hatter's decision is a regrettable piece of judicial activism. The decision usurps Mr. Clinton's authority as commander in chief and the military's subordinate power to determine rules necessary for good order and discipline. By implication, the decision also denies the Article I authority of Congress to determine rules for governing the armed forces.

In sum, the problem with the opinion is that it seeks to declare the nation's policy on gays in the military. "Gays and lesbians," as Judge Hatter put it, "should not be banned from serving our country in the absence of conduct which interferes with the military mission." "Hopefully," he added, as though he held both the executive and legislative powers, "our military leaders will come to realize the '[w]e are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide someone else's unfamiliar or even repellent practice because the same tolerant impulse protects our own idiosyncrasies.'" This language, which settles one of today's "culture wars" in a most debatable way, comes from a dissenting opinion in a 1989 case by Justice William Brennan.

Mr. Clinton seems close to grasping that the federal courts should not be making policy in this area. On Friday he said, correctly enough, that there is a "not insignificant chance" the courts might impose the kind of policy Judge Hatter has articulated, and that the courts might do so before "a whole range of practical issues" have been adequately dealt with. Those practical issues, apparently, are the ones Mr. Clinton now wants addressed, with Mr. Nunn's help.

Policy on gays in the military is properly the province of the elective branches. Mr. Clinton's education in separation of powers will be complete when he takes issue, rhetorically if not in litigation, with the activism of such opinions as those of Judge Hatter.

[From the Washington Times, Jan. 1, 1993]

NEW MILITARY WAY OF LIFE AND STRIFE

CIVILIAN ANXIETIES

(By Suzanne Fields)

Maria, a beautician who was born in Bolivia (she's an American now), worries about lifting the ban on homosexuality in the military.

"I wouldn't want my son to enter the service under those conditions," she says with an appeal to euphemism. Maria voted for Bill Clinton. She didn't focus on that issue back then. Not many people did.

Sarah, a sophisticated widow in her 80s, also voted for Bill Clinton. "Why is it that every time I turn on the television, the commentators are talking about sodomy?" she asks. "Must we now be bombarded with all these intimate sexual references all over the news? I thought that was restricted to soaps and sitcoms."

Maria and Sarah are neither homophobes nor bigots. They're not particularly religious or even Republicans. They can't be fairly accused of gay bashing or political expediency. They just don't want to know about the private sex lives of homosexuals or heterosexuals. They're offended by the vulgarity of this public discussion.

Maria, who assumes her son, now 8, would answer proudly if his country calls, believes that open admission of homosexuality in the armed forces undercuts the pride of military service and will hurt recruitment. Sarah thinks everyone got along all right when everyone was less interested in the private sexual habits of men and women everywhere (or at least restrained their curiosity.)

Rep. Barney Frank, one of two Democratic congressmen who openly declares his homosexuality, declares it often on television to answer questions by other women (and men) like Maria and Sarah. He insists the discussion is not about walking in Gay Pride parades, or men dancing together at the Officers Club or the Enlisted Men's Club.

But isn't it? If the issue is civil rights and discrimination, then shouldn't homosexual men and women expect the same rights and perks as heterosexuals? Defenders of homosexuals in the military readily invoke comparisons to the integration of blacks in the military. Can anyone imagine Harry Truman saying blacks could serve side by side with whites, but they couldn't march together or dance together?

The homosexual analogy to blacks, of course, is false, as Gen. Colin Powell, chairman of the Joint Chiefs of Staff, frequently points out. The issue is one of behavior, not skin color—military readiness, not prejudice. Readiness includes issues of morale, discipline, recruitment, personal privacy, concerns of deeply religious servicemen and not least the increased risk of AIDS. If randiness is not part of homosexual notions of readiness, why the eagerness to flaunt sexual preference?

Sen. Sam Nunn insists the rights of those in the armed services who find overt homosexuality offensive are being ignored, and he's right. Will "straights" require therapy to cure them of their religious faith and teachings?

The debate about homosexuality in the military, like so many other debates in the United States today, is conducted in two voices. One is the voice of the Politically Correct, which believes that tolerance must be replaced with celebration, that not only should homosexuals be free to practice what they wish, but the rest of us should accord homosexuality the respectability of heterosexuality, including rights (and rites) of marriage. The other is the voice of the ages that commands us not to throw away common sense in the pursuit of decency and tolerance.

"Though men be much governed by interest, yet even interest itself and all human affairs are entirely governed by opinion," wrote Scottish philosopher David Hume.

Such opinion will be heard in the hearings Sen. Nunn will conduct. That opinion might surprise the president. He could even change his mind. He changed it on Zoe Baird, on Haiti and on a tax cut for the middle-class. But I doubt it, and that's too bad for all of us.

[From the Washington Times, Jan. 1, 1993]

NEW MILITARY WAY OF LIFE AND STRIFE

CULTURAL BASICS

(By Joseph Sobran)

Suddenly Slick Willie has become Thick Willie. Supposedly a smart politician, he has begun his presidency by picking a fight he can't win over a red-hot cultural issue.

His stand on gays in the military has embarrassed his own allies in Congress. The Democrats know they can sneak almost anything through, as long as Rush Limbaugh doesn't find out about it. This was definitely an item that called for furtive midterm treatment. But the commander in chief decided to tell it to the Marines.

Liberals—those broad-minded people who define a bigot as anyone who disagrees with them—have decided that homosexuals are to be officially defined as a victimized group. It's now nearly taboo to suggest in public that there is anything wrong with homosexuality, when everyone knows otherwise, as the popular reaction shows. The media's hypocrisy about sex would amaze the Victorians.

Like impotence and many other disorders, homosexuality is a disability for marital life. No decent person would torment anyone for it, but no sane person would think it's normal. Despite all we hear of gay "pride," nobody wishes the condition on those they love. It's bizarre to imagine even the most liberal expectant parents hoping their child will be homosexual. People never say: "Susan and I don't care whether it's a boy or a girl, as long as it's gay or lesbian."

Yet the liberal chorus insists that Mr. Clinton's action is the equivalent of Harry Truman's decision to integrate the armed forces. This strained analogy is a clue to what's really going on. Today's liberals want to re-enact the civil rights struggle, and they are using the gay rights movement as

an opportunity to strike virtuous poses. See how tolerant we are! See how nobly we stand in contrast to our benighted opponents!

Liberals fear nothing more than being on the Wrong Side of History. They presume, of course, that History will ultimately be written by moralizing liberals like the people who write editorials in the New York Times. It never occurs to them that their moral fads may blow over in a few years, as nature inexorably reasserts herself, and that their views won't necessarily constitute the perspective by which future historians judge us. Let's not dismiss the possibility that future historians, surveying our age, will die laughing.

Gays and feminists, cognate political activists, hold pretty much the same ideology—one that belittles the centrality of the family. Those who don't share that ideology can see what the decline of the family has brought us: a social dissolution whose most volatile element is fatherless boys.

Yet liberals, of whom gays and feminists are merely two denominations, insist on asserting the same old precedents, which have lost their relevance and now can only mislead. And instead of offering evidence for their views—of which there is precious little—they condemn anyone who is reactionary enough to disagree with them.

The result is a severe reactionary shortage. Progressives have a terrible record of predicting the future: Remember the Soviet experiment and the great Society? But the reactionaries who saw only a dark future, though they had more sense, fell short. They had no idea how bad things were going to be.

Just as no monarchist or capitalist predicted that communism would kill tens of millions of people, no Goldwater Republican or Bircher foresaw the rates of crime, disease and abortion that now degrade and depopulate American society. And who, back in sunny 1964, prognosticated AIDS? Never mind what History will say. We can't even draw the right lessons from our own experience.

No, our gloomiest conservatives turned out to be utopian optimists. This is History speaking, folks. Absolutely nobody a generation ago had any inkling of what was to issue from social reform and experimentation and welfare and liberation—all those hot tickets of the '60s.

Throughout this progressive century, only the pessimists have been prophetic. But not prophetic enough. If any segment of our society deserves to be nurtured and cherished and encouraged (I won't say subsidized), it's the doomsayers. The more hysterical they sound, the more respectfully we should listen to them. That's what recent history teaches.

[From the Washington Times, Nov. 16, 1992]

PICKING UP THE PROMISSORY INVOICES

(By William Murchison)

The military—whose call Bill Clinton conspicuously spurned in the 1960s—can't be greatly surprised when the commander in chief-elect discloses plans to incorporate homosexuals into its ranks.

The election is over, the inauguration impends. The time for presenting bills has come. Here's the homosexual-rights lobby's invoice.

Top military officers, starting with Gen. Colin Powell, don't want the homosexual ban lifted, for reasons of order and discipline, but that's not the point where Mr. Clinton is concerned. The point is accommodating a numerous, active, well-heeled and ever-more-clamorous element of the Democratic constituency.

The Clinton victory on Nov. 3 comes near to guaranteeing homosexuals that social and political legitimacy toward which they have aspired. The military ban will go—though only after consultation with military officials, Mr. Clinton promises. The administration will have an AIDS advocate of some sort. (No cancer or heart advocates, last time I checked.) At a minimum, no one in the Clinton administration is going to hurt homosexuals' feelings deliberately.

The U.S. military becomes an unwilling pawn in this power game. The imperatives of order and discipline, cited by the likes of Gen. Powell, don't seem so imperative, weighed against the need to deliver on promises to constituents.

True, homosexuality in military ranks isn't exactly an innovation or, in every circumstance, a hindrance to success. I believe it was Lord Nelson who said the Royal Navy was sustained by rum, sodomy and the lash.

Well, at least they called it sodomy. No one back then pretended that homosexuality was just a life-style choice: no better, no worse than any other; as morally neutral as a birthmark.

The homosexual-rights lobby today takes a very different view of things. It demand validation. This means all doors must swing wide open, so that members of the lobby may enter at will. A ban on homosexual soldiering is, to the lobby, mere job discrimination. Away with it!

Bill Clinton finds such a demand easy to comply with, in part because he never wore a uniform. He doesn't know the military. What is often referred to as the military's non-homosexual "tradition"—as if it had no more moral standing than a school fight song or squash casserole at Thanksgiving—makes sense in terms of instilling unit cohesiveness. Unwanted sexual attentions from a barrack mate or mates don't build the kind of community spirit on which military effectiveness depends. "It is difficult," says Gen. Powell, "in a military setting where there is no privacy, where you don't get choice of association, where you don't get choice of where you live, to introduce a group of individuals who are proud, brave, loyal, good Americans but who favor a homosexual lifestyle." Don't forget that the service is an authority structure. The possibilities for abusing authority in quest of sexual dominance are endless.

Odd and disturbing things go on in late 20th century America. We the people put our various institutions at the service of subgroups with gnawing anxieties—racial, sexual, whatever kind. The functioning of the institution—even one so essential as the military—becomes secondary to the massaging of those anxieties. This is as true of the outcry to open up military combat roles to women as it is true of the agitation to allow uniformed homosexuals.

Of course the line one hears is that actually we're making the institution better than ever, by bringing in people/viewpoints hitherto shut out. Pluralism becomes the acid test.

Actually, it's the only test one hears about anymore. Tests of worth and efficiency, right and wrong, truth and falsehood, don't matter. It's nothing but look-how-inclusive-we're-becoming. Look how many "outcasts" we're rescuing. America as one giant therapeutic enterprise, designed not to maximize liberty and virtue but to make people Feel Good About Themselves—isn't that increasingly our national vision? If you call it "vision."

WASHINGTON, DC,
May 8, 1992.

Hon. PATRICIA SCHROEDER,
House of Representatives, Washington, DC.

DEAR PAT: Thank you for your recent letter concerning the position I took before Congress in February concerning homosexuals serving in the Armed Forces. I have given a great deal of thought to my position and continue to hold the view that the presence of homosexuals in the military is prejudicial to good order and discipline.

This is the policy of the Department of Defense and is supported by all of the Joint Chiefs of Staff. It is also a view held by experts who have studied the sociology of the military for many years. I am including a recent article by Charles Moskos on the subject.

I am well aware of the attempts to draw parallels between this position and positions used years ago to deny opportunities to African-Americans. I know you are a history major, but I can assure you I need no reminders concerning the history of African-Americans in the defense of their Nation and the tribulations they faced. I am a part of that history.

Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument. I believe the privacy rights of all Americans in uniform have to be considered, especially since those rights are often infringed upon by the conditions of military service.

As Chairman of the Joint Chiefs of Staff, as well as an African-American fully conversant with history, I believe the policy we have adopted is consistent with the necessary standards of good order and discipline required in the Armed Forces.

Sincerely,

COLIN L. POWELL,
Chairman of the Joint Chiefs of Staff.

The PRESIDING OFFICER. The Senator yields the floor.

Who yields time?

The Senator from Indiana controls 25 minutes.

Mr. COATS. Mr. President, I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 5 minutes.

Mr. McCAIN. Mr. President, I ask unanimous consent that my full text of my statement and accompanying materials be entered into the RECORD.

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

THE ALL-VOLUNTEER MILITARY

Mr. McCAIN. Mr. President, the American armed forces are not a social laboratory. There are approximately 1.5 million men and women in uniform who volunteered to serve their country in extraordinary circumstances and risk their lives when ordered to so by their Commander in Chief. Even during peacetime, they give up certain rights and privileges accorded civilians because of conditions of military service.

Our men and women in uniform have little choice about their jobs, they must live where they are assigned, and they must give up their privacy—often without warning and for months at a

time. Deployments in areas like Panama, Somalia, and the Persian Gulf involve living in close proximity, with little personal space, and with no choice of associates. The ship, the battalion, and the squadron become the center of every moment of military life. Survival is often based on the cohesion of small groups of men and women who literally must live in each other's shoes.

The issue of allowing open gay life styles in the military is completely different from the kind of changes taking place in civil life. The whole structure of military life involves wide ranging sacrifices of individual perogatives. Any changes to that structure can rapidly erode morale, efficiency, and unit cohesion—the three critical factors that determine survival and victory.

America's uniformed military leaders are not being reactionary by objecting to the open admission of gays into the military before our society has fully resolved questions about their involvement in many other walks of life where a gay life style may be perceived as more than a matter of personal choice.

A broadly respected national figure like Gen. Colin Powell, who exemplifies the progress we are making in civil rights, is not reacting out of prejudice, but out of concern for the practical implications which the open admission of homosexuals poses for his profession. He is charged with considering the impact of such policies on the safety of our nation.

This is not a civil rights issue. No one supports prejudice and discrimination. The issue is what policy best promotes the effectiveness and strength of our military. Comparison to racial discrimination is misplaced and inappropriate. Homosexuality is a behavioral trait, unlike skin color. Gen. Colin Powell has eloquently stated:

I have given a great deal of thought to my position and continue to hold the view that the presence of homosexuals in the military is prejudicial to good order and discipline. I am well aware of the atempts to draw parallels between this position and positions used years ago to deny opportunities to African-Americans . . . skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.

I believe the privacy of all Americans in uniform has to be considered, especially since those rights are often infringed upon by the conditions of military service. As Chairman of the Joint Chiefs of Staff, as well as an African-American fully conversant with history, I believe the policy we have adopted is consistent with the necessary standards of good order and discipline required in the Armed Forces.

I think it is also important to point out other statements by senior uniformed leaders who are well-known, well respected, and modern-day heroes because of their great service to our country.

Gen. H. Norman Schwarzkopf has stated: "once a homosexual comes out of the closet and publicly avows their homosexuality, all unit cohesiveness is lost."

Gen. Al Gray has said: "the presence of homosexuals would adversely affect our ability to maintain good order, discipline, and morale; foster mutual trust and confidence; and ensure the integrity of the system of rank and command. We cannot afford homosexual suspicions, which would threaten our mission by degrading unit cohesion, morale, and esprit de corps."

We need to preserve the trust that is the core of military life. We cannot do this by telling over 1 million people who have already sacrificed many of their rights on our behalf that in addition to their loss of privacy and choice they must now accommodate in close quarters a life style they rejected when they enlisted and continue to reject in every opinion poll taken on the subject.

Last week, Adm. George Kinnear and Vice Adm. Tom Kilcline from the Retired Officers Association briefed me on a Gallup poll that they had commissioned to determine the attitudes and opinions among active and retired military members with regard to the issue of allowing homosexuals in the military. I found the information interesting and in stark contrast to some of the other polls I have noticed in the press.

For instance, 83 percent were strongly opposed to lifting the ban on homosexuals in military. Eighty-five percent of those respondents who had recommended the military as a career to either a family member or friend were particularly oposed to allowing homosexuals in the military and would tell the person who they had given the advice to, to reconsider. Also, 77 percent of the respondents who opposed allowing homosexuals in the military cited a disruptive negative effect on morale, on discipline, combat readiness, and lack of acceptance as reasons for their opposition.

The day may come when society as a whole accepts gay life styles as a fully integrated part of our national life. At that point, military life may change as well. Until that day arrives, the U.S. military should not be used for legal tests and social experiments that threaten its ability to preserve our national security.

In preparation for 6 months of study that this body will engage in, I asked the Congressional Research Service to put together a series of studies on the issue of homosexuals in the military.

The first is a study by the American Law Division of the Congressional Research Service summarizing the legal challenges to the Department of Defense policy regarding homosexuals in the military.

The second is a collection of major articles, opinions, and speeches regarding homosexuals in the military.

The third is a socioeconomic study.

The fourth is a background study on homosexuals in other areas of Federal service.

Mr. David Burelli of the Congressional Research Service has done a fine job in bringing the results of this research together. His report is a must read for anyone interested in an objective examination of the issue of gays in the military. I urge my colleagues to review it in its entirety.

In addition to this extensive research I have requested letters from Veterans organizations, letters from the veterans of my State, relevant statements by public officials, and a Gallup poll of the members of the Retired Officers Association.

I ask unanimous consent that all of these documents be included in the RECORD at this point.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, December 21, 1992.

AMERICAN LAW DIVISION MEMORANDUM

Subject: Legal Challenges to the Department of Defense Policy Regarding Homosexuals in the Military.

Author: Charles V. Dale.

Current Department of Defense policy states that "[h]omosexuality is incompatible with military service."[1] Homosexuals, therefore, are barred from enlisting or serving in the military service, and if their sexual orientation becomes known, they are subject to discharge with or without proof of actual homosexual conduct on their part. In addition, the Uniform Code of Military Justice, article 125, provides criminal penalties for both homosexual and heterosexual sodomy.

The military policy of excluding homosexuals had been judicially challenged, largely without success, on a variety of legal and constitutional grounds. Most of the early cases involved personnel suspected of homosexual conduct who argued that the policy violated the constitutional right of privacy;[2] that it was prohibited by the Equal Protection Clause because only homosexual sodomy was persecuted while similar heterosexual conduct was not;[3] or that the procedure applied by the service to effect discharge did not conform to procedural due process requirements.[4] Later cases also raised First Amendment free speech claims when brought by admitted homosexuals who had been discharged not for alleged sexual conduct but rather because of their "status" as revealed by voluntary statements to colleagues, or in the press and other public fora.[5]

Due process challenges predicted on the right of privacy have been uniformly rejected by the courts in these cases, particularly after the U.S. Supreme Court in *Bowers v. Harwick*[6] sustained a Georgia statute criminalizing sodomy as applied to consenting adults in the privacy of the home of one of them. The Court there expressed the view that homosexual sodomy was neither a fundamental liberty "implicit in the concept of ordered liberty" nor is it "deeply rooted in the Nation's history and tradition."[7] On parallel reasoning, the courts generally have refused to apply heightened scrutiny to the equal protection claims of discharged homosexuals according to the constitutional standards traditionally applied in cases of governmental discrimination based on race,

ethnicity or other "suspect" classifications.[8] First Amendment challenges to the military policy have fared little better. Thus, open acknowledgment by a service person of his/her homosexual orientation, whether in the media or otherwise, has not generally been accorded First Amendment protection since it does not implicate the exchange of information and ideas on homosexuality as a matter of "public concern."[9] An important element in each of these decisions was the history of judicial deference to military judgments that is now firmly entrenched in our legal tradition.[10]

Accordingly, to date, successful judicial challenges to the military's exclusionary policy regarding homosexuals have been few in number and of relatively narrow legal significance. For example, *Matlovich v. Secretary of the Air Force*,[11] involved an admitted homosexual with an "outstanding" 12-year record of military service who had not been charged with any homosexual activity on base or with other servicemen. Neither the court of appeals nor the federal district court on remand ever decided the main constitutional challenge asserted by the petitioner based on the right to privacy. Instead, the Air Force policy, which at that time permitted retention of homosexual personnel in "unusual circumstances," was held procedurally defective for its lack of fair and objective standards governing discharge. In other words, the petitioner was entitled to an explanation of why the exception did not apply to him. Subsequent to this decision, and a similar one concerning Navy regulations,[12] the Department of Defense issued revised regulations clarifying the exceptions to the policy of mandatory discharge of homosexual servicemembers which effectively preempted any defense based on quality of performance in future cases.

In a more recent and highly publicized decision, *Watkins v. United States Army*,[13] the Ninth Circuit *en banc* vacated a panel's constitutional condemnation of the DOD policy as violative of the Fifth Amendment right to equal protection and instead ordered reinstatement of a homosexual 16-year veteran on equitable estoppel grounds. The earlier panel ruling had determined that lesbian and homosexual persons constitute a "suspect class" and employed heightened equal protection scrutiny to invalidate the Army policy. On rehearing, however, the full court held that the Army could not refuse reenlistment to a highly rated serviceman who had openly acknowledged his homosexuality at the time of initial enlistment and who had consistently been reenlisted despite the Army's awareness of his sexual orientation. Because it disposed of the case of equitable estoppel grounds, based on the specific factual circumstances before it, the *en banc* court avoided making any determination of the constitutional issues raised. Consequently, the decision is likely to have minimal impact upon current military policy.

Judicial analysis of federal equal protection claims fall into three basic modes. First is the traditional "rational basis" standard that will uphold most legislative or executive action that classifies individuals as long as the classification is reasonable and rationally related to a legitimate governmental objective. Certain classifications are deemed "suspect" or "quasi-suspect," however, and governmental actions based on such classifications will be subjected to rigorous or "searching" judicial scrutiny.[14] Governmental actions that burden members of a suspect or quasi-suspect class call for a higher level of justification both in terms of the weight of the government's interest[15] and the degree of relationship to the interest served.[16] The federal courts of appeals to date have generally refused to apply the so-called "strict scrutiny" test, or other heightened equal protection standard of judicial review, to the military policy regarding homosexuals.

Applying the more lenient equal protection standard, the courts have usually had little difficulty accepting as "rational" the military's justifications for its homosexual policy.[17] In *Beller* v. *Middendorf*,[18] the Ninth Circuit accepted all of the military's justifications and upheld the Navy policy as applied to the discharge of three enlisted personnel who had engaged in homosexual acts. Judge (now Justice) Kennedy wrote that:

The Navy can act to protect the fabric of military life, to preserve the integrity of the recruiting process, to maintain the discipline of personnel in active service, and to insure the acceptance of men and women in the military, who are sometimes stationed in foreign countries with cultures different from our own.

Furthermore, although he felt the policy was "perhaps broader than necessary to accomplish some of its goals," Judge Kennedy concluded that it "represents a reasonable effort to accommodate the needs of the Government with the interests of the individual."[19] In *Dronenburg* v. Zech[20] Judge Bork wrote for the D.C. Circuit in another case involving homosexual conduct that "[t]he effects of homosexual conduct within a naval or military unit are almost certain to be harmful to morale and discipline." Finally, in *Ben-Shalom* v. *Marsh*,[21] a status (not conduct) case, the Seventh Circuit ruled that military discharge due to a declaration of lesbianism did not violate the First Amendment, and that the Army regulation barring homosexuals passed rational basis equal protection review.

A recent judicial development that may forecast invigorated scrutiny into the military's justifications for excluding homosexuals is the Ninth Circuit decision in *Pruitt* v. *Cheney*.[22] Pruitt was an officer in the U.S. Army Reserve with an "outstanding" record in both active and reserve duty. Although it had no evidence of homosexual acts on her part, the Army moved to revoke Pruitt's security clearance and discharge her after she revealed, in a *Los Angeles Times* interview, that she was a lesbian and had twice participated in ceremonies of marriage to other women. Pruitt thereafter challenged the Army's actions, which were based solely on her own admissions of homosexuality, as a violation of free speech rights. This First Amendment claim was rejected by both the district and appellate court on the rationale that Pruitt's admission of her homosexual status was not protected speech.[23] The appeals court did hold, however, that the Army had not demonstrated the rational basis for its regulation and that Pruitt had the right to a hearing on the equal protection claim. Moreover, the decision departs from *Beller* and related precedent by relying on two Supreme Court rulings which stand for the principle that governmental denial of equal protection is never justified by the antipathy of others towards the group adversely affected.

In the more recent of these, *City of Cleburne* v. *Cleburne Living Center, Inc.*,[24] the Court invalidated under rational basis equal protection analysis the refusal of a city to permit construction of a group home for the mentally retarded. Although neither a suspect nor quasi-suspect class was involved, the city's justifications for denying a permit were rejected. The desire to avoid negative reactions of neighbors was found to be an unacceptable basis for discriminatory treatment,[25] and even the legitimate goal of relieving congestion could not be achieved by prohibiting only certain types of group homes while allowing others. *Palmore* v. *Sidoti*[26] was an earlier case which struck down a denial of child custody based upon social disapproval of the interracial marriage of the mother. The Supreme Court declared that "[t]he Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."[27]

The Court's refusal in these cases to accept asserted governmental goals as legitimate, and its more than perfunctory scrutiny of the means by which the governmental body pursued its legitimate goals, may have important implications for future judicial review of military policies regarding homosexuals. At the very least, if applied in this context, it could mean that the military faces a weightier burden than heretofore in terms of justifying its policies as rational and reasonable based on factual evidence presented to the court. In this regard, the courts may be less willing to accept as rational the offer of any proof which reflects popular antipathy toward or stereotypical views concerning homosexuality.

FOOTNOTES

[1] DOD Directive 1332.14 (Jan. 28, 1982).

[2] *E.g., Matlovich v. Secretary of the Air Force*, 591 F.2d 852 (D.C. Cir. 1978); *Dronenburg v. Zech*, 741 F.2d 1388 (D.C. Cir. 1984) and *Beller v. Middendorf*, 632 F.2d 788 (9th Cir. 1980), *cert. denied sub nom. Miller v. Weinberger*, 454 U.S. 855 (1981).

[3] *E.g., Hatheway v. Secretary of the Army*, 641 F.2d 1376 (9th Cir.), *cert. denied*, 454 U.S. 864 (1981).

[4] *See, e.g., Matlovich (supra)* n. 2.

[5] *E.g., Ben-Shalom v. Marsh*, 881 F.2d 454 (7th Cir. 1989). *cert. denied sub nom. BenShalom v. Stone*, 494 U.S. 1004 (1990); *Pruitt v. Cheney*, 963 F.2d 1160 (9th Cir. 1991), *cert denied 61 U.S.L.W. 3413 (S.Ct 12-8-92)*.

[6] 478 U.S. 186 (1986).

[7] *Id.*, at 191-92.

[8] *See, e.g., Woodward v. United States*, 871 F.2d 1068, 1075-76 (Fed. Cir. 1989), *cert denied*, 494 U.S. 1003 (1990) where the appeals court noted that *Hardwick* permitted the criminalization of "the most common sexual practices of homosexuals." Because "there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal," the *Woodward* court reasoned that, under *Hardwick*, the military's discrimination against homosexuals is constitutional.

[9] In *Ben-Shalom v. Marsh*, 881 F.2d 454, 462 (7th Cir. 1989), *cert. denied*, 494 U.S. 1004 (1990), the federal appellate tribunal stated the proposition:

[Appellant] is free under the regulation to say anything she pleases *about* homosexuality and about the Army's policy toward homosexuality. She is free to advocate that the Army change its stance; she is free to know and talk to homosexuals if she wishes. What [appellant] cannot do, and remain in the Army, is to declare herself to *be* a homosexual. Although that is, in some sense, speech it is also an act of identification. And it is the identity that makes her ineligible for military service, not the speaking of it aloud. *(emphasis in original)*.

See also Johnson v. Orr, 617 F.Supp. 170 (E.D.Cal. 1985) (finding for the military), *aff'd mem.*, 787 F.2d 597 (1986); *Pruitt v. Cheney, (supra)* n. 5. (same).

[10] *See, e.g., Ben-Shalom v. Marsh*, 881 F.2d 454, 461 (7th Cir. 1989)("The Commander-in-Chief, the Secretary of Defense, the Secretary of the Army, and the generals have made the determination about homosexuality, at least for the present, and we, as judges, should not undertake to second-guess those with direct responsibility for our armed forces. If a change of Army policy is to be made, we should leave it to those more familiar with military matters than are judges not selected on the basis of military knowledge."); *Goldman v. Weinberger*, 475 U.S. 503, 507-510 (1986)(Court deferred to the "professional judgment of military authorities" that Jew-

ish officer's wearing of yarmulke justified a court martial for noncompliance with dress code); *Rostker v. Goldberg*, 453 U.S. 57, 70–71 (1981)("[J]udicial deference to such congressional exercise of authority is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulation for their governance is challenged."). *Also, Gilligan v. Morgan*, 413 U.S. 1, 10 (1973); *Orloff v. Willoughby*, 345 U.S. 83, 93–94 (1953).

[11] Supra n. 2.

[12] Berg v. Claytor, 436 F. Supp. 76 (D.D.C. 1977), vacated and remanded, 591 F.2d 849 (D.C.Cir. 1978).

[13] 875 F.2d 699 (9th Cir. 1989), aff'g en banc on other grounds, 847 F.2d 1328 (9th Cir. 1988), cert. denied 111 S. Ct. 384 (1990).

[14] The Supreme Court has found that classifications based on race, national origin, and in some cases, alienage constitute suspect classifications. See Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439–42 (1985). In addition, classifications based on gender, e.g. Craig v. Boren, 429 U.S. 190 (1976), and illegitimacy, Trimble v. Gordon, 430 U.S. 762 (1977), are considered "quasi-suspect" and trigger a form of "intermediate scrutiny" that is more rigorous than basic rational relationship review. In addition to subjecting suspect or quasi-suspect classification to strict scrutiny, courts will apply strict scrutiny to classifications that burden "fundamental interests."

[15] These classifications must be supported by more than merely a "legitimate" interest: governmental actions that burden a quasi-suspect classification must be based on an "important" interest, Craig v. Boren, supra n. 13, while actions that burden a suspect classification must serve a "compelling" governmental goal. Cleburne, supra n. 14.

[16] The connection between the discriminatory action and the governmental goal must be more than merely "rational": for quasi-suspect classifications the relationship must be "substantial," Craig v. Boren, supra n. 13, and for suspect classifications the discriminatory action must be "precisely tailored" to the governmental interest at issue. Plyler v. Doe, 457 U.S. 202, 217 (1981).

[17] As it appears from the decided cases, the justifications asserted by the government are several. First, it is argued that the presence of homosexual personnel arouses "tensions and hostilities" and inspires a lack of confidence and respect for homosexual officers. The military has also contended that homosexuals would be unable to effectively perform their duties as a consequence of their emotional involvement with other homosexuals and fear of disclosure. Other factors relate to anticipated disruption of the command structure that could result from homosexual relationships with subordinates, the possibility that heterosexuals would be discouraged from enlisting, and the threat of adverse foreign reaction to homosexual military personnel stationed abroad. Finally, one court has opined that "toleration of homosexual conduct, as expressed in a less broad prohibition, might be understood as tacit approval." See, e.g., Beller v. Middendorf, 632 F.2d 788, 811 (9th Cir. 1980); Dronenberg v. Zech, 741 F.2d 1388 (D.C.Cir. 1984).

Most recently, the federal district court in Steffan v. Cheney, 780 F. Supp. 1 (D.D.C. 1991), upheld the forced resignation of a Naval Academy midshipman who though not charged with homosexual behavior had admitted his homosexual orientation just weeks before graduation. Judge Oliver Gasch ruled that the regulations were rationally related to the military interest in protecting soldiers and sailors from AIDS.

Since Congress is empowered to raise and support armies, it may do whatever is necessary to protect the health and welfare of those armies. . . . The power to protect the armed forces from venereal disease is ample to sustain the power to protect them from what is now known to be a fatal and incurable virus.

[18] *Supra* n. 17.

[19] *Id.* at 812.

[20] *Supra* n. 17 at 1398.

[21] *Supra* n. 5.

[22] 963 F.2d 1160 (9th Cir. 1992), *cert. denied* 61 U.S.L.W. 3413 (S. Ct. 12–8–92).

[23] The gist of the Ninth Circuit reasoning is revealed in the following passage:

The Army did not discharge Pruitt because she spoke candidly about her sexuality to a newspaper. Nor did it discharge her for publicly expressing her views on a timely and controversial subject, or for demonstrating compassion for and association with homosexuals. The Army discharged Pruitt because she admitted to being homosexual, . . . Pruitt's admission, like most admissions, was made in speech, but that does not mean that the first amendment precludes the use of the admission as evidence of the fact admitted. . . . The question is not whether the Army is free to discharge her for her speech, because it did not do so. The question is whether the Army is entitled to discharge her for her homosexuality—an issue not encompassed by Pruitt's first amendment claim. 963 F.2d at 1163–64.

[24] 473 U.S. 432 (1985).

[25] The Court ruled in this regard that "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like." 473 U.S. at 450.

[26] 466 U.S. 429 (1984).

[27] *Id.* at 448. *See also United States Dep't of Agriculture v. Moreno*, 413 U.S. 528 (1973) (invalidating under the rational basis test a provision of the Food Stamp Act that excluded households containing unrelated individuals because motivated by congressional dislike for "hippies").

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, DC, January 26, 1993.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to express the support of the Veterans of Foreign Wars of the U.S. for your position opposing the removal of the ban on homosexuals serving in the Armed Forces, and for your decision to hold public hearings on this issue.

We believe the President's stated intention to lift the existing ban on homosexuals was made without due consideration for its impact on the Armed Forces and without proper consultation with military and Congressional leaders.

We support the current ban and we support your courageous decision to convene Senate hearings on this issue. The hearings will give the Service Chiefs and others the opportunity to describe the impact of the proposed policy change and to openly discuss their concerns before the Congress and the American people. Moreover, your decision will remind all that the Congress shares in the authority and formulation for such a major policy change affecting our Armed Forces.

Senator Nunn, you have our strong support on this issue and all your efforts directed toward maintaining a strong national defense.

Sincerely,

JOHN M. CARNEY
Commander-in-Chief.

VFW REMAINS OPPOSED TO LIFTING MILITARY BAN ON HOMOSEXUALS

WASHINGTON, DC, January 21, 1993.—Upon hearing reports that President Clinton planned to act quickly to lift the ban on homosexuals serving in the Armed Forces, the Commander-in-Chief, Veterans of Foreign Wars, John M. Carney of Melbourne, Fla., issued a statement reiterating VFW opposition.

"The VFW, an organization of 2.2 million wartime veterans, opposes lifting the current Defense Department ban on homosexuals serving in the Armed Forces. Last August, delegates assembled at our National Convention reexamined this issue and again concluded that homosexuality is incompatible with military service.

"This issue is a very serious matter. Our military leaders are gravely concerned about the impact such a change would have on our Armed Forces at this critical time. It is our hope that President Clinton will listen to the wise counsel of the Chairman of the Joint Chiefs of Staff, General Colin Powell and other military leaders on this issue. If he does so we believe he will conclude, as we have, that the ban should remain in place."

RESOLUTION NO. 416 AS AMENDED

Whereas, because of the past experience of many veterans, we urge opposition to the effort of homosexual organizations, both male and female, to force the military services to accept and retain homosexuals; and

Whereas, the policy of the Department of Defense states that homosexuality is incompatible with military service and that the presence of homosexuals in such an environment seriously impairs the accomplishment of the military mission; and

Whereas, the Uniformed Code of Military Justice, Article 125, 10 USC, Section 925 (1976), specifies that sodomy is a crime in the military and the exclusion of homosexuals is a practical means of preventing violations of this Code; and

Whereas, this policy has been subjected to judicial challenge in numerous federal lawsuits with the goal of permitting homosexuals into the Armed Forces; now, therefore

Be it resolved, by the 93rd National Convention of the Veterans of Foreign Wars of the United States, that we express our deep concern over the impact this change of policy would have on our Armed Forces; and

Be it further resolved, that we unequivocally oppose the efforts of homosexual organizations to force the military services to accept or retain homosexuals and urge the Departments of Defense and Justice to take this matter before the Supreme Court to seek final judicial reaffirmation of the homosexual exclusion policy; and

Be it further resolved, that the aforementioned Codes should be rewritten in an effort to dismiss any possible question of the denial of civil rights based on moral, religious or ethical behavior, as it is not the intent to inflict that upon said persons, rather a just concern for the solid stability of our Armed Forces and its operation.

THE AMERICAN LEGION,
Washington, DC, January 29, 1993.

DEAR SENATOR: The American Legion remains steadfast in its opposition to lifting the ban on homosexuals in the military. Now is not the time for procrastination. The choice is clear. The decision should be made "to stay the course". This is not a matter of patriotism, loyalty or one's ability to do a job. This is a matter of choosing a lifestyle that is disruptive in a military environment. As wartime veterans, our members understand the necessity for cohesiveness and conformity, leaving no room for alternative behavior.

If the Administration insists on a change, then the decision should be made by means of the legislative process. Enclosed is a copy of The American Legion's most recent press release on this issue.

Sincerely,

ROGER A. MUNSON,
National Commander.

THE MILITARY COALITION,
Alexandria, VA, December 22, 1992.

Hon. JOHN MCCAIN,
Senate Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: The Military Coalition, comprised of nationally prominent military and veterans associations, representing 3.5 million members—active, reserve, retired and veterans—of the seven uniformed services, wishes to inform you that on December 8, 1992 we sent the enclosed let-

ter to President-Elect Clinton concerning the issue of allowing acknowledged homosexuals to serve in our nation's armed forces.

For the reasons expressed in the letter, this issue is of grave concern to us. As we suggested to President-Elect Clinton, such a departure from a long-standing policy banning service by avowed homosexuals should not be made without a careful, extensive and considered examination by the appropriate committees of Congress following a course of hearings. We further recommended that only then, after their recommendations are presented, should a final decision be made.

We urge you to support this recommendation to hold hearings and then make appropriate recommendations to the President. We further request that during your deliberations you solicit testimony from the service Chief's as well as from the Military Coalition, and other appropriate groups.

Sincerely,

PAUL W. ARCARI,
Colonel, USAF Retired, The Retired Officers Association, Co-Chairman.

C.A. (MACK) MCKINNEY,
Sgt. Maj. USMC Retired, Non Commissioned Officers Association, Co-Chairman.

THE MILITARY COALITION,
Alexandria, VA, December 8, 1992.

President-Elect BILL CLINTON,
Governor's Mansion, Little Rock, AR.

DEAR PRESIDENT-ELECT CLINTON: The Military Coalition, a consortium of military and veterans' associations is deeply concerned over the probability of your fulfilling the promise to allow acknowledged homosexuals to serve in the Armed Forces of the United States. The Coalition, representing 3.5 million members of the military community, opposes such a demoralizing move on the part of the Commander-in-Chief of the nation's uniformed services.

Service in the armed forces is a unique calling. Military men and women must be prepared to live anywhere, fight anywhere, and maintain high morale and combat efficiency under frequently adverse and difficult conditions. They are asked to undergo frequent exposure to risk, long hours, periodic relocations and family separations. Additionally, they willingly accept some abridgment of their freedom of speech, their right to privacy, and control over their living and working conditions. These are all part of the very personal price our military personnel pay on a daily basis.

Your pledge, if fulfilled, would strike at the very things which compromise the core of combat efficiency—high morale and discipline. What little privacy now exists for most personnel would be further jeopardized. The result can only be a diminution of their ability to carry out their mission—the defense of our nation.

The Coalition respectfully urges you to accept the sage advice of your military service chiefs and retain the current ban on military service by acknowledged homosexuals. Our top military leaders collectively possess years of experience in handling morale and disciplinary problems. Their knowledge and opinions on what is best for our nation's uniformed services require your careful consideration.

The Coalition, furthermore, strongly suggests that Congress be requested to conduct extensive hearings on this issue and then provide its counsel on a matter with potentially long-term detrimental effects on the All-Volunteer Force. It has taken this action a good many years to develop a well educated quality force of dedicated men and women that comprise the best military organization in the world. Let us keep it the best.

THE MILITARY COALITION.

THE RETIRED OFFICERS ASSOCIATION,
Alexandria, VA, December 15, 1992.

Hon. JOHN MCCAIN,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: The Retired Officers Association, representing 322,000 commissioned and warrant officers (over two-thirds of the nation's retired military officer community) recently sent a letter to President-Elect Clinton expressing our concern over the issue of military service by avowed homosexuals.

This letter is based on the sentiments of our membership as compiled by the Gallup Organization at the behest of the TROA Board of Directors. The survey results reveal that over 83% of our membership oppose Mr. Clinton's campaign promise to allow avowed homosexuals to serve in the military.

I have taken the liberty of enclosing a copy of the editorial page from our January 1993 edition of The Retired Officer Magazine as well as a copy of the results of the Gallup survey we commissioned. The editorial contains a letter jointly written by TROA's Chairman of the Board, G. E. R. Kinnear, Admiral, USN-Ret. and me, the original of which was sent to President-Elect Clinton.

As we did with the President-Elect, we urge you to seriously consider the impact of Mr. Clinton's promise and the effect it can and will have on our nation's military forces. Additionally, we urge you and your colleagues to hold hearings on this issue; to hear arguments from all sides and then make an informed decision. Our nation's military forces who have long and faithfully served the defense needs of our great nation should expect no less from its elected representatives.

Sincerely,

T.J. KILCLINE,
President.

THE RETIRED OFFICERS ASSOCIATION,
Alexandria, VA, December 11, 1992.

President-elect BILL CLINTON,
The Governor's Mansion, Little Rock, AR.

DEAR MR. CLINTON: On behalf of The Retired Officers Association (TROA), we want to congratulate you on your election as president of the United States.

TROA is an organization of 322,000 members who have served as commissioned or warrant officers and 60,000 surviving spouses. We look forward to working with you in maintaining the United States combat-ready armed forces capable of defeating all foreign threats to our national interests and security.

It is from this perspective that we express our profound concern about your reported interest in repealing the current Department of Defense policy on homosexuals in the armed forces. Military service is unique and vastly different in both working and living conditions from private and public sector occupations where employees are free to come and go as they please. The military institution, with its sea duty, field deployments and combat operations, necessarily infringes upon personal privacy and forces intimate living conditions unlike those experienced in any other community or profession. Our years of military leadership experience confirm that when avowed homosexuals are thrust into this environment, the impact undermines morale and discipline to the detriment of the essential mission. This is an even more significant factor at a time when we are undergoing a massive drawdown of the fighting force. The result of this kind of social engineering within our all-important defense community can be nothing but disastrous.

Further, the military institution must act in loco parentis for the young men and women entrusted to its care. Service recruiting efforts to maintain the required vitality and quality of the force can only suffer. Many parents will discourage their sons and daughters from joining an armed service forced to accommodate to the gay lifestyle.

We strongly recommend that you heed the advice of your senior military advisors to retain the long-standing and logically-conceived policy to ban homosexuals from the military and not make a precipitous decision that would seriously impair national security.

G.E.R. KINNEAR II,
Admiral, USN (Ret.), Chairman of the Board.

T.J. KILCLINE,
Vice Admiral, USN (Ret.), President.

NON COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES OF AMERICA,
Alexandria, VA, August 21, 1992.

Hon. JOHN MCCAIN,
U.S. Senator, Subcommittee on Manpower and Personnel, Russell Senate Office Building, Washington, DC.

DEAR MR. MCCAIN: Over the years, the Non Commissioned Officers Association of the United States of America (NCOA) has opposed every legislative attempt to change the policy of denying service in the U.S. Armed Forces to homosexuals and bisexuals. The association has and will continue to be strong in its support of the Department of Defense (DoD) position in the matter. If DoD should, by chance, succumb to public pressure on the issue, NCOA will not alter its position.

In an effort to demonstrate the association's resolve on the homosexuality issue, a copy of a Resolution has been enclosed for your information. This Resolution was approved by NCOA members during the Business Meeting held in conjunction with the association's 31st Annual Convention in Reno, Nevada, in July 1992.

Should public hearings be held on any legislation intended to open the ranks of the military services to homosexuals, NCOA would welcome the opportunity to offer a representative to express opposing views to such legislation. In this regard, invitation may be sent to me at the above address.

NCOA firmly believes that this is a social issue and not one of discrimination as some would lead us to believe.

Sincerely,

MICHAEL F. OUELLETTE,
Sgt. Maj., US Army, (Ret), Deputy Director of Legislative Affairs.

HOMOSEXUALS IN THE ARMED FORCES

Whereas, it has been a long-standing policy of the Armed Forces of the United States to deny service to homosexuals in the uniformed components of the Army, Navy, Marine Corps, Air Force, and Coast Guard;

Whereas, there is currently an organized effort with segments of the public and in the Congress of the United States to have the Armed Forces to amend its policy and authorize the enlistment and retention of homosexuals;

Whereas, the enlistment and retention of homosexuals, is not in the best interest of

preserving high morale and good discipline in the Armed Forces of the United States, and is incompatible with maintaining good order among uniformed members of the military services,

Whereas, homosexual conduct is an offense under the Uniform Code of Military Justice;

Therefore, be it

Resolved, That the membership of the Non Commissioned Officers Association of the United States of America, hereby declares its unanimous support for the current Department of Defense policy, DOD DIRECTIVE 1332.14 January 1982, which reads in part:

"Homosexuality is incompatible with Military Service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the military services to maintain discipline, good order and morale; to foster mutual trust and confidence among service members; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of service members who frequently must live and work under close conditions affording minimal privacy to recruit and retain members of the Military Services; to maintain public acceptability of military service; and to prevent breaches of security."

Be it further

Resolved, the Association shall actively oppose legislation or regulation directing the recruitment or retention of homosexuals in the Armed Forces.

THE RETIRED ENLISTED ASSOCIATION,
GOVERNMENT AFFAIRS OFFICE,
Alexandria, VA, June 29, 1992.

Hon. JOHN MCCAIN,
Ranking Minority Member, Subcommittee on Manpower and Personnel, Senate Committee on Armed Services, Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the more than 58,000 members of The Retired Enlisted Association (TREA), I am writing to express our strong opposition to S. Res. 236, a Resolution "expressing the sense of the Senate that the President rescind DOD Directive 1332.14, section H.1, which bans gay, lesbian, and bisexual Americans from serving in the Armed Forces of the United States."

It is obvious the sponsors have never lived for years aboard a man-o-war, as so many enlisted Navy personnel do, for example.

Proponents of S. Res. 236 site the costs to DOD when involuntarily separating homosexuals from the Armed Forces. What all neglect to mention is that homosexuals enlisting or receiving a commission have misrepresented themselves and entered into a fraudulent enlistment.

Overlooked, is the potential impact on recruiting. Each year the services recruit tens of thousands of high school seniors into the Delayed Entry Program (DEP). The DEP program allows the service to guarantee a specific school months ahead of graduation from high school. Many of these same high school seniors are 17 years old and thereby require parental consent. This makes one wonder, how many heterosexual parents are going to consent or encourage their young sons and daughters to join the service should S. Res. 236 become law.

We respectfully urge you to offer your strongest opposition to S. Res. 236.

Very respectfully,

JOHN M. ADAMS,
MCPO, USN (RET.),
Director of Government Affairs.

P. RESOLUTION NO. 93-7

Reserve Officers Association of the United States

UNIFORMED SERVICES POLICY REGARDING HOMOSEXUALS

Whereas, allowing acknowledged homosexuals to serve in the military will impair the Department of Defense's capability to provide adequate national security; and

Whereas, the Uniform Code of Military Justice, an Act of Congress, prohibits sodomy and other deviant behavior on the part of service personnel; and

Whereas, the special conditions and operational demands related to military service, especially in wartime, are unique to serving in the military and must not be confused with conditions prevailing in society as a whole; and

Whereas, heterosexual personnel experience significant stress when forced to associate with overt homosexuals in close quarters, lacking privacy and during life and death situations; and

Whereas, forcing heterosexual military personnel to serve with overt homosexuals threatens morale, discipline, and esprit de corps, that which is at the core of combat effectiveness; and

Whereas, service in the armed forces is not a right but a unique calling, entered into by those who meet stringent physical and mental requirements; and

Whereas, discrimination related to behavior and lifestyle must not be confused or equated with that based on gender, race or religion; Now, therefore, be it

Resolved, That the Reserve Officers Association of the United States, chartered by Congress, urge the Congress and the uniformed services to sustain policies excluding homosexuals from the uniformed services.

This supersedes Resolution No. 91-57.

Note: This is not an official ROA resolution until adopted by the National Council/Convention.

AMERICAN SECURITY COUNCIL,
Washington, DC, January 29, 1993.

Hon. JOHN MCCAIN,
Russell Senate Office Building, Washington, DC

DEAR SENATOR MCCAIN: We are writing to strongly urge you to vote in favor of the amendment that will be offered by Senators Bob Dole, Strom Thurmond, and Dan Coats in support of the current ban on homosexuals in the armed forces. We have been in contact with ASC members and supporters throughout the nation, and we can tell you they are vigorously opposed to President Clinton's decision.

For 37 years the American Security Council and its members have worked to safeguard U.S. national security interests while promoting a world of free nations at peace. Today, we are focusing our efforts on developing a bipartisan strategy for the 21st Century—a strategy for "winning the peace" in a post-Cold War world. We believe a key element to our success in the Cold War, and a critical element in maintaining peace in the future, is the readiness, morale, and professionalism of our armed forces.

Because of this, we were very dismayed by President Clinton's decision to issue an Executive Order repealing the current ban on homosexuals in the armed forces. We strongly urge you to weigh carefully the concerns and difficulties which have already been expressed to you by the entire national security community. These are thoughtful men and women whose professional lives have been devoted to improving the quality of our fighting forces. They are open-minded and compassionate, and they have the best interests of the country and military at heart.

As you may know, the American Legion, the Veterans of Foreign Wars, the Association of the U.S. Army, the Navy League, the Air Force Association, the National Guard Association, the Marine Corps League, the Reserve Officers Association and the Retired Officers Association have all joined ASC in going on record in support of the ban. Letters, statements and resolutions from all of these groups have already been sent to your office.

Our nation's veterans groups urged President Clinton not to issue this Executive Order before the men and women most affected by this proposal had an opportunity to be heard and their concerns addressed. This is a major policy change with far-reaching implications, and we regret that the President acted so suddenly.

Military service is unique and vastly different in both working and living conditions from private and public sector occupations where employees are free to come and go as they please. The military institution, with its mandatory sea duty, field deployments and combat operations, necessarily infringes upon personal privacy and forces intimate living conditions unlike those experienced in any other community or profession.

Years of military experience suggest that when homosexuals are thrust into this environment, the impact undermines morale and discipline to the detriment of the essential mission. This is an even more significant factor at a time when we are undergoing a massive drawdown of the fighting force. The result of this kind of social engineering within our all-important defense community can be nothing but disastrous.

Further, the military institution must act in loco parentis for the young men and women entrusted to its care. Recruiting efforts can only suffer, risking the vitality and quality of the forces. Many parents will discourage their sons and daughters from joining an armed service forced to accommodate gay lifestyles.

The basic issue addressed by the Dole/Thurmond/Coats amendment is national security, not the alleged "rights" of any group of citizens. We strongly recommend that you respect the advice of our senior military officers and all of the nation's veterans groups. We hope you will not vote for a policy that would put our national security at risk.

ROBERT H. SPIRO, JR., PH.D.,
Vice President, Former Under Secretary of the Army, Carter Administration,
JOHN M. FISHER,
Chairman and Chief Executive Officer.

NAVY LEAGUE OF THE UNITED STATES—BOARD OF DIRECTORS' MEETING

MINUTES

The meeting was called to order at 8:30 a.m. by the National President, William C. Kelley, Jr.

The following National Directors were present:

NEW ENGLAND REGION

Charles L. Cashin, Jr., Raymond R. Couture, Daniel D. Gallagher, William C. Kelley, Jr., Harry W. Konkel, Ivan R. Samuels, Robert W. Saul, Jr., and Robert W. Selle.

EMPIRE REGION

Earnest G. Campbell, Kenneth A. Deegan, John H. Reilly, Jr., Richard W. Scheuing, Austin N. Volk, Arthur D. Ward, and William E. Weisert.

LIBERTY REGION

Ludevit Cerven, William H. Cowper, John Dalton, Timothy O. Fanning, John D. Faulds, Richard Herb, Edwin E. Kraft, Janet F. MacInnes, Donald R. Misura, Robert Mulford, Albert S. Ogden, John Rogge, John J. Sweeney, Elizabeth W. Trimble, George J. Trimble, and E. Howard York.

MID-ATLANTIC REGION

Donald F. Bartley, Calvin H. Cobb, Jr., Winifred Q. Collins, Burton L. Doggett, Albert H. Friedrich, Larry D. Hamilton, Steven L. Hammer, Michael J. Hutter, Billy Kellum, Lou Kriser, Jerome Rapkin, Stewart E. Reuter, William G. Sizemore, Jacquelyn C. Smith, Ralph Solberg, and Suzanne B. Williams.

SOUTH ATLANTIC COAST REGION

Edith E. Calliham, Gerald F. Corcoran, Dale Lewey, Hugh H. Mayberry, Arlie McNeil, Owen W. Siler, and Robert Van Nuise.

FLORIDA REGION

Herbert A. Jordan, Jr., Robert C. Morrison, Henry C. Petri, G. Rodman Porter, Jr., John J. Spittler, and Stewart R. Sprung.

SOUTHERN REGION

Boykin R. Dodson and Walter H. Reese.

SOUTHWEST REGION

Ronald W. Bradley, Carter B. Conlin, Raymond L. Nelson, J. Wayne Trimmer, J. Frank Williams, and Tommy C. Wimberly.

GREAT LAKES REGION

George E. Burlingame, Fred D. Carl, Margaret D. Christie, John D. Crawford, Howard R. Doud, Rosalind K. Ellis, Morgan L. Fitch, Jr., James A. Hotham, Robert W. Mitchler, Sarah J. Whitlock, and Roycealee Wood.

UPPER MIDWEST REGION

Gordon E. Loffhagen.

CENTRAL MIDWEST REGION

Charles W. Boswell.

ROCKY MOUNTAIN REGION

Joseph Y. Miller IV and Paul R. Streich.

CARIBBEAN REGION

Joseph S. Galbraith and Wallace Valencia.

PACIFIC SOUTHWEST REGION

Pamela K. Ammerman, John R. Anderson IV, Mary E. Barrett, Jewell H. Bonner, Patricia Ann Brill, James C. Cecil, Jr., John R. Fisher, Walter F. Heisey, Frances Z. Heppe, Herbert Hirsch, Glen J. Huber, Seymour Knee, Donald A. Lambe, Raymond W. Lusby, K. A. Moras, Jack H. Morse, Robert L. Murphy, Anthony Pearson, Dwight D. Perry, Edna M. Ralston, John M. Rau, Katherine O. Rogerson, William R. Sammons, Mildred A. Talley, and Charlotte Thompson.

PACIFIC CENTRAL REGION

David M. Albin, Evan S. Baker, Charles J. Beasley, Leonard H. Bregman, Genie Cancellier, William N. Durley, Stanley E. Ellexson, William R. Gaynor, T. Cole Hackley, Paul E. Hazelrig, Sr., Ralph P. Hill, Lorraine D. Hughey, Josephine M. Hutchinson, Willis E. Reed, John H. Roscoe, Henry J. Warren, Robert C. Whitten, Jr., and Jacquelin G. Wilson.

NORTHWEST REGION

Robert E. Bateman, Marilynn E. Crist, Steven D. Gann, Hubert Glenzer, Dewitt James Griffin, Charles E. Krischano, Jean Look-Krischano, Henry M. Robinett, and Harold H. Vlist.

PACIFIC AREA REGION

Pasha Baker, Ted M. Damron, Harold B. Estes, Alexander Gaston, J. Walsh Hanley, Myron Haynes, Jonathan Hodkinson, Alan S. Lloyd, and Paul A. Nelson.

EUROPEAN AREA REGION

Guy M. Newland and Robina Townes-Cornille.

The President stated that a quorum was present.

"Now therefore be it resolved, by the National Directors of the Navy League of the United States at their meeting on November 16, 1992, that the Navy League of the United States supports the statement of the Chairman of the Joint Chiefs of Staff who said 'The Joint Chiefs of Staff and the senior commanders continue to believe strongly that the presence of homosexuals within the armed forces would be prejudicial to good order and discipline.'"

LINDA TRUMP,
Director, Executive Services.
WILLIAM G. SIZEMORE,
Corporate Secretary.

ALEXANDRIA, VA,
November 24, 1992.

President-elect BILL CLINTON,
Governors' Mansion, Little Rock, AR.

DEAR PRESIDENT-ELECT CLINTON: I am writing you to express my deep concern over your pledge to lift the current order which bans homosexuals from serving in the military.

I am a 1974 graduate of the U.S. Military Academy at West Point. I served for 5 years in the Army in various assignments as a combat arms officer. These assignments included Korea and the 3rd U.S. Infantry, otherwise known as the Old Guard of the Army. I currently reside in the Northern Virginia area and work as a consultant within the information technology field.

My concern over your pledge goes to the very core of the future readiness of our nation's defense as well as to the moral climate within our nation. I can best reflect my concerns by raising other questions which you as the Commander-in-Chief and other military commanders will be faced with:

1. Recognizing that the sexual drive within us is one of the strongest (if not the strongest), how will soldiers feel when they are faced with the prospect of sharing the most intimate of environments with people who potentially could find them sexually attractive?

2. Given these attractions, how will units function properly when such attractions lead to unwanted sexual overtures by one soldier towards another, thus breaking down the trust that is so critical for a unit to function during combat?

3. How will the military address the likely prospect of homosexuals seeking such privileges as dependent medical and dental care for their partners in much the same way as cities such as San Francisco have mandated within 'domestic partner' programs?

4. Once homosexuals are given the privilege to serve within our nation's military, how will the military respond to the requests of bisexuals to be given the same privilege?

5. How will the service academies handle openly homosexual students?

This list goes on and on. I know I speak for many when I say that lifting the current ban will be tantamount to destroying the cohesiveness that is vital for our nation's defense personnel.

I would like to add one more point: As a black American, I find it extremely offensive and disparaging for anyone to compare the lifting of this ban to that of the racial integration of the services which began in the late 40's. It indeed tarnishes the valor and memory of all those brave soldiers who served under conditions that I never had to experience in order to pave the way for me to attend one of the most prestigious schools in America.

I strongly urge you to re-consider this pledge for the good of our military, its readiness, and for the good of our nation.

Sincerely,

BRANDYWINE, MD,
January 12, 1993.

Hon. JOHN MCCAIN,
Washington, DC.

DEAR SENATOR MCCAIN: I am an Army Captain, and I want to encourage you to do everything possible to stop President-Elect Clinton's proposal to lift the ban on homosexuals in the military. I believe this action would have a dramatically negative effect on military morale, discipline and readiness as well as undermining public confidence in our armed forces.

Everyone has rights, but not everyone has the right to serve in the military. The military discriminates against the handicapped, drug users, and criminals, with good reason. Imagine the consequences of nearsighted pilots, chemically dependent tank drivers or soldiers who are forced to depend on the actions of a known criminal. They do not belong in the military and neither do homosexuals.

In ten years I have seen hundreds of training hours lost to sexual discrimination cases. If the ban on homosexuals is lifted the number will increase ten fold. Every time a homosexual soldier receives even a slightly negative report he will be able to claim sexual preference discrimination. This will only further detract from training and add to an already burdensome amount of paperwork.

Heterosexual male soldiers will not follow homosexual leaders. I base this claim, not just on hypothesis but examples in units in which I have served. Soldiers, especially those in combat arms, will not tolerate known homosexuals in their unit. It is detrimental to morale and order to have soldiers worry about their bunkmates' sexual preferences. The result of such situations is usually violence. Comrades of mine in the Navy are particularly worried about their rights as heterosexuals, when they are forced to share crowded ship-board quarters with known homosexuals.

The military is aware that there are homosexuals presently serving and this has already created unit disruptions. My wife served for four years in the Marines and was approached by lesbians several times. One even threatened to kill herself if my wife did not give in to her advances. That did not improve the morale of her unit. The trust that creates cohesion and fighting spirit is lost. How much more common will this scene become when homosexuality is condoned?

I believe the military is supposed to represent the finest ideals of American society not the opinions of a deviant minority. Basic biology demonstrates that homosexuality is unnatural. If the military is not allowed to discriminate against "sexual preference," will homosexuality be the limit or will other sexual preferences like bestiality and pedophilia be accepted as well? Will they soon be considered normal behavior too? Will

the military soon be unable to discriminate against anyone? Like dozens of other officers I have spoken with, I will seriously consider resigning if this new measure is put into effect.

I adamantly urge you to do everything you can to stop this proposed measure. If you do not believe me, believe General Powell, this is not a good idea.

Sincerely,

S.A. UNDERWOOD,
Captain, U.S. Army.

PHOENIX, AZ,
January 25, 1993.

Mr. LES ASPIN,
Secretary, DOD, The Pentagon, Washington, DC.

DEAR MR. SECRETARY: I write with the strongest of objection to the fact the President wishes to change the Military's rules re gay individuals.

I served as an enlisted man with World War II and Korean service. I have watched the great improvement in our services the past decade.

It is simply wrong to create special rules or circumstances for the gay. These people choose their life style. Will we see special Army units exclusively of gays or perhaps an air force wing manned by gays? How do you expect our military leaders to develop pride, morale and teamwork with their officers and men with special rules and or treatment?

Homosexuality is immoral. It contributes to the present problem of AIDS in our country. As a person I would not want to serve in a military that has special rules for gays. I would not want my children to serve either. Aboard ship the quarters are close. In training, work and combat our men and women must depend on one another to perform duties. I would not want to rely on an individual or group that I knew to be gay.

It is just as shameful that apparent political expediency results in such requests. I am saddened to think our nation must stoop to such low depths. Please remember our military is vital and should be treated honorably, not shabbily. Also, I remind you New York, San Francisco and the Washington beltway are just part, not all of America.

Cordially yours,

RICHARD WAGNER.

[From the Wall Street Journal, Dec. 2, 1992]

GAYS IN THE MILITARY? A CAUTIONARY TALE

(By Kevin M. McCrane)

Bill Clinton's desire to lift the ban on homosexuals in the military brings to mind a troubling incident from my own military experience more than a generation ago.

When I turned 18 late in 1945 I discovered that I had missed the war but not the draft. After five weeks of boot camp, I was shipped to San Francisco's Treasure Island, the Navy base where new recruits waited to receive their orders.

It was dark and raw as only San Francisco can be in January when five of us mustered on a pier to await a ship's boat from the USS Warrick. The new recruits were told the Warrick was an Attack Cargo Auxiliary, which sounded promising. We soon discovered this was a fancy name for a cargo carrier. Even so, we were excited at the prospect of shipping out. Lugging our bags, we arrived on board late at night. We unhooked our berths from their vertical positions and settled down to sleep.

The awakening was sudden, panic-filled. A hand was caressing my leg, running up the inside of my thigh. A dim figure ducked away as I lashed out, kicking, swinging a fist and striking air. There was no more sleep that night.

Our voyage began the next day, our destination Honolulu. But the excitement was gone, at least for me. At the end of a long day riding the sea's rolling swells, I took a 12-inch box end wrench from the engine room and retreated to my berth. Hanging on to the wrench under my pillow, I slept.

My sense of unease did not go away even when the seasickness passed. On the fourth day at sea I visited the ship's post office. The second-class petty officer manning the tiny cubicle greeted me warmly. Grinning broadly, he stepped back from the counter, dropped his dungarees, fondled himself and made an obscene invitation. I walked away.

Whom do you tell? I chose a third-class petty officer on my watch. He laughed at what I told him. "You're on a French cruiser, kid." He told me to watch out.

It was in the open now, a subject for discussion among the new recruits. Each of us had been accosted, patted, propositioned. Though we were in different divisions, we flocked together for meals, averting our eyes when one of "them" leered in our direction.

There were five such aggressive homosexuals that we knew of on board this ship with almost 250 men. They were all petty officers. Their actions were enough to poison the atmosphere on the Warrick. Meals, showers, attendance at the movies, decisions about where you went on the ship alone—all became part of a worried calculation of risk.

After two weeks at sea, I received the whispered news that the smallest and most vulnerable of our "team" had been sodomized in the paint locker. When I looked at the bearer of this news, I saw that there were tears in his eyes. "Why are they doing this to us?" he asked.

It was a good question. The comments of some petty officers suggested that the rapid discharge of so many veterans at the end of the war had brought with it a slackening of discipline. On board the Warrick this disciplinary neglect had loosened the restraints on homosexual behavior—the threat of discharge was the surest of these—and created an atmosphere where exhibitionism and lewd action were commonplace.

All homosexuals aren't rapists. But in this closed male society, with its enforced communal living, unchecked homosexual appetites wrought havoc. The atmosphere on the USS Warrick in January of 1946 does have a present-day parallel—the atmosphere of fear that rules in today's prisons.

Is there a lesson here for Mr. Clinton? I think so. The U.S. Navy certainly won't turn into a collection of horror ships like the Warrick if he succeeds in ending the ban on homosexuals in the military. But my experience does suggest that military officials are right to worry that "good order and discipline of the services will be impaired" if the ban is lifted.

A postscript: When the Warrick reached Pearl Harbor in that long-ago winter, a new executive officer reported aboard. On the sixth day in port the PA system blared a summons "for all those personnel being transferred to assemble at the quarterdeck."

I joined the rush topside to see who was going ashore. The ship's rail was lined with crewmen cheering as five petty officers debarked into a P-boat.

I went below decks and ran back up. When the P-boat cleared the side, I dropped my box-end wrench in to the blue waters of Pearl Harbor.

TUCSON, AZ,
January 22, 1993.

Hon. JOHN MCCAIN,
U.S. Senator, Tucson, AZ.

DEAR SENATOR MCCAIN: I am writing this letter to urge you to oppose the proposed action of President Clinton that would allow known homosexuals to remain in or be allowed to join the United States Military.

I am a military wife. My husband has proudly served this nation for 21 years. I am a registered voter in the state of Arizona, and we are stationed at Davis-Monthan AFB. However, my husband has recently been sent to Saudi Arabia.

Through the Uniformed Code of Military Justice [UCMJ], active duty personnel may not strike, organize protests, or any other such activity that is the normal right of the American population. This is the very code of laws enacted by Congress that an Executive Order allowing homosexuals in the military would violate. We have only our representatives in Congress to help us fight our political battles.

Although we feel that there should be supportive government programs to help rehabilitate the people who suffer from this very sad physiological psychological illness, remaining in the military should not be allowed. If we had effective rehabilitating programs, these patients could then take their rightful place in any society.

We have programs to rehabilitate substance abusers and child abusers, in the hope that these programs would allow people to be rehabilitated and stop the cycle of these problems. So to with the homosexual. If we can control this illness and break the cycle, we will then be able to get an upper hand on other illnesses, such as AIDS.

By the very nature of the military lifestyle (i.e. barracks living, combat living arrangements, etc.), this is not an environment that would benefit the homosexual.

Senator McCain, I urge you to help fight this proposed violation of the Uniform Code of Military Justice that our military personnel must be ruled by. Please seek alternative measures to help the victims of this illness.

Sincerely,

CARLA S. DUPUY.

JANUARY 29, 1993.

Hon. JOHN MCCAIN,
Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: As a World War II veteran, decorated for valor, authorized to wear the Purple Heart with a cluster, a former rated military paratrooper and pilot, who has served in virtually all enlisted and officer grades from Private to Lieutenant Colonel, I urge you and your colleagues in the Senate not to allow a naive, draft-dodger President to over rule the wisdom of the Joint Chiefs of Staff of the United States on the matter of "gays."

My personal philosophy allows me to believe that any relationship between two consenting adults is acceptable. However, this liberal philosophy does not allow me to accept the arbitrary imposition of "gays" on the finest military establishment in the world, against the advice of the Joint Chiefs of Staff, by a President whose qualifications to make such a decision are totally absent in the face of his experience.

It is not the rights of "gays" that are at issue, but the rights of "non-gays." Moreover, beyond the issue of "gays" entitlements to serve are a myriad of other related and associated issues which ought to be fully examined prior to the proposed decision of an inexperienced President.

Therefore, I urge that you and your colleagues in the Senate move to prevent the President from making a premature judgement, one that could have a significant impact on the morale and attitude of the national military establishment, without a comprehensive examination of the matter and the full support of the Joint Chiefs of Staff.

Respectfully yours,

STANLEY C. WALDNER.

PARADISE VALLEY, AZ,
January 19, 1993.

President WILLIAM J. CLINTON,
The White House, Washington, DC.

DEAR PRESIDENT CLINTON: On the eve of your inauguration I am saddened by the thought that I may no longer be able to encourage my grandchildren to follow in my footsteps by seeking appointments as cadets at the country's military academies. That change in my position will certainly occur if homosexuals are knowingly allowed in the military.

Having served this country in ranks from private to colonel of infantry and commanded all units from squad through brigade, I have a pragmatic understanding of the trauma which can be inflicted upon young men who are naive and/or physically, mentally, or morally weaker than others. I offer three examples of which I have personal knowledge.

While attending officers candidate school at Fort Benning in 1946–1947 I was in a company in which more than twenty young men (mostly 18 to 20 years old) were first invited singly and in pairs to parties in the local community. After they consumed copious amounts of alcohol they were inducted into homosexual activities. The civilian homosexual organizers of the party photographed them, then threatened the photos would be sent to the soldiers' commanding officer if they did not bring more of their unsuspecting barrack mates to the next round of parties. Fortunately, one young man did not comply. Instead he informed his commander and the Georgia Bureau of Investigation. The lives of the more than twenty men who were discharged from OCS were undoubtedly negatively affected. Whether any went on to practice homosexuality and lure more young men into that practice, I do not know. However, it is fair to say that all those young men were negatively impacted by the events described. I believe that many suffered from changes in self-image and loss of self-esteem. If you want to verify that story, check the Infantry School's archives for OCS Class 536, graduated March 28, 1946.

A second threat to young military men is persuasion or coercion by a homosexual officer into accepting his sexual advances. I personally saw that type of mistreatment in my first troop assignment out of West Point. My company commander always had two or three specially selected recruits as his messengers or aides. When the unit went to the field for training, he and his young group would stay in barracks. When unable to avoid field duty, he had a large tent set up where he and his "aides" stayed. At the time I was too naive to realize what was happening. It was only after leaving that assignment that I read the commander had been discharged as a homosexual. I suppose one of his aides objected to the inappropriate personal attention. Or perhaps one of them reported him in a rage of jealous spite. Whatever the reason, hundreds of young recruits passed through that unit for training every eight weeks, so the homosexual company commander had a wide selection of young men to prey upon while neglecting his duties to the rest of his men and to his country. Command authority over others is very persuasive and can be intimidating. To misuse it is a grave disservice to all involved.

A third and different kind of episode occurred much later in my career. This was a typical case of the barracks bully. It seems that when men are placed in close quarters, as they are in a 40 to 60 man barrack, there is often a struggle to determine who is strongest, toughest and meanest. When that has been determined, that barracks bully often dominates all others in every way. He selects a few other toughs and rules the barrack when the non-commissioned officers are not there. So it was when I commanded a battalion at Fort Lewis. It was reported to me that such a bully and his henchmen were pulling young soldiers out of bed at night, taking them to the latrine and forcing them into sodomy and oral sex acts. When told of this, I immediately had the bully arrested. Subsequently it was learned he had murdered his brother and so was returned to his home town for prosecution. Although the bully was gone, he had left some shattered, shamed and forever changed young men in his wake.

I know these examples are unsavory and perhaps gross; but they are real stories of the kind of things that happen when people with unnatural and unfettered sex drives are placed in a position to be able to influence, coerce and bully young, immature and often innocent men. I believe strongly that we are obligated to protect our young servicemen from unwanted attentions similar to those described above. Placing them under command of homosexuals, or in barracks, foxholes, ship berths, or other close quarters with other men who seek sexual pleasure with other men is to purposely expose them to sexual advances which negatively and severely impact their lives, and those of their loved ones, forever. We certainly would not allow men who are naturally sexually attracted to females to live in open barracks with them.

On the battlefield soldiers often mix their blood as they tend their fallen comrades, or are tended by them. How will their exposure to long-term death from AIDS be rationalized if homosexuals are allowed to serve? Since it is well known that male homosexuals are the largest population of AIDS carriers in the country, it would seem extremely injudicious, if not reckless, to expose servicemen to their blood. The battlefield is not a neat place where gloves and masks can be worn.

If homosexuals are accepted in the armed services and their lifestyle accepted as an "alternative", how does a commander prevent open sexual coercion by subordinate commanders of their subordinates? How do commanders control open homosexual acts in barracks, since they would then be accepted as an "alternate lifestyle"? How do commanders get rid of barracks bullies who force themselves on others and then coerce them into silence?

The young servicemen who are affected by your decision may one day fight, be maimed, and die as a result of world events and your decisions. If they are expected to make those sacrifices, let them understand you respect them and their right to security in what little private life they have, that they need not fear sexual harassment by their officers, nor fear undue exposure to AIDS in peacetime, or on the battlefield.

It has been a great privilege for me to serve with and fight alongside our magnificent American infantrymen. They are tough, dedicated and skilled soldiers, on whom we place onerous burdens of killing and being there when their friends fall in combat. They will carry those burdens born of battle with them for the rest of their lives. The scars can never heal. I implore you not to add further burdens and scars on their psyches by exposing them to homosexuality as an acceptable lifestyle in our armed services.

Sincerely,

ROBERT L. SEARS,
Colonel, Infantry, U.S. Army, retired, U.S. Military Academy, class of 1952.

P.S.—It is with great sadness that I just read of your decision to implement a two phase plan for integration of homosexuals into our armed services. By that act you have diminished greatly the effectiveness of our armed services as effective implements of the extension of political power. You have already demonstrated quite clearly that you are unworthy of being Commander in Chief of our armed services.

I, and others who proudly served are saddened and dismayed by your decision.

JANUARY 29, 1993.

From: Dennis Roos, Hewitt, NJ.

To: Senator John McCain, Washington, DC.

DEAR SIR: I am a proud veteran of the US Army. I had the distinct privilege to serve while President Reagan was the Commander in Chief. I come from a family that believes very strongly in the American ideals of God, country & family. That the American dream is alive for all who will work for it, it was not something for the government to hand out to everyone.

My father instilled all this into us as well as the ideals of the Republican Party. Having served in the military, as you have, I am offering you my support in your fight against lifting the ban on homosexuals in the armed forces. I firmly believe what Mr. Clinton wants to do with this ban will have the most adverse affect on the moral, discipline, & cohesiveness of our armed forces.

I do not believe that the homosexuals constitutional rights are being infringed upon. If a person was joining the military and is either over weight, or a single parent, or does not have a highschool diploma, these are grounds for not being admitted to the military. Are their rights not being infringed upon also? Of course not. It is being done for the betterment of the armed forces.

I only hope your leadership, as well as the leadership of the other Republican Senators and Congressman will be enough to stem this social experimentation madness with the military. I wish that I had a Congressional Representative of your caliber instead of the Liberal Democrats that do represent the State of New Jersey. God help this country if Mr. Clinton and the other liberals that did not have the guts to serve his country when they were called upon, but now think they understand how the military should be run, get their way. If there is anyway that I may be of service to you to help thwart the democrats shenanigans on lifting the homosexual ban in the military, I would only be to happy to assist you. Good luck and Godspeed to you.

A great admirer of yours.

Sincerely,

DENNIS ROOS.

TUCSON, AZ,
January 26, 1993.

Hon. JOHN MCCAIN,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: If you think well of the enclosed letter, would you be kind

enough please to enter same in the Congressional Record in order that it might be seen by every member of the U.S. Congress?

Thank you ever so much.

Respectfully,

J.B. CHICKERING.

TUCSON AZ,
January 26, 1993.

Hon. WILLIAM JEFFERSON CLINTON,
President of the United States, The White House, Washington, DC.

DEAR MR. PRESIDENT: Please allow me to add my voice to the legions beseeching you to reconsider your plan to admit homosexual people into the Armed Forces of our blessed nation.

On January 25, 1993, your distinguished Communications Director Mr. George Stephanopoulos referred to your plan as "progress in civil rights, in ending discrimination." Civil rights are vital, to be sure. However, Mr. Stephanopoulos' expression misses the mark in two vital respects: (1) there is crucial distinction between civilian life and military life, which will be ignored, through ignorance or otherwise, to our national peril; and (2) U.S. Constitutional law does not prohibit "discrimination" but prohibits "unreasonable discrimination." Indeed, reasonable discrimination abounds, lest anyone could practice medicine or play pro football or drive a car, etc. etc. The issue at hand is not whether it would be discriminatory to bar "gays" from the Armed Forces, but whether it would be "reasonably" or "unreasonably" discriminatory to do so. And intelligent resolution of the issue is manifest in the lessons of history, religion, experience and morality.

The secular lessons of history record that each and every nation or civilization which has ascended to world leadership throughout all time has ultimately declined and fallen therefrom via moral devaluation. The British historian Arnold Joseph Toynbee, in referring to this phenomenon as "psychological indolence," aligned his thesis with the decay theory of the German Philosopher of history Oswald Spengler, author of "The Decline Of The West." Like Spengler, Toynbee saw the development of historical happenings in terms of civilizations rather than nations per se; but unlike Spengler, Toynbee did not see such civilizations as organically doomed, but with destinies dependent upon their reactions to certain challenges, i.e. their ability, or their inability, to strike a healthy balance between the extremes of excess; (Nazism is an apt illustration of one such extreme; Sodom and Gomorrah's exaggerated emphasis upon "rights," to the exclusion of responsibilities, illustrates another).

What do religion and its moral correlatives teach? Without belaboring the entire Old and New Testaments, as I believe that you stand four-square with our Judeo-Christian heritage and ethic, may I simply cite one passage from each:

"* * * if a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination* * *" (Leviticus 20:13)

"And likewise also the men, leaving the natural use of the women, burned in their lust one toward another; men with men working that which is unseemly * * * they which commit such things are worthy of death." (Romans 1:27-32)

Nor do I find a single passage of Scripture contrariwise.

What about the lessons of experience? To those of us who have experienced the military, those who fought in the trenches via five-decker bunks sardined within the holds deep in the bowels of a troopship in submarine-infested waters, those who huddled together in the mud dodging bullets, bombs and mortar fire, those who barracked in miserably close quarters at sea or on makeshift airstrips, and indeed those who kept the faith at home even as they coveted the opportunity to fight abroad for Old Glory, to all of these and many more, it is inconceivable that any experienced and knowledgeable military commander would break faith with his charges and countenance such perversion as your plan envisions vis-a-vis the unique military force structure requirements, demands and mission.

It appears that the Hon. Secretary of Defense Les Aspin has followed your lead, but question marks appear even here as each time Mr. Aspin presented himself on television and refers to nuclear weapons, he cites same as "new-kew-ler" (phonetic) weapons instead of "new-klee-er" weapons.

Just so, some television "anchors" and reporters are wont to opine that there are "tens of thousands of gays already in the military." None of these reporters, however, has ever presented even unsupported evidence to reinforce their allegations, let alone credible evidence documenting same. I can only say that in my decades of military service (prior to my years in academia, in the practice of law, and as an Administrative Law Judge), I never once encountered a single one of these "tens of thousands of gays," nor, to my knowledge, did any of my many military friends, classmates and colleagues.

I respect the fact that you have made a pledge, but surely you will agree that upholding a pledge simply for the pledge's sake, and without a cogent underpinning rationale therefor, is risky at best. Nor is there any germane rationale to support the subversion of military imperatives for the sake of someone's demented social agenda, particularly one supported by far less than a majority of the American electorate. Moreover, what more disastrous and grotesque signal could be sent to our American youngsters, the very fabric of America's future. Have we not even yet reached the bottom of the barrel in our callous and negligent treatment of and regard for our young people? (Cf. William J. Bennett's "The De-Valuing Of America—The Fight For Our Culture And Our Children," Summit Books, Simon and Schuster Bldg., Rockefeller Center, NYC, 1992)

I pray that you might reconsider your above-identified plan, just as you have had the wisdom to reconsider other campaign plans and appointments, in the light of seasoned reflection and competent counsel by those who have "been there" in the military leadership that has served America so well and throughout her history; that you might heed America's history under the tested and proven leadership of Washington, Lincoln, Roosevelt, Truman, Kennedy, and Bush; at Valley Forge, Gettysburg, on the beaches of Normandy and Iwo Jima, at Coral Sea and Inchon, in Indochina and the Persian Gulf; and that you will answer the call of the majority of Americans, who would appeal to reason and would have you do so, and to reasonable discrimination, at this turning point, up or down, in American history. Where and when otherwise are we to ever to draw the line in our ongoing abdication of our better natures?

Respectfully,

J.B. CHICKERING.

TUCSON, AZ,
January 22, 1993.

Hon. JOHN S. MCCAIN,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: I am extremely concerned about the President's stated view on lifting the ban for homosexuals in the military. Having spent 21 years as an Air Force pilot, I assure you that this action will be devastating to the military. I realize that there are jobs and situations that could probably be conducted with little consequence to morale and performance. Unfortunately, national emergencies (times of increased readiness that require temporary quarters with high stress levels and nonexistent privacy) based on my experience, would be an untenable situation. The President's proposal will result in severe degradation of the Armed Forces. I urge you to use any and all measures available to you to see that the President doesn't pursue this potentially disastrous action.

Sincerely,

BILLY TOWLES.

JANUARY 15, 1993.

DEAR SENATOR MCCAIN: Sir, I am not from Arizona. I am from Florida and I am a Sailor. I have written Senator Mack from my state and also to Senator Nunn on the Armed Services Committee along with my Congressman from my district.

I am going to share some of this information with you because you are also on the Armed Services Committee and you have served in the Navy, and now it looks like they are going to name a Burke class destroyer after you.

I feel that you of all people can understand the feelings of myself and a lot of other sailors out there that don't want homosexuals in our Navy. I can't foresee myself having to live under conditions that have been forced on me by a President that has no comprehension of what it is like to serve in the close confines of a ship that both you and I know about quite well. Secondly, why do I have to put up with this new and ungodly lifestyle. Senator, I am going to tell you what I am going to do. I'm not! Recall that 15 year retirement that Senator Nunn proposed? Looks like President elect Clinton likes it, and I am going to take it and go.

The Navy has changed a lot in the past 14 years since I joined up at 18 but, this is one change that I am not going to put up with. It is not just me. There is a whole lot of Sailors and Marines that I have talked to over at the Pentagon where I work at that are going to either get out or take the 15 year retirement offer. If Mr. Clinton wants to reduce the size of the forces putting homosexuals among our ranks is one way to do it.

What I can see happening is a mass exodus of personnel leaving the service that it will put us below the force manning requirements. This is just the way that I see it starting to shape up. God only knows what they are saying out in the fleet.

Senator, there are a lot of Sailors out there that do think the same way that I do but they won't write to their Congressmen and Senators. So I am kind of writing this for a lot of them too. I am urging you to please do just like what you have done in the past and stand up for us. You have been there, and you know that we don't want this executive order pushed on us.

Thank you for your time and keep the wind at your back and one hand on starboard rail.

Very Respectfully,

MICHAEL F. ALLINDER, RMI (SW).

LIFTING THE BAN ON HOMOSEXUALS IN THE MILITARY: WHAT MILITARY LEADERS SAY

In the debate on whether to allow the President's lifting of the ban on homosexuals in the military to stand, it is important to consider the opinion of current and former military commanders.

General H. Norman Schwarzkopf, U.S. Central Command (Ret.):

"It has nothing to do with sexual preference. It has nothing to do with discrimination against someone because they're gay * * * [W]e learned a long time ago that when gays openly are in small organizations, it tends to polarize that organization completely. Yet, we know that when you go into battle, the most important thing that holds you is the cohesion in the unit, fighting for the buddy on your left or right. So, polarization in units is not in the best interests of the unit." [Larry King, 9/30/92]

"The experience in the Army has been * * * when you have an open, out of the closet, gay or gays within your organization, and that freely admit that, within your organization it tends to break down the cohesion. So it is not a question of a personal sexual expression, it is a question of cohesion within the organization and that is what makes organizations fight." [ABC, "20/20", 9/25/92]

"[W]hen men go into battle and fight, they don't fight for God, country, mom, and apple pie. That's maybe what got them into the battlefield, but generally, it is the unit cohesion, it's your buddy on your left and your right, and you're not wanting to let the unit down, that causes you to really end up fighting the enemy." [ABC, "20/20", 9/25/92]

"We have always discriminated and surrendered civil rights as members of the armed force * * * We discriminate on the basis of age and sex." [Associated Press, 1/29/92]

General Colin Powell, Chairman, Joint Chiefs of Staff:

"It's just my judgment, the judgment of the Chiefs, that homosexual behavior is inconsistent with maintaining good order and discipline.

"What do I mean by that? I mean that it's difficult in a military setting, where there is no privacy, where you don't get choice of association, where you don't get choice of where you live, to introduce a group of individuals who are proud, brave, loyal, good Americans but who favor a homosexual lifestyle and put them in with heterosexuals who would prefer not to have somebody of the same sex find them sexually attractive, put them in close proximity, ask them to share the most private of their facilities together—the bedroom, the barracks, the latrines, the showers. I think it would be prejudicial to good order and discipline to try to integrate that into the current military structure, and I think that's the significance." [Hearing of the House Budget Committee on the FY 1993 Budget, 2/5/92]

"Skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument." [Text of letter to Representative Pat Schroeder, Reprinted in Army Times, 5/25/92]

"It is a very big problem for us, and it is not just the generals and the admirals who are saying it. We're hearing it throughout the force." [Washington Times, 11/19/92, p. 3]

"Gays now exist in the military but they are not openly practicing—they're not openly gay. They have not come out of the closet and that's quite different from them being openly gay * * * With respect to gays—when you're putting two people who have different sexual orientations into that kind of close environment, can you make it, should you make it involuntary? And which case is that closer to? The racial case or the case of sexual difference?

"I submit that it is somewhere closer to sexual difference and we have to think through very carefully the situation where you are going to place a heterosexual male or female serviceperson into an involuntary intimate arrangement, in terms of privacy, with somebody who is gay." ["Newsmaker Saturday", 12/5/92]

General Carl E. Mundy, Commandant, U.S. Marines

"I do support the ban against homosexuals in the military * * * I believe that homosexual conduct, that the gay lifestyle, embodies those things that are contrary to good order and discipline in the military." ["This Week with David Brinkley", 12/6/92]

Admiral Frank Kelso, Chief of Naval Operations

"I believe the current Department of Defense policy on homosexuality is best for the readiness of our Armed Forces." [LA Times, 1/9/93]

WASHINGTON, DC,
May 8, 1992.

Hon. PATRICIA SCHROEDER,
House of Representatives, Washington, DC.

DEAR PAT: Thank you for your recent letter concerning the position I took before Congress in February concerning homosexuals serving in the Armed Forces. I have given a great deal of thought to my position and continue to hold the view that the presence of homosexuals in the military is prejudicial to good order and discipline.

This is the policy of the Department of Defense and is supported by all of the Joint Chiefs of Staff. It is also a view held by experts who have studied the sociology of the military for many years. I am including a recent article by Charles Moskos on the subject.

I am well aware of the attempts to draw parallels between this position and positions used years ago to deny opportunities to African-Americans. I know you are a history major, but I can assure you I need no reminders concerning the history of African-Americans in the defense of their Nation and the tribulations they faced. I am a part of that history.

Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument. I believe the privacy rights of all Americans in uniform have to be considered, especially since those rights are often infringed upon by the conditions of military service.

As Chairman of the Joint Chiefs of Staff, as well as an African-American fully conversant with history, I believe the policy we have adopted is consistent with the necessary standards of good order and discipline required in the Armed Forces.

Sincerely,

COLIN L. POWELL,
Chairman of the Joint Chiefs of Staff.

DON'T IGNORE GOOD REASONS FOR HOMOSEXUAL BAN

The military's ban on homosexuals is under assault. The pressure comes not only from gay rights groups but from civil libertarians and organizations such as the American Council on Education, the American Psychological Association, the Association of American Universities and the Unitarian Church. The exclusion of homosexuals from ROTC commissioning programs has become the new cause on many college campuses. A threshold was crossed in the current Congress with the introduction of House Resolution 271, which calls for the Defense Department to rescind the ban.

Lawrence Korb raised doubts on maintaining the ban against homosexuals in this space ("Cheney remains silent on thorny social issues," Commentary, Feb. 17). To be sure, Korb argues for "empirical research" to ascertain if homosexuals can function in military units. Like all opponents of the ban, Korb holds that judgments about individuals should be based on performance, not sexual orientation. When a former assistant secretary of defense for manpower brings the ban into question, something is indeed in the air.

Certainly some of the reasons for excluding homosexuals do not stand up to scrutiny. The assertion that AIDS will be a greater threat if homosexuals are allowed in the military is a facade argument. HIV testing in the military makes the health argument untenable. Further, what if a cure or prevention for AIDS were to be discovered tomorrow? Is the way then clear for homosexuals in the military?

The argument that homosexuals are susceptible to blackmail is logically inconsistent. If one's sexual proclivities do not have to be concealed, they can hardly be the basis for extortion. No evidence exists, moreover, that homosexuals, even under the present rules, have been greater security risks than anyone else. As Defense Secretary Dick Cheney put it, in his now famous words, the blackmail argument is indeed "an old chestnut."

Further, no one can seriously argue that homosexuals across the board are ineffective soldiers, sailors, airmen or Marines. Any neutral observer would agree that not only have hundreds of thousands of homosexuals served in the armed forces, but many have done so with distinction. Likewise, no one can deny that some number of homosexuals are serving in the military.

What is at issue is allowing declared gays and lesbians into the military. This is an entirely different kettle of fish from the service of discreet homosexuals in uniform. (Though all are not that discreet, since nearly 1,000 homosexuals are discharged from the military each year.)

Proponents of lifting the gay ban are quick to draw an analogy between the current exclusion of homosexuals and the earlier resistance to racial integration in the armed forces. This is a nice debating point, but the comparison does not stand. A racial category is not a behavior category. Indeed, to lump blacks with homosexuals is an affront to most African-Americans.

The proper analogy between homosexuals and heterosexuals is that between men and women. Sexual orientation is, after all, sexual orientation. Erotic urges are powerful human drives and recognized as such.

Sex between service members does undermine order, discipline and morale. So does invasion of sexual privacy. That is why the military separates the living quarters of men and women. Even in field conditions, the privacy of men and women is maintained to the maximum degree possible.

Nowhere in our society are the sexes forced to endure situations of undress in front of each other. Should we have "empirical research" on the effects on military efficiency of mixed male/female bathing? Most women—and many men—dislike being

stripped of all privacy before the opposite sex. Similarly, most heterosexual men and women dislike being exposed to homosexuals of their own sex. If feelings of privacy for women are respected regarding privacy from men, then we must respect those of straights with regard to gays.

Anybody who wants to allow homosexuals into the military must make the same argument for breaking down privacy barriers between the sexes. If members of the armed forces were able to go their own way off duty, as in the case with most civilian occupations, there would be no serious argument against incorporating open homosexuals in the armed forces. But the military is different. It is an institution that requires enforced intimacy and lack of privacy.

Of course there are concealed homosexuals in the military who function just fine. But that is the point. Closet gays do not cause feelings of invasion of privacy precisely because they are covert. One could argue that homosexuals can be accommodated in today's military by rearranging living areas as we already do for men and women. We could have separate homosexual and heterosexual living quarters. Whatever such arrangements might do in the name of abstract individual rights, they raise more problems than they solve. It boggles the mind to think of the stigmas and nicknames that would accrue to all-homosexual groups. In any event, gay rights advocates have never seriously pushed for this option. Separate living arrangement for homosexuals is clearly a non-starter.

So where does this leave us? Because there are foolish reasons for excluding gays from the armed forces should not let us ignore the good ones. Most feminists would not advocate forced intimate living between the sexes. Likewise, enlightened gay advocates should not argue for compulsory intimacy among persons of openly different sexual orientations. The military's ban on homosexuals still makes good sense.

[From the Washington Post, Feb. 6, 1992]

POWELL SAYS DISCIPLINE IS BASIS OF MILITARY HOMOSEXUAL BAN

The chairman of the Joint Chiefs of Staff said yesterday the military maintains its ban on homosexuals because of potential problems of discipline and morale.

Gen. Colin L. Powell told the House Budget Committee he agrees with Defense Secretary Richard B. Cheney's view that the ban is not justified by the department's onetime contention that homosexuals pose a greater security risk.

Rather, Powell said that homosexual behavior "is inconsistent with maintaining good order and discipline."

"It's difficult in a military setting where there is no privacy * * * to introduce a group of individuals—proud, brave, loyal, good Americans, but who favor a homosexual lifestyle—and put them in with heterosexuals who would prefer not to have somebody of the same sex find them sexually attractive." Powell said.

"I think it would be prejudicial to good order and discipline to try to integrate that into the current military structure," Powell told the panel.

All branches of the military ban homosexuals.

Last July, Cheney said he had "inherited a policy that has been in the department now for many years" and that the policy was "based upon the proposition that a gay lifestyle is incompatible with military service."

[From the Washington Post, June 28,1992]

THE CASE FOR A MILITARY GAY BAN

(By David Hackworth)

Rep. Pat Schroeder of Colorado wanted to give women "equality and opportunity" by making them rucksack-toting grunts. Now she aims at putting homosexuals in the foxholes to "end the final bastion of discrimination."

I cannot think of a better way to destroy fighting spirit and gut U.S. combat effectiveness. My credentials for saying this are over four decades' experience as a soldier or military reporter.

Despite the ban on service by homosexuals, gays have long served in the armed forces, some with distinction. Many perhaps felt no sexual inclination toward their heterosexual fellow soldiers. If they did, they had their buddies' attitudes and the Uniform Code of Military Justice hanging over their heads. Still, I have seen countless examples of inappropriate and morale-busting behavior.

In Italy, for example, in the post-war occupation, a gay soldier could not keep his hands off other soldiers in my squad. He disrupted discipline, mangled trust among squad members and zeroed out morale. In the same unit, the personnel major was gay. He had affairs with ambitious teenage soldiers in exchange for kicking up their test scores. This corrupted the command's promotion system and led to the commissioning of William Calley-like lieutenants not fit to lead combat soldiers.

During my second tour in the Korean War, a gay commanding officer gave combat awards to his lovers who had never been on the line. In Vietnam, a young captain in my unit was asked by the commander to go to bed with him. This almost destroyed the esprit of a fine parachute unit.

These are not isolated incidents: During my Army career I saw countless officers and NCOs who couldn't stop themselves from hitting on soldiers. The absoluteness of their authority, the lack of privacy, enforced intimacy and a 24-hour duty day made sexual urges difficult to control. The objects of their affection were impressionable lads who, searching for a caring role model, sometimes ended up in a gay relationship they might not have sought.

A majority of American citizens, according to polls, support Schroeder's bill. Many people look at the armed forces as they do the post office, the Bank of America or General Motors—an 8-to-5 institution where discrimination on the basis of sexual orientation is against basic freedom, human rights and the American way of life. If these polls are true, a lot of people don't understand what war is about.

Sure, banning gays from defending their country is discriminatory. But discriminations are necessary when a larger public purpose is being served. Civilian standards of fairness and equality don't apply down where the body bags are filled.

On the battlefield, what allows men to survive is combat units made up of disciplined team players, who are realistically trained and led by caring skippers who set the example and know their trade. When all of these factors are in synch, a unit has the right stuff. It becomes tight, a family, and clicks like a professional football team. Spirited men who place their lives in their buddies' hands are the most essential element in warfare. The members of such combat teams trust one another totally.

One doesn't need to be a field marshal to understand that sex between service members undermines those critical factors that produce discipline, military orders, spirit and combat effectiveness. Mix boys and girls, gays and straights in close quarters such as the barracks or the battlefield; and both sexual contact and the consequent breakdown of morale are inevitable.

Many bright people are pushing for the ban to be lifted. I suspect that few if any have been down in the trenches, but I have no doubt their psychological/sociological/political clout will have considerable influence even if they don't have a clue what combat is about.

Unfortunately, most of the top brass won't sound off. They duck and weave and offer hollow and spurious Pentagonese double-talk reasons for continuing the ban—reasons that only fuel the pro-gay argument. But they have told me in the "G" ring of the Pentagon that they're "against it, but sounding off would be the kiss of death, like opposing women in combat—a career killer, you know."

I hope that our lawmakers will visit Quantico and Fort Benning before they vote, and ask Marine gunnery sergeants and Army platoon sergeants what a few gays would do to the fighting spirit of units. These pros told me: Gays are not wanted by straight men or women in their showers, toilets, foxholes or fighting units. They say that in combat young men face death constantly, and what allows them to make it through the hell of it all is a feeling of toughness, invincibility and total trust in their buddies.

My experience with warriors in over eight years of roaming the killing fields in seven wars confirms what these old salts are saying.

A serving lieutenant general recently wrote to me, "Ask Pat Schroeder if she'd like her kids under a gay first sergeant who might use his rank and authority to demand sexual favors from his subordinate 18-year-old kids. We just had that occur in my command."

No doubt advocates of gays in combat units will argue that they don't approve of demanding sexual favors and that the first sergeant deserved what he got—a court-martial. The problem is, all the court-martials and regulations in the world can't prevent the kind of morale problems that a change in the law is bound to create. Sure, the first sergeant is serving hard time at Fort Leavenworth, but Pat Schroeder and the two dozen law-makers who support her bill must also ask themselves what happened to the morale and fighting spirit of his unit.

[From the Wall Street Journal]

WILL COURTS UPHOLD MILITARY BAN ON GAYS?

(By Junda Woo)

Are the courts likely to overturn the ban on gays in the military if Congress doesn't let the Clinton administration do so?

Defense Secretary Les Aspin said Sunday that he warned the Joint Chiefs of Staff that the courts would, indeed, get around to it "sooner or later" and that the military would be better off cooperating now with the president's proposal to lift the ban.

But gay-rights lawyers say the history of such cases in the courts so far suggests no such legal outcome is imminent. "It's absolutely not true that the courts are on the verge of striking down this policy," said Paula Ettelbrick, legal director of the Lambda Legal Defense and Education Fund, a gay-rights legal group.

Only once has a court overturned a military discharge for homosexuality, and that case was decided on narrow grounds. The

Ninth U.S. Circuit Court of Appeals ruled in 1989 that equitable rules of fairness barred the Army from discharging a man whom the Army knew was gay when he was drafted. The man had passed several reviews despite the Army's knowledge of his homosexuality.

Attorneys for lesbians and gay men have won some cases in lower courts but have lost on appeal. The courts of appeals in Washington and Chicago have said outright that the military's ban is constitutional, said John I. McGuire, a Los Angeles attorney representing a 12-year Navy veteran discharged in May after publicly declaring his homosexuality.

Ms. Ettelbrick said many military-discharge lawsuits were put on hold in the hope that President Clinton will lift the ban. But if there is a delay, "we have to think about whether we want to push these in the courts," she said. "We don't want to, because we don't think we're going to win."

One new variable, though, could affect future cases, lawyers say. If the Clinton administration asserted in court that the executive branch no longer wanted the ban, and started making constitutional arguments against it, some judges might change their own analyses of the issues, the lawyers suggest.

Attorneys for lesbians and gay men generally have argued in the court cases that the 14th Amendment's equal-protection clause bars the military from treating homosexual service members differently. The government thus far has always responded that it has legitimate reasons to do so because allowing open homosexuals in the military would harm morale and good order and would allow security breaches. Openly lesbian and gay service members also would face prejudice and even violence, the government has said.

Even outside the military context, gays as a group typically haven't been afforded special protection under the equal-protection clause, unlike, for example, racial or religious groups.

Lawyers for lesbians and gay men are pinning their hopes on Pruitt vs. Cheney, a lawsuit in which the Ninth Circuit ruled in 1991 that the government must prove that its arguments on the impact of lifting the ban are grounded in fact. The case, involving a former Army captain discharged after revealing that she is a lesbian, is awaiting trial in California.

The Canadian government, after facing a similar ruling in a Toronto lawsuit last year, opened its military to lesbians and gays just before the case was set to go to trial. The Canadian government, in a decision noted by Mr. Aspin on CBS's "Face the Nation" program, said it didn't have the facts to back up its arguments. "You can object and stonewall," Mr. Aspin said, "but one of these days we're going to have, like it happened in Canada, where the court suddenly comes in and says, 'You have to, that this is unconstitutional.'"

In the Pruitt case, gay-rights lawyers plan to counter government arguments about morale with the Ninth Circuit's statement that it won't accept prejudice within the military as a rationale for a ban. But even if Ms. Pruitt prevails, gay-rights lawyers fear that she would ultimately lose on appeal.

"The Supreme Court is a serious obstacle," said Kathleen M. Gilberd, co-chair of the Military Law Task Force, a San Diego advocacy group for lesbians and gay men in uniform. The high court has never addressed the issue directly, but gay-rights attorneys believe it won't be sympathetic.

[The Retired Officers Association, Alexandria, VA, December 1992]

HOMOSEXUALS IN THE MILITARY RESEARCH STUDY

(Prepared by Scott S. Ahlstrand, Senior Analyst, The Gallup Organization, Princeton, NJ)

INTRODUCTION

The Gallup Organization of Princeton, New Jersey conducted market research for The Retired Officers Association (TROA) of Alexandria, Virginia. The overall purpose of this market research was to determine, among current TROA members, their attitudes and opinions with regard to the issue of allowing homosexuals in the military.

METHODOLOGY

To accomplish the objectives of this study, The Gallup Organization interviewed 1,013 current TROA members across the continental United States. TROA members were randomly selected from a list of current TROA members provided by the organization.

Respondents were interviewed by telephone between November 27 and December 1, 1992. The Gallup Organization used a multiple-callback methodology in which up to five callbacks were made to the same telephone number in order to eliminate bias in favor of those respondents easy-to-reach. Gallup provided experienced, professionally trained interviewers under the exclusive employment of Gallup. All interviewers involved in this project were briefed specifically as to the objectives and methodology of the study.

All field work was validated at the 10% level by supervisory callbacks. Telephone interviews were monitored internally as part of the ongoing Gallup process for evaluating interviewers. Completed questionnaires were edited and coded independently as a quality-control measure.

SURVEY INSTRUMENT DEVELOPMENT

Items included in the questionnaire were mutually agreed upon by The Gallup Organization and TROA. TROA had responsibility for identifying question areas and information desired. Gallup had responsibility for ensuring that all items were written technically correct and without bias.

STABILITY OF RESULTS

At the 95% level of confidence, the maximum expected error range for a sample of 1,013 TROA members is ±3.1%. Stated more simply, if 100 different samples of 1,013 TROA members were chosen randomly from a national sample of TROA members, 95 times out of 100 the results obtained would vary no more than ±3.1 percentage points from the results that would be obtained if the entire population of TROA members were interviewed.

REPORTS PREPARED

TROA has been provided a complete set of tabular results by frequency and percentage for each of the major classifications. These tabular results should serve as reference material and be consulted before important decisions are made. This narrative report focuses on what are felt to be the most meaningful findings of this study.

"How familiar are you with the issue of allowing homosexuals in the military? Are you very familiar, somewhat familiar, not too familiar, or not at all familiar with this issue?"

Table 1.—Familiarity With Issue of Homosexuals Being Allowed in the Military (n=1,013)

Response:	Percent
Very familiar	58
Somewhat familiar	36
Not too familiar	4
Not at all familiar	1
Don't know	1

In general, the respondents showed a high degree of familiarity with the issues of homosexuals being allowed in the military. More than nine-tenths (94%) of the retired officers said they were either very familiar (58%) or somewhat familiar (36%) with the issue of allowing homosexuals in the military.

"Currently, homosexuals are not allowed to serve in the military and an admission of homosexuality is sufficient evidence for discharge. President-elect Bill Clinton has said that he will lift the ban and open the military ranks to homosexuals. In general, would you say that you favor or oppose allowing homosexuals in the military?"

Table 2.—Favor/oppose allowing homosexuals in the military

Response:	Percent
Strongly favor	3
Favor	10
Net (strongly favor/favor)	13
Oppose	16
Strongly oppose	67
Net (strongly oppose/oppose)	83
Don't know	2
Refused	2

The great majority (83%) of retired officers said they either strongly opposed (67%) or opposed (16%) allowing homosexuals in the military. Respondents in the Navy (85% strongly opposed/opposed), respondents who did not have postgraduate education (85%) and respondents who had recommended the military as a career to either a family member or friend were particularly opposed to allowing homosexuals in the military.

Less than one-seventh (13%) of the respondents said they either strongly favored (3%) or favored (10%) allowing homosexuals in the military.

It should be noted, for the most part, that most respondents had a set opinion with regard to the issue of allowing homosexuals in the military. Only two percent (2%) of the respondents said they did not know whether they favored or opposed allowing homosexuals in the military.

"Currently, homosexuals are not allowed to serve in the military and an admission of homosexuality is sufficient evidence for discharge. President-elect Bill Clinton has said that he will lift the ban and open the military ranks to homosexuals. In general, would you say that you favor or oppose allowing homosexuals in the military?"

TABLE 3.—FAVOR/OPPOSE ALLOWING HOMOSEXUALS IN THE MILITARY—BY KEY GROUP—Continued

[In percent]

	Strongly favor/favor	Strongly oppose/oppose
Branch of Service:		
Army (n=391)	14	82
Air Force (n=326)	16	80
Navy (n=234)	11	85
Education:		
Less than college degree	13	84
College graduate	11	85
Postgraudate work/degree	15	81
Total (n=1,013)	13	83

"Why do you oppose allowing homosexuals in the military?"

Table 5.—Reasons for opposing allowance of homosexuals in the military (n=836; those who strongly oppose or oppose allowing homosexuals in the military)

Response:	Percent
Could have a negative effect on morale	20
Could have a negative effect on discipline	11
Close living quarters	7
Don't fit/don't belong	6
I oppose the lifestyle	6
Causes problems we don't need	5
Bad past experience with homosexuals	5
Disruptive	4
Will not work	4
Could affect combat readiness	3
Don't like homosexuals	3
Wouldn't be accepted by other soldiers	3
Don't think it is right	3
Other	20
Don't know	(1)

[1] Less than 1 percent mention.

Respondents tended to cite a wide variety of reasons for opposing allowing homosexuals in the military. In fact, they cited so many different reasons, that only two—could have a negative effect on morale (20%) and could have a negative effect on discipline (11%)—received more than seven percent (7%) mention.

In general, respondents who opposed allowing homosexuals in the military tended to cite a disruptive negative effect (on morale, on discipline, combat readiness, lack of acceptance, etc.) as being the primary reason why they opposed allowing homosexuals in the military.

Have you ever personally recommended a military career to a friend or family member? (n=1,013).

Yes—85 percent.

Don't know—12 percent.

No—13 percent.

Approximately five-sixths (86%) of the respondents said they had personally recommended a military career to a friend or family member. This level of recommending military service was consistent across all branches of service and officer types.

If homosexuals were allowed to serve in the military, do you think you would be more likely or less likely to recommend a military career, or would it make no difference on your likelihood to recommend a military career to a friend or family member?

Less likely—51 percent.

Refused—1 percent.

Don't know—4 percent.

No difference—44 percent.

Total population, (n=1,013).

Less likely—53 percent.

Refused—1 percent.

Don't know—4 percent.

No difference—42 percent.

Those who have recommended a military career (n=874).

Approximately one-half (51%) of the respondents said they would be less likely to recommend a military career to a friend or family member if homosexuals were allowed to serve in the military. Slightly less than one-half (44%) said that it would make no difference in their recommendation of a military career, while only three respondents (less than 1%) said that allowing homosexuals in the military would make them more likely to recommend a military career.

Among respondents who had previously recommended a military career to someone, 53% said they would be less likely to recommend a military career in the future if homosexuals were allowed in the military.

"If the ban on homosexuals in the military was lifted, do you think it would have a positive effect, a negative effect, or make no difference for the following? How about ( )?"

TABLE 6—EFFECT ON ALLOWING HOMOSEXUALS IN MILITARY ON VARIOUS FACTORS (N=1,013)

[In percent]

Factor	Positive effect	Make no difference	Negative effect	Net difference (positive minus negative)	Don't know
The morale of the military	3	17	78	−75	2
Military pride	3	22	72	−69	2
The level of trust of troops for one another	4	20	73	−69	3
The discipline of the military	4	22	70	−66	3
The United States' Combat Capabilities	3	26	66	−62	4
The number of individuals signing up for military service	4	29	58	−54	8
The right of privacy of individuals on active duty	7	29	53	−46	9
The number of resignations from military service	10	29	49	−39	11

Respondents were asked to indicate whether or not they thought allowing homosexuals in the military would cause a positive effect, a negative effect or make no difference on various factors involving the military. By taking the number of respondents who said that allowing homosexuals in the military would cause a positive effect on the factor and subtracting out the respondents who said that such an allowance would cause a negative effect, we generate a "net difference." All eight of the tested factors in this study had a negative "net difference" (indicating that for each one, the number of respondents saying that allowing homosexuals in the military would cause a negative effect was greater than the number of respondents saying it would cause a positive effect). Those factors that were most negatively affected (according to the respondents) by the allowance of homosexuals in the military were: the morale of the military (−75% net difference), military pride (−69%), the level of trust of troops for one another (−69%), and the discipline of the military (−66%).

Those factors that respondents believed would be least negatively affected by allowing homosexuals in the military were: the number of resignations from military service (−39%), the right of privacy of individuals on active duty (−46%), and the number of individuals signing up for military service (−54%).

Only one of the eight tested factors—the number of resignations from military service—had at least ten percent (10%) of the respondents say that allowing homosexuals in the military would have a positive effect on that factor.

EFFECTS OF ALLOWING HOMOSEXUALS IN THE MILITARY ON VARIOUS FACTORS (N=1,013), NET DIFFERENCE.

The number of resignations from military service, −39 percent.

The right of privacy of individuals on active duty, −46 percent.

The number of individuals signing up for military service, −54 percent.

The United States' combat capabilities, −62 percent.

The discipline of the military, −66 percent.

The level of trust of troops for one another, −69 percent.

Military role, −69 percent.

The morale of the military, −75 percent.

[CRS Report for Congress, Jan. 14, 1993]

HOMOSEXUALS AND U.S. MILITARY PERSONNEL POLICY

(By David F. Burrelli, Analyst in National Defense, Foreign Affairs and National Defense Division)

SUMMARY

Department of Defense policies concerning homosexuals in military service have recently been the subject of increasing scrutiny and debate. In the 1992 presidential campaign, candidate Clinton indicated that as President he would rescind or modify the military policy excluding homosexuals from military service while maintaining strict limits on the behavior of those who serve.

Current military personnel policy bars homosexuals from entering or serving in the armed forces. Under this policy, individuals who state they are homosexual, engage or intend to engage in homosexual behavior or attempt to marry someone of the same sex are administratively discharged from the military service. In addition, homosexual or heterosexual acts of sodomy or "disorders and neglects to the prejudice of good order and discipline in the armed forces" are punishable by court-martial.

Advocates for removing the policy view it as a violation of civil rights and fair treatment. They contend that it is unfair to separate individuals from the armed services merely as a result of their "sexual orientation." Proponents of the policy cite the need to maintain cohesion, discipline and morale within the working and living conditions imposed as a result of military service. They contend that allowing homosexuals into the service would prove disruptive to unit cohesion and, ultimately, to military readiness.

While an undetermined number of homosexuals have served in the military, such service has been performed without an open acknowledgement of their homosexuality. The question confronting policy makers remains, "To what extent, if any, would open homosexuality be disruptive to morale, cohesion and readiness in the ranks, and to what extent does any disruption justify discrimination?" Many military leaders, familiar with the military society and its rules believe that the presence of open homosexuality would prove sufficiently disruptive to justify continuing the policy. Homosexual rights advocates, many of whom have also served in the military, believe that not only will disruptions be minimal but that the overall effectiveness and readiness of the force will improve by allowing homosexuals to serve.

Advocates for repealing the policy have generally held that restrictions should be maintained on behavior but that a homosexual "orientation" alone should not be grounds for dismissal. Distinctions between orientation and behavior, seemingly clear in the abstract, may prove difficult to make in the complex realities of everyday life.

In addressing this issue, President-elect Clinton has suggested that he will consult with a "committee" and military leaders. Senator Nunn has suggested that hearings will be held on the issue. Congress may also consider other options including the formation of a commission or the enactment of specific legislation. Some observers believe that such military personnel policy changes may be made by President Clinton via either an executive order or what has been termed a "memorandum of understanding."

EXECUTIVE SUMMARY OF KEY OBSERVATIONS

Context

The Department of Defense (DoD) policy excluding homosexuals from serving in the armed forces has recently been the subject of increasing scrutiny and debate. This issue has been addressed in a number of fora including the media, college campuses, the courts, Congress, within the Executive branch itself, among military members, veterans and civil rights organizations, and as an issue in the 1992 presidential campaign. In the 1992 presidential campaign, the Democratic candidate for President stated that, if elected, he would rescind the policy on homosexuals in the military.[1] Following his election in November, President-elect Clinton has maintained his position on rescinding the policy while considering strict limits on behavior.

Current military personnel policy (see Appendix) excludes homosexuals from entering or serving in the armed forces. Under this policy, persons identified as homosexuals (either through the individual's own statements, attempts to marry someone of the same sex or, by engaging or attempting to engage in homosexual acts as defined) are administratively discharged from the military. Four bills were introduced in the 102d Congress that would eliminate, or encourage the President to rescind, the military policy on homosexuals. While efforts to abolish the policy against homosexuals serving in the military have increased, previous efforts to change the policy have been unsuccessful in Congress. However, it appears that hearings may be held to address the issue in the 103d Congress.[2]

Advocates for rescinding the policy view it as a violation of civil rights and fair treatment. They contend that it is unfair to separate individuals from the armed services merely as a result of their sexual orientation. They note that many homosexuals have served with distinction but must live under the constant threat to being exposed and removed from the service. Proponents of the policy cite the need to maintain cohesion, discipline, and morale within the unique environment of military service. They contend that allowing homosexuals into the service would prove disruptive to unit cohesion and, ultimately, to military readiness.

Purpose and scope

This report examines the historical background of laws and DoD policy on homosexuals. Current Defense Department regulations and articles under the Uniform Code of Military Justice are discussed. Next are analyzed various important aspects of the issue including: origins of homosexuality, prevalence of homosexuality, homosexual orientation v. behavior, open v. covert homosexuality, fairness and discrimination, military readiness, sexual harassment, and foreign military experiences with homosexuality.

Other issues of immediate effect relating to the homosexual policy are also analyzed. These include: public opinion, effects on ROTC and recruitment advertising, the use of homosexuality as a means of avoiding service, and the deployment of homosexuals during time of war or crisis.

Finally, this report considers and discusses the issues confronting Congress in the context of a presidential pledge to rescind or modify the military policy excluding homosexuals.

In addition to the sources cited throughout this report, a large number of interviews were conducted with knowledgeable sources, including individuals for and against the current policy. This report considers and analyzes the various issues raised and arguments in favor of or against particular policy positions. However, their inclusion and subsequent analysis should not be considered, in this context, as evidence of congressional support or opposition. Instead, this report is intended to provide a range of views on competing perspectives regarding proposals to change or maintain the current policy on homosexuals in the military.

HISTORICAL BACKGROUND

Prior to World War I, U.S. military law did not address homosexuality. Although commanders had great discretion in the control and disciplining of their troops, specific laws, regulations or policies addressing homosexuality did not exist. The Articles of War of 1916 (effective March 1, 1917) restricted consideration of sodomy to cases of assault with the "intent to commit" sodomy.[3] In 1951, the Uniform Code of Military Justice introduced Article 125 specifically banning sodomy (between members of the same or opposite sex) itself. Cases of assault with the intent to commit sodomy were charged under Article 134, or the General Article.

Despite a lack of laws specifically addressing the issue, numerous policies and regulations allowed for differential treatment of homosexuals or those who manifested homosexual behavior. Prior to World War II, homosexuals were admitted into the services and, in the case of those who evidenced cross-gender mannerisms, often assigned tasks deemed relevant to the individuals' behavior and lifestyle. ("Effeminate" men were assigned away from the combat arms) for example, and placed in jobs not considered to require particularly masculine qualities, such as clerk, hospital corpsman, chaplain's assistant or camouflage specialties.[4]

During World War II, psychiatrists, who at the time tended to view homosexuality as a mental illness, attempted to identify and "treat" homosexuals in uniform. Numerous efforts to identify and treat homosexuals had mixed results. Failure to respond to treatment often resulted in a Section VIII discharge ("inaptness or undesirable habits"). With the social taboo against homosexuality (resulting in its concealment), the relative flexibility of personnel regulations, the need for personnel during wartime, and the inability of psychiatrists to determine who was homosexual (especially in an era of rushed wartime medical entrance examinations), meant that an undetermined number of homosexuals passed through the services without difficulty.

The policies concerning homosexuality shifted gradually from the 1940s to the 1970s. Early policies were based on a treatment and retention model. Later policies continued to accept treatment but moved increasingly toward separation (and in certain cases, punishment) of known homosexuals. Flexibility was maintained to the extent that certain homosexuals could be retained in situations involving "heroic service." Nevertheless, until the mid-1970s, efforts to address the issue remained under a medical model of illness, treatment, and integration into or, later, exclusion/separation from the services.

"In 1966, for example the Army required a psychiatric examination prior to separation for homosexuality. In 1970 the homosexuality regulation was superseded and was integrated into regulations that covered all types of unfitness and unsuitability. Unsuitability could be demonstrated by evidence of homosexual "tendencies, desires, or interests * * * ."

"The regulatory scheme was significant because separation boards * * * generally had the authority to recommend retention of soldiers being processed for elimination, and commanders could disapprove a board's recommendation to separate * * *. Indeed, prior to February 1977, the Army's posture was that there was discretion to retain homosexuals."[5]

In the late-1970s, the Report of the Joint Service Administration Discharge Study Group was completed.

Two of the study group's recommendations concern homosexual behavior. One recommendation [was] to reaffirm the long-established ban on gays in the military. Specifically, the study group [had] proposed that the phrase "homosexuality is incompatible with military service" and "processing (for separation) is mandatory unless * * * the allegations are groundless" be included in all subsequent DOD directives on personnel separations. The second recommendation [was] that, in cases of "unsuitability," i.e., those involving homosexual tendencies or homosexual acts between consenting adults, individuals receive an *honorable* discharge.[6]

Created in a period of legal challenges to its policies on homosexuality (see court section below), the recommendations of this study group were used as the basis of current DoD policy.

Summary of Key Observations

The military has generally been characterized as a separate institution governed by rules that may or may not be acceptable in civilian society. Differential treatment of military personnel has generally been justified on the basis of the uniqueness of the military mission. Discrimination on the basis of this mission and the unique nature of military society has been upheld, generally, in the courts. Discrimination on other basis has generally not been justified.

While many homosexuals have served in the military, such service has been performed in most instances without open acknowledgement of their homosexuality. The question confronting policy makers remains: "To what extent, if any, would open homosexuality be disruptive to morale, cohesion and readiness in the ranks, and to what extent does any such disruption justify discrimination?" Many military leaders, familiar with the military society and its rules believe that the presence of open homosexuality would prove sufficiently disruptive to justify continuing the policy. Homosexual rights advocates, many of whom have also served in the military, believe that not only will disruptions be minimal but that the overall effectiveness and readiness of the force will improve.

Advocates for repealing the policy have generally held that restrictions should be maintained on "behavior" but that a homosexual "orientation" alone should not be grounds for dismissal. However, distinctions between orientation and behavior, seemingly clear in the abstract, may prove difficult to make in the complex realities of everyday life.

Issues of privacy for heterosexuals, whether real or perceived, remain contentious.

Comparisons to foreign military policies appear informative, inconsistent and of problematic application.

Historically, the U.S. military has been in the forefront of some major social changes. The successful integration of blacks is widely viewed as a positive indication of the military's ability to make important social changes. However, some have questioned using the military as a vehicle of social

change (see Project 100,000[7]). Among the question policy makers may consider is not whether the military can or should be forced to change, but whether society as a whole supports this change and whether the military is the appropriate vehicle for such a change? What impact, if any, would this change have on military readiness? Indeed, issues concerning civil rights and the definition of acceptable behavior may be raised both inside and outside of the military.

Under the Constitution, Congress has the authority "to make rules for the government and regulation for the land and naval forces." Congress, subject to Presidential veto, has authority to create military rules and laws. Changes concerning repealing or modifying DoD policy on homosexuals in the military might also be made by executive order of the President, but in any case would likely present Congress with a range of legislative considerations including: Equal opportunity/anti-discrimination issues; questions concerning military compensation and benefits particularly with regard to homosexual "partnerships" and definitions of dependency and family; issues concerning the separation of church and state; and, questions of fairness in maintaining morale and discipline under rules regulating conduct.

DEPARTMENT OF DEFENSE POLICY

The DoD policy addressing homosexuals is dealt with in three directives (on 1. Enlisted Administrative Separations, 2. Separation of Regular Commissioned Officers for Cause, and, 3. Physical Standards for Enlistment, Appointment, and Induction). In addition, the Uniform Code of the Military Justice regulates behavior concerning sodomy and general disorders and neglects to the prejudice of good order and discipline. Each of these is discussed below.

Administrative Regulations

The January 1982 directive on Enlisted Administrative Separations (discharges) establishes the DoD policy for enlisted administrative separations and is, therefore, the most often cited and disputed statement of this policy:

Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain the public acceptability of military service; and to prevent breaches of security.[8]

Based on this policy, individuals who engage in homosexual conduct or exhibit an intention of engaging in such conduct are deemed to affect adversely the ability of the military to accomplish its mission. Such conduct is considered a threat to morale, good order, discipline, mutual trust, privacy, the ability of the services to attract and retain members, and public acceptability of military service.

As used in DoD policy, homosexual means "a person who engages in, desires to engage in, or intends to engage in homosexual acts" (or homosexual and heterosexual acts in the case of bisexuals). A homosexual act is defined as "bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires." (See Appendix). In order for an individual to be subjected to administrative discharge procedures, at least one of the following findings (with certain exceptions) must be made:

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts;

(2) The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual and that the purpose of the marriage or attempt was the avoidance or termination of military service.

This directive addresses homosexual administrative discharges from a behavioral perspective, or 'behavioral intent,' perspective. In other words, "persons who *engage in homosexual conduct* or who, *by their statements, demonstrate a propensity to engage in homosexual conduct*" are considered, under this directive, eligible for separation. From a technical point of view, an individual must have engaged in, or stated a desire or intention to engage in, homosexual behavior. Statements that acknowledge an individual's homosexuality are considered reasonable grounds of intention but may not be sufficient to warrant a discharge, i.e., the member may be attempting to avoid service. To this end, an investigation is required. Such an investigation would need to determine if an individual had engaged, or intends to engage, in such behavior, or if such a statement is being used solely as a means of avoiding military service. Thus, the admission of being a homosexual is not treated as an *ipso facto* indication of a propensity to engage in homosexual behavior. Rather it is considered a reasonable cause for conducting an investigation. (It remains possible that an individual is both homosexual and attempting to avoid service.)

This directive provides exceptions to this policy including provisions that allow a member to remain in the service when it is in the service's interest and when it can be found that the member does not desire or intend to engage in homosexual behavior.

Generally speaking, when an individual is administratively discharged for homosexuality alone, an Honorable or General Discharge is issued. This directive lists those instances in which certain homosexual behaviors would result in a discharge Under Other Than Honorable conditions.[9] These conditions include the use of force, homosexual acts with a minor, and fraternization that is deemed sufficiently disruptive to good order.

Lastly, this directive provides direction concerning the procedure for such separations. In each of these, there needs to be a "finding," "probable cause," or "circumstances authorizing" such a separation. Without such, an administrative board is directed to retain the member. Under these rules, an individual may be separated with a finding of conduct or intended conduct (including self-made statements) consistent with the definition of homosexual, bisexual and/or homosexual act as provided in this directive. Furthermore, "[T]he burden of proving that retention is warranted under the limited circumstances * * * rests with the member except in cases where the member's conduct was solely the result of a desire to avoid military service." Therefore, the service concerned must provide findings of probable cause of homosexual behavior or intended behavior, or determine that such statements or behavior are being used as a means of avoiding service. With the finding of such behavior or intention of behavior, the member must prove that retention in the service is warranted.[10]

While the above pertains to enlisted personnel, officers may also be separated (see the text of the directive on the Separation of Regular Commissioned Officers for Cause in the Appendix). The rules that apply to officers generally reflect the policy on homosexuality. However, these regulations are somewhat different than those pertaining to enlisted personnel due to procedural differences in the separation of officers.

Under the third directive, on Physical Standards for Enlistment, Appointment, and Induction (see Appendix), prospective service members may be denied entry into the service for homosexual activity. During the screening process, individuals are asked if they are homosexual. An affirmative answer, technically, is sufficient grounds to deny entry into the service. Thus, a recruit who states that he is a homosexual is reasoned to have been engaged in, or to have intended to engage in homosexual behavior. It is important to remember that under the 'separation directive' the burden of proof lies with the service member, or in this case with the recruit, once homosexuality is acknowledged. It may be impossible to prove that an individual has not and will not engage or intend to engage in homosexual activity. It should also be noted that neither of the above two directives require "proof beyond a reasonable doubt" but are based on the less restrictive standards of an administrative finding of fact.

Statutes

The Uniform Code of Military Justice (UCMJ), as enacted by Congress, lists sodomy and "disorders and neglects to the prejudice of good order and discipline" as grounds for conducting a court-martial proceeding (see Appendix). As such these regulations of behavior, in theory apply to both homosexuals and heterosexuals. Under these articles, legal rules of evidence apply. Unlike the directives described earlier, the results of findings by a court-martial may entail punitive sanctions. The threat of punitive actions under these articles may be used as leverage in getting service members to divulge homosexual activities. In other words, individuals apprehended under one of these articles, or acknowledged homosexuals who, subject to an investigation, are found to have fraternized with subordinates in such a manner as to endanger good order or morale, may be offered an administrative discharge (rather than court-martial and punishment) if they cooperate in providing evidence against themselves or other service members. Investigations of criminal behavior often require seeking confessions, or corroborating testimony. To this end, plea bargaining a punishable offense under the UCMJ to an administrative discharge, for example, is a legal tool for gaining evidence and expediting cases. As noted above, since certain individuals may resign from the military and thereby avoid prosecution, the manner and extent to which these statutes are used is not clearly known.

Under the above DoD directives, homosexuals are excluded from enlistment, appointment, and induction into the armed

forces. Such individuals found to be serving in the forces may be administratively separated. Under the UCMJ, individuals (whether homosexual or heterosexual) found guilty of violating either of the above articles may be punished as the court martial may direct.

Under current practice, individuals who admit a homosexual orientation, admit past behavior of a homosexual nature, or who have been apprehended for behavior related to homosexual acts as described may be denied entry into the armed forces or separated from the armed forces. Thus, under current practice, merely stating one's homosexuality or having a homosexual orientation is sufficient grounds for denying enlistment to or removing a person from the armed forces.

BROAD POLICY ISSUES AND ARGUMENTS

The following discussion of military policy on homosexuals is divided into two major sections. The first one addresses the general context and broadly relevant aspects of the issue. The second major section addresses specific issues of more immediate effect. Such a distinction is not perfect nor mutually exclusive and, therefore, a certain degree of overlap between the two sections is unavoidable. In this first section, policy issues considered and analyzed include: the origins of homosexuality, estimates of the prevalence of homosexuality, orientation v. behavior, covert and overt homosexuality, social legitimacy considerations as well as consideration of fairness, and policies of other nations.

The origins of homosexuality

Attempts to ascertain the origins of homosexuality have proven inconclusive and no generally agreed causality has been established. Numerous research endeavors have been undertaken to determine factors that cause homosexuality or heterosexuality including genetic/biological, psychological and socio-cultural.[11] Difficulties in methodology, experimental controls and sampling have complicated these efforts. While each academic discipline has made certain "discoveries" or observations concerning the differences between homosexuals and heterosexuals, such findings 1) are not universal (or statistically significant), 2) can be explained by various factors or phenomena, and or 3) are unable to discern temporal considerations (i.e. which came first: the associated factor or homosexuality).

Since no one area appears to adequately explain the entire range of sexual behaviors (including homosexuality), many researchers have assumed a more expansive explanation: "* * * the diversity among sexual orientations is likely to be understood from a combination of sociological, cultural and biological factors.[12]

Efforts to discern "causes" for homosexuality or heterosexuality have been further complicated by one additional reality: the existence of bisexuality.[13]

Findings of a link between genetics and sexuality have been used by some to argue that homosexuals represent a class meriting protection under the law, or that homosexuality is an immutable characteristic (as is race, for example). These arguments are made in pursuit of legal protection as a legitimate minority but are based on scientifically disputed theses and courts have been generally unwilling to grant special protection for homosexuals (see Court section below).

Estimates of the prevalence of homosexuality

The number of homosexuals in society or the military at any given time has not been reliably measured. Reports in the media have assumed that the proportion in the military is roughly equivalent to the number in society. (The validity of such an assumption cannot be measured.) Estimates of the numbers of homosexuals in society tend to be based on definitional considerations of who is homosexual. The most commonly cited number is 10 percent of the population. This number is based on one datum supplied by the 1948 Kinsey study. According to Berube:

"Kinsey found 4 percent of the white males he surveyed to be "exclusively homosexual throughout their lives" after the onset of adolescence, and 10 percent to be 'more or less exclusively homosexual' for at least three years between the ages of sixteen and fifty-five.[14]"

Although it can be argued that 4 percent is as relevant a finding as 10 percent, media sources and homosexual rights groups tend to cite the higher figure. (Kinsey's data have been criticized for various reasons, including the "unrepresentativeness" of his sample.) More recent data provided by Smith found the percentage of a national sample of sexually active adults to be somewhat smaller: "* * * results show that 98.4 percent of sexually active adults reported that they were exclusively heterosexual during the year preceding the survey. * * * This percentage is substantially higher than the commonly cited level of 90 percent, but concurs with the best available estimates.[15]"

Using the definitions and data obtained by Smith, fewer than two percent of those men and women sampled could be considered homosexual or bisexual.

The proportion of military personnel who are homosexual remains unknown in part because of the policy excluding homosexuals from service. As a result of the policy, individuals in uniform who are homosexual are less likely to acknowledge their orientation or behavior. It can also be argued, however, that the policy discourages homosexuals from joining in the first place. Conversely, certain aspects of military service, including sexual segregation, physical aggressiveness, authoritarian atmosphere, may appeal to both men and women as well as to certain heterosexuals and homosexuals.[16]

The extent to which homosexuality exists in the military is, in part, dependent upon the definition of who is homosexual or what behavior constitutes homosexuality. The Department of Defense has outlined specific definitions as a part of its policy. Since this definition is likely to be different from others in use, it is unlikely that there will be agreement on the proportion of military personnel who are homosexual. (In the context of discussing the military's policy on homosexuals, the definition used by DoD applies.)

Homosexual orientation and homosexual behavior

"Orientation" is defined as "the act of determining one's bearings or settling one's sense of direction, * * * the settling of one's sense of direction or relationship in moral or social concerns or in thought or art, * * * awareness of the existing situation with reference to time, place, and identity of persons."[17] "Behavior" is associated with the particular action or reaction of an individual. Thus, homosexual orientation implies only that an individual has determined himself/herself to be homosexual without necessarily entailing a homosexual act. Interestingly, DoD policy concerning enlistment, while generally excluding homosexuals from entering the military, does allow certain individuals to enter the service who have committed or been a party to a homosexual act.[18] An admitted homosexual is also barred from the service despite the fact that such an individual may not have participated in such an act. In the case of *Shalom v. Marsh*, the court upheld the Army's right to administratively discharge an acknowledged lesbian based only upon her statement that she was a lesbian.

Plaintiff's lesbian acknowledgement, if not an admission of its practice, at least can rationally and reasonably be viewed as reliable evidence of a desire and propensity to engage in homosexual conduct. * * * [T]he regulation does not classify the plaintiff based merely upon her status as a lesbian, but upon reasonable inferences about her probable conduct in the past and in the future. * * * Plaintiff has admitted that she has a homosexual desire, but not necessarily that she intends to commit homosexual acts. The Army need not try to fine tune a regulation to fit a particular lesbian's subjective thoughts and propensities.[19]

"In the Closet" and "Out of the Closet"

Social taboos, legal restrictions and moral intolerance have historically forced individuals to hide or deny their homosexuality (i.e., keep their homosexuality "in the closet"). With increasing efforts toward gaining civil rights and social acceptance, increasing numbers of homosexuals are "coming out of the closet" or publicly proclaiming their identity. Definitions of "in the closet" or "out" are somewhat situational in actual practice. Individuals may "come out" with close friends or siblings but remain in the closet with employers, a spouse, parents or more distant relatives. "Outing" can be personal (i.e., a proclamation of self-identification), or forced by others (i.e., activists may proclaim a public figure to be homosexual without his or her consent). While military discharges have arguably "outed" thousands of homosexuals, many have simply been allowed to resign, in effect, protecting the individual's privacy by allowing him/her to "stay in the closet." Conversely, the decision to be "out of the closet" often is both personal and political (particularly in those instances where homosexuals seek to challenge the military's policy on homosexuals—see Court section in Appendix).

The concept of "in" or "out" of the closet should not be confused with issues relating to orientation or behavior. Consider the heuristic diagram 2 x 2 diagram below:

HEURISTIC FIGURE 1.

Status	Orientation	Behavior
"In the Closet"	A	B
"Out of the Closet"	C	D

Individual homosexuals may find themselves to be exclusively in one cell or, given particular circumstances, in more than one cell. For example, certain individuals may have a homosexual orientation and choose to be "in the closet" with employers (cell A), but "out" with close friends (cell C). Still others may wish to remain behaviorally in the closet (cell B, but remain, de facto, "out" with partners). Finally, cell D represents those who not only have "come out" but who also manifest public behaviors (including, for example, marching in homosexual rights parades, "marriage" to a same sex partner, political "street theater" protests, or certain illegal behaviors). It is those individuals in cell C that homosexuals acknowledge most often in attacking the military's policy on homosexuals.

In the military context, most homosexuals are in cells A and B. Due in part to military

restrictions, these individuals are forced to keep their homosexuality largely secret. Efforts to change the policy have, in most cases, concentrated on allowing individuals to acknowledge, through statements, their orientation without prejudicial action resulting. Other advocates claim that on orientation alone (cells A and C) or private sexual acts between consenting adults (cell B) should not be grounds for discharge. Certain advocates have argued that sodomy laws should be revised.

(Some observers have claimed that the military, technically, does not have a "ban" on homosexuals since individuals who would fall into cell A or B are allowed to serve. These claims, however, have been attacked as being disingenuous since the military requires statements to be made about a recruit's sexuality. In addition, those in certain pre-commissioning programs must sign statements that they are not homosexuals—see ROTC section below. Also, those subject to review for security clearances are also asked about their sexuality. From this perspective, individuals are "allowed" to serve provided that they are willing to deny their homosexuality and thereafter live under threat of discovery.)

Although presented for analytic purposes, the above chart can be misleading. Homosexuals who only have an orientation but participate in political debates on homosexual rights or "street theater,"[20] could be placed in cell D. (It is important to note that many of the participants in political debates include heterosexuals as well.) As such the distinction between orientation and behavior is, at best, subjective, and at worst, a rhetorical obfuscation. Indeed, definitions of "acceptable behavior" remain a contentious issue for policy makers and those charged with enforcing laws, rules and regulations.

Advocates for removing or modifying the policy on homosexuals in the armed forces state that those who have a homosexual orientation should not be discriminated against based on their orientation alone. They argue that sexual orientation is non-threatening and to force individuals to divulge their private thoughts and emotions on such matters represents an invasion of the individuals' rights to privacy. In essence, since the services prevent those with such an orientation from entering the military, those so prevented are judged not on their behavior but on their very existence. Such individuals are, it is argued, "found guilty" without having performed an act beyond stating their sexual orientation. Many advocates state that it is not their intention to change those rules, regulations and laws regarding behavior.[21] In other words, some advocates have stated that homosexuals, and others, should be judged on the basis of what they do, not who or what they are. Those individuals who have proclaimed an "orientation" and are otherwise fit for duty should not be discriminated against. It is believed that such a reform would prevent many otherwise outstanding service members from being forced out of the service merely as a matter of their sexual orientation.

Other advocates believe that once the policy on homosexuality is modified to recognize or tolerate orientation, other related policies may also be modified. As discrimination against homosexuals is eliminated, these advocates believe that legal restrictions pertaining to certain sexual acts of consenting adults, now termed sodomy, will be eliminated.

Finally, certain advocates have supported overturning the statutory language pertaining to behavior as the first step to eliminating discrimination against homosexuals.

"* * * [G]ay rights activists say the military's chief weapon to force out homosexuals is not the regulations [administrative discharge directive], but the threat of criminal prosecution under a 1956 military sodomy law.

"Such pressure tactics in military investigations create a climate of fear that make it easy for the military to separate anyone suspected or even rumored to be homosexual, the activists say. And no service member is safe, they say, as long as the military has the power to make intimate acts between consenting adults a crime."[22]

From this point of view, once privacy is recognized and non-intrusive behavior (including sodomy) between consenting adults is decriminalized or afforded privacy protection, the arguments for maintaining the policy will be insupportable.

Proponents of maintaining the current policy state that "allowing declared and open homosexuals to join and remain in the military * * * would be quite a different kind of social chemistry than the present situation, where homosexuals who do serve in the military are discreet about it."[23] Formally recognizing homosexuals would allow many "to come out of the closet" so long as they did not engage in homosexual behavior. Rescinding the policy on the basis of orientation alone would allow homosexuals legitimacy while maintaining the illegal nature of their sexual behavior. (Also, it is not clear what effect changing the policy would have on homosexual "political behavior" in the services—such as forming organizations to advocate homosexual rights.) Under the first proposal, gays and lesbians would be permitted to join and stay in the military so long as they remain sexually inactive, "celibate," or, behaviorally "in the closet." This places homosexuals in the position of being recognized for their orientation and punished for the behavior that orientation may entail. (Some advocates of homosexual rights also acknowledge that once the homosexual orientation is officially accepted, restrictions on relevant behaviors will also be challenged.)

Thus, critics view the focus on orientation as a deception that would recognize homosexuality and lead to the inevitable recognition of homosexual behavior as "normal." These critics contend that the sexual drive is perhaps one of the most innate and profound human characteristics and that it would be foolhardy to acknowledge the homosexual orientation and continue to deny the ensuing behavioral manifestations.

H.R. 5208 and S. 3084

The "distinction" between orientation and behavior has been incorporated into proposed legislation. H.R. 5208 and S. 3084[24] would remove discrimination against homosexuals based on orientation while maintaining restrictions on certain unspecified behaviors (see Appendix). In other words, this proposed legislation would require the services to remove any prohibitions barring an individual from remaining in the service or seeking to join the military on the basis of sexual orientation. Also, this language would maintain standards in law, regulation or policy preventing sexual misconduct (i.e., rape, harassment, sodomy, sex with minors, relations on duty as prescribed, etc.). These rules may not be applied, under this language, in a manner that discriminates on the basis of sexual orientation. Thus, homosexual conduct would be permitted provided that rules and regulations pertaining to conduct apply equally to heterosexuals. In other words, nothing in this language would permit sexual relations aboard a ship, for example, since such behavioral restrictions would apply to both heterosexuals and homosexuals. In fact, nothing in this language would allow "unnatural carnal copulation with another person of the same or opposite sex" as prescribed under article 125 of the UCMJ. Presumably, any undefined conduct, as considered by a court martial which violates the customs and traditions of the armed services, deemed to be "prejudicial to good order and discipline" remains illegal provided that such standards would apply equally to heterosexuals and homosexuals. (Without a clear definition of acceptable behavior, certain problems may arise. For example, asking for a date may be protected, arguably, unless a fight broke out. Harassment and solicitation would not be protected.) Instances of fraternization sufficient to threaten discipline, whether homosexual or heterosexual, may be resolved by court martial and/or discharge.

Proponents of this proposed legislation note that this language would remove discrimination and unfair treatment based on sexual orientation while keeping in place those rules, policies and laws pertaining to behavior. Under this language, discipline and good order would be maintained since behavior would be controlled. Court martial and discharge options remain available in those instances, heterosexual and homosexual, involving violations of rules, regulations and laws pertaining to conduct. Proponents point out the success that has resulted in those instances where restrictions against homosexuals have been removed (i.e., in the civilian workplace). It can also be argued that although some personnel, homosexual and heterosexual, will behave in a manner that is deemed inappropriate, these cases will be more than offset by the increase in the number of professional and dedicated service members who would be allowed to enter the military and remain on active duty. That is, a homosexual orientation alone should not be considered an adequate indication of a behavior problem. Under current policy, many of those forced from the service "involve a soldier, sailor or airman who but for being homosexual, is outstanding in every respect."[25] Such a change, advocates believe, would ultimately enhance military readiness.

Critics view this language (H.R. 5208 and S. 3084) as going beyond efforts to merely protect those with a homosexual orientation. Narrowly interpreted, most, if not all, homosexual activity, critics argue, has been and will likely continue to be defined as "unnatural." This proposed language allows homosexuals into the service provided that they remain, for the most part behaviorally asexual. Such a situation places homosexuals in a position of being able to "come out of the closet," acknowledge their sexual orientation and then refrain from acting on that orientation. Critics note that given studies of male homosexual behavior and given the sexual segregation of the services, instances of such behavior will increase substantially if this legislation were to be enacted.[26] In other words, removing the stigma of homosexuality or rules that exclude homosexuals from the military will increase instances of and opportunities for such behavior in the services, leading to morale and discipline problems and disruptive of good order.

Broadly interpreted, this "same treatment standard" could be construed to allow for ho-

mosexual co-habitation in the receipt of military housing benefits, homosexual marriages performed by military chaplains, co-location of homosexual military couples, and the extension of military benefits such as health care, survivor benefits and adoption to a homosexual couple. In other words, although proponents suggest that this legislation focuses only on orientation, broader issues involving behavior and definitions of family or dependents may be involved. The ability of commanders to maintain discipline and morale under this language could, it is argued, prove onerous.

While it can be asserted that removing such restrictions in civilian society have not brought about many problems, critics note that the military institutional environment (including geographic isolation, sexual segregation, and the lack of privacy) is very different and will intensify the likelihood of both homosexual acts and violent clashes with heterosexuals. Others believe that this language is the first step to repealing restrictions against not only homosexuality but also homosexual behavior. Finally, critics argue that in the interest of protecting homosexuals, the privacy and morality of heterosexuals, as well as readiness, would be sacrificed by this language.

Military service and the social legitimacy of open homosexuality

It is said that efforts to eliminate or modify the military policy are but one part of a larger effort to gain a more universal acceptance of homosexual rights. From this perspective, proponents and critics alike contend that the movement for equal rights in the military (as with the civil rights movement) is a stepping stone to gaining greater acceptance in other fora including Federal and state courts, and legislative bodies. The argument is based on the concept that recognition by a major Federal institution, i.e., the military, would enhance and provide support for greater recognition of homosexuals' rights. According to some observers, this claim is similar to arguments pressed during the civil rights movement that it is unfair to allow blacks and other minorities to bear the burden of citizenship (i.e., military service, paying taxes, etc.) without allowing them to share equally in the benefits such citizenship has to offer. Such recognition would provide support for "partnership legislation"[27] and other issues of interest to the homosexual rights community and civil libertarians. As such, removing the military policy on homosexuality would represent a step toward the attainment of equal rights and opportunities as well as equal responsibilities for homosexuals.

There are indications that social acceptance of homosexuality has increased in recent years. Some consider rescinding the military policy a natural extension of these changes. Others view rescinding the military policy as a means of allowing or forcing the military to take the lead on this issue, i.e., using the military as the engine for social change. In this latter sense, removing the policy is criticized as the means and not necessarily the result of the "homosexual rights agenda." The military has been the means of social change in the past.[28] In contrast, military leaders believe that such changes should be justified on the basis of military needs and readiness. Critics view the use of the military as a vehicle for social change without consideration of readiness issues as feckless and unwise. As stated by Gabriel: "It will avail us little if the members of our defeated force are all equal. History will treat us for what we were: a social curiosity that failed.[29]"

Not surprisingly, arguments against the policy focus on its unfairness and discriminatory basis. The denial of homosexuals the option to serve is arguably a prejudicial self-fulfilling prophecy which makes it impossible for homosexuals to prove their military value. While many homosexuals have served, the scenario of homosexuals openly serving can not be evaluated unless the policy is removed. Removing the policy may allow homosexuals to prove their military worth and gain greater social legitimacy. However, should presumed problems of discipline and morale prove to be true, it may be politically impossible to reinstate the current policy. Nevertheless, removing the policy in the military context may create a sense of increased social legitimacy for homosexuality generally and, thereby, foster changes in other areas.

The relevance of "fairness" and "readiness"

As described above, arguments for and against the policy on homosexuals are often considered on the basis of their effects on the military and on issues of fairness. Proponents of maintaining the military policy on homosexuals are concerned with the extent to which acknowledged homosexuality (whether orientation or behavior) would prove disruptive to unit cohesion, morale and discipline. Studies of soldiers in battle have shown that the existence of close and interpersonal relationships are of equal or greater importance (for military effectiveness) than training, physical conditioning, leadership, etc. S.L.A. Marshall states:

"* * * [I]t is far more a question of the soldier's need of physical support from other men. He must have at least some feeling of spiritual unity with them . . . Should he lack this feeling for any reason, whether it be because he has lost physical contact or because he has been denied a chance to establish himself with them, he will become a castaway in the middle of a battle and as incapable of effective offensive action as if he were stranded somewhere without weapons.[30]"

Shils and Janowitz found interpersonal relationships to be a critical factor in a unit's ability to fight. Once these relationships have been disrupted, unit effectiveness disintegrated leading to desertion, surrender, and/or death.[31] Military leaders' concerns over the potentially disruptive effects of homosexuality relate, in large measure, to its effects on the development of these interpersonal relationships. While it is true that many homosexuals have served ("in the closet") in the military without incident, there are individual and legal accounts in which the effect of homosexuals in the ranks has proven disruptive.[32] The extent to which open homosexuality in the ranks would prove sufficiently disruptive to justify continued discrimination is not known.

Efforts to rescind the policy are rooted in a number of convictions, civil rights concerns, and social movement objectives. These efforts either ignore concerns over effectiveness or argue that there will be relatively little change in effectiveness. The most common source of objections to the policy is its perceived basic unfairness. According to Snyder and Nyberg:

"* * * [E]xisting policies [concerning homosexuality] are not being applied consistently; [closeted] gays continue to serve in the armed forces, apparently quite satisfactorily, despite the ban on their service (Lester, 1974: 5–13). This inconsistency creates the basis for a legal or political challenge to existing policies."[33]

In addressing this issue, the military has taken the approach of excluding all admitted homosexuals, even if this means excluding some individuals who would otherwise make good soldiers, airmen, sailors or marines. Such exclusion is justified by the services as being directly related to national defense considerations.

The military policy has been attacked variously on the issues of "fairness." These include the arguments that the policy (1) leads to "witch hunts," (2) is similar to the prejudice that kept blacks out of the service, (3) allows for differing treatment of civilian and military DoD employees, and (4) encourages the harassment of women. Each of these is considered and analyzed.

"Witch hunts"

While DoD policy is explicit in terms of conducting investigations and providing for administrative discharges, actual practices may vary. According to some observers, the decision to investigate and discharge individuals for homosexuality can be discretionary and, therefore, arbitrary. Commanding officers who find such behavior problematic in terms of unit morale, or who have a personal or moral philosophy against such behavior, may choose to aggressively pursue the removal of homosexual service members from their units. Conversely, commanding officers may be more concerned with the day-to-day operation and welfare of their units, including administrative functions, training activities, other disciplinary issues, as well as their own personal, career and family needs, and chose not to spend much, if any, free time searching for "suspected homosexuals." Commanders and investigators who do discharge homosexuals out of the service are often charged with conducting "witch hunts."[34] Commanders who fail to maintain discipline or follow DoD directives may be charged with dereliction of duty. During an investigation of homosexuality other individuals may be named as homosexuals (regardless of their sexual orientation, service record, or behavior) and may face the intimidation of an investigation, stigma of being labelled, possible court-martial and discharge.

The use of the term "witch hunt" has been applied by some to any attempt to discharge homosexual members whether or not the behavior at issue is flagrant or illegal. When such behavior comes to the attention of a commanding officer or investigators, it is nearly impossible for them to ignore it without being held accountable for dereliction of their duties. Such commanders may find themselves forced to conduct such investigations or bring their own careers into question.[35]

It can be argued that removing the policy would eliminate the exclusion of individuals who are otherwise performing their jobs, eliminate the unfair and disruptive effects of "witch hunts," and remove the threat to commanders' careers. Conversely, it can be argued, removing the policy would shift the unfairness to those who find their sense of morality (based on social, cultural or religious beliefs) and emotional and physical privacy violated by the presence of homosexuals in the close confines imposed by military service.

The services recruited, appointed, or commissioned approximately 330,000 people each year during the period 1980 to 1990. If the ten percent figure for homosexual prevalence widely reported in the media is accepted, approximately 33,000 homosexuals were included in that number. If so, it can be estimated that the service brought 330,000 over a ten-year period. According to the General Accounting Office,[36] during this ten-year pe-

riod, the services discharged approximately 17,000 service members under the category of homosexuality. This represents approximately five percent of a presumed (if disputed) number of homosexual accessions. Numerous conclusions may be reached: (1) homosexuals are extremely adept at avoiding detection, (2) notions of a "witch hunt" are greatly exaggerated, (3) the services are doing a poor job of eliminating homosexuals from the ranks, (4) in most cases, the presence of homosexuals in the ranks does not constitute a problem requiring formal action, (5) estimates of the existence of homosexuality in society and the services are inflated, and/or (6) homosexuals may be discharged, denied reenlistment, allowed to resign for other reasons, including to avoid an investigation of suspected homosexuality. (If a lower estimate of the prevalence of homosexuality is used, say 1.6 percent, arguably 52,800 homosexuals would have been brought into the service, or over three times the number discharged during this same period.)

Analogies to the treatment of blacks

Numerous claims have been made that the military policy on homosexuals parallels the prejudice that kept the services racially segregated. Proponents of rescinding the policy view the successful integration of blacks in the military as an example of how the services are capable of overcoming preconceived prejudices and include all members of society as full members. According to the National Gay and Lesbian Task Force: "The rational for the exclusion of gays and lesbians is almost identical to the rationale used by the Department of Defense for maintaining a racially segregated Armed Services through 1948."[37] From this point of view, the policy itself supports and perpetuates prejudices against homosexuals. Once the policy is abandoned, it is argued, the services would integrate gays and lesbians in much the same manner as blacks and women have been integrated. Since DoD policy prevents homosexuals from joining the service and allows for the discharging of known homosexuals, continuing the policy is the same as keeping minorities out for who they are, rather than on the basis of their behavior.

Conversely, the Chairman of the Joint Chiefs of Staff, Gen. Colin L. Powell, responding to a letter from Representative Schroeder encouraging him to support efforts to rescind the policy, stated:

"I am well aware of the attempts to draw parallels between this position [excluding homosexuals from the service] and positions used years ago to deny opportunities to African-Americans. I know you are a history major, but I can assure you I need no reminders concerning the history of African-Americans in the defense of their Nation and the tribulations they faced. I am a part of that history.

"Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument."[38]

While the letter arguably can be criticized for erroneously presuming that sexual orientation usually has behavioral manifestations, it notes that race and behavioral manifestations are independent[39] and that by attempting to equate the behavioral consequences of race with sexual orientation such comparisons can become problematic. Such comparisons can be viewed as insulting to minorities and women. Critics contended that if the two are similar, homosexual rights advocates are presuming that merely being black or a women is the same as having a specific and identifiable "orientation."

In at least one way, the integration of homosexuals would well parallel the experience of expanding the numbers of women in the services: increasing opportunities for fraternization.[40]

Differing standards for DoD uniformed and civilian employees

Differing treatment of military and civilian personal has been cited as justification for rescinding the policy. During the Persian Gulf War, a highly placed civilian official at the Department of Defense was "outed."[41] No effort was made to remove this individual from his post.[42] Critics of the policy cite this as a double standard. In other words, DoD "plays by two sets" of rules when it suits their purposes. It is blatantly unfair, critics contend, for gays to be forced from the serving their country in uniform, and in some cases rehired by the Department of Defense or one of the services immediately after discharge.

Comparisons of civilian working environments to the military sometimes overlook the distinctive nature of the military. According to scholars, the military has traditionally been viewed in the framework of an institutional model.

"(A)n institution is legitimated in terms of values and norms, i.e. a purpose transcending individual self-interest in favor of a presumed higher good. Members of an institution are often viewed as following a calling; they generally regard themselves as being different or apart from broader society and are so regarded by others."[43]

This unique institutional environment, resulting in part from the peculiar mission of the military—to prepare for and to fight wars, is recognized as a legitimate basis for differentiated treatment of military personnel from civilian employees. In *Orloff* v. *Willoughby*, the Court states "The military constitutes a specialized community governed by a separate discipline from that of the civilian."[44]

Thus, proponents of the policy note that it only pertains to military personnel for reasons that have to do with the peculiar nature of the military environment and mission. The differences between the military and civilian society are recognized by the courts, Congress and the Executive branch. Civilians are not subject to the same deprivations as military personnel (including privacy) and are not subjected to the need to maintain the same levels of morale, cohesion and discipline under war-time conditions. Thus, the very purpose of the policy is not relevant to civilians. It would arguably be unfair to subject civilians to a similar policy for reasons that only apply to military personnel.

The homosexual policy and sexual harassment of women

Critics of the policy have posited that the current policy encourages the harassment of women in uniform. They argue that women who refuse sexual advances by their male counterparts are labelled, or threatened to be labelled, lesbians. In one case, an Army staff sergeant finally confided to a friend that she was a lesbian in an attempt to deflect his sexual advances. This revelation was turned over to the "Criminal Investigation Command which launched a three-month investigation * * * into [the staff sergeant's] sex life that those involved say included telephone taps and hostile interrogations" resulting in the staff sergeant's administrative discharge.[45] In other reported incidents, lesbians in uniform have "married" men in an effort to protect themselves from sexual advances or suspicious investigators.[46]

In rebuttal, it has been argued that sexual harassment, for whatever purpose, is against military regulations. While the services have been under vigorous scrutiny following revelations of incidents concerning sexual harassment,[47] the contention that a women can be harassed via threats of exposing her as a homosexual (i.e., lesbian-baiting) have been made. In these instances, DoD policy excluding homosexuals is viewed as a vehicle for sexual harassment.

Critics claim that lecherous individuals may use threatened revelations of drug use or other illegal behavior in an attempt to extort sexual favors. However, no one has argued that drug use should be made legal in order to avoid any chance that it could be used as a means of sexual harassment. The problem, it can be argued, is sexual harassment. Changing the policy on homosexuality (or drug abuse) will not "fix" the problem of harassment. It can also be argued that changing the policy may actually expand the problem for women and men. According to these claims, problems of harassment disproportionately involve women as victims. Removing the policy does nothing to limit and may actually make possible although not sanctioned) the opportunity for broader incidents of harassment. Such harassment could include the harassment of male and female homosexuals by heretosexuals (gay bashing),[48] unwanted sexual advances by gays and lesbians toward heterosexuals,[49] and/or sexual harassment of homosexuals by other homosexuals in uniform. From this point of view, eliminating the policy on homesexuals would not end harassment and may actually broaden the number of forms it can take.

The relevance of foreign-military comparisons

Lastly, proponents of rescinding the policy note that many nations do not exclude homosexuals from entering the military service. GAO reviewed the policies of 17 nations.

"These nations had various, sometimes diametrically opposed approaches to and legislation affecting the presence of homosexuals in their armed forces. The attitudes ranged from the view held by the United States to less strict ones in other countries. Some, in fact, do not view homosexuality as a legal or military issue. Four of the 17, or 24 percent, had policies that specifically exclude homosexuals from serving in the armed forces. Four of the remaining 13 restricted homosexuals' duties or relieved them from duty for disruptive behavior. Seven of the 17, or 41 percent, had no written policy addressing homosexuality. Two of the 17, or 12 percent, stated that during the recruiting process, the question regarding the individual's sexual orientation was not asked.[50]"

Davis, citing Tielman and de Jonge,[51] notes that in 60 countries, homosexual behavior is not illegal (although it may be regulated to some extent) and that in 55 countries, homosexual behavior is illegal.

"A number of countries have tackled the issue of whether homosexuals should be allowed in the military. Many countries do not allow homosexuals to serve, in spite of the fact that they consider homosexual acts between consenting adults to be legal. These countries include Canada, Peru, Venezuela, New Zealand, Italy, Great Britain, and Northern Ireland.[52]"

In fact, many nations do not have formal policies on homosexuals in the military. In other cases, policies differ widely in that some nations may allow certain homosexuals to serve, but only in limited ways or subject to certain, arguably discriminatory, career

restrictions. In certain nations, homosexuality that proves disruptive may or may not be dealt with administratively by commanding officers. It is possible, therefore, for different individuals to look at these foreign military situations and arrive at different conclusions as to whether they allow or prohibit homosexuality in the ranks.[53]

Comparisons of the U.S. policy to foreign military policies is based on qualitative comparisons that must consider differences in culture (particularly with regard to historic considerations of sexuality and varying definitions of what constitutes homosexuality[54]), military policies overall (internal force versus a force that is routinely sent or stationed overseas in countries that may or may not have similar views concerning homosexuality), as well as the considered opinions and judgments of those in charge of the military. These "analyses" of other nations' policies generally do not consider the effect open homosexuality has on the fighting capabilities of their armed forces nor do they consider what problems, if any, have occurred as a result of open homosexuality in the ranks.[55] Generally speaking, no effort is made to make an argument based on comparisons for strategic or national security purposes. Arguably, a more in-depth study of foreign experiences could prove instructive, but given differing cultural and social norms, its direct relevance might be scant or considerable.

One observer has concluded that when considering the policies of foreign nations, "(A) closer look reveals that supporters and opponents of the gay ban alike are clouding the debate with misleading statements. Citing laws and regulations alone is not enough to under the situation. In many countries there is a vast difference between what is written and what is day-to-day reality."[56]

CURRENT ISSUES CONCERNING THE HOMOSEXUALITY POLICY

In this section of the report, specific issues concerning the military's policy on homosexuals are considered. These include court challenges, public opinion surveys and polls, health issues, and the effects the policy has had on educational institutions vis-a-vis Reserve Officer Training Corps and recruiting. Also, the current policy is analyzed and scrutinized with regard to its use to avoid service and the deployment of homosexuals during war or crisis.

DOD policy and the courts

The military policy of excluding homosexuals has, generally speaking, survived legal challenges in the courts. Challenges to this policy have been made on constitutional grounds including: due process, equal protection, free speech, and right to privacy. In one unusual instance, the court disposed of the case on equitable estoppel[57] grounds without making any determination of the constitutional issues raised. For a more thorough and detailed discussion, see the legal analysis "DoD Policy and the Courts—Legal Analysis," by Charles Dale, in the Appendix.

Public opinion and the policy

Some polls have shown an increasing social acceptance of homosexuality. GAO reported the findings of a national Gallup poll showing the percentage of the public who believe that homosexuals should be hired for various jobs.[58]

GALLUP POLL, PERCENT WHO BELIEVE HOMOSEXUAL HIRING IS ACCEPTABLE FOR VARIOUS JOBS BY YEAR

Job/year	1977	1982	1985	1987	1989	1991
Salesperson	68	70	71	72	79	89

GALLUP POLL, PERCENT WHO BELIEVE HOMOSEXUAL HIRING IS ACCEPTABLE FOR VARIOUS JOBS BY YEAR—Continued

Job/year	1977	1982	1985	1987	1989	1991
Armed forces member	51	52	55	55	60	69
Doctor	44	50	52	49	44	54
Clergy member	36	38	41	42	44	54
Elem. school teacher	27	32	36	33	42	52
High school teacher	(1)	(1)	(1)	(1)	47	60

[1] The poll did not address this category between 1977 and 1987.

Another poll conducted in 1991 (cited by GAO) found that 81 percent of Americans believed that homosexuals should not be discharged from the military based solely on their sexual orientation while 14 percent believed homosexuals should be discharged.[59]

These data show that from 1977 through 1991, a growing majority of Americans believe that homosexuals should be allowed to serve in the military. The level of support among Americans has increased by 18 percent. Given the increasing level of support as reflected by polling data and public ordinances, many argue that refusing to allow homosexuals to serve runs against popular sentiments and, therefore, is not supported as being the "will of the people."

However, according to a recent telephone poll conducted by USA Weekend, only 33 percent of the respondents were in favor of repealing the current military policy.[60] Of arguably greater importance is the issue of how those in the military view such a change, since it is, after all these very individuals who will be directly affected. "All the service chiefs oppose lifting the ban."[61] In a speech at the Naval Academy, Secretary of Defense Cheney defended the policy of discharging homosexuals from the military. "Four thousand midshipmen gave him a standing ovation."[62] Finally, the Air Force Times published an editorial is support of eliminating the policy. In response, the Air Force Times published letters to the Editor (under the title "Readers strongly oppose accepting gays in service.")[63] While not a valid survey of military opinions, (perhaps only those who write are those against the position taken by the A.F. Times), it does at least suggest that military members have strong opinions on the issue. The Air Force is currently conducting a survey to find out what its enlisted personnel and officers think of "serving alongside openly gay men and women * * *[64]

A November Newsweek poll suggested that public support for overturning the policy is "softer" than originally reported. When asked: "Should Clinton delay lifting the military restrictions on gays if there are strong arguments that it will produce serious morale and readiness problems?, "61 percent state "Should delay (28 percent stated "Should not").[65]

By the middle of December, 1992, polls showed that Americans are split over lifting the policy. According to the Associated Press, "forty-five percent said lesbians and gay men should be forbidden from joining, while 44 percent said they should be allowed into the military. The rest were not sure or would not answer the question."[66]

According to a Gallop telephone survey commissioned by the Retired Officers Association (conducted among the association's members from Nov. 27 through December 1, 1992), 83 percent opposed allowing homosexuals into the service. Although 86 percent said they had recommended a military career to a friend or family member.

"53 percent said they would be less likely to do so if homosexuals were allowed to join. Some 42 percent said it would make no difference, Slightly more than a third of the respondents said they had to deal administratively with a homosexual incident during a tour of duty. Of these, 50 percent said the experience was a major disruption to normal operations of their command, 34 percent considered it a minor disurpiton while 14 percent said it was not a disruption.[67]"

In part, the variations in responses are somewhat affected by the type of question that is asked. A survey that considers the military policy (as cause for administrative separation: same-sex marriage, statements or behavior) may prove instructive.

Homosexuality and health

Critics of admitting homosexuals into the armed forces cite the high incidence of sexually transmitted illnesses, particularly AIDS,[68] as a reason for the policy. Critics contend that the incidence of transmittable illnesses will affect morale and threaten the military's "walking blood bank." In addition, these critics argue that the spread of such illnesses ultimately threatens military readiness. In part, these concerns are based on the reported levels of male homosexual promiscuity[69] and some have argued that given the high incidence of venereal diseases, in general, and HIV-1, in particular, among male homosexuals, the current policy should be expanded to include considerations of the health of the force as a reason for excluding homosexuals from the military. (In one case, a judge cited the need to protect military personnel from HIV-1/AIDS as a justification for the policy—an argument not made by the military.[70])

The military policy excluding homosexuals is not predicated on health care issues. Health care is generally treated as a medical concern and not necessarily a personnel issue.[71] Individuals are screened for health problems to ensure readiness. Health care is dependent upon illness, not the probability that an individual may become ill. (It would be equally inappropriate to refuse to enlist smokers on the basis that they, as a group, have a higher incidence of certain illnesses.) Thus, individuals who are unfit for service (or who have a history of certain illness with a substantial rate of reoccurrence) may be barred from entering the military.

Arguments concerning the military's homosexual policy and AIDS provide examples of the confusion brought about by combining these two issues. Generally speaking, in the United States, male homosexuals have a much higher incidence of human immunodeficiency virus (or HIV-1, the virus that causes Acquired Immune Deficiency Syndrome). Conversely, lesbians have a much lower incidence of HIV-1 infection rates than male homosexuals or heterosexuals. On the basis on limiting HIV-1, as argued by the above critics (and something that is not being considered here), the service could consider attracting more lesbians. "Only one case [of HIV infection] has been described as being transmitted by female homosexual contact."[72]

In order to prevent the spread of HIV-1, the military has introduced one of the most comprehensive screening and educational campaigns. Under this policy, individuals who show evidence of HIV-1 infection are not allowed to join the armed forces. Uniformed personnel are provided educational information on how to avoid infection. HIV-1 infected individuals in the military are counseled, provided health care and monitored. For this reason, the risk of contracting HIV-1 is reportedly better controlled in the military environment than elsewhere. (Ironically, for this reason, the military is per-

haps one of the safest places to participate in "high-risk" behaviors—such as sodomy.)[73]

AIDS, HIV-1 and other sexually transmitted diseases are medical issues. As such, for the services they remain unrelated to policies concerning homosexuality. Contracting HIV-1 or any other illness is not based on whether an individual is homosexual or heterosexual, but the risks of infection to which the person is exposed (i.e. the nature of sexual activity and the level of promiscuity). Some argue that keeping homosexual behavior illegal or punishable (or making heterosexual promiscuity punishable) under regulations may increase the chances for infection because such behavior (and the subsequent illness) is forced "underground" and therefore not subject to medical surveillance.[74] Under such a scenario, infected individuals are unlikely to seek medical care for fear of reprimand. (It is occasionally argued that should AIDS or other such illnesses be cured, it is unlikely that critics who cite these arguments would change their minds on allowing homosexuals to join the military.)

The homosexual policy, ROTC, military recruiting, and educational institutions

With increasing calls for increased civil rights for homosexuals, numerous colleges and universities have sought to challenge the Department of Defense policy excluding homosexuals. These challenges have occurred as college and university (and in some cases, high school) deliberative bodies have sought to include rights and protection for those with homosexual orientations on the same basis as are provided racial and ethnic minorities, disabled, women, etc. Such changes have brought about conflicts on those campuses that maintain Reserve Officer Training Corps (ROTC) units. ROTC prohibits homosexuals from receiving scholarships (that inherently include an obligation to serve in the military).[75] Individuals applying for ROTC are required to sign documents stating that they are not homosexuals. Thus, certain campuses have recognized or supported homosexual rights that are at odds with ROTC policies.

On a number of occasions, campus administrators have been urged to remove ROTC units from the campus; and in one case they have done so.[76] Advocates of the removal of such units argue that it is improper to allow outside agencies to dictate campus policy or to conduct business (such as research or recruitment[77] or training) with agencies whose policies are antithetical to campus policy with regard to discrimination. In a number of instances, efforts have been made to ban military recruitment advertising from campus newspapers and other publications.

Such challenges to DoD policy have had relatively little impact on military recruiting or ROTC enrollment. (This is especially the case given the recent drawdown in force size and efforts to reduce inductions—including commissions via ROTC.) It has been argued that the only individuals harmed by removing these units from campus are those who sought ROTC training in the first place, including minorities, as well as the campus bursars. For example, the University of Wisconsin brings in more than $2 million in ROTC scholarships and salaries. "ROTC scholarships are strong incentives for attracting minority students, a perpetual problem for Midwestern schools. Added to this are the millions the Pentagon provides universities in research grants, which might be spoiled by sour relations with ROTC. * * * And there's another problem. Land grant universities such as Wisconsin and Minnesota are required by law to offer military instruction."[78] Given these circumstances, it is easy to see why university administrators feel caught between the competing demands of student relations, economic necessity, equal opportunity enrollment, and law (specifically with regard to states interfering with Federal interests).[79]

The issue of homosexuality and ROTC recently surfaced with regard to a student who had participated in ROTC (including the receipt of an ROTC scholarship) and then announced that he was homosexual. After investigating, the Army determined that the student was not making such a claim to avoid a service obligation. The service initially sought to recoup its scholarship payments from the student (approximately $25,000). Army officials ultimately decided to discharge the cadet from ROTC, deny him a commission, and not seek recovery of his scholarship. Army officials stated that the decision not to seek recoupment was particular to the circumstances surrounding this case.[80] Such a decision created debate in the sense that any student could receive a scholarship and later acknowledge being a homosexual and free himself/herself from any service obligation. It appears likely, however, that should this situation occur again, the service involved would seek recoupment of scholarship funding and continue to deny commissioning.

What effects, if any, lifting the policy will have on military recruiting remains unknown. Some have suggested that heterosexual young people will be discouraged from joining the military if such service means living and working with openly homosexual personnel. Others argue that the willingness to serve will depend on how well the military (and those serving) maintain discipline and restrictions on behavior. Lastly, there is no known indication of the number of otherwise qualified homosexuals who will join should the policy be removed.

Homosexuality as an excuse to avoid military service

Under current policy, homosexuality may be used as a means of avoiding service. Individuals may join the service, and then at some later point decide to leave by acknowledging or claiming to be homosexual. The ability to use the homosexual policy as means of avoiding service, whether the claim of being a homosexual is legitimate or a ruse, is documented in other areas. During the draft era, for example, Baskir and Strauss cite incidents where young men were instructed on how to receive an exemption during the psychiatric interview at the induction station. The ability of psychiatrists who were at least somewhat suspicious of such behavior led to unexpected results. According to Baskir and Strauss:

"Homosexuality was a common ground for a psychiatric exemption and [one] antidraft pamphlet advised how to fake it[.] [Indeed,] San Francisco draft counselor Paul Harris recalled that 'all clients who faked it got their exemptions, but they drafted the one fellow who really was gay.'"[81]

Even though the current policy is intended to prevent individuals from using homosexuality to avoid service, it may not necessarily work out that way. Under current policy, homosexuals can and do serve provided that they do not violate military regulations. Indeed, any change in the policy on homosexuality that maintains restrictions on behavior will allow certain individuals to avoid service (see also the French, German and Italian policies presented in the Appendix). Homosexuals need only admit to violating these restrictions; heterosexuals must bluff or violate these restrictions in order to seek the same escape.

Deployment of homosexuals during a war or crisis

Instances have been cited during the mobilization for the Persian Gulf War, wherein suspected or acknowledged homosexuals were sent to the Gulf only to be discharged upon their return.[82] In these cases, the individuals involved may have been under investigation or had acknowledged their homosexuality. On going personnel actions were placed on "hold" until their return. Many have concluded that DoD's position is that homosexuals can fight and possibly die when DoD needs them, but that they are otherwise to be treated with prejudice and forced out of the service once the crisis has passed.

DoD argues that its primary mission is to be prepared for and to fight wars. Once a conflict has begun, it is necessary for the Department to treat national security concerns as paramount relative to personal issues. For this reason, individuals who claim to be, or are under investigation as, homosexuals are deployed first while the issue of their homosexuality is investigated under proceeding prescribed. As such, this policy discourages service members from using homosexuality as a means of avoiding service.

During the mobilization for Desert Shield/Desert Storm, President Bush invoked a "stop-loss" order.[83] Under these provisions, administrative procedures deemed to be at cross-purpose with national defense may be suspended. To some extent, discretionary decisions are involved. Consequently, some individuals covered under the Secretary of Defense's Memorandum may have certain administrative actions (including separation for homosexuality) put on hold. Under this law, the President is provided with the authority to override various personnel actions. The practice can prevent individuals, who are about to be deployed, from using certain administrative polices (such as the policy on homosexuality) from avoiding military service during a time of crisis. Once the crisis has passed, administrative procedures involving promotion, retirement and separation will be put back in place.

It has been argued that allowing individuals to avoid their service obligation at a time of crisis (whether they are homosexuals or merely making such a claim to avoid service) may wreak havoc on the morale, cohesion and ability of certain units to function. In addition, it is considered unfair to the taxpaying citizens to train and pay service personnel and then allow them to walk away when their services are most required. Thus, it is argued that the deployment of personnel who are under investigation as, or claim to be, homosexuals need not necessarily imply that the services condone homosexuality. Instead, these policies demonstrate that homosexuality cannot reliably be used as a means of being excused from an active duty commitment made under voluntary circumstances during a time of crisis. These policies ultimately maintain DoD's commitment to national security as its first priority.

However, the situation that arises during time of deployment because of the homosexual policy arguably places homosexual service members in a no-win situation. They are allowed or ordered to serve at the risk of their own lives with the probability of a forced discharge when hostilities end. Perhaps no other scenario subjects the policy of excluding homosexuals to greater scrutiny. By deploying homosexuals with their units, the services bring into question their own ar-

gument that the presence of homosexuals "seriously impairs the accomplishment of the military mission."[84] In no other situation are a lack of privacy, the need for cohesion and morale, and the integrity of the system of rank and command more compelling than in time of war. If homosexuals pose such a threat, it seems fair to argue that they should not be deployed. Nevertheless, DoD has deployed them and has raised no questions on their abilities to serve. It can be argued that DoD's actions of investigating and/or threatening to remove these individuals does more harm to morale and cohesion then would be the case had they been left alone in the first place. It remains unknown whether eliminating known homosexuals would have improved service performance or lead to a reduction in discipline problems.

It is possible that, if the policy on homosexuality is altered, homosexuals and others may continue to use homosexual *behavior* as a means of getting out of the service. Again, assuming certain restrictions remained on behavior, those seeking to avoid military service, say at times of mobilization, need only "disclose" such acts and seek a discharge. Such a confession, however, may in some cases, risk more severe sanctions via court-martial.

ISSUES FOR CONGRESS

With President-elect Clinton's stated support for rescinding the policy on homosexuals in the military, Congress is likely to be confronted with a number of direct and associated issues. Depending on the nature of the alteration of policy made or proposed, Congress may need to consider: laws and legislation regulating behavior and misconduct, and military compensations as they relate to homosexuals and their partners.

Given past experiences on integration, base closures, and women in combat, it is possible that hearings will be held and/or a committee or commission will be formed to consider these issues. The formation, direction and scope of such deliberations may entail congressional oversight or direct participation. This section discusses each of these after first considering how the policy may be repealed.

An executive order repealing the policy

Following the election, President-elect Clinton reiterated his campaign commitment to repeal the military policy on homosexuals in the military. Such a repeal could be made via an executive order.[85] Under this authority, a President has the discretion to issue orders that would rescind or modify the policy (including modifications that may increase restrictions). For example, in 1948, President Harry Truman issued an executive order terminating racial segregation in the military. With minor modifications, similar language could be used to repeal, modify or strengthen the policy on homosexuals. (For the text of President Truman's Executive Order, see the Appendix.) The effective implementation of any hypothetical executive order could be made contingent (as was the case with Truman's executive order) upon the actions of a committee created for that specific purpose.

Beyond an executive order explicitly rescinding the policy, the Secretary of Defense could modify DoD directives that effectuate any changes. These changes could involve administrative procedures concerning investigations, discharges, administrative review boards, etc. Any changes made by these subordinates would require at least tacit approval of the President.

Any such change brought about by a President or appropriate subordinate would be subject to congressional oversight.[86] It is possible for a President or Secretary of Defense to modify current policy, only to have such a modification, itself, modified, enhanced, or rescinded by legislation. An attempt to rescind the policy against homosexuals, to make it more restrictive, or otherwise change it, could hypothetically prompt Congress to exercise its constitutional responsibility to make rules and regulations for the armed forces. Such legislation, of course, would be subject to presidential veto. For example, the President could issue an executive order rescinding the policy. Congress could consider legislation that would block the executive order by refusing the use of appropriated funds for its implementation, or reinstate the policy, in whole or in part, or as modified. If passed by both houses of Congress, this new language would be sent to the President to be signed into law. The President could sign or veto the bill. If vetoed the legislation would then be returned to Congress. To override the veto, both the House of Representatives and the Senate would need to pass the legislation again with a two-thirds majority in each chamber. Failure to gain such a majority in both chambers would mean defeat for the bill. Attaining such a majority would pass the bill into law over a presidential veto.

As a tactical matter, should such a scenario occur, it is likely that congressionally preferred modifying language would be incorporated in a larger bill (such as the annual National Defense Authorization Act of the DoD Appropriations Act). The President (lacking a line-item veto) would have to veto the entire bill (leaving the Department of Defense without authorization or funding) or accept the congressional language.

Whatever the outcome (i.e., passed, vetoed, rejected), the legislation can be further modified by Congress and, subsequently, reconsidered. Unlike legislation, executive orders may only make modifications to the extent that such modifications do not conflict, or at least are consistent, with existing law. Thus, the ultimate oversight responsibility rests with Congress. The President may modify the current language regarding homosexuals and military service, but such modifications remain subject to congressional oversight and constitutional challenges.

Law regulating behavior and misconduct

Articles 125 (Sodomy) and 134 (General Article) of the Uniform Code of Military Justice may or may not be directly at issue. Explicit congressional action is required for these to be modified or struck from title 10, United States Code and the President alone cannot modify these articles. However, the enforcement of these articles remains under executive (presidential) control. Such enforcement is expected to be conducted in conformance with congressional intent. Failure to regulate conduct, consistent with congressional intent, could invite congressional action.

Military compensation and homosexual partnerships

The issue of "partnership" recognition may have more far reaching effects than generally recognized. The laws concerning domestic relations, including marriage or partnership, for example, are usually under state domain. Federal laws and regulations consider domestic relationships in terms of providing Federal employment benefits. Under Federal law,[87] familial relations or definitions of dependency are used to determine eligibility for Federal benefits including military health care, commissary and exchange privileges, housing and subsistence allowances, life insurance, survivor and death benefits, moving and transportation allowances, separation pay, adoption benefits, former spouse benefits, and Dependency and Indemnity Compensation and other veterans' benefits. Should the DoD policy on homosexuality be lifted, it is not clear how Federal regulations would be interpreted in situations where a state or municipality recognizes a homosexual partnership for the purposes of providing employer benefits. State regulations do not normally supersede Federal laws. Clearly, conflict and confusion may result if a state recognizes such a relationship and the Federal government does not. Congress may well be lobbied to reconsider family or dependency benefits for homosexuals. Failing this, it is possible that should the policy be lifted, limiting benefits to only heterosexual partners (marriages) or dependents would be challenged in court as unfair to those homosexual relationships that are recognized under other ordinances, regulations or laws.[88]

Changing the policy may also involve congressional or administrative consideration in other areas. For instance, should the Department of Defense Dependent Schools provide information on homosexuality in its curricula?[89] And, if so, at what age? How should benefits be taxed under "partnership" situations? Should partners receive employment preferences on the same basis as heterosexual spouses? Could military chaplains be compelled to perform homosexual weddings? These questions suggest the scope of the issues that are likely to arise.

Commissions, committees, hearings and studies

Although it appears likely that President-elect Clinton will make some modifications, there are indications that he may consult with, or form, a committee or commission to study the issue.[90] Congressional leaders have urged Clinton to proceed with caution.[91] Senator Nunn (chairman of the Senate Armed Services Committee), has agreed to hold hearings on the issue. Members of the Joint Chiefs of Staff have reportedly had input: "working through retired Adm. William J. Crowe Jr. and Rep. Dave McCurdy (D-Okla.), to convince Clinton that he will face serious repercussions in military ranks if he makes the change. Army Gen. Gordon R. Sullivan and other chiefs are urging Clinton 'to study it for a year or two,' * * *"[92]

The use of a commission remains an option (given the recent precedents including one on the role of women in the military and another on base closures). However, choosing commission members is, itself, a political issue. Members for the base closure commission were selected by the President subject to House of Representatives and Senate advice. Members of the commission on women were also selected by the President. The latter commission was criticized because of this method before it finished its work or filed a report.[93]

In the final analysis, whatever approach is taken to consider or actually make any changes in DoD policy, including committees, commissions, hearings, executive order, legislation, it appears likely that both the executive and legislative branches of government will share responsibility for the final outcome.

APPENDIX

TEXT OF CURRENT DIRECTIVES RELATED TO HOMOSEXUALITY

Directive on enlisted administrative separations

This Directive provides the policy rationale concerning homosexuals and military

service. This Directive is divided into three main parts. Part 1 gives the Basis for providing administrative discharges; part 2 provides guidance concerning the characterization and description of such discharges; and, part 3 outlines the procedures that are to be followed to administer or execute such discharges.

According to the Department of Defense Directive[94] on providing enlisted administrative separations (section H, cited verbatim except those parts enclosed by brackets-[ ]-for clarification purposes):

1. Basis

a. Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affect the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain the public acceptability of military service; and to prevent breaches of security.

b. As used in this section:

(1) Homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts;

(2) Bisexual means a person who engages in, desires to engage in, or intends to engage in homosexual and heterosexual acts; and

(3) A homosexual act means bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

c. The basis for separation may include preservice, prior service, or current service conduct or statements. A member shall be separated under this section if one or more of the following approved findings is made:

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that:

(a) Such conduct is a departure from the member's usual and customary behavior;

(b) Such conduct under all the circumstances is unlikely to recur;

(c) Such conduct was not accomplished by the used of force, coercion, or intimidation by the member during a period of military service;

(d) Under particular circumstances of the case, the member's continued presence in the service is consistent with the interest of the Service in proper discipline, good order, and morale; and

(e) The member does not desire to engage in or intend to engage in homosexual acts.

(2) The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual and that the purpose of the marriage or attempt was the avoidance or termination of military service.

2. Characterization or description. Characterization of service or description of separation shall be in accordance with the guidance in section C. of Part 2 [Characterization of Service or Description of Separation]. When the sole basis for separation is homosexuality, a characterization Under Other Than Honorable Conditions may be issued only if such a characterization is warranted under section C. of part 2 and there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act in the following circumstances:

a. By using force, coercion, or intimidation;

b. With a person under 16 years of age;

c. With a subordinate in circumstances that violate customary military superior-subordinate relations;

d. Openly in public view;

e. For compensation;

f. Aboard a military vessel or aircraft; or

g. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

3. Procedure. The Administrative Board Procedure (section C. of Part 3) shall be used, subject to the following guidance:

a. Separation processing shall be initiated if there is probable cause to be separation is warranted under H.1.c., above.

b. The Administrative Board shall follow the procedures set forth in subsection C.5. of Part 3, except with respect to the following matters:

(1) If the Board finds that one or more of the circumstances authorizing separation under paragraph H.1.c., above, is supported by the evidence, the Board finds that retention is warranted under the limited circumstances described in that paragraph.

(2) If the Board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph H.1.c. has occurred, the Board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

c. In any case in which characterization of service Under Other Than Honorable Conditions is not authorized, the Separation Authority may be exercised by an officer designated under paragraph B.4.a. of Part 3.

d. The Separation Authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary concerned with a recommendation that the Secretary separate the member under the Secretary's authority (section O of this Part [Secretarial Plenary Authority]).

(2) If the Board recommends separation, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

(1) There is insufficient evidence to support the finding; or

(2) Retention is warranted under the limited circumstances authorizing separation under paragraph H.1.c. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in paragraph H.1.c., above.

(3) If there has been a waiver of Board proceeding, the Separation Authority shall dispose of the case in accordance with the following provisions:

(a) If the Separation Authority determines that there is not sufficient evidence to support separation under paragraph H.1.c., the Separation Authority shall direct retention unless there is another basis for separation of which the member has been duly notified.

(b) If the Separation Authority determines that one or more of the circumstances authorizing separation under paragraph H.1.c. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in that paragraph.

e. The burden of proving that retention is warranted under the limited circumstances described in paragraph H.1.c. rests with the member, except in cases where the member's conduct was solely the result of a desire to avoid military service.

f. Findings regarding the existence of the limited circumstances warranting a member's retention under paragraph H.1.c. are required only if:

(1) The member clearly and specifically raises such limited circumstances to justify the member's retention.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary concerned to take appropriate action in a case to ensure that there has been compliance with the provisions of this Directive;

(2) Precludes retention of a member for a limited period of time in the interests of national security as authority by the Secretary concerned;

(3) Authorizes a member to seek Secretarial review unless authorized in procedures promulgated by the Secretary concerned;

(4) Precludes separation in appropriate circumstances for another reason set forth in this Directive; or

(5) Precludes trial by court-martial in appropriate cases.

Under this same Directive, Part 2(C)2(b) provides the following description of each type of discharge:

Honorable. The Honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

General (under honorable conditions). If a member's service has been honest and faithful, it is appropriate to characterize that service under honorable conditions. Characterization of service as General (under honorable conditions) is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

Under other than honorable conditions. (a) This characterization may be issued in the following circumstances:

1. When reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of members of the Military Services.

2. When the reason for separation is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of members of the Military Services. Examples of factors that may be considered include the use of force or violence to produce serious bodily injury or death, abuse of a special position of trust, disregard by a superior of customary superior-subordinate relationships, acts or omissions that endanger the security of the United States or the health and welfare of other members of the Military Services, and delib-

erate acts or omissions that seriously endanger the health and safety of other persons.

(b) This characterization is authorized only if the member has been afforded the opportunity to request an Administrative Board, except as provided in section L. of Part 1. (Separation in Lieu of Trial by Courts-Martial.)

(Other discharge characteristics include Bad Conduct and Dishonorable. Both of these require a finding of unlawful behavior by a court-martial and are not therefore included in the directive or administrative separations. Generally speaking, those discharged under the characterization of General, retain eligibility for many of the same benefits as those discharged under the characterization of Honorable.)

Directive on the separation of commissioned officers for cause

According to the DoD Directive on the Separation of Commissioned Officers for Cause.[95]

B. ACTS OF MISCONDUCT OR MORAL OR PROFESSIONAL DERELICTION

A commissioned officer may be separated from a Military Service, under regulations prescribed by the Secretary of the Military Department concerned, when he or she is found to have committed an act or acts of misconduct or moral or professional dereliction, which include (but are not limited to):

4. Homosexuality. The basis for separation may include preservice, prior service, or current service conduct or statements. A commissioned officer shall be separated under this provision if one or more of the following findings is made:

a. The officer has engaged in, has attempted to engage in, or has solicited another to engage in a homosexual act or acts, unless there are further findings that:

(1) Such conduct is a departure from the officer's usual and customary behavior.

(2) Such conduct under all the circumstances is unlikely to recur.

(3) Such conduct was not accomplished by use of force, coercion, or intimidation by the officer during a period of military service.

(4) Under the particular circumstances of the case, the officer's continued presence in the Service is consistent with the proper discipline, good order, and morale of the Service.

(5) The officer does not desire to engage in or intend to engage in further homosexual acts.

b. The officer has stated that he or she is a homosexual or bisexual unless there is a further finding that the officer is not a homosexual or bisexual.

c. The officer has married or attempted to marry a person known to be of the same sex (as evidenced by the external anatomy of the persons involved), unless there are further findings that the officer is not a homosexual or bisexual and that the purpose of the marriage was the avoidance or termination of military service.

Directive on physical standards for enlistment, appointment, and induction

Although the above Directives only address separations from the armed forces, this third Directive (Physical Standards for Enlistment, Appointment, and Induction) includes among the causes for rejection for appointment, enlistment and induction:

a. Homosexual Behavior. This includes all homosexual activity except adolescent experimentation or the occurrence of a single episode of homosexual behavior while intoxicated.[96]

TEXT OF UNIFORM CODE OF MILITARY JUSTICE PROVISIONS RELATED TO HOMOSEXUALITY

Title 10 United States Code (U.S.C.) contains two sections under the Uniform Code of Military Justice (UCMJ) under which certain behaviors may be prosecuted.[97] In other words, there is no law against being a homosexual. However, certain behaviors may be proscribed by law.

A. Article 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct. (Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

B. Article 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. (Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

The current definition of sodomy (above) differs from that used in 1917. According to the Manual for Courts-Martial (United States, 1917, para. 443): "Sodomy consists in sexual connection with any brute animal, or in sexual connection, per anum, by a man with any man or woman. . . . Penetration of the mouth of the person does not constitute this offense. Both parties are liable as principals if each is adult and consents; but if either be a boy of tender age the adult alone is liable, and although the boy consent the act is still by force. Penetration alone is sufficient. An assault on a human being with intent to penetrate his or her person per anum." (See Davis 1991.)

DOD policy and the courts—legal analysis[98]

The military policy of excluding homosexuals has been judicially challenged, largely without success, on a variety of legal and constitutional grounds. Most of the early cases involved personnel suspected of homosexual conduct who argued that the policy violated the constitutional right of privacy;[99] that it was prohibited by the Equal Protection Clause because only homosexual sodomy was prosecuted while similar heterosexual conduct was not;[100] or that the procedure applied by the services to effect discharge did not conform to procedural due process requirements.[101] Later cases also raised First Amendment free speech claims when brought by admitted homosexuals who had been discharged not for alleged sexual conduct but rather because of their "status" as revealed by voluntary statements to colleagues, or in the press and other public fora.[102]

Due process challenges predicated on the right of privacy have been uniformly rejected by the courts in these cases, particularly after the U.S. Supreme Court in *Bowers v. Hardwick*[103] sustained a Georgia statute criminalizing sodomy as applied to consenting homosexual adults in the privacy of the home of one of them. The Court there expressed the view that homosexual sodomy was neither a fundamental liberty "implicit in the concept of ordered liberty" nor is it "deeply rooted in the Nation's history and tradition."[104] On parallel reasoning, the courts generally have refused to apply heightened scrutiny to the equal protection claims of discharged homosexuals according to the constitutional standards traditionally applied in cases of governmental discrimination based on race, ethnicity or other "suspect" classifications.[105] First Amendment challenges to the military policy have fared little better. Thus, statement by a service person of his/her homosexuality, whether in the media or otherwise, has not generally been accorded First Amendment protection since it does not implicate the exchange of information and ideas on homosexuality as a matter of "public concern."[106] An important element in each of these decisions was the history of judicial deference to military judgments that is now firmly entrenched in our legal tradition.[107]

Accordingly, to date, successful judicial challenges to the military's policy regarding homosexuals have been few in number and of relatively narrow legal significance. For example, Matlovich v. Secretary of the Air Force,[108] involved an admitted homosexual with an "outstanding" 12-year record of military service who had not been charged with any homosexual activity on base or with other servicemen. Neither the court of appeals nor the federal district court on remand ever decided the main constitutional challenge asserted by the petitioner based on the right to privacy. Instead, the Air Force policy, which at that time permitted retention of homosexual personnel in "unusual circumstances," was held procedurally defective for its lack of fair and objective standards governing discharge. In other words, the petitioner was entitled to an explanation of why the exception did not apply to him. Subsequent to this decision, and a similar one concerning Navy regulations,[109] the Department of Defense issued revised regulations clarifying exceptions to the policy of mandatory discharge of homosexual service members which effectively preempted any defense based on quality of performance in future cases.

In a more recent and highly publicized decision, Watkins v. United States Army,[110] condemnation of the DOD policy as violative of the Fifth Amendment right to equal protection and instead ordered reinstatement of a homosexual 16-year veteran on equitable estoppel grounds. The earlier panel ruling had determined that lesbian and homosexual persons constitute a "suspect class" and employed heightened equal protection scrutiny to invalidate the Army policy. On rehearing, however, the full court held that the Army could not refuse reenlistment to a highly rated serviceman who had openly acknowledged his homosexuality at the time of initial enlistment and who had consistently been reenlisted despite the Army's awareness of his sexual orientation. Because it disposed of the case on equitable estoppel grounds, based on the specific factual circumstances before it, the enbanc court avoided making any determination of the constitutional issues raised. Consequently, the decision is likely to have minimal impact upon current military policy.

Judicial analysis of federal equal protection claims fall into three basic modes. First is the traditional "rational basis" standard that will uphold most legislative or executive action that classifies individuals as long as the classification is reasonable and rationally related to a legitimate governmental objective. Certain classifications are deemed "suspect" or "quasi-suspect," however, and governmental actions based on

such classification will be subjected to rigorous or "searching" judicial scrutiny.[111] Governmental actions that burden members of a suspect or quasi-suspect class call for a higher level of justification both in terms of the weight of the government's interest[112] and the degree of relationship to the interest served.[113] The federal courts of appeals to date have generally refused to apply the so-called "strict scrutiny" test, or other heightened equal protection standard of judicial review, to the military policy regarding homosexuals.

Applying the more lenient equal protection standard, the courts have usually had little difficulty accepting as "rational" the military's justifications for its homosexual policy.[114] In Beller v. Middendorf,[115] the Ninth Circuit accepted all of the military's justifications and upheld the Navy policy as applied to the discharge of three enlisted personnel who had engaged in homosexual acts. Judge (now Justice) Kennedy wrote that:

"The Navy can act to protect the fabric of military life, to preserve the integrity of the recruiting process, to maintain the discipline of personnel in active service, and to insure the acceptance of men and women in the military, who are sometimes stationed in foreign countries with cultures different from our own."

Furthermore, although he felt the policy was "perhaps broader than necessary to accomplish some of its goals," Judge Kennedy concluded that it "represents a reasonable effort to accommodate the needs of the Government with the interests of the individual."[116] In Dronenburg v. Zech[117] Judge Bork wrote for the D.C. Circuit in another case involving homosexual conduct that "[t]he effects of homosexual conduct within a naval or military unit are almost certain to be harmful to morale and discipline." Finally, in Ben-Shalom v. Marsh,[118] a status (not conduct) case, the Seventh Circuit ruled that military discharge due to a declaration of lesbianism did not violate the First Amendment, and that the Army regulation barring homosexuals passed rational basis equal protection review.

A recent judicial development that may forecast invigorated scrutiny into the military's justifications for excluding homosexuals is the Ninth Circuitdecision in *Pruitt v. Cheney*.[119] Pruitt was an officer in the U.S. Army Reserve with an "outstanding" record in both active and reserve duty. Although it had no evidence of homosexual acts on her part, the Army moved to revoke Pruitt's security clearance and discharge her after she revealed, in a Los Angeles Times interview, that she was a lesbian and had twice participated in ceremonies of marriage to other women. Pruitt thereafter challenged the Army's actions, which were based solely on her own admissions of homosexuality as a violation of free speech rights. This First Amendment claim was rejected by both the district and appellate court on the rationale that Pruitt's admission of her homosexual status was not protected speech.[120] The appeals court did hold, however, that the Army had to demonstrate a rational basis for its regulation and remanded the cases for appropriate proceedings. Moreover, the decision departs from *Beller* and related precedent by relying on two Supreme Court rulings which stand for the principle that governmental denial of equal protection is never justified by the antipathy of others towards the group adversely affected.

In the more recent of these, *City of Cleburne v. Cleburne Living Center, Inc.*,[121] the Court invalidated under rational basis equal protection analysis the refusal of a city to permit construction of a group home for the mentally retarded. Although neither a suspect nor quasi-suspect class was involved, the city's justifications for denying a permit were rejected. The desire to avoid negative reactions of neighbors was found to be an unacceptable basis for discriminatory treatment,[122] and even the legitimate goal of relieving congestion could not be achieved by prohibiting only certain types of group homes while allowing others. *Palmore v. Sidoti*[123] was an earlier case which struck down a denial of child custody based upon social disapproval of the interracial marriage of the mother. The Supreme Court declared that "[t]he Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."[124]

The Court's refusal in these cases to accept asserted governmental goals as legitimate, and its more than perfunctory scrutiny of the means by which the governmental body pursued its legitimate goals, may have important implications for future judicial review of military policies regarding homosexuals. At the very least, if applied in this context, it could mean that the military faces a weightier burden than heretofore in terms of justifying its policies as rational and reasonable based on factual evidence presented to the court. In this regard, the courts may be less willing to accept as rational the offer of any proof which reflects popular antipathy toward or stereotypical views concerning homosexuality.

SUMMARIES AND SUMMARY CRITIQUES OF PREVIOUS STUDIES ON HOMOSEXUALITY AND THE MILITARY

The U.S. General Accounting Office recently released a report entitled "Defense Force Management: DoD's Policy on Homosexuality."[125] Some of these findings have been considered in the text of this report. The general findings are presented and discussed below. GAO states:

"On the basis of its policy of excluding homosexuals from the military, DOD annually expelled an average of about 1,500 men and women between 1980 and 1990 under the separation category of "homosexuality." These expulsions reached a high of about 2,000 in 1982 and a low of about 1,000 in 1990. Separations for homosexuality do not require a determination that an individual's behavior affects the military's mission. In terms of rank, gender, and race/ethnicity, the majority of those expelled were enlisted personnel; most were men (about 78 percent); and most were white. When challenged, these discharges have been routinely upheld in the military adjudication and civil court systems.

"DOD does not maintain records of the costs associated with administering its policy; nor does it record the costs of investigating alleged cases of homosexuality. Accordingly, our analysis was limited to estimates of the costs of recruiting and training individuals to replace personnel discharged for homosexuality.

"Major psychiatric and psychological organizations in the United States disagree with DOD's policy and believe it to be factually unsupported, unfair and counterproductive. In addition, two DOD/service-commissioned study efforts have refuted DOD's position on the potential security risk associated with homosexual orientation as well disclosed information that raised questions about the basic policy. Further, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff have recently acknowledged that homosexual orientation is no longer a major security concern."

GAO also found that: Recent polls suggest that the public has become more accepting of homosexuality and homosexuals' serving in the military; Some U.S. allied nations have policies similar to that of the United States, and others have policies that permit homosexuals to be members; and, police and fire departments in several major U.S. cities have removed employment restriction without adverse effects on mission.[126]

Based on these findings, the GAO report has been cited by opponents of the policy to support their contention that the policy should be rescinded. Some have argued that the costs involved do not justify the policy. This report has not escaped criticism. First, it should be noted that the DoD policy is not predicated on economic issues. Critics contend that it is difficult to make an economic argument for keeping certain individuals on active duty (such as sodomists or those who prove disruptive to good order and discipline). Second, it has been noted that the reports cited by GAO (including the Crittenden Report[127]) actually support the DoD policy, or were dismissed because the "analysis" was flawed, uninformed and represented the opinions of the authors only (PERSEREC[128]).

While it stresses the high cost of replacing discharged homosexuals, critics note that GAO fails to consider the costs imposed on the service by rescinding the policy. Costs associated with discipline problems, fraternization, court-martials for sodomy (unless that too is rescinded) reduced morale, invasions of privacy, recruiting and retention difficulties and image problems.[129]

GAO has noted that the American Psychological Association, American Psychiatric Assoication and American Sociological Association have stated their opposition to the policy. This opposition is based on medical/clinical questions concerning the medical status of homosexuals and social equity issues. Critics contend that these positions are not based upon needs for discipline or good order, or on consideration based on combat effectiveness—the very basis for the policy.[130]

GAO also noted that among selected police and fire departments officials state that the elements of unit/team cohesiveness, discipline and good order and morale, trust and confidence, and a system of command rank and respect are important to their overall mission.[131]

The issue of comparing police and fire departments to military organizations has been raised as the only viable way to gain a perspective into the operation of 'paramilitary-type' organizations and their response to homosexuals in the ranks. Critics contend that this is a false comparison. The living environment, stresses, and issues of privacy available to fire fighters and police officers strain comparison when viewed from a military perspective. (See section above on "Differing standards for DoD uniformed and civilian employees.") While the military has police and fire fighting units, few civilian organizations are deployed for long periods under military conditions.

NATO POLICIES

The following is reproduced from an Army Times report (see NATO policies on gays in uniform, January 11, 1993, p. 22). These findings are based on information provided by military and embassy officials of each country.

Belgium

Not acknowledged as a relevant issue. Neither conscripts nor volunteers are asked about their sexual orientation. Homosexuality itself does not exempt Belgians from the draft unless there are accompanying psychological disorders as determined by clinical evaluation. Homosexual conduct between consenting adults off-duty is not punished, but inappropriate homosexual and heterosexual behavior can lead to dismissal from military duty or exclusions from certain units and jobs.

Britain

Homosexuals are officially barred from service, but unofficially the British Defense Ministry says the practice of prosecuting gays simply for being gay is rare. Homosexual acts among consenting adults has been decriminalized in military as well as civilian law as long as it is off-duty.

Canada

Was ordered by the Federal Court of Canada to drop its ban on gays in the Canadian Forces in October 1992. Canadian service members were not required to certify they were heterosexual when they enlisted, but openly gay persons were often discharged or had their transfer or promotion opportunities limited. The files of service members who were either discharged or denied promotion because of their sexual orientation are being reviewed for reconsideration by military authorities.

Denmark

Now law or policy. Neither conscripts nor volunteers are asked about sexual orientation. Treated as a personal, private matter.

France

No legislation or written codes. Gays are allowed to serve in the French military as long as they do not harass other members of their units. But gays and lesbians can avoid being drafted by claiming their homosexuality is incompatible with service life.

Germany

Homosexuality cannot be used as a reason not to be drafted, although potential gay conscripts who claim service would be psychologically injurious are evaluated and frequently given alternative mandatory service. Career members of the military who are openly gay do face discrimination, frequently finding promotions blocked and access to top-level classified information denied.

Greece

Homosexuals are banned from military service.

Italy

Homosexuals are deemed unsuitable for military service. During medical examinations, homosexual conscripts will be declared ineligible if found to have behavioral "anomalies" caused by sexual deviations.

Luxembourg

Homosexuals are not precluded from service. Military service is voluntary and enlistees are not asked about sexual orientation. Improper conduct—whether homosexual or heterosexual—is punishable by discharge or court martial.

Netherlands

Basic law prohibits all discrimination, for any reason. A union represents homosexuals in the military. Unwanted advances are treated as improper behavior. Courses in human relations are conducted for commanders and include homosexual issues. Legislation is pending for homosexual survivor benefits.

Norway

Not considered a relevant issue and no one entering the service is asked about their sexual orientation. Unwanted advances by either homosexual or heterosexual service members are treated as improper behavior contrary to good order and discipline.

Portugal

Not seen as a relevant issue. Homosexuals may serve in the armed forces, although conduct may be punishable.

Spain

There are no codes regulating homosexuals in the military. Like religion, sexual orientation is considered a person's own choice.

Turkey

Homosexuals are not permitted to serve openly in the armed services, although they are not asked about their sexual orientation upon entering the service.

TEXT OF 102D CONGRESS LEGISLATION ON HOMOSEXUALITY AND THE MILITARY

Four bills were introduced in the 102d Congress concerning the issue of homosexuality and military service. Two bills, H.R. 5208 and S. 3084, contain identical language:[132]

A bill to prohibit discrimination by the Armed Forces on the basis of sexual orientation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Prohibition on discrimination in the military on the basis of sexual orientation.

(a) In General.—No member of the Armed Forces, or person seeking to become a member of the Armed Forces, may be discriminated against by the Armed Forces on the basis of sexual orientation.

(b) Preservation of Rules and Policies Regarding Sexual Misconduct.—Nothing in subsection (a) may be construed as requiring the Armed Forces to modify any rule or policy regarding sexual misconduct or otherwise to sanction or condone sexual misconduct, but such rules ard policies may not be applied in a manner that discriminates on the basis of sexual orientation.

On September 18, 1992 Senator Metzenbaum introduced the above language as an amendment to the FY 1993 National Defense Authorization Act.[133] After a brief debate, the Chairman of the Senate Armed Services Committee, Senator Sam Nunn, stated:

"* * * I think the subject [homosexuality and military service] ought to be heard before we complete our markup of the [FY 1994 defense authorization] bill. That markup is completed in either May or June of next year. I think before that time we ought to have hearings because this [homosexual policy] ought to be the subject of that [hearing]. I assure [Senator Metzenbaum] we will have hearings on the subject before we mark up our bill."[134]

Following the above statement, Senator Metzenbaum withdrew this amendment.

Two other resolutions, H. Res. 271 and S. Res. 236, were introduce.[135] Although differing in text and scope from the above bills and amendment, both the House and Senate version of this resolution were identical:

Resolution

Expressing the sense of the [House of Representatives/Senate] that the President should rescind Department of Defense Directive 1332.14 section H.1, which bans gay, lesbian and bisexual Americans from military service.

Whereas the effectiveness of the military's mission is hindered when competent and qualified personnel are denied the opportunity to give their services to the armed services of the United States;

Whereas an estimated 1,000 men and women are discharged from the armed services each year simply because of their sexual orientation, costing American taxpayers millions of dollars per year;

Whereas Secretary of Defense Richard Cheney acknowledged that the men and women banned from military service under Department of Defense Directive 1332.14 section H.1 are currently allowed to serve in sensitive civilian jobs at the Department of Defense;

Whereas studies authorized by the Department of Defense have shown that there is no correlation between successful military service and sexual orientation;

Whereas the men and women banned under 1332.14 section H.1 have, in fact, served in the Armed Forces of the United States throughout our history when our Nation has been at peace and at war;

Whereas the men and women banned under 1332.14 section H.1 have, in fact, served in the Armed Forces of the United States and fought in the Persian Gulf War;

Whereas the men and women banned under 1332.14 section H.1 have, in fact, been decorated for their valor and service to our country;

Whereas Secretary of Defense Richard Cheney testified that Department of Defense testified that Department of Defense Directive 1332.14 section H.1 is one that he "inherited";

Whereas Secretary of Defense Richard Cheney admitted that the security risk rationale for 1332.14 section H.1 is "a bit of an old chestnut"; and

Whereas all Americans who meet the criteria for service in the Armed Forces, regardless of sexual orientation, deserve an equal opportunity to serve in the defense of our country: Now, therefore, be it

Resolved, That the [House of Representatives/Senate] urges the President to rescind Department of Defense Directive 1332.14 section H.1 so that all Americans, regardless of sexual orientation, currently serving their country in the armed services, and those who want to serve, will not be prevented from, or punished for, doing so.

TEXT OF 1948 TRUMAN EXECUTIVE ORDER ON RACIAL DESEGREGATION[136]

EXECUTIVE ORDER 9981

Whereas it is essential that there be maintained in the armed services of the United States the highest standards of democracy, with equality of treatment and opportunity for all who serve in our country's defense:

Now, therefore, by virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed services, it is hereby ordered as follows:

1. It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed service without regard to race, color, religion or national origin. This policy shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale.

2. There shall be created in the National Military Establishment an advisory committee to be known as the President's Committee on Equality of Treatment and Opportunity in the Armed Services, which shall be composed of seven members to be designated by the President.

3. The Committee is authorized on behalf of the President to examine into the rules, procedures, and practices of the armed serv-

ices in order to determine in what respect such rules, procedures and practices may be altered or improved with a view to carrying out this order. The Committee shall confer and advise with the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, and shall make such recommendations to the President and to the Secretaries as in the judgment of the Committee will effectuate the policy hereof.

4. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Committee in its work, and to furnish the Committee such information or the services of such persons as the Committee may require in the performance of its duties.

5. When requested by the Committee to do so, persons in the armed services or in any executive departments and agencies of the Federal Government shall testify before the Committee and shall make available for the use of the Committee such documents and other information as the Committee may require.

6. The Committee shall continue to exist until such time as the President shall terminate its existence by Executive Order.

HARRY S TRUMAN.

THE WHITE HOUSE, *July 26, 1948.*

FOOTNOTES

[1] The degree to which President-elect Clinton intends to modify current policy is not clear. According to reports quoting Clinton:

"The difficulty, it seems to me," [Clinton] said, "is to get people to focus on what I believe the real issue is, to say that we don't have a person to waste. By the way, it's not as simple a question as it seems," he said, "because the sexes are segregated in the services to guarantee a certain level of security against sexual overtures, a certain level of cohesion, you know. So it's not a simple issue. But what I think the rule ought to be is in the absence of some inappropriate behavior, if someone has been in service and they're serving well, that alone should not be grounds for dismissal. I want to be very clear about this, because it is not a totally simple issue. There would have to be something besides the simple statement of status. But I think everybody understands that any kind of inappropriate behavior would be grounds for dismissal." Schmalz, Jeffrey, Difficult First Step, New York Times (News Analysis), Nov. 15, 1992: 22.

This statement, and others, have been subjected to interpretations as to what actions the President-elect may ultimately take, and what may be the political ramifications of these actions. See also, Lift the Ban on Gay Soldiers, New York Times, November 15, 1992: IV-18; Evans, David, Clinton's Promise on Gays could Cloud the Military's Future, Chicago Tribune, October 20, 1992: 25; Matthews, William, Navy Times, Clinton's Stance on Gay Ban Angers Many, October 5, 1992: 18.

[2] Kenworthy, Tom, Nunn, Dole Urge Caution on Military Gay Policy, Washington Post, November 16, 1992: A12.

[3] Davis, Maj. Jeffrey S., Military Policy Toward Homosexuals: Scientific, Historical, and Legal Perspectives, Military Law Review, Vol. 131, Winter 1991: 115. (Hereafter referred to as Davis 1991.) For the definition of sodomy in the Manual for Courts-Martial (1917), see Appendix section "Text of Uniform Code of Military Justice * * *"

[4] Berube, Allan, Coming Out Under Fire: The History of Gay Men and Women in World War II, New York: Penguin Books (Plume), 1991.

[5] Davis, 1991: 76–77. Although Davis notes that Army language concerning "tendencies, desires, or interests" was later "found to be unconstitutional" (see p. 77), he provides no court citation. Efforts to locate such a ruling have proven unsuccessful. In addition, in 1973, the American Psychiatric Association voted to remove homosexuality from its list of abnormalities.

[6] Snyder, William P., and Kenneth L. Nyberg, Policy Paper Gays and the Military: An Emerging Policy Issue, Journal of Political and Military Sociology, Vol. 8, No. 1, Spring 1980: 74.

[7] According to Laurence, Janice H., and Peter F. Ramsberger, "Beginning in 1966, under Project 100,000, some 300,000 low-aptitude men enlisted or were drafted into the rank and file as part of a social welfare program. Responding to President Lyndon Johnson's War on Poverty, then-Secretary of Defense Robert S. McNamara launched this project with the hopes of equalizing the burden of wartime service, while turning the lives of the disadvantaged around through a tour of military duty." (Low-Aptitude Men in the Military: Who Profits, Who Pays?, New York: Praeger, 1991: 1.)

[8] U.S. Department of Defense, Directive No. 1332.14, Enlisted Administrative Separations, January 28, 1982: 1-9 through 1-13. For the complete text of this directive, see Appendix.

[9] See Appendix for an explanation of discharge characterizations.

[10] Under DoD regulations and the UCMJ, a person can not be prosecuted for merely being homosexual. Although a person can be administratively discharged, with an Honorable or General discharge—which is substantively different from prosecution—for making statements confirming that he or she is homosexual, such statements are viewed as acts (see *Ben-Shalom v. Marsh*, 881 F.2d 454, 462 (7th Cir. 1989) as discussed in the Appendix). Merely making a statement, however, is likely to lead to an investigation under the foregoing policy. For example, in one case, a sailor became president of the San Diego Veterans Association—whose membership is largely homosexual—and who advocates changing the military policy but who has not violated any of the provisions of the DoD regulation may be subject to investigation but can not be administratively discharged without a finding of homosexuality based on DoD definitions (see Reza, H.G., Sailor at Odds With the Navy's Anti-Gay Policy, Los Angeles Times (Washington, D.C. Ed.), April 1, 1992: B-2). While such an investigation, and perhaps an ensuing discharge, is not a form of prosecution, these processes have been seen by some as a form of persecution of homosexuals.

[11] LeVay, Simon, A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men, Science, 258, 1991: 1034–1037; Bailey, J.M., and Pillard R.C., A Genetic Study of Male Sexual Orientation, Archives of General Psychiatry, 48, 1991: 1089–1096; Gelman, David, et al., Born or Bred?, Newsweek, Feb. 24, 1992: 6; Kinsey, A, W. Pomeroy, and C. Martin, Sexual Behavior in the Human Male, cited in Davis, 1991; Voeller, Bruce, Some Uses and Abuses of the Kinsey Scale, in Homosexuality, Heterosexuality: Concepts of Sexual Orientation, The Kinsey Institute Series, June Machover Reinisch, ed., Oxford University Press, 1990: 35; Diamant, Louis, (Ed.), Male and Female Homosexuality: Psychological Approaches, Washington: Hemisphere Publishing Corp., 1987; Marmor, Judd, (Ed.), Homosexual Behavior: A Modern Reappraisal, New York: Basic Books, 1980; and, Pattullo, E.L., Straight Talk About Gays, Commentary, Vol. 194(6), December 1992: 21. A number of religion-based organizations exist to help "homosexuals" in "going straight," including Regeneration of Baltimore, MD, and Exodus International of San Rafael, CA., leading some to believe that homosexuality may be based on choice. According to Davis, 1991: 62–63, "The vast majority of homosexuals never seek treatment. Of those who have, there have been some reports of successfully changing homosexuals into heterosexuals, but the criteria for success often have been "either vague or considerably less than exclusive heterosexual behavior." * * * At any rate, the reports on treatment of homosexuality seem consistent with the hypothesis that efforts to change sexual orientation should be minimally effective."

[12] Gladue, Psychological Contributions, in L. Diamant (Ed.), Male and Female Homosexuality: 130.

[13] Toufexis, Anastasia, Bisexuality: What is it?, Time, August 17, 1992: 49–51.

[14] Kinsey, Alfred C., Sexual Behavior in the Human Male, Philadelphia: W.B. Sanders, 1948: 650–51; cited in Allan Berube, Coming Out Under Fire: The History of Gay Men and Women in World War Two, New York: Penguin Books (Plume), 1991: 289.

[15] Smith, Tom W., Adult Sexual Behavior in 1989: Number of Partners, Frequency of Intercourse and Risk of AIDS, Family Planning Perspectives, Vol. 23, No. 3, May/June 1991: 104. (These data were collected as part of the General Social Survey, 1988 and 1989, by the National Opinion Research Center, University of Chicago. Smith's study was funded by the National Science Foundation.) See also, R.E. Fay et al., Prevalence and Patterns of Same-Gender Sexual Contact Among Men, Science, 243, 1989: 338. For a critique of Kinsey's work, see Reisman, Judith, and Edward W. Eichel, Kinsey, Sex and Fraud: The Indoctrination of a People, Huntington House Publishers, Lafayette, LA, 1990; Really Dr. Kinsey?, 337 The Lancet (British Medical Journal, 547, 1991; and, Kinsey Sex Reports: Dubious, Misleading, Fraud?, German Medical Tribune, July 19, 1991 (Jurgen Benning Trans.) cited in *Steffan v. Cheney*, 780 F. Supp. 1, (D.C. Cir. 1991).

[16] Berube, 1991: 32, 56–57.

[17] Webster's Third New International Dictionary of the English Language, Unabridged, Philip Babcock Gove (Ed.), Springfield, Massachusetts: G. & C. Merriam Company, 1971: 199, 1591. For a discussion of this issue in the civilian context, see Eddy, Mark, Prohibiting Discrimination on the Basis of Sexual Orientation: Arguments For and Against Proposed Legislation, Congressional Research Service Report 89-222 Gov, April 10, 1989. Under current DoD policy, no distinction is made on the basis of orientation versus behavior.

[18] For example, instances of youthful experimentation or sexual assault victimization may not be considered as grounds for denying an enlistment if there are reasons to believe that these instances do not represent a desire or intent to engage in future homosexual activities. Discretion, therefore, is involved.

[19] *Ben-Shalom v. Marsh*, 881 F.2d 464 (7th Cir. 1989). In addition, the Supreme Court held that there was no fundamental right of homosexuals to engage in consensual sodomy and upheld the Georgia statute criminalizing sodomy (*Bowers v. Hardwick*, 478 U.S. at 194–195, 106 S.Ct. at 2846).

[20] Dewar, Helen, Nunn Assailed by Gay Rights Groups for Firing of Two Aides, The Washington Post, Dec. 8, 1992: A11. "About a dozen members of the gay rights group Queer Nation conducted a small demonstration—a "kiss-in—at Nunn's office on Capitol Hill yesterday to protest what the group's spokesman, Mike Petrelis, called Nunn's 'known homophobia.'"

[21] Rep. Schroeder, ABC News Nightline, Show #2867, Air Date: May 19, 1992.

[22] Willis, Grant, Gay Activists Target Repeal of Sodomy Law, Navy Times, August 24, 1992: 21.

[23] Charles C. Moskos, Jr. ABC News Nightline, May 19, 1992. General Colin L. Powell, chairman of the Joint Chiefs of Staff: "I have never been of the view that this would break the armed forces of the United States if we [allowed homosexuals to serve openly in the military]. I'm also not of the view [as] some newspapers are, that there will be mass resignations. I am of the view, and continue to be of the view that it will be prejudicial to good order and discipline because (it will) introduce this added very complex social dimension into [this] institution * * *." Powell: 'Gays in the Military Far More Complicated Issue,' Air Force Times, December 14, 1992: 12.

[24] H.R. 5208, Rep. Patricia Schroeder, May 19, 1992; S. 3084, Sen. Howard Metzenbaum, July 28, 1992.

[25] See, e.g., *Watkins v. United States Army*, 875 F.2d 699, 702–04 (9th Cir. 1989) (en banc); *Matlovich v. Secretary of the Air Force*, 591 F.2d 852, 854 (D.C. Cir. 1978); cited in Davis, Major Jeffrey S., Military Policy Toward Homosexuals: Scientific, Historical, and Legal Perspectives, Military Law Review, Vol. 131, Winter 1991: 55.

[26] Based on research conducted at the University of Indiana, 75 percent of white male homosexuals reported to have had 100 or more partners, and 28 percent reported 1000 or more. None of the respondents reported fewer than three partners. Bell, Alan P., and Martin S. Weinberg, Homosexualities: A study of Diversity Among Men and Women, New York: Simon & Schuster, 1978: 312. According to a University of Chicago survey (Smith, Tom W., Adult Sexual Behavior in 1989: Number of partners, Frequency of Intercourse and Risk of AIDS, Family Planning Perspectives, Vol. 23(3), May/June 1991: 104.) "Adults reported an average of 7.15 sexual partners since age 18."

[27] "Partnership legislation" refers to proposals to have employers (including the government) recognize a gay partnership for the purposes of receiving health care and other employer-offered benefits. While a few employers and a small number of municipalities or other jurisdictions already recognize and/or provide limited benefits to "partners," most do not.

[28] The integration of blacks is generally viewed as a success. (See Moskos, Charles, The Army's racial success story. How do they do it? The New Republic, August 5, 1991:16.) The integration of women remains debated today (Collier, Ellen, Women in the Armed Forces, CRS Issue Brief, IB92008, updated regularly;

The Presidential Commission on the Assignment of Women in the Armed Forces, Report to the President, Washington, D.C., U.S. Government Printing Office, November 15, 1992). The attempt to use the military as a means of social mobility for individuals of low-aptitude has been criticized by a number of observers as a failure that perhaps did more damage to those it was intended to help in the first place. (Laurence, Janice H., and Peter F. Ramsberger, Low-Aptitude Men in the Military: Who Profits, Who Pays?, Praeger, New York: 1991.) The services of women and blacks in various forms are not new to the military. Blacks served openly in every war (including as "Buffalo soldiers" during the Indian Wars) and were in segregated units at least since the Civil War (including Confederate units). By World War II, such segregation was recognized as problematic in terms of effectiveness and efficiency. The integration of women (including the opening of non-stereotypical military occupational specialties), particularly in the 1970s, was in part a result of a need for qualified personnel created during the transition to the All-Volunteer Force. Homosexuals, generally speaking, have not served "openly" in the military. Critics contend that, although the integration of the military and the expansion of opportunities had social and political underpinnings considering the history of blacks and women in uniform, these changes were justified on military needs. Homosexual rights advocates, critics contend, have not shown a military need or justification for changing the current policy.

[29] Gabriel, Richard A., Women in Combat? Two Views, Army, March 1980:

[30] Snyder, William P., and Kenneth L. Nyberg, Policy Paper Gays and the Military: An Emerging Policy Issue, Journal of Political and Military Sociology, Vol. 8, No. 1, Spring 1980: 72–73

[31] Shils, Edward and Morris Janowitz, Cohesion and Disintegration in the Wehrmacht, Public Opinion Quarterly, 12 (Summer 1948); 280–315.

[32] McCrane, Kevin M. Gays in the Military? A Cautionary Tale, Wall Street Journal, Dec. 2, 1992: A10; Hackworth, David, The Case for a Military Gay Ban: My Combat Experience Tells Me It's the Only Sensible Policy, Washington Post, June 28, 1992: C5.

[33] Snyder, William P., and Kenneth L. Nyberg: 72.

[34] For example, homosexuals who come to the attention of investigators by being caught in homosexual acts may "plea bargain" to an administrative discharge (rather than face a court-martial) provided that they turn over the names and incriminating evidence against other homosexuals in the service. Providing information on "partners" needed in part to remove other homosexuals from the service as well as to determine whether the individual is trying to avoid military service necessarily broadens the scope on an investigation.

[35] In a recent incident, a vice admiral was censured and was retired at the reduced rank of rear admiral following accusations that he protected a member of his own personal staff "from disciplinary action resulting from alleged homosexual advances to other staff members." Burlage, John, The Fetterman Saga: Witch Hunt or Justice?, Navy Times, August 10, 1992: 14.

[36] U.S. General Accounting Office, Defense Force Management: DOD's Policy on Homosexuality, B-247235, June 12, 1992, (referred to hereafter as U.S. GAO-1); see also, U.S. GAO, Defense Force Management: Statistics Related to DOD's Policy on Homosexuality, B-247235, June 12, 1992.

[37] NGLTF, Policy Institute, Press Kit, Gays and Lesbians in the Military, Department of Defense, Robert Bray, Communications Director, 1734 Fourteenth Street, NW, Washington, D.C. 20009-4309, undated.

[38] Powell, Gen. Colin L., Letter to Representative Patricia Schroeder, May 8, 1992.

[39] While race is not an indication of behavior nor is behavior an indication of race, the same can not be said of sexual orientation—sexual orientation is not necessarily an indication of sexual behavior (individuals can remain abstinent, for example), sexual behavior is an indication of orientation. It is difficult for someone who has voluntarily participated in homosexual acts to deny being homosexual or bisexual.

[40] Swasy, Alecia, Navy Babies, The Wall Street Journal, October 3, 1991, A1. "Kathleen was one of 36 Navy women who returned home pregnant from their tour on the [U.S.S.] Acadia. The ship was dubbed 'The Love Boat' in a newspaper cartoon.* * * 'Hanky-panky—hetero or homo—is a problem' says Charles Moskos, a military sociologist at Northwestern University. 'Propinquity breeds romance.'"

[41] "Outing" refers to the involuntary revelation that an individual is homosexual.

[42] Suplee, Curt, Pentagon Ban on Homosexuals Exempts Civilians, Cheney Says, The Washington Post, August 5, 1991: A6.

[43] Moskos, Charles C., From Institution to Occupation: Trends in Military Organization, Armed Forces and Society, 4(1), 1977: 41–50.

[44] 345 U.S. 83, 93–94, 73 S. Ct. 540, 97 L.Ed. 842 (1953). Indeed, other courts have noted that restrictive rules demanding conformity, discipline and sacrifice required as a result of military service would not necessarily be viewed as constitutional in the civilian context. In upholding the discharge of homosexuals by the Navy, the court wrote: "It should be plain from our opinion that the constitutionality of the regulations stems from the needs of the military, the Navy in particular, and from the unique accommodations between military demands and what might be constitutionally protected activity in some other context." *Beller v., Middendorf*, 632 F.2d 812 (9th Cir. 1980).

[45] McIntire, Katherine, Fair Game? Lesbians Protest Army Investigations, Army Times, October 14, 1991: 12. According to a Congressional Caucus for Women's Issues letter (April 24, 1992) to Jean Appleby Jackson (Chair, Defense Advisory Committee on Women in the Service-DACOWITS), "DACOWITS heard testimony of lesbian-baiting, the practice of harassing and blackmailing service women by threatening to force their discharge by calling them lesbians."

[46] Risser, David, Gays Protest Policy, Daily Press, June 16, 1991, E3.

[47] See Smolowe, Jill, An Officer, Not a Gentleman, Time, July 13, 1992: 36.

[48] Seigle, Greg, In the U.S.: Fear and loathing, Army Times, January 11, 1993: 11; "Troops say if gays are allowed in the military, 'they'll get their asses kicked.' "

[49] Del Maris, James, How to Seduce a straight Man, The Advocate, March 28, 1989: 38.

[50] GAO-1: 40.

[51] Country by Country Survey, in Second ILGA Pink Book 186, 1988.

[52] On Oct. 27, 1992, Canada rescinded its policy on homosexuals serving in the military. (See Lancaster, John, Many Allies Allow Gays in the Military, Canada, Australia are Latest to Drop Exclusionary Policy, Washington Post, Nov. 30, 1992: 1.) It should be noted that GAO concluded that Italy allows homosexuals to serve while Davis lists Italy among those countries that bans homosexuals from the military. See Davis: 79–80.

[53] Philpott, Tom, In Israel: The Hard Reality, "Gays are allowed to serve in the military but they are not fully accepted" Army Times, January 11, 1993: 11; see related stories in same edition, Israeli's Invisible Soldiers, Gay Israelis avoid ridicule, get ahead by staying in closet (p. 18), and, NATO Acceptance of gays runs full spectrum (p. 20). See Appendix for a reproduction of these findings.

[54] "In many Latin societies, men do not consider themselves bisexual or gay unless they take the passive-receptive role during sex." Toufexis, Anastasia, Bisexuality What is It?, Time, August 17, 1992: 50.

[55] Maze, Rick, Study: Integration of Dutch navy not without problems, Army Times, Nov. 30, 1992: 4.

[56] Philpott, Tom, In Israel: The hard reality, Army Times, January 11, 1993: 11.

[57] In *Watkins v. U.S. Army* 875 F.2d 701 (9th Cir. 1989), the court held that the "Army was estopped from barring reenlistment (of Watkins) solely because of the serviceman's acknowledged homosexuality; service man had been completely candid about his homosexuality from the start of his Army career, and the Army, with full knowledge of his homosexuality, had repeatedly permitted serviceman to reenlist in the past, despite its long-standing policy that homosexuality is a nonwaivable disqualification for reenlistment." Thus, the Army's continued violation of its own rules in the Watkins case lead to the estoppel ruling requiring the Army to reenlist Watkins and thereby preventing injury to him (i.e. loss of retirement and other benefits) on the basis of the Army's actions.

[58] GAO-1: 39.

[59] April, 1991, Penn and Schoen Associated, Inc., conducted this poll for the Human Rights Campaign Fund—a group dedicated, in part, to overturning the ban.

[60] How you voted: Keep gays out of the military, readers say, USA Weekend, September 4–6, 1992: 9.

[61] Wolffe, Jim, McPeak, Others Split on Handling Gay Ban, Air Force Times, December 14, 1982: 14.

[62] Cheney defends Pentagon's Anti-Gay Policy; Midshipmen Applaud, New York Native, October 21, 1991: 10; cited in Family Research Council, "In Focus," Homosexuals in the Military: Talking Points, INF29*5/92: 3.

[63] Air Force Times, September 21, 1992: 31.

[64] Air Force Surveys Itself on Attitudes about Gays, Baltimore Sun, December 4, 1992: 4.

[65] Newsweek Poll 19–20, 1992; cited in Newsweek, Nov. 30, 1992: 29.

[66] Goldberg, Harold, Poll Shows Country Splits on Gays in the Military, Associated Press wire service, December 17, 1992. In addition, this poll stated that the "same split occurred when Americans were asked how to treat those already in uniform who are discovered to be homosexual: 44 percent said the military should continue discharging homosexuals, 46 percent said that practice should stop."

[67] Leigh, Julia Hood, TROA Members Nix Homosexuals in Service, The Retired Officer Magazine, January 1993: 21.

[68] Jaffee, Keewhan, et al., National Case-Control Study of Kaposi's Sarcoma, etc. in Homosexual Men; Part 1, Epidemiological Results, Annals of Internal Medicine, 99(2), 1983: 145–157.

[69] See Bell and Weinberg, 1978.

[70] See DoD and the Courts—Legal Analysis, *Steffan v. Cheney*, 780 F. Supp. 1 (D.C. Cir. 1991), in the Appendix.

[71] For example, see Burrelli, David F., HIV-1/AIDS and U.S. Military Manpower Policy, Armed Forces and Society, Vol. 18(4), 1992: 452–475.

[72] According to Zajdowicz, R., et al., The Truth on AIDS & HIV, Proceedings, December, 1987: 83.

[73] Davis, 1991: 70.

[74] In recognition of this, under DoD policy, "information gained as a result of testing [for HIV-1] may not be used as the independent means for an adverse administrative action." (Burrelli, 1992: 459.)

[75] Although ROTC does not discriminate against those who wish to enroll in classes offered, receipt of a scholarship or enlisting as a senior cadet or midshipman is contingent upon being eligible to receive a military commission upon graduation. Those who fail to be eligible for a commission are required to repay their scholarships or serve for a specified period of time in the enlisted ranks—the latter option is unavailable to homosexuals.

[76] The National Lesbian, Gay & Bisexual Student Caucus, an affiliate of the United States Student Association, states that Rutgers University was the first school to remove four-year ROTC scholarships "in protest of anti-gay discrimination." According to an ROTC official at Rutgers, however, the program is still in place. John Jay University in New York, an ROTC extension center was closed. Other campuses listed as having some form of activities on this issue include: University of Wisconsin at Madison, University of Texas at Austin, University of Arizona (Tucson), University of Connecticut at Storrs, University of Oregon at Eugene, and state-wide activities at USSA-member groups in Wisconsin, Texas, New York and Oregon.

[77] Farrish, Katherine, Military Recruiter Barred at UConn Law, The Hartford Courant, October 15, 1992: 1.

[78] Kosova, Weston, ROTC Ya Later, The New Republic, February 19, 1990: 24.

[79] Pyle, Amy, Ouster of ROTC Program Rejected at Northridge, Los Angeles Times, April 17, 1990: B1.

[80] Roth, Margret, Gay ex-ROTC cadet wins $25,000 battle, Army Times, June 4, 1990: 22. More recently, the military has instituted a policy of requiring ROTC cadets to declare that they are not homosexual. Maze, Rick, Forcing ROTC Applicants to Sign Non-Gay Affidavit Protested, Air Force Times, December, 14, 1992: 11; "Since 1986, 28 ROTC candidates have been dismissed because of their sexual orientation * * *. Nine were forced to repay their scholarship money, a decision made on a case-by-case basis * * *."

[81] Baskir, Lawrence M., and William A. Strauss, Chance and Circumstance: The Draft, The War and The Vietnam Generation, New York: Knopf, 1978: 45–46.

[82] Lambert, Wade, U.S. Military Moves to Discharge Some Gay Veterans of Gulf War, The Wall Street Journal, July 30, 1991: B6.

[83] 10 USC 673c. Authority of President to suspend certain laws relating to promotion, retirement, and separation; Executive Order 12728, August 22, 1990; and, Office of the Secretary of Defense, Memorandum, Delegation of Authority to Suspend Provisions of Law Relating to Promotion, Retirement or Separation:

1. Delegation. * * * I hereby delegate to the Secretaries of the Military Departments for the armed forces within their respective Department author-

ity, within the limitations set forth * * * to (b) determine, for purposes of Section 673c, that members of the armed forces are essential to the national security of the United States.

2. Coverage. The authority granted by paragraph 1 may be exercised only with respect to members of the armed forces who: (a) are, or are about to be, engaged in the conduct of operation in or around the Arabian Peninsula; (b) are, or are about to be, engaged in the direct support of operation in or around the Arabian Peninsula; (c) possess critical skills associated with operations in or around the Arabian Peninsula; or (d) possess skill in short supply in the armed forces.

[84] DoD Directive 1332.14.

[85] Some Clinton aides suggest that as President he may issue a "memorandum of Understanding." Although not clearly defined, it is suggested that such a memorandum would have the "same legal force as an executive order * * *, but does not carry with it the same historic significance." Healy, Melissa, Clinton Aides Urge Quick End to Military Ban on Gays, Los Angeles Times (Washington edition), January 8, 1993: 1.

[86] U.S. Constitution, Article I, Section 8, provides Congress with the power to "make rules for the Government and Regulation of the land and naval Forces." Under Article II, Section 2, the Constitution states "[T]he President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States."

[87] 10 U.S.C. 1072 et seq., 1447 et seq., and 38 U.S.C. 410 et seq., for example.

[88] San Francisco, CA has an ordinance recognizing homosexual marriages. Numerous other municipal and state regulations recognize certain benefits for domestic partners. Recently the District of Columbia passed a domestic partnership bill that would allow city workers to purchase health insurance for his or her same-sex partner. An amendment (no. 2799) included in the District of Columbia Appropriations, 1993 (H.R. 5517), blocked such provisions (see Congressional Record, July 30, 1992: S10902–S10907).

[89] E.g. Lacayo, Richard, Jack and Jack and Jill and Jill, Time, December 14, 1992: 52, "In the quest to instill tolerance, schools are increasingly instructing children about homosexuality. What should they be taught—and when?"

[90] Clinton stated, "On the issue of Gays in the military, I have made no decision on a timetable except that I want to firmly proceed and I want to do it after consulting with military leaders." Chibbaro, Lou, Debate over ban ignites, The Washington Blade, November 20, 1992: 1, 15. Others expect that any change short of lifting the ban will involve a political problem for Clinton. Commentator Evan Thomas (same cite) stated "I think in the end, [Bill Clinton] will [lift the ban]. He's got to. I think his fourth largest contributor group was Gays. * * *."

[91] Kenworthy, Tom, Nunn, Dole urge caution, Washington Post November 16, 1992: A12.

[92] Gellman, Barton, Clinton Says He'll 'Consult' on Allowing Gays in Military, Washington Post, Nov. 13, 1992: A1.

[93] Anton, Genevieve, Panel studying women in armed forces rapped, Gazette Telegraph (Colorado Springs, March 14, 1992: 1.

[94] U.S. Department of Defense, Office of the Assistant Secretary of Defense (formerly MRA&L, now FM&P), Directive No. 1332.14, Enlisted Administrative Separations, January, 28, 1982: 1–9 through 1–13.

[95] U.S. Department of Defense, Office of the Assistant Secretary of Defense (FM&P), Directive, Separation of Regular Commissioned Officers for Cause, No. 1332.30, February 12, 1986, section 2: 2–1, 2–2.

[96] U.S. Department of Defense Directive, Office of the Assistant Secretary of Defense (HA), Directive No. 6130.3, Physical Standards for Enlistment, Appointment, and Induction, March 31, 1986: Sec. XVI. Mental Disorders, para. 2–34. Psychosexual Conditions, p. 1–36. The other two subsections cite as reasons for rejection: (b) Transsexualism and Other Gender Identity Disorders, and, (c) Exhibitionism, Transvestism, Voyeurism and Other Paraphilias. It remains a contentious point of fact that DoD and certain foreign countries continue to treat homosexuality as a "Mental Disorder" despite statements to the contrary by the American Psychiatric Association and the American Psychological Association.

[97] 10 U.S.C. secs. 925 and 934, respectively.

[98] The author of this section, Charles V. Dale, is a Legislative Attorney with the American Law Division, Congressional Research Service.

[99] *E.g., Matlovich v. Secretary of the Air Force*, 591 F.2d 852 (D.C. Cir. 1978); *Dronenburg v. Zech*, 741 F.2d 1388 (D.C. Cir. 1984); and *Beller v. Middendorf*, 632 F.2d 788 (9th Cir. 1980), *cert. denied sub nom. Miller v. Weinberger*, 454 U.S. 855 (1981).

[100] *E.g., Hatheway v. Secretary of the Army*, 641 F.2d 1376 (9th Cir.), *cert. denied*, 454 U.S. 864 (1981).

[101] *See, e.g., Matlovich.*

[102] *E.g., Ben-Shalom v. Marsh*, 881 F.2d 454 (7th Cir. 1989), *cert. denied sub nom. Ben-Shalom v. Stone*, 494 U.S. 1004 (1990); *Pruitt v. Cheney*, 963 F.2d 1160 (9th Cir. 1991), *cert. denied.*

[103] 478 U.S. 186 (1986).

[104] *Id.*, at 191–92.

[105] *See, e.g., Woodward v. United States*, 871 F.2d 1068, 1075–76 (Fed. Cir. 1989), *cert. denied*, 494 U.S. 1003 (1990) where the appeals court noted that *Hardwick* permitted the criminalization of "the most common sexual practices of homosexuals." Because "there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal," the *Woodward* court reasoned that, under *Hardwick*, the military's discrimination against homosexuals is constitutional.

[106] In *Ben-Shalom v. Marsh*, 881 F.2d 454, 462 (7th Cir. 1989), *cert. denied*, 494 U.S. 1004 (1990), the federal appellate tribunal stated the proposition: "[Appellant] is free under the regulation to say anything she pleases *about* homosexuality and about the Army's policy toward homosexuality. She is free to advocate that the Army change its stance; she is free to know and talk to homosexuals if she wishes. What [appellant] cannot do, and remain in the Army, is to declare herself to *be* a homosexual. Although that is, in some sense, speech it is also an act of identification. And it is the identity that makes her ineligible for military service, not the speaking of it aloud" *(emphasis in original).*

See also Johnson v. Orr, 617 F.Supp. 170 (E.D. Cal. 1985) (finding for the military), *aff'd mem.*, 787 F.2d 597 (1986); *Pruitt v. Cheney, (supra)* n. 5 (same).

[107] *See, e.g., Ben-Shalom v. Marsh*, 881 F.2d 454, 461 (7th Cir. 1989) ("The Commander-in-Chief, the Secretary of Defense, the Secretary of the Army, and the generals have made the determination about homosexuality, at least for the present, and we, as judges, should not undertake to second-guess those with direct responsibility for our armed forces. If a change of Army policy is to be made, we should leave it to those more familiar with military matters than are judges not selected on the basis of military knowledge."); *Goldman v. Weinberger*, 475 U.S. 503, 507–510 (1986) (Court deferred to the "professional judgment of military authorities" that Jewish officer's wearing of yarmulke justified a court martial for noncompliance with dress code); *Rostker v. Goldberg*, 453 U.S. 57, 70–71 (1981) ("[J]udicial deference to such congressional exercise of authority is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulation for their governance is challenged."). *Also, Gilligan v. Morgan*, 413 U.S. 1, 10 (1973); *Orloff v. Willoughby*, 345 U.S. 83, 93–94 (1953).

[108] *See Matlovich v. Secretary of the Air Force; Dronenberg v. Zech; Beller v. Middendorf; and, Miller v. Weinberger.*

[109] *Berg v. Claytor*, 436 F.Supp. 76 (D.D.C. 1977), *vacated and remanded*, 591 F.2d 849 (D.C. Cir. 1978).

[110] 875 F.2d 699 (9th Cir. 1989), *aff'g en banc on other grounds*, 847 F.2d 1328 (9th Cir. 1988), *cert. denied* 111 S. Ct. 384 (1990).

[111] The Supreme Court has found that classifications based on race, national origin, and in some cases, alienage constitute suspect classifications. *See Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439–42 (1985). In addition, classifications based on gender, *e.g. Craig v. Boren*, 429 U.S. 190 (1976), and illegitimacy, *Trimble v. Gordon*, 430 U.S. 762 (1977), are considered "quasi-suspect" and trigger a form of "intermediate scrutiny" that is more rigorous than basic rational relationship review. In addition to subjecting suspect or quasi-suspect classification to strict scrutiny, courts will apply strict scrutiny to classifications that burden "fundamental interests."

[112] These classifications must be supported by more than merely a "legitimate" interest: governmental actions that burden a quasi-suspect classification must be based on an "important" interest, *Craig v. Boren, supra* n. 14, while actions that burden a suspect classification must serve a "compelling" governmental goal. *Cleburne, supra* n. 14.

[113] The connection between the discriminatory action and the governmental goal must be more than merely "rational": for quasi-suspect classifications the relationship must be "substantial," *Craig v. Boren, supra* n. 13, and for suspect classifications the discriminatory action must be "precisely tailored" to the governmental interest at issue. *Plyler v. Doe*, 457 U.S. 202, 217 (1981).

[114] As it appears from the decided cases, the justifications asserted by the government are several. First, it is argued that the presence of homosexual personnel arouses "tensions and hostilities" and inspires a lack of confidence and respect for homosexual officers. The military has also contended that homosexuals would be unable to effectively perform their duties as a consequence of their emotional involvement with other homosexuals and fear of disclosure. Other factors relate to anticipated disruption of the command structure that could result from homosexual relationships with subordinates, the possibility that heterosexuals would be discouraged from enlisting, and the threat of adverse foreign reaction to homosexual military personnel stationed abroad. Finally, one court has opined that "toleration of homosexual conduct, as expressed in a less broad prohibition, might be understood as tacit approval." *See, e.g., Beller v. Middendorf*, 632 F.2d 788, 811 (9th Cir. 1980); *Dronenberg v. Zech*, 741 F.2d 1388 (D.C.Cir. 1984).

Most recently, the federal district court in *Steffan v. Cheney*, 780 F. Supp. 1 (D.C.Cir. 1991) upheld the forced resignation of a Naval Academy midshipman who though not charged with homosexual behavior had admitted his homosexual orientation just weeks before graduation. Judge Oliver Gasch ruled that the regulations were rationally related to the military interest in protecting soldiers and sailors from AIDS. "Since Congress is empowered to raise and support armies, it may do whatever is necessary to protect the health and welfare of those armies * * *. The power to protect the armed forces from venereal disease is ample to sustain the power to protect them from what is now known to be a fatal and incurable virus."

[115] *Beller v. Middendorf* at 811.

[116] *Id.* at 812.

[117] *Supra* n. 17 at 1398.

[118] 881 F.2d 454 (7th Cir. 1989).

[119] 963 F.2d 1160 (9th Cir. 1992), *cert. denied* 61 U.S.L.W. 3413 (S.Ct. 12–8–92).

[120] The gist of the Ninth Circuit reasoning is revealed in the following passage: "The Army did not discharge Pruitt because she spoke candidly about her sexuality to a newspaper. Nor did it discharge her for publicly expressing her views on a timely and controversial subject, or for demonstrating compassion for and association with homosexuals. The Army discharged Pruitt because she admitted to being homosexual. * * * Pruitt's admission, like most admissions, was made in speech, but that does not mean that the first amendment precludes the use of the admission as evidence of the fact admitted. * * * The question is not whether the Army is free to discharge her for her speech, because it did not do so. The question is whether the Army is entitled to discharge her for her homosexuality—an issue not encompassed by Pruitt's first amendment claim. 963 F.2d at 1163–64."

[121] 473 U.S. 432.

[122] The Court ruled in this regard that "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like." 473 U.S. at 450.

[123] 466 U.S. 429 (1984).

[124] *Id*, at 448. *See also United States Dep't of Agriculture v. Moreno*, 413 U.S. 528 (1973) (invalidating under the rational basis test a provision of the Food Stamp Act that excluded households containing unrelated individuals because motivated by congressional dislike for "hippies").

[125] U.S. General Accounting Office, Defense Force Management: DOD's Policy on Homosexuality, B-247235, June 12, 1992; see also, U.S. GAO, Defense Force Management: Statistics Related to DOD's Policy on Homosexuality, B-247235, June 12, 1992.

[126] GAO estimated that in FY 1990, recruiting and initial training costs associated with the replacement of those discharged for homosexuality was $28,772 for each enlisted number and $120,772 for each officer.

[127] Officially, the Report of the Board Appointed to Prepare and Submit Recommendations to the Secretary of the Navy for the Revision of Policies, Procedures and Directives Dealing With Homosexuals, March 15, 1957.

[128] GAO recognizes that this study went beyond its directed task, but does not believe the information should be discounted for that reason alone. Critics have questioned the level of scrutiny GAO applies to the PERSEREC reports, particularly the earlier drafts.

[129] Hackworth, David, The Case for a Military Gay Ban, Washington Post, June 28, 1992: C5; Matthews, William, Clinton's Stance on Gay Ban Angers Many, Navy Times, October 5, 1992: 18.

[130] Historically, the American Psychiatric Association was a major influence in creating the policy excluding homosexuals from the service. At one time, homosexuality was considered a mental illness by this group and the American Psychological Association. Although homosexuality was dropped from the list of mental disorders in the 1970s, critics contend this change represented a change in these associations' political stance and was based not on scientific or medical concerns but rather on political activism. In addition, it is charged that the protests of these groups is based on medical or sociological opinions and considerations which do not take into account military considerations. These groups (the two APAs and ASA), however, deny these charges and note that efforts to link homosexuality to mental illness have failed. See Hooker, Evelyn, The Adjustment of the Male Overt Homosexual, Journal of Projective Techniques, 21, 1975: 18-31; Male Homosexuality in the Rosrschach, Journal of Projective Techniques, 22, 1958: 33-54; and, A Preliminary Analysis of Group Behavior in Homosexuals, Journal of Psychology, 42, 1956: 217-225.

[131] GAO noted that one of the eight departments visited did not have a policy dictating nondiscrimination on the basis of sexual orientation or allowing the employment of homosexuals. GAO made no mention of their findings at this department.

[132] H.R. 5208, Rep. Patricia Schroeder, May 19, 1992; S. 3084, Sen. Howard Metzenbaum, July 28, 1992.

[133] Amendment no. 3047, S. 3114, Congressional Record, Vol. 138, no. 128, September 18, 1992: S13984-S13987.

[134] Congressional Record, September 18, 1992: S13897.

[135] H. Res. 271, Rep. Barbara Boxer, November 6, 1991; S. Res. 236, Sen. Brock Adams, November 26, 1991.

[136] Cited in MacGregor, Morris, J., Jr., Integration of the Armed Forces 1940-1965, Center of Military History, United States Army, Washington, D.C., 1981: 312.

Mr. McCAIN. Mr. President, although it appears that the President has already made up his mind on this issue, regardless of what the 6 months of study disclose, I sincerely hope that my fellow colleagues in Congress will come to the debate with an open mind, and a willingness to understand the many difficult and complex issues involved.

Mr. President, I want to just make three points in this debate. Most of the aspects of this argument on both sides has already been fairly well ventilated.

I would like to talk about the process of this debate and what this vote means to the American people. The process under the rules that we go through in this body is a process of collecting information, holding hearings, reporting legislation out of committees with the proper oversight, and finally debating the legislation here on the floor of the U.S. Senate.

However, this vote today will short-circuit that process; in effect, it will determine the verdict before the trial. It forces a major and fundamental decision, concerning one of the most emotional and diversive issues that has come before this body in many, many years, before we have properly understood, examined, and scrutinized this longstanding policy.

Do not believe as you have heard here today that before 1982 there was no policy against homosexuals in the military. That is simply not the case. This longstanding policy will be fundamentally changed by the President of the United States on July 15, without the partnership, the association with, and indeed, the constitutional obligation of, the Senate of the United States.

A vote in favor of the Dole amendment is not for or against homosexuals in the military. A vote for the Dole amendment is indeed an affirmation of the process that we have in an obligation to go through, as elected representatives, to uphold the process as I have described earlier. I was very disappointed by the statement of the Senator from Rhode Island, my friend, who said if the Joint Chiefs of Staff do not agree with lifting the ban on homosexuals in the military then let them leave the military service. That is an incredible, callous, and cavalier attitude toward the brave men and women who volunteered to serve this country and put their lives on the line in defense of peace and freedom.

Let me say, Mr. President, that the Joint Chiefs have an obligation—the Chairman of the Joint Chiefs statutorily has an obligation to provide advice and counsel on military issues to the President of the United States. And I say that when you ignore, in fact, not even take into consideration as was the case in this particular scenario, the advice and counsel of the leaders who place the lives of the young men and women who volunteer to join the military, you are making a deep and serious mistake of which I will not be a part of.

The Joint Chiefs have a unique responsibility that we do not place on anyone else, on any other public, elected, or appointed official, and that is the very lives of the young men and women who volunteer to serve their country. This brings me to my final point.

These brave men and women in the military today are not conscripted. We have done away with the draft in this country. We are dependent upon the willingness and the desire of young men and women to join the military as a way of maintaining in what we are all proud to describe as the finest and highest quality Military Establishment in the world. Before we enact a fundamental change in policies toward personnel—and believe me Mr. President, it is the personnel, especially the young enlisted, that are the backbone of our great military forces—we had better find out what the effect on the All-Volunteer Force will be. What do the parents of these young men and women think? What do the young men and women who are considering joining the military think? Will they have been more motivated to join the military and serve this country or will they be less so?

I will tell you—that the initial responses that I am getting are that mothers and fathers all over this country are seriously concerned about the effect on the safety and lifestyle of their sons and daughters who serve in the military because of the policy change that the President of the United States has initiated.

Also, the young men and women themselves are concerned. They are concerned about the protection of their privacy and they are concerned about many other serious issues. Issues that are serious to me.

In summary, I ask my fellow colleagues to assess the impact on the All-Volunteer Force and our ability to keep the finest men and women that our military has ever known. That is why I urge my colleagues to maintain the present policy in place until we hold thorough and in-depth hearings, which I know will be conducted in a fair and evenhanded manner by the distinguished chairman of the Armed Services Committee. I most strongly urge a vote in favor of the Dole amendment.

The PRESIDING OFFICER. The Senator's time has been consumed. Who yields time?

Mr. COATS. How much time is left on this side?

The PRESIDING OFFICER. The Senator controls 15 minutes, the Senator from Georgia controls 20 minutes.

Mr. COATS. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. COATS. Mr. President, shortly the U.S. Senate will be faced with two votes. The first vote is a vote that will support the decision by President Clinton to change current military policy and change it now. It will change it in respect to recruitment of homosexuals into the military, a policy that our Joint Chiefs of Staff and virtually the entire military says will fundamentally alter the way the military functions. That first vote will be on the amendment that says we will accept that immediate change but we will study it over the next 6 months.

We can be forgiven for opposing that, when you realize that the President has already said that, regardless of what the study shows, it is not going to change his mind about making the change. I want to quote from his statement. He said:

> Well, I haven't given up on my real goals. I think this is a dramatic step forward. I can only tell you that I still think I am right. I feel comfortable about the way we have done this and I am going to maintain the commitment that I have.

Senator DOLE has offered an amendment. It will be the second vote. That amendment says that we should hold DOD policy relative to homosexuals in the military as it was before President Clinton ordered the change. Then we should take a 6-month period of time and have a real study and listen to the

Joint Chiefs and to sergeants and to privates and to those in the military most affected by any change in this policy. And gather all the evidence that we can and involve Congress, which is constitutionally guaranteed the right to be involved in setting policy, in a final decision as to whether or not such a change is in the benefit of our national security, in the benefit of providing the American people with the most effective military that we can provide them.

This is not an effort to discriminate against any class of citizens. This is an effort to say that the policy that has been upheld by the courts for many, many years and the policy that has been followed by our military for the 200 years of its existence in this country is a wise policy, is a policy that is fashioned on the basis of what is needed to form an effective fighting unit; that morale, good order, discipline, espirit de corps, is an essential element, essentially necessary to provide what is necessary to have an effective military.

Mr. President, I yield myself an additional 2 minutes.

We believe that before any policy change of this magnitude is made, that the Congress ought to study this thoroughly and carefully and wisely and then come to a decision about whether or not a change should be made. Only a vote for the Dole amendment allows this to go forward in the way that we believe is the correct process, in the way we believe will allow our military and those most affected to have input as to whether or not we should go forward with the President's decision.

So Senators have a very clear choice. They could either accept President Clinton's decision to change the policy now and study later or they can vote for the Dole amendment which will say let us keep the policy as it is. It has worked all these years. We are willing to take a look at it and hear the evidence and study it and then make a final decision. That way the American people, the American military, the Congress can have a say and have a role in determining whether or not this is a wise course to take.

I urge my colleagues to follow what I believe is a sensible course of action, and that is let us leave what is in place and was in place before the President's decision, let us leave that in place, study this, and then make a decision. We are jeopardizing and putting too much at stake by simply going forward with a decision I believe was not well thought out and not designed to provide the American people what they deserve, and that is the most effective military that we can possibly muster.

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

The PRESIDING OFFICER. The Senator reserves the remainder of his time. The Senator from Georgia controls 20 minutes, 35 seconds.

Mr. NUNN. Mr. President, I yield 10 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia, Senator BYRD, is recognized for 10 minutes.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Georgia.

Mr. President, I shall vote for both tabling motions offered by the two leaders on this matter, as there are elements of both amendments with which I disagree. I ask unanimous consent at this point, to use an old House expression, to revise and extend my remarks.

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

Mr. BYRD. The amendment by Mr. MITCHELL allows for a change in policy on this issue at the same time that it calls for a policy review. I do not think we can have it both ways. The President issued an Executive order on January 29, 1993 which removes from "future versions of the induction application" the "question regarding sexual orientation." This is a major change in policy on this matter. It prejudges the policy review, and anticipates a change in the policy which might not be supported by the findings of the 6-month review which it provides for. Therefore, while I do support a full review of the policy and hearings by the Armed Services Committee, I do not at this time support the change introduced by the President's direction of January 29, and therefore I cannot vote for the Mitchell amendment.

But I want to address my comments at this time to the Dole amendment. Everyone here, every Senator, knows of my great respect for my friend, BOB DOLE. I do not believe that he has read his amendment. This is a phenomenal amendment. It is extraordinary, to the point of its being bizarre.

I hold a copy of the Dole amendment and I am just astounded as I read it. I have never seen anything quite like it.

This printed text should be shown to a good grammar teacher. It proposes to trash the Senate rule book and the Constitution of the United States on one piece of paper, and in broken English. It provides that in certain circumstances, on legislation on this matter, the Senate shall be "deemed" to have passed the House bill in lieu of its own bill and the same shall be transmitted forthwith to the President.

Let us see what the Constitution says. Section 7 article I, paragraph 2.

> Every bill which shall have passed the House of Representatives and the Senate shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it—

And so on.

So what we are saying here is, if the House has passed the bill with the number H.R. 100 on it, the Senate has passed a bill with the number S. 150, the Senate shall be deemed to have passed H.R. 100 when, indeed, no such thing really happened. The same bill has to pass both houses—under the presentment clause of the Constitution—before it goes to the President.

We in the Senate sometimes use such language of "deeming" something as having passed. It is messy language. But at least it is done by unanimous consent.

This is not being done by unanimous consent in the Dole amendment. Instead, we are "deeming"—sight unseen—the passage of legislation by a majority vote. And I question, I seriously question the constitutionality of this approach.

Moreover, suppose that after passing the Senate bill, I decide I want to change my vote, I want to vote on that House bill. By the Dole amendment, I would be deprived of the opportunity of even asking for a vote. The Constitution says that any time one-fifth of the Senators present ask for the yeas and nays, a rollcall vote must occur. But this amendment would deprive me and any other Senator of that privilege.

This is a very unusual procedure.

What is "deem" to mean in this context? Are we to cease to be Senators and become deemers? Are deemers dreamers? This is not dreamland. It is a legislative body and I hope it is sober.

We are responsible for the words and clauses and measures that we pass. Each Senator's voting on each item that moves to the President's desk is the ultimate responsibility for which we are elected.

I cannot support an amendment that allows a bill to be deemed passed, rather than actually voted upon and actually passed by a majority.

Also, Mr. President, there is a hole in this thing big enough for the star Betelgeuse to go through, and that star, as Senators know, is so huge that it cannot pass between the Earth and the Sun, the Sun being 93 million miles away.

Well, here is the huge hole in this amendment. "Any proposed change in this policy," it says, "shall be submitted by the President in the form of a bill and shall be introduced in each House of Congress by the majority leader." It does not say how much time the majority leader has in which to offer it. He can take a week. He can take 2 weeks. He can take 6 months. It does not say he has to do it immediately. But everything else in the amendment is triggered off the time of his introducing the bill. The 3 days begin to run after he introduces that bill. Nothing will ever happen if the leader does not introduce that bill. What legislative craftsman would write an amendment of this kind?

I do not have enough time, Mr. President, to fully go into this, but let me say one or two other things. There is

no provision in here for sending measures to conference. Who is going to make the multiple motion?

I will content myself with one other item. Read this: "Any conference report shall be nondebatable." Now, why do bills go to conference? They go to conference because there are differences in the bills passed by the two Houses, and the conferences are for the purpose of resolving the differences between the two Houses. So, under the Dole amendment, if there is something in that conference report that I would like to attack, the conference report is not debatable.

Suppose the conferees do not act in good faith, suppose they put something in that conference report that is not relevant, not germane, and conferees have been known to do that. When it comes back to this body, it would be nondebatable. Suppose I raise a point of order. "Mr. President, I make a point of order that this provision is not germane, the conferees put it in." Suppose the Chair upholds my point of order. Suppose another Senator says, "I appeal the ruling of the Chair." We have no time to debate the appeal. By a majority vote, the Chair would be overruled.

Suppose the House, with its different rules, however, takes that same conference report back and a House Member says, "Here is a provision that is not germane." Well, they can send it to the Rules Committee. They have a different kind of Rules Committee than in the Senate, which is so ably chaired by the Senator from Kentucky [Mr. FORD]. They can get a special rule waiving points of order.

So here the House passes a bill that has a nongermane provision in it—line-item veto, enhanced rescission, term limits, not relevant, but the House conferees and the Senate conferees were not loyal to their faith. Senate conferees do not have to pay any attention to instructions of the Senate, but it comes out with any kind—you name it—of nongermane amendment. The House can get a rule waiving all points of order, and it goes sailing through and then comes over here, and we cannot debate it. We cannot even debate it.

Why, Cato the Philosopher conducted a successful filibuster 2,053 years ago when Julius Caesar wanted to be a candidate for the office of consul. The Roman Senate had voted Caesar a triumph. But a general could not enter the city of Rome and go back out and then return to the city to receive his triumph. But in the meantime, the elections for the office of consul were about to be held, and Caesar wanted to be a candidate for consul. Through his friends in the Senate, he hoped that they would be able to get legislation through the Senate that would allow him to run for consul while absent from the city so he could be elected consul and also receive his triumph.

Cato the Younger held the Senate floor and spoke against the proposition until the time ran out and Caesar had to settle for one thing: He had to either give up his triumph or not run for consul. He gave up his triumph. Cato was successful in that ancient filibuster.

The Dole amendment says that the conference report would be nondebatable—even though it may be injurious to my people in West Virginia the people of Maine, and the people of Kentucky. The Senators from those States would not be able to filibuster the conference report. Two of the things that make this institution so unique are: Unlimited debate and the ability to amend. The Dole amendment would trash the institution.

Mr. President, I close with those lines by Hughes Mearns.

As I was going up the stair.
I met a man who wasn't there.
He wasn't there again today.
I wish, I wish he'd go away.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I do not want to monopolize the time on this side. Would the Senator from Indiana like to yield at this time and then I will yield to the Senator from Washington some time? How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. Nine minutes and thirty-five seconds for Senator NUNN.

Mr. NUNN. How about the Senator from Indiana?

The PRESIDING OFFICER. Fourteen minutes.

Mr. COATS. I have one more speaker before the Republican leader.

Mr. NUNN. I will yield to the Senator from Washington 3 minutes at this point.

Mr. COATS. That is fine.

Mr. NUNN. I yield to the Senator from Washington 3 minutes.

Mrs. MURRAY. Mr. President, I rise today out of a deep sense of frustration, frustration that the most important piece of legislation, the Family and Medical Leave Act, has been delayed today by politics because so many of us are waiting for its passage. But I am also frustrated by the debate this afternoon because most of this debate has been in the abstract.

I want to share with my colleagues the experience of a real person, Col. Greta Cammermeyer of Washington State whose courage helped define this issue for me. Colonel Cammermeyer was the chief nurse of the Washington National Guard. She was a decorated Vietnam war veteran with the highest professional awards from the Surgeon General and she was on her way to becoming chief nurse of the U.S. National Guard.

During a routine security interview, she was asked a question required by regulation about her sexual orientation. She answered honestly and discharge proceedings began immediately. For Greta Cammermeyer, her distinguished military career of 26 years was summarily ended. For the National Guard and the Nation, the services and combat experience of the most distinguished nurse in the National Guard were lost, lost not because she had done anything wrong, but because she did what we tell our kids to do: Tell the truth no matter the consequences.

Mr. President, I believe it is time to move on.

Mr. President, I believe that President Clinton's decision to seek an end to the policy barring gay men and lesbians from the military is a sound one. It was a commitment made by every Democratic candidate for President last year. It has received the editorial endorsement of major newspapers in my State and throughout our Nation. It is long overdue.

The proposal to implement this decision, offered by Senators MITCHELL and NUNN, is a good first step toward this goal. The President is the Commander in Chief. The strength of our democracy lies in civilian authority over the military. He is acting on principle and, after considerable deliberation, on what he believes is best for our Nation. We should respect his decision.

The policy barring gays from the military is based wholly and simply on stereotypes and prejudice. It is bigoted. It wastes some 27 million American taxpayers' dollars every year, and hurts people and destroys careers. It springs from intolerance, myth, and discrimination.

The Republican administrations defended this policy with the same arguments used to deny African-Americans the right to serve their country. I am truly disappointed that Gen. Colin Powell has so vocally opposed his Commander in Chief on this matter. The same arguments were raised against women joining the services. The United States has the most modern military in the world, and an antiquated personnel policy. The President has correctly decided to discard this policy. It is time to do so.

The question is not whether there are or should be gays in the military. There are. One should not have to lie to serve his or her country. The ban encourages harassment of gays, compromises national security, and denies our Nation the service of some of our best soldiers and sailors. Soldiers like Col. Greta Cammermeyer, a Bronze Star Vietnam vet, and sailors like Joe Steffan, top of his class at Annapolis.

Most of the discussion about gays in the military deals with abstractions. People have expressed fears about disruptions in morale based on all sorts of supposed horrors. I would like to share with my colleagues the experience of a real person, Col. Greta Cammermeyer, of Washington, whose courage has helped define the issue for me.

Colonel Cammermeyer was the chief nurse of the Washington National Guard. A decorated Vietnam war veteran with the highest professional awards from the Surgeon General, she was on her way to becoming chief nurse of the U.S. National Guard. During a routine security interview, she was asked a question required by regulation about her sexual orientation. She answered honestly, and discharge proceedings began immediately.

In one fell swoop, two terrible things happened. For Greta Cammermeyer, her distinguished military career of 26 years was summarily ended. For the National Guard and the Nation, the services and combat experience of the most distinguished nurse in the National Guard were lost. Not because she had done anything wrong. But because she did what we tell our kids to do: tell the truth, no matter the consequences.

Greta Cammermeyer is what I have defined to my kids as a hero. A profile in courage. She told the truth about her sexual orientation, knowing the military's policy would cost her a 26-year career and a promotion to a lifelong goal of being the National Guard's highest ranking nurse. It is time to change that policy and lift the ban against gays in the military.

The President is right. The military's standard for service should be conducted. This was unfortunately not the case in the infamous Tailhook incident. That was a double standard, and so is the policy banning gay men and lesbians from the armed services. One should not have to lie to serve his or her country. It is time to move forward and lift the ban.

I ask unanimous consent to print in the RECORD, several items that I have found persuasive on this question. Editorials from the Seattle Times and Tacoma News Tribune, and an op-ed piece from last Sunday's Washington Post by Lisa Keen in which she succinctly lays out the case to end the ban on gays in the military.

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

CLINTON SHOULD ACT NOW TO CHANGE ANTI-GAY RULES

President Bill Clinton has the authority to reduce the harassment of gays in the military and pave the way toward full acceptance of homosexuals in the armed services. He should use his authority quickly and decisively.

Clinton is having hard going fulfilling his campaign promise to integrate gays into the services. The military brass is against him and so are some powerful members of Congress. Even his own secretary of defense is urging a six-month cooling off period to work out the details.

That's fine, but not before firm action is taken by the president to stop the military from asking potential recruits their sexual preference and halt the automatic prosecution and discharge of gays and lesbians now in military.

Clinton's obligation is not to the Joint Chiefs of Staff or the Congress but to the American electorate. If he delays action or tries to reach compromise, the effect will be harmful to his public standing in the short run and weaken the strength of his presidency on other, tougher decisions in the future.

The foundation of American military hierarchy is civilian control. In large measure, the debate over the acceptance of gays in uniform was concluded in the results of the election, which handed Clinton the authority of commander in chief.

Reducing the ban on gays in the military will not be popular in every corner of the country or the Congress, but Clinton cannot hesitate now if he is going to lead.

He must not let the momentum and this issue slide away to an equivocating Congress or allow military commanders to tarnish his compact with voters.

[From the Morning News Tribune January 27, 1993]

FIND COMPROMISE ON MILITARY GAYS

President Clinton made it clear to his unhappy top military brass Monday he has no intention of backing down from his campaign pledge to end discrimination against gays in the military.

Clinton was right to do so. It is time to end the U.S. military's unjustified practice of discharging gays who have served their country honorably, for no other reason than their sexual preference.

But Clinton must tread carefully. Although it is his prerogative as president and commander-in-chief to order the Joint Chiefs of Staff to fall in line, Clinton should recognize the danger of acting precipitously.

Clinton is now well aware he risks a politically disastrous uprising in Congress—among Republicans and Democrats alike—if he moves too fast. There is no way to completely defuse such a politically volatile issue, but a well-considered strategy of consultation and compromise would improve the new policy's chances of success.

That is precisely what Defense Secretary Les Aspin recommends. Aspin suggests Clinton begin with an adminsitrative directive allowing Aspin to halt action against gays being ousted because they admitted their homosexuality. The military would also stop asking recruits about their sexual orientation. The second step, which carries more symbolic weight, would be a formal executive order by Clinton some months later repealing the ban on homosexuals in the military.

Aspin's proposal is sound. It would give the president time to allay fears in the military and Congress by showing the new policy will be implemented with respect for the military's need for discipline. Rules based strictly on conduct are fair and reasonable. Gay soldiers' clubs, spousal benefits for gays and open displays of sexual preference are not.

The administration and Congress should head for the middle ground between the two extremes on this issue—the gay activists who seek a governmental "blessing" of homosexuality on one side and outright homophobes on the other. There's a place in America's armed services—just as there always has been unofficially—for responsible homosexuals who simply want to serve their country and do their jobs.

[From the Washington Post, January 31, 1993]

THE FEARS ARE UNJUSTIFIED

(By Lisa Keen)

Should gay people in the military get better treatment than heterosexuals, worse treatment or the same?

This is really the basic question in the debate about President Clinton's proposal to repeal the Defense Department's regulations barring gays. But media reports on who says what often make it seem much more complicated than that.

It's no surprise: The media are not accustomed to covering gay issues and are unfamiliar with the details. That has given opponents of Clinton's plan an advantage, which they are using—along with some ever-so-effective scare tactics—to stir up hostility to the idea of ending a form of discrimination. In psychobabble, this is known as "fogging"—keeping people from seeing the key issue by clouding it over with a swirl of smaller and less important matters. Some examples:

(1) With big changes like this, it's better to study the idea first.

The Pentagon has already studied it numerous times and discovered from its own research that gay recruits perform as well or better than their heterosexual counterparts.

(2) If gays are allowed into the military, Congress will have to change military law, which currently prohibits sodomy.

Military law prohibits sodomy with a person of the same sex and opposite sex. Since many studies have shown that more than 90 percent of heterosexual couples engage in oral sex, the military might as well either change the code for everybody or retain it for everybody.

(3) Gays in the military will threaten the privacy of heterosexuals.

The truth is that many service members live off-base in their own apartments, and those who rely on base housing share a dorm-like room and a bathroom that has a door. The only place where service members must rely on group shower facilities is in basic training. If privacy is such a concern, perhaps the military could consider upgrading the facilities at boot camp.

(4) Gays in the military will openly lust after their colleagues.

If gays did this, their actions would constitute sexual harassment, as in the Tailhook scandal. Sexual harassment is already prohibited under military regulations. As long as the military is willing to enforce those regulations, the solution to any such problem with gays is already in place.

Furthermore, there is no evidence that the danger of gays openly expressing lust for their same-sex colleagues would be greater than straights openly expressing lust for their opposite-sex colleagues.

(5) Discrimination based on race is different from discrimination based on sexual orientation—race is an immutable characteristic. Gays can choose to have sex with a person of the opposite sex if they want to. We should not protect people against discrimination based on characteristics that they freely choose and could change.

A person's religion is a matter of choice, too. A person may be born into a Baptist family, but he or she is free to become Catholic and can choose to do so. But that "choice" was considered so precious that the founders of this nation made its protection a part of the constitution's Bill of Rights.

But the implication that sexual orientation is a choice has become a favored argument of the uninformed and the willfully ignorant. Numerous recent studies have all pointed to evidence that sexual orientation is genetic or biological in origin—it is immutable.

(6) Gays in the military will mean more members of the service will have AIDS and spread it to other members.

Again, the DOD already has an HIV antibody testing policy that provides as much insurance as possible that new recruits with HIV infection are barred. The argument that battlefield blood transfusions require this kind of scrutiny are also unfounded, since the military acknowledges that it stores blood transfusions for use in battle. It does not perform person-to-person blood transfusions on the battlefield.

The overall AIDS argument is based on the belief that only gays get AIDS. But more and more, the new infections are occurring among heterosexuals.

(7) U.S. servicemen and women are sometimes deployed in countries where homosexuality is considered an abomination. That could hurt America's image.

Those same countries and many others also consider adultery and sex out of wedlock to be abominations. But male heterosexual U.S. service members, who have gotten thousands of women pregnant overseas, are still allowed to serve in the U.S. military.

(8) President Clinton's proposed executive order would allow gays into the military for the first time, requiring the military to figure out how to accommodate them.

Gays are already in the military, always have been, and both military leaders and Senate opponents of Clinton's plan have already acknowledged that. The executive order would ensure that gays are treated the same as heterosexuals are treated now.

Under current policy, a heterosexual member of the service cannot be discharged from the military simply because of his or her sexual orientation. Under Clinton's executive order, that would apply to service members with a homosexual or bisexual orientation as well.

(9) Clinton's decision to talk with military and congressional leaders about how best to implement the executive order is his way of backing off the executive order idea.

President Harry Truman did the same thing in 1948 when he issued an executive order to end the military's policy of racial segregation. The Truman executive order itself established an advisory panel and ordered that panel to determine how best to implement the executive order and time its implementation without jeopardizing the military's ability to perform its duty.

(10) Gays in the military would hurt morale and jeopardize our military's readiness.

The public counts on the Department of Defense to train its servicemen and women well. It is an unsettling idea that this country's highly trained fighting forces would be so easily demoralized by acknowledging the reality that there are gay troops among them.

The country's military leaders are not elected officials. Bill Clinton is, and during the campaign, he was up front with the American people in saying that he would seek to end discrimination based on orientation in the military. The American public voted him into office, and now he is keeping his word. That's how democratic government works.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. I yield 3 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I rise in strong support of the amendment offered by the majority leader and the chairman of the Armed Services Committee, and in opposition to the alternative presented by the Senator from Kansas.

The action taken last week by President Clinton was a first essential step toward ending the discrimination against gay men and lesbians in the Nation's Armed Forces. It is now time to move forward and not to turn back.

This action is the latest chapter in the unfinished business of America. This country was founded on the principle of equal justice under law and opportunity for all. If we do not end discrimination wherever it exists in our society—then America is not America. We have been here before, and we will surely be here again.

I agree with President Clinton. America does not have a person to waste. The issue is not whether there are gays in our Armed Forces, there are, and they serve with great distinction. The question is whether we will continue to force them to lie about who they are—in order to serve their country.

The real issue is how we can make progress with this important policy change, in a sound and effective manner, in consultation with all affected parties, and reach the goals of equality and efficiency.

We know that we cannot change hearts and minds overnight. But if we have learned anything from the long and painful experience of our Nation's history, it is that changing the law is an essential step in breaking down barriers and fundamentally changing attitudes. It has been done before. And it must now be done again.

It was once thought that black and white soldiers could not serve together. In fact, in 1948 we heard in this very chamber, and read in the pages of major newspapers across this country that "One of the surest ways to destroy the efficiency of the Army" was to integrate blacks and whites.

I am sure that my colleagues would be shocked to review the Senate floor debate of a half century ago, and see just how little the arguments for bigotry have changed. We were told in 1948 that integrating black and white members of the Armed Forces would raise insurmountable issues of cleanliness, health, and morale.

Nevertheless, despite strong resistance and threats of mass resignations, we integrated our Armed Forces—and proudly, America moved forward.

As stated by the Federal district court in California in its recent opinion ordering that petty officer Keith Meinhold be reinstated in the Navy:

The Department of Defense's justifications for its policy banning gays and lesbians from military service are based on cultural myths and false stereotypes. These justifications are baseless and very similar to the reasons offered to keep the military racially segregated in the 1940's.

A 1991 report commissioned by DOD and undertaken by the Defense Personnel Security Research and Education Center stated, and I quote:

The order to integrate blacks was first met with stout resistance by traditionalists in the military establishment. Dire consequences were predicted for maintaining discipline, building group morale, and achieving military organizational goals. None of these predictions of doom has come true. It would be wise to consider applying the experience of the past 40 years to the integration of homosexuals.

More recently we were told that if women serve alongside men, the integrity of the military system will be seriously diminished. Once again, adopting a policy of inclusion, we improved our armed services, and our society as a whole.

We must not be deterred now from taking this next important step. It is time to shift the focus from status to conduct. If the Armed Forces have their priorities right, they should deal with the festering epidemic of harassment of women in the military, instead of squandering talent and resources by denying gay and lesbian Americans the opportunity to serve their country.

According to the General Accounting Office, the Federal Government has spent nearly $500 million over the past 10 years investigating more than 15,000 homosexuals and discharging them. In the same 10-year period, more than 100,000 cases of sexual assaults on women were committed by heterosexual servicemen—100,000 cases.

It is long past time for the Armed Forces to start dealing with people's conduct, and stop discriminating against anyone because of who they are.

Last week's action is a first step. Recruits will no longer be questioned about their sexual orientation, and discharges and court cases will be put on hold pending a comprehensive review of this policy, and further action by the President.

I hope that we can work closely with the administration and our colleagues in Congress to ensure complete implementation of a nondiscrimination policy as rapidly as possible. Whatever name discrimination takes—racism, sexism, homophobia, apartheid, ethnic cleansing—it ought to be exposed and rooted out.

Change is never easy, but it can be done. Canada, one of the few countries in the NATO alliance which had a policy similar to ours, lifted its ban on gays in the military 3 months ago under court order. According to the Canadian Department of National Defense, they have had no resignations, no reports of gay bashing, and no one standing up to declare their sexual orientation. The implementation was without incident. This was the experience of the Australian government that also recently lifted its ban.

President Clinton's decision to delay final action on an Executive order lifting the ban will allow ample time to

understand concerns and develop appropriation implementation plans. The Joint Chiefs of Staff, servicemen and women, the gay and lesbian community, and other interested parties will all be heard.

Senator NUNN plans to schedule hearings on this issue in March, and as a member of the Armed Services Committee, I look forward to those hearings. I think that we can all learn something.

I wish we could have moved more swiftly— and I recognize that some wish we would not move at all. We have all compromised—on both policy and process.

The President has responded wisely and created an opportunity for dialogue and debate. I hope that all Senators will respond positively to this gesture of cooperation and resist any attempt to end-run this constructive compromise, and undermine our Commander in Chief.

Progress has never been easy. But it has always been worth the effort. I look forward to a day when the nation's military, and our society as a whole, will base its judgments on character and conduct, not orientation. It will be a better day for all Americans, and we will have a stronger and fairer country.

In the interim, I urge my colleagues to support the Mitchell-Nunn amendment and oppose the Dole amendment, so that we can dispose of this matter—and return to our efforts to provide family and medical leave for the working men and women of America.

Mr. President, I join others in wanting to move ahead toward the completion of this legislation, which is so important for families all across this country.

But with the issue that is before us, I want to join these expressing support for the Nunn proposal. Change comes slowly in society, and change with regard to racism, ethnicity, religious intolerance, sexism, apartheid, and homophobia has come extremely slow over the history of this country.

This proposal will permit the process to move forward in the manner that has been outlined by those who have spoken already. My own sense is that we ought to move forward, as have other countries. The debate and statements we have heard on the floor have a remarkable resemblance to the kinds of statements that were made some 40 years ago, when this Nation was debating whether those whose skin was a different color could serve this country with distinction and honor.

The words could basically be exchanged.

I welcome the day, Mr. President, when we are going to root out that kind of discrimination in our society and in the Armed Forces.

I think what has been outlined here is an extremely reasonable way to proceed. Many of us wish the steps would be taken more rapidly; others not at all. This is a fair compromise. I hope that it will be supported.

Mr. COATS. Mr. President, I yield 3 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I rise today in support of the Dole amendment regarding the issue of service of homosexuals in the military.

Many of us in the Senate and those of us sponsoring this amendment feel this matter should be decided by the military experts and leaders—after considerable debate and hearings on the subject—along with a vote by the Congress. I for one, support this course of action. I do not advocate any form of gay bashing, or homophobia. That is not the intent here.

However, there are several tough issues involved here, ranging from health care of service members, to same sex marriages, to benefits for homosexual partners, to the morale, discipline, and welfare of the members of the armed services.

It is an extremely controversial area which must be thoughtfully and carefully considered. That is why we must proceed in an orderly and prudent fashion. It is important that we conduct hearings on this issue and listen so very closely to what the military experts and others, including representatives of the gay community, and the health care community, are saying before making any decisions to change existing policy.

Before rushing to approve policy changes arising out of campaign promises that were made without consultation with the Congress responsible for these issues or our respected military leaders, it is now our responsibility to hear and consider the opinions of our senior military leaders and other experts—and then to vote on this matter.

I have received many calls and letters from people who feel very strongly about this issue.

I understand the depth of feeling on the issue and I am continuing to listen. That is what this amendment advocates. Let us call a time out and listen to the experts. After a thorough policy examination—Congress is entitled to vote on such a major potential change in military policy.

The Dole amendment does the following: First, it allows for a thorough review of the issue regarding the service of homosexuals in the military.

Second, the policy that was in effect on January 1, 1993, regarding the service of homosexuals in the military will be reinstated during this review and shall remain in effect until the completion of this review.

Third, any proposed changes to the policy will be presented to both Houses of Congress by the President in the form of a bill which shall be amendable and which shall be voted on by Congress before becoming law.

I believe this is the most thoughtful approach possible and that it ought to be adopted by the Senate.

Finally, I think there has been some unfortunate and erroneous interpretation of my activities in this matter. I have always favored an up-and-down vote on this issue or a motion to table directly on our amendment. I have never waivered from that. I want that to be absolutely clear. There has been some remarkable distortion of that.

Remember also that the military is not a social organization; it is a killing machine, and designed to protect our national health and safety. We must keep that distinction in mind as we deal with this issue which is totally different than anything we have dealt with regard to civil rights or other rights in this society.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, given the time limitations we have had, a number of Members have not been able to speak, or have reduced their statements.

I ask unanimous consent that I be allowed to submit a full statement of my remarks on this issue, and that other Members may be allowed to do so also.

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

Mr. MITCHELL. Mr. President, I yield 5 minutes to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Mr. President, I thank the Chair.

What is it that makes an excellent soldier? I submit to you that it is five basic virtues: Devotion to duty; loyalty to country, commanders, and comrades; skill in military arts; personal integrity; and courage. If you have these qualities, you can be an excellent soldier, whether your name is Manursky or Jefferson, Goldberg or Nguyen, Warner, Dole, Kerrey, or McCain.

A number of Americans who have these qualities, however, are being excluded from serving their country in the military for reasons beyond fitness or performance.

People have told me for some time that they cannot understand how someone who thinks of himself as a gung-ho marine can march to the music of a drummer that I do not hear.

Mr. President, the drummer I hear plays the Marine Corps Hymn. It still gives me a chill, and I still stand when it is played. I certainly do not want to detract in any way from the military's effectiveness or performance.

Because of that, I cannot stand by and let a policy that I consider less than perfect keep our services from attracting the best and most competent

people. The issue should be not what kind of person you are but what kind of soldier, sailor, airman, or marine you are.

As a former marine who considers his 34-plus years in uniform and in the reserve to be the proudest affiliation of my life, I well understand those who argue the importance of maintaining morale and good discipline in the ranks.

But I would suggest to you, Mr. President, morale is in the heart of each service person. The threat to morale comes not from the orientation of a few but from the closed minds of many. President Truman recognized that when he ordered the services to be integrated by race despite the racial animosity of many then in service.

Do some of today's soldiers fear what they do not understand? Certainly, they do. Obviously. But should America's policy be guided by fear, or should we work to overcome prejudice by showing that merit and behavior, not orientations, are what counts in the military?

I have spent a great deal of time discussing this with a number of friends, including the Chairman of the Joint Chiefs, Gen. Colin Powell. Some think that I am simply on the wrong side of this issue, and I understand this and other objections to the proposal.

General Powell recently drew a difference between discrimination based on sexuality, which he called a behavior, and that based on race, which he called a benign characteristic. But I summit to you that race is obvious, while sexual preference is not. It is an even more benign characteristic; indeed, an invisible one, until and unless it is expressed in conduct. And if that sexuality is expressed, it is no longer benign. Then it will run into the existing regulations of the Uniform Code of Military Justice.

The code offers sufficient protections against much of the conduct that supporters of this amendment fear. And it can certainly be expanded to prevent other breaches of decorum or good order.

The specter of drill sergeants dancing together is unsettling, to say the least, Mr. President. But some of the amendment's supporters fail to note it is just the kind of behavior already prohibited by the Uniform Code, as is almost all of the conduct presented as a concern by those who are in favor of this particular amendment.

The President is the Commander in Chief of the Armed Services, and he sets the goals. Just as many military men were given the goal of ejecting Iraqi forces from Kuwait, and led the plan and implemented that goal, I believe that the military should also be cast with making the President's goal a reality.

As a former military commander, I can tell you that if the goal of truly equal access to military service is to be reached, I believe that the military itself will have to come to terms with it.

That will best be done if given the proper role of implementing the President's directive. The hearings announced actually last year by the distinguished chairman of the Armed Services Committee will add information and understanding to that process and will let us fulfill the Congress' proper role of ensuring that readiness is maintained while achieving the President's goal. But I ask we not let fear govern our actions. While we may not perfectly understand what motivates individual sexuality, we cannot allow that lack of understanding to block deserving patriotic Americans from service.

Mr. President, I hope that my colleagues will oppose the amendment offered by my distinguished and very respected colleague, the Republican leader, in this particular instance.

I yield the floor.

Mr. DOLE. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. Ten minutes, eighteen seconds.

Mr. DOLE. Mr. President, I make one suggestion to the majority leader either before or after we close debate, if we could have the second vote maybe limited to 10 minutes.

Mr. MITCHELL. That certainly is agreeable with us.

Mr. DOLE. That would be back-to-back votes. I understand there still may be another amendment offered. There is an effort being made to work that out. I hope that can be done. There is no limited debate on that particular amendment.

Mr. JEFFORDS. Mr. President, few issues have generated as much debate and emotion over the last few months as the question of whether to lift the ban on service by homosexuals in the U.S. military. My office has received many, many calls over the past weeks from people on both sides of this issue. While we have a reasonable compromise before us today, it will be quite some time before this issue is finally resolved.

As my colleagues know, there have always been gays in the military and there are many homosexuals proudly serving their country today. In spite of the current ban that prohibits their serving, these men and women have chosen to do so and many will stay, no matter what legislation we might enact today. As our society's concept of individual rights has evolved, I do not believe we can demand that all homosexuals be forced out of the military. And it would not benefit our national security to do so. Rather, our task is to determine how we can best confront the reality of military service by homosexuals and manage the transition to a more stable and just policy.

Having served over 3 years on active duty in the U.S. Navy on board ship and over 25 years in the U.S. Naval Reserves, I am well aware of the concerns that many people have raised about the conduct of military personnel. And I share some of those concerns. No serviceman or servicewoman should have to worry about his or her privacy or safety. But this is primarily a question of conduct, Mr. President. Sexual harassment, no matter what the orientation or motivation of the individual, must not be allowed.

Similar concerns were raised when the decision was made to desegregate the military and to integrate women into the Armed Forces. These concerns had to be dealt with and behavioral regulations clearly articulated to prevent such fears from being realized. The same will have to happen now to ease this transition to a new policy. This type of change cannot happen overnight. Hearings must be held, rules of conduct re-evaluated and military procedures reviewed. The concerns of military personnel at all levels must be listened to and taken into account. It is critical that this change, as with any substantive change in the Armed Forces, not result in any drop in the morale or effectiveness of our military.

Mr. LEVIN. Mr. President, I rise in opposition to the Dole amendment. The country needs to consider this issue in a dispassionate manner—not with emotional, extreme, and uncompromising rhetoric. Changing a part of the institutional culture of the armed services is serious business which requires sober, rational, and reasonable consideration. Our Nation's safety, as well as the well-being of our men and women in uniform, depend upon our efforts to forge intelligent answers to the questions which are raised by the President's plan.

While I believe that the ban against gays and lesbians should be lifted, there are complex issues with regards to such a policy change which must be carefully looked at. The President's plan of allowing for 6 months for the Joint Chiefs of Staff to put together recommendations on how to implement these changes is a wise one—one that will ensure that all pertinent aspects of this issue are considered. Congressional hearings should also provide an opportunity for lawmakers and the public to study the issue in greater depth from a balanced set of witnesses. The hearings should carefully examine how most of our allies in NATO, who have already lifted the ban, have addressed this issue in their own armed services.

The Dole amendment takes a step backward. I urge my colleagues to reject it.

Mr. CAMPBELL. Mr. President, I rise today to address the compromise agreed to by the leadership and President Clinton as we address the current ban on gay and lesbian Americans serving in the United States military.

As a person who knows the sting of discrimination, I do not support this

ban. I believe discrimination based exclusively on sexual orientation has no place in our military any more than ethnic discrimination has a place in our military. I support elimination of this ban combined with strict sexual conduct codes for all soldiers, sailors, airmen and marines—gay or straight, as defined in the Uniform Code of Military Justice.

I believe pragmatism, fairness, and common sense—not unfounded fears or old wives' tales of gay behavior should drive this debate.

As all military commanders freely acknowledge, there are about 180,000 homosexuals who currently serve in the Armed Forces ably and honorably. These individuals have displayed the same acts of heroism, courage, determination, and sacrifice for their fellow soldiers and country as heterosexual soldiers. Many of these individuals have distinguished records and careers that would be the envy of any soldier.

Our Armed Forces wasted over $27 million last year hunting and discharging gay and lesbian soldiers.

So the real question is not, should lesbian and gay Americans be allowed to serve in the Armed Forces?—they already are serving. The question is, how will we treat them? I believe that we should treat these soldiers as we treat all others. Let's make a distinction between their sexual orientation and their personal conduct.

This change may seem difficult right now. There are many emotional arguments against equality, but they are unwarranted. We cannot live by unjustified fears of change. We must have the courage to eliminate this ban because it is the right thing to do.

In 1862, Abraham Lincoln was vilified for allowing black soldiers to fight for the Union, but he took the heat and he did the right thing.

In 1951, Harry Truman was vilified for integrating our military. This was 3 years before Thurgood Marshall argued Brown versus the Board of Education to integrate the public schools, but Truman took the heat and he did the right thing.

By trying to address this inequity in the military, President Clinton is doing the right thing.

This discussion is not about lifestyles or choices, it is about discrimination, and in my opinion should be separate issue and not attached to the Family Medical Leave Act. I applaud Senator MITCHELL and Senator NUNN for their efforts to find an equitable solution to this debate and look forward both as a Member of this body, and a veteran of the Korean conflict to helping resolve this issue.

Mr. DODD. Mr. President, this amendment embodies everything that the American public dislikes about the way our Government is run. As far as they are concerned, the gridlock in Washington has picked up right where it left off.

And the public has every right to feel that way, Mr. President. This issue has absolutely nothing to do with the Family and Medical Leave Act. Nothing. Yet some Members on the other side of the aisle have seen fit to bring this issue before this Chamber.

While we stand here and argue the germaneness of the underlying amendment, American families continue to suffer. Thousands of unemployed aerospace workers are lining up for unemployment applications. Just last week in my home State of Connecticut, Pratt & Whitney workers were notified that another 6,700 layoffs were coming. Three months ago, it was 1,400 Textron workers. And 10 months ago, it was 700 welders and pipefitters at the Electric Boat Shipyard. The people of this country are hurting Mr. President—and they are looking to us for relief.

They are looking to us to provide them with some sense of security in their jobs, in their homes, and in their families. This bill is the first step in addressing the real needs of American families.

Yet, if it were not for these delaying tactics—we could today pass this legislation assuring working Americans that they can be there when their families need them.

Mr. President, I believe that men and women should be permitted to serve their country based upon their qualifications, not their orientation. Conduct, and personal integrity, should be our benchmarks for determining who should continue to serve.

In a Nation that prides its very existence on the promise of equal opportunity for all, I find the current prohibition policy to be baseless. And just as our country dealt with the difficult issue of integration in the military during World War II, the time has come to remove this final, pointless barrier from our military personnel regulations.

I am not suggesting that this will be a simple change, or one that could be accomplished overnight. President Clinton has worked hard to address the concerns of many, both inside and outside of the services, regarding this difficult transition. He has proposed 6 months of study on how best to implement this measure.

I believe that is a fair and equitable approach to the matter.

Mr. President, many of us have no doubt visited Arlington National Cemetery at one time or another. Each time I visit that quiet resting place for our Nation's veterans, I can not help but be moved by the clear evidence of so many who have laid down their lives for this country. Yet, as I gaze down row after row of fallen service members—I see no distinction. I see no separation. I see no isolation. Each and every tombstone from the modern era is equal. No mention of race, no mention of religious affiliation, no mention of sex, no mention of sexual preference, just a name and a date. Equals in the sight of their peers.

Mr. President, our Nation is waiting. We have so much to do and for the first time in 12 years we possess the mechanism to implement meaningful and lasting change.

Our Nation is waiting for Washington to cast aside the shackles of gridlock and to begin working in earnest on the problems facing our country. Health care, job creation, and a solid family leave policy are the issues the American people have told us they care most about.

We simply can not afford to continue this foolish game. Our future and the future of our children is literally in the balance. We must begin to move this country forward if we are to have any hope for renewal. This underlying amendment has no place on this bill and it has no place in our society. I urge my colleagues to reject the underlying amendment and adopt the more moderate proposal as offered by Senators MITCHELL and NUNN.

Mr. GLENN. Mr. President, as a cosponsor, I rise in support of S. 5, the Family and Medical Leave Act of 1993 and urge my colleagues to pass this legislation.

Twice before, the Family and Medical Leave Act was passed by the Senate and then vetoed by President Bush. We now have the opportunity to get this legislation signed into law.

We stand at an economical crossroads in America. Our families are being torn apart by the rising cost of health care, layoffs, and unemployment. Our economic competitors in Europe and in Asia have family and medical leave programs. They have struck a balance between the needs of one's family and the needs of the work place. The Family and Medical Leave Act of 1993 will do just that for working people across America.

This legislation will provide up to 12 weeks of unpaid, job-protected leave per year for the birth of a child or the serious illness of the employee or an immediate family member. However, S. 5 will exempt businesses with 50 or fewer employees, protecting small businesses from extraordinary costs. Thus, claims that this legislation will hurt American competitiveness are not well founded. In fact, S. 5 will help companies retain some of their best employees, and foster a sense of family among employers and their workers. Testimony from CEO's of companies that already have some type of family and medical leave policy has illustrated this point. And this sense of loyalty and family will lead to increased productivity, and therefore, increased American competitiveness in the global economy.

Additional safeguards for businesses are included in the Family and Medical Leave Act. Employees will be required

to provide adequate medical certification to the employer justifying the leave. Employers may get a second opinion. Also, employees must provide 30 days notice for birth of a child, or imminent medical treatments. Furthermore, employers will be permitted to exempt key employees from coverage—the highest paid 10 percent of their work force.

This bill is about family values—about letting families help each other in a time of need. People should not have to decide between caring for one's children or family members and keeping their job.

I urge my colleagues to pass S. 5, the Family and Medical Leave Act of 1993.

AMENDMENT NO. 17

Mr. DURENBERGER. Mr. President, I rise reluctantly to oppose the measure offered by the distinguished minority leader. Although it is a sound response to the Clinton administration's policy adjustments regarding gays in the military, I believe the compromise arranged between Senator NUNN and President Clinton is a responsible, reasonable approach to take for the next 6 months, particularly when one considers that the compromise, in reality, does not change the current policy in any major way.

I believe we must use this coming period to develop a greater understanding and appreciation for the many issues involved in this matter. It is not a single question of just lifting the ban or maintaining it. There is more to it than that, and this Senator wants to learn a great deal more before making a final decision.

President Clinton has already predetermined the outcome of this 6 month deliberations process. He has stated that he will lift the ban in July, irrespective of what the Senate and the public learn between now and then.

I want to emphasize for my colleagues and constituents, however, that this Senator has not predetermined the outcome. I have come to no decision at this point about what policy is best for America's armed services. I enter this debate with an open mind, anxious to learn from both the opponents and proponents of lifting the ban.

It is incumbent upon each side to make the strongest case for their respective positions. The burden of proof, so to speak, falls equally to the opponents and proponents.

Mr. President, I also wish to emphasize my view that in accepting the Nunn-Clinton compromise, the Congress does not forfeit its constitutional role in making policy in this matter. In 6 months time, we will return to this debate—better informed and better prepared—to make principled, thoughtful decisions. The Senate is not now predetermining the outcome of our own deliberations. That opportunity to decide will come in due time.

Mr. President, I ask unanimous consent that an updated version of a statement I offered yesterday on this subject be included in the RECORD at this point.

GAYS IN THE MILITARY

Mr. DURENBERGER. Mr. President, I rise today to address the question of homosexuals in the military. The specific question before us is: Will we approve the Clinton-Nunn proposal and allow a 6-month period of study on the complex moral, legal, and administrative issues involved? I support the option that will do us the most credit as a deliberative body.

What we are addressing today is not the simple question of whether we approve or disapprove of the sexual orientation of certain individuals. We are discussing whether we have the right to deny some of these individuals the right to serve in the U.S. Armed Forces because of that private matter.

It is a fundamental principle of American Government that we must not discriminate against an individual for having a certain status—a certain gender, religion, sex, race, disability or age. In civilian life, the Government can only legitimately prevent or punish conduct—behavior that society views, rightly or wrongly, as harmful to its own interests.

The military is recognized, appropriately in my view, as a special case. Military service does in fact require certain forms of discrimination—like restrictions on the role of women in combat, and the exclusion of some disabled persons.

In the present case, homosexuals have been expelled from the military absent any demonstration that they have actually engaged in homosexual conduct. What we have to determine is whether the status of being a homosexual—in and of itself—is sufficiently harmful in a potential serviceman to warrant an exception to the rule that in civilian life we do not discriminate on the basis of status.

Is this a decision we have to make now? Yes and no. For each gay person facing disciplinary proceedings in the military, the answer is yes. For those who are investigating the tragic death of Seaman Allen Schindler in Japan, again, the answer is yes. But for the Americans who are desperately concerned about the economy, the budget deficit, and fixing health care and education, the answer is no.

But the issue will not go away. The President has put us on the track toward a date certain for the resolution of this problem. We can not duck it—so let us get to work on making the best decision we can.

It is in the interest of the armed forces of this country that we make a decision, but not an unconsidered decision. This issue affects the lives of millions of men and women currently in uniform, and also those we will need to attract to service in the future. We need to examine the potential consequences in detail—and come to a principled decision.

This Senator is not prepared to decide today. We are nowhere near that stage yet. When any major change is contemplated in a huge organization of people, there needs to be an intelligent analysis of the real disruptions that are going to result—and whether they are so great that to risk them would be unwise.

This sort of analysis is precisely what we have lacked so far in the national discussion on gays in the military.

We also need to understand that in recent years, we have repudiated laws that discriminate against individuals in employment or public accommodation on the basis of their status—on the basis of stereotypes that relegate every individual to a pigeonhole. We have repudiated the spurious logic that goes, "All Polish people are stupid, I am Polish. Therefore I am stupid. Therefore, do not hire me."

The days of Jim Crow—the days when it was acceptable to put up signs reading "No Irish Need Apply"—are over. Employment law now protects individuals from this kind of pigeonholing by status.

Again, we recognize that the military has the right to discriminate in certain cases. In some areas of discrimination, the military has reversed its opinion—in other areas, it has not. And for the next 6 months we will be examining whether the policy on homosexuals ought to be reversed.

What we need to determine is whether the status of homosexuality standing alone bestows on everyone in that category a set of behavior patterns that cannot be modified by conduct regulation. Then—and only then—should status classification lead to blanket exclusion.

It is objected that having gays in the military would pose a serious threat to morale—that it would reduce the camaraderie, the bonding, and the trust that are necessary if soldiers are going to be an effective fighting team in combat. But it is acknowledged even by those who advance this line of argument that there are gays currently serving in the military, and I have yet to see any evidence suggesting that these gays have in any way impaired the morale or fighting effectiveness of our armed forces.

I am not saying that there is no evidence proving this. I am merely saying that I have not seen it—yet. That is another reason why I think this 6-month delay will be extremely valuable—we need to find out if their acknowledged presence will reduce our military effectiveness.

It has also been objected that gays in the military might abuse positions of authority to engage in sexual harass-

ment. Again, no evidence has been presented to demonstrate that these cases would be any more disruptive than the cases of heterosexual harassment that we already have to confront. It would be truly perverse to draw the conclusion from the "Tailhook" scandal that heterosexual men or women ought to be excluded from the military. It would seem to me that if this were the sole objection, the appropriate solution is not to exclude people from the armed services, but to have a code of conduct and enforce it.

I recognize that there is undoubtedly more to this argument than I currently know. And I want to learn about it over the next 6 months.

I join my distinguished colleague, the senior Senator from Georgia, as well as the no less distinguished Chairman of the Joint Chiefs of Staff, General Powell, in hoping that the proposed 6 months of investigation will give us a better understanding of the serious objections that no doubt exist to the lifting of the ban.

Like Senator NUNN, I am making no commitment to support the full lifting of the ban when the 6-month investigation is over. In 6 months, I expect that we will have a better understanding of the real facts and issues involved—and thus be able to make that decision intelligently. In the meantime, I would modestly suggest that it would be appropriate for us to address other issues of national importance—such as economic growth and job creation, the Federal budget deficit, and the fundamental reform of U.S. health care.

Thank you, Mr. President, I yield the floor.

Mr. DORGAN. Mr. President, today, I will cast my vote in opposition to an amendment to the Family and Medical Leave Act that would prohibit lifting the current ban on homosexuals in the military. But I cannot do so without expressing my great frustration at the amount of time spent on this issue.

The American people have told us in no uncertain terms that they are interested in finding solutions to the economic problems of this country, reforming our inadequate health care system, and addressing important issues like the education of our children and the future of the Social Security trust fund. These are their priorities, and they expect us—their elected representatives—to get to work on them.

And yet we and the media have spent several days discussing the issue of gays in the military. By focusing on these controversial issues, we are ignoring the central challenges that face our Nation.

That being said, I want to be clear that I agree that we should lift the ban on gays in the military carefully over time, and in close consultation with U.S. military leaders. The President has reached an agreement with the Joint Chiefs of Staff about the most appropriate way to do this, and I think we should support these leaders in their efforts to work together to address this problem.

And in the meantime, I think Congress should get down to the business of solving the pressing economic problems facing our Nation as a whole.

Mr. MACK. Mr. President, I agreed with President Clinton last week when he acknowledged that, fundamentally, military society is different from civilian society. Ideally, a military force will never be used, but in a time of crisis there is often nowhere else to turn. A society looks to its military for insurance against catastrophe. No excuses can be tolerated when lives are in jeopardy.

The Armed Forces are like no other organization in the Government, in society for that matter. Discrimination is an everyday affair in the military: height, weight, hair length, visual acuity, dexterity, physical disability, disease, alcoholism, casual drug use, even attitude have legitimate standards to which servicemembers are held, and which would be considered well out of bounds in the civilian sector. Such discrimination is only tolerable because it advances the necessary readiness and warfighting capability of that military.

America's armed services have the responsibility to select from the available talent pool only those who will help strengthen the team. The good of the whole is more important than the demands of the individual. Just ask the next servicemember you see whether it is a right or a privilege to wear the uniform of the United States of America.

I am gravely concerned by the apparent disregard for the readiness of our armed services. The informed counsel of General Powell and the Joint Chiefs of Staff, of every major veterans' organization, of the Republican leadership, and even the groundswell which has swept America in opposition to lifting the ban have been ignored. I fear that we face a proposal to change a successful and longstanding personnel policy simply in order to meet a given social agenda.

Still, it is not too late. I urge my colleagues to support the Dole amendment which makes meaningful the hearings and studies proposed for the next 6 months, and does not presuppose the end result of those investigations, by codifying the present policy in law until Congress has the information to make an informed decision in July.

Mr. PELL. Mr. President, I rise today to express my full support for the amendment offered by the majority leader which would let stand the compromise agreement announced by President Clinton on January 29, 1993, regarding the ban on homosexuals from serving in the military.

The agreement provides a 6-month period to carefully and thoroughly review the current Department of Defense policy excluding homosexuals from serving in the Armed Forces. My own view, Mr. President, is that men and women should not be prohibited from serving in the Armed Forces solely because of their sexual orientation. Like the President, I believe such a prohibition is discriminatory and is just as inappropriate as discrimination based on race, gender, or religion.

I believe all our service personnel should be judged on performance and behavior and held accountable to the strict code of conduct which is necessary for the effective operation of military units.

The implementation of policies based on these views will require time and sensitivity, and I applaud the President's determination to seek a broad range of advice on this vexing issue.

Mr. President, I am confident that, in the end, the President, after full consultation with congressional and military leaders, will reach a resolution that is positive, fair, and equitable.

Mr. COATS. Mr. President, I want to be clear what this amendment is about. It is a freeze in current policy on homosexuals in the military—for a limited period of time—for a specific purpose. That purpose is to carefully study the issues involved before we begin a change.

The military argues that our military effectiveness is at stake. If their case is even remotely plausible, we have a duty to consider it fully and fairly before we act.

So, though there are countless questions about procedure and politics—I want to focus on the substance of this debate.

Many of us had a part in an extraordinary effort to raise our military from the low point of the 1970's. If you ask military leaders, they will tell you what has made the difference: It is our people. In spite of all the new weapons and new training, our strength is in our soldiers. The services now attract some of the very best men and women in our Nation.

These same commanders will also tell you that many of these soldiers hold strong religious beliefs and moral convictions. Many come from families with strong moral traditions. R.D. Adair and Joseph Myers, two military experts, have written:

> Military courses in ethics and professionalism teach a lengthy process of reasoning one's way through moral dilemmas. But the decisions of junior commanders reflect less of what they have been taught as soldiers and more of the moral characteristics they brought with them into the Army from their teachers, parents, and childhood environment. Our leadership must understand that simply declaring a new morality by executive or legislative fiat does not automatically imbue soldiers and officers with a new professional ethic concerning issues of right and wrong. Particularly if it is seen as an overtly political act.

This kind of moral principle is valued in military life. Adm. James

Stockdale, while president of the Naval War College, wrote:

If anything has power to sustain an individual in peace or war, it is one's conviction and commitment to defined standards of right and wrong.

Many of the people who train these young men and women have real fears that lifting military policy on homosexuality will cause good soldiers to leave, or not renew. They are worried about retention. They are worried about recruitment. They are worried about how the Armed Forces will look in 5 or 10 years. Gen. Colin Powell told midshipmen at the Naval Academy: "If it strikes at the heart of your moral beliefs, then you to have to resign."

Recently, a high ranking naval official visited a ship to talk, in assembly, with the entire crew. One sailor rose to say that he had 2 years left on his contract, but if the President acted to lift the ban he wanted to know how he could leave. That sailor got a standing ovation from every crewmember.

I've had a number of letters. One from Anderson went:

My husband comes from a family of six siblings; of that six, five were marines. Four of the five married marines * * * we would say that if this ban were to be lifted, we would advise our son, son-in-law, and many young people not to join the military.

Another letter read:

We have a son serving in the Army in Wurzburg, Germany, and he has shared his concerns over this matter. He said the entire base was upset and knows this reckless action would jeopardize military effectiveness, as you have stated. He will look to get out as soon as he can as I'm sure many others will do.

Some homosexual activists are arguing they have the right to serve. But military service has never been a right. There have always been restrictions—limits on who could be recruited. There is only one goal: To get the type of soldier that will form one part of an effective fighting unit.

For instance, a disabled person might want to serve in the military—or someone too old or too weak. They would be denied, not out of discrimination, but to do something specific and limited—to fit a mission.

An editorial in the Washington Times made this case:

Many groups are excluded based not on bigotry but on characteristics found incompatible with military service. Examples include young people, old people, short people, single parents, undocumented aliens, and many others. Indeed, all of these people enjoy civil rights because a strong military protects the freedoms of all Americans.

Maj. Melissa Well-Petri, in a new book titled "The Power To Raise and Support Armies," writes:

Military personnel policies are designed to effect decisions on how best to compose America's fighting force. They are designed to discriminate between those in the judgment of the Army's senior military and civilian leadership, is strong and those whose potential is weak. Military personnel policies are not anti-any individual. They are simply pro-Army.

Should homosexuals fit in the category of the excluded? The military has argued for decades that they should. To understand why, we need to open our minds and listen to what makes a fighting unit effective. It is unlike anything we encounter in civilian life.

An effective fighting unit depends on something intangible—something you cannot quantify. It is described as morale, Esprit de Corps, good order. Throughout history, commanders have argued it is the essence of military success—from the platoon to the battalion. David Hackworth, America's most decorated veteran, writes:

On the Battlefield, what allows men to survive is combat units made up of disciplined team players * * * when these factors are in synch, a unit has the right stuff. It becomes tight, a family, and clicks like a professional football team. Spirited men who place their lives in their buddies' hands are the most essential element in warfare. The members of such combat teams trust one another totally.

Those who have been in the military know what this is. Those who have not need to try to understand—before they make a decision. This is why we need to wait—to listen to the people who will live with that decision.

What is it about the presence of open homosexuals in the military that would cause General Schwarzkopf to say it would "destroy the military"? Or General Powell to comment it is "inconsistent with maintaining good order and discipline"?

The problem is a simple three letter word: Sex. Why should we be afraid to address it? Common sense and thousands of years of human experience teach that sexuality is powerful, especially among the young. In the case of Baker versus Wade, the judge found that "sex next to hunger and thirst, is the most powerful drive that human beings experience, and it is unrealistic to think that laws will force total abstinence." I don't think that we needed a judge to tell us that.

Managing sexual tension among young people is hard, in the best circumstances. In military life it is even more difficult. The challenges are unique—enforced, close living where people often share intimate situations. Not just for 8 hours day, but for 24 hours a day. The military mission dictates intimacy, from close bunks to communal showers. On submarines, that closeness can be measured in inches.

Many recruits are just 18 years old—the age of high school seniors. This, to say the least, is a tender age sexually. We are not always talking about mature professionals.

I had one letter from Lebanon, IN, that reads:

The first thing you notice in the military is the loss of privacy. It starts in boot camp with an 88 man barracks. You eat, sleep, shower, shave, march, go to classes, learn how to care for a weapon as a group. No one has any secrets. You just aren't physically able to get away from the others.

The unity that causes soldiers to sacrifice for each other is eroded when there are sexual undercurrent in the barracks. Again, listen to David Hackworth:

One doesn't need to be a field marshall to understand that sex between service members undermines those critical factors that produce discipline, military order, spirit and combat effectiveness. Mix boys and girls, gays and straights in close quarters such as the barracks or the battlefield, and both sexual contact and the consequent breakdown of morale are inevitable.

Sometimes the ban on homosexuals in the military is compared to its dead, discredited color bar. But practical concerns about controlling sexual tension are not the same as racism. We are talking about sexual tension, conflict, and consequences in close quarters. Colin Powell addressed this issue as follows:

Skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.

The proper analogy here is to the tension between the sexes. No one would put young men and women together in the same barracks and then try to regulate behavior. So they are separated. Charles Krauthammer argues:

Consider the behavioral implications of gender differences: Men and women are sexually attracted to each other, and sexual attraction engenders feelings not just of desire but shame and a wish for privacy. That is why segregating bathroom facilities by sex makes sense, whereas segregating them by race is pure prejudice.

Homosexuals cannot be treated the same way. An all-gay barracks would concentrate sexual conflict. Yet putting open homosexuals with heterosexuals would spread sexual tension throughout the force and undermine morale.

This is not, like I've sometimes heard, like a health club. In many cases, it is 24-hour, forced intimacy. You can't just politely ignore matters of sex. Sean O'Keefe, former Secretary of the Navy, has written:

This is not a case of trying to be belligerently discriminatory. It's a circumstance where we're trying to apply a 9 to 5 social tolerance to an environment in which we're asking people to operate that bears no resemblance to a 9 to 5 environment at all.

Heterosexuals have a right to privacy, just as women do with men. Wouldn't a woman, placed in this situation with men, feel shamed and harassed? Sociologist Charles Moskos at Northwestern University says:

Sex between service members does undermine order, discipline and morale. So does invasion of sexual privacy. This is why the military separates the living quarters of men

and women. Even in field conditions, the privacy of men and women is maintained to the maximum degree possible. If feelings of privacy for women are respected regarding privacy for men, then we must respect those of straights with regard to gays.

Commanders need to be realists about human nature. They try to manage the sexual energy of young people in an intimate living place, while building morale and unit cohesion. Open homosexuality in the barracks, on their testimony, would make that job impossible.

If you say the real issue is not status but behavior, then you have taken away the rational justification for separating men and women. They are prevented from living together because sexual status is directly related to behavior.

The issue here is not if a homosexual can be a good soldier—many have been. The issue is this: Will units fight and die together if they are divided by sexual conflict and tension? Will unit effectiveness be dangerously compromised?

That is a serious enough prospect to justify a call for patience and study. With so much at stake, I believe we have no other choice. That is what this amendment is about—a temporary freeze in current policy for a limited purpose: To give a change in policy the scrutiny it demands.

In 6 months, we will be involved in a final choice on this question—after hearings and a renewed national debate. This is just the first shot in a siege.

I hope we win today, but we will gather strength as time passes, as our case is made, and as the political fog begins to lift. We are committed to this fight, and we will see it to its end.

LISTEN TO THE EXPERTS: TIME OUT NEEDED FOR GAYS IN THE MILITARY QUESTION; PRESIDENT CLINTON'S HUGE BLUNDER

Mr. DOLE. Mr. President, the phones are still ringing off the hook on Capitol Hill. President Clinton's determination to lift the ban on homosexuals in the military has whipped up a fire storm of outrage—and that is an "understatement." Calls to my offices are running 10-to-1 against Bill Clinton's mission to "open the barracks" to gays. I must confess that I do not understand why the President has chosen this particular moment to make good on this particular campaign promise, especially after reneging on so many others, such as the middle-class tax cut, and cutting the deficit in half within 4 years.

With U.S. troops in Somalia—with our forces engaging a still dangerous and hostile Saddam Hussein—with the powder keg in Bosnia about to explode—and with thousands of military men and women facing the unemployment line because of Defense cutbacks—Americans just do not get it: Why has the President made lifting the ban on homosexuals his top Defense priority???

Americans are also wondering just who is demanding this immediate change in policy. Outside of gay activist groups, liberal cheerleaders in the media, and all of Bill Clinton's Hollywood elitists who showered his campaign with big ticket contributions, mainstream America just does not understand the rush.

But mainstream America does understand bad policy. That is why in history-making numbers, Americans are calling Washington to tell Congress and the White House to back off.

Americans are telling us that they don't care what happens in the French Army. They do not care what the Dutch, or any other country does with its armies. But Americans do care about America's Armed Forces. And they trust Gen. Colin Powell, and Gen. Norman Schwarzkopf, and just about every veterans' group when they tell us that gays in the military will compromise esprit de corps and discipline.

Let me be clear. I recognize that this is a sensitive issue, because we are talking about human beings and real lives. And no one is very comfortable discussing the "gay issue," but we must. Now, I condemn discrimination. I do not like it. It is wrong. And I condemn violence against gays, just as I condemn it against any other group.

But serving in the military is not a right, it is a privilege. Every day, Americans are denied entrance because of height, weight, age, and physical conditioning, or lack thereof.

They can be turned away because of behavior deemed to be a threat to discipline, including prior criminal records, bad credit, alcohol and drug abuse, and other kinds of potentially disruptive behavior.

Those are the realities of military service. Some critics may not like it, but those are the facts, and those are the standards which have helped make America's Armed Forces second to none.

So when I hear General Powell, and the service chiefs state that dropping the ban on gays will destroy unit cohesion and morale, it is time to listen.

When I hear Gen. Norman Schwarzkopf say that gays in the barracks will cause a breakdown in order, it is time to listen.

When the distinguished chairman of the Armed Services Committee says "slow down, let's have some hearings, President Clinton," It's time to listen.

When I get a call from a sergeant in Kansas saying she will quit the Army if gays are welcomed into the force, then it is time to listen.

And when all these experts tell us that this policy change could well have a dramatic impact on national security, it's time to call "time out."

Unfortunately, there is one person who is not an expert who doesn't want a "time out." He has decided that the policy on gays must be, and will be changed. That nonexpert is the President of the United States. Unfortunately, Bill Clinton has already made up his mind on this issue, before he ever consulted with the experts. It has been a huge blunder. If the President is looking for blame, if he is having trouble dealing with the national outrage, then he has no one to blame but himself. If special interest groups, and the President's Hollywood elite know more about national security than Colin Powell, Norman Schwarzkopf, the Joint Chiefs, the American Legion and the VFW, and our men and women in uniform, then the President should explain it all to the American people.

Let us also set the record straight on another point. Congress did not set the timing of this debate. It was not Republicans, either, despite the desperate "damage control" being offered up in the White House briefing room these days. It is a Clinton campaign promise that has pushed its way right past the deficit, the economy, health care and jobs. Already it is tying up legislation. For some reasons, Bill Clinton's first major initiative since taking the oath of office has to be opening the barracks to gays. Yes, he is the Commander-in-Chief, but the last time I checked, the constitution calls for "checks and balances." That is what Congress is all about, and on this issue, Bill Clinton needs "checks and balances."

I am not certain who President Clinton has been consulting on this issue, but I can tell you Senate Republicans had meaningful consultations with representatives of more than 25 veterans groups, representing millions of American men and women, They raised several legitimate concerns, issues that apparently the President hasn't focused on. These issues include:

G.I. benefits: We must ask, will gay spouses be entitled to taxpayer-funded health care benefits, taxpayer-funded military retirement benefits, and taxpayer-funded housing?

Gay marriages: Military chaplains are concerned they may be required to marry gay couples in military chapels.

Combat wounds and AIDS: Remember that on the front lines, the blood supply is a walking bloodbank, where blood transfusions come from your fellow soldiers.

Recruiting: What will the effect be on the All Volunteer Army?

Retention: Will there be a revolt in the ranks? How many other men and women in uniform will feel uncomfortable remaining in the service?

And the list of concerns—the concerns of people who are, and have been in the Armed Forces—goes on and on.

In his floor speech last Tuesday, Senator NUNN outlined the many important considerations that must precede

any change in policy. And he rightly noted that article 1, section 8 of the Constitution places this responsibility with the Congress.

I applaud Senator NUNN's commitment to hold hearings on this subject. And I know that he and the Armed Services Committee will give this matter the full and serious consideration it deserves.

But my question, and the question the American people are asking is whether there should be any change in the policy of the Department of Defense regarding homosexuals serving in the military before we understand the full implications of this action. It is clear that President Clinton wants to shoot first and ask questions later. But I believe that we should study the facts and then decide. I believe that Congress has an important role to play. And so, I offer this amendment which is designed to do three things:

First, it directs the Congress to conduct a thorough review of all executive orders, Department of Defense directives and regulations concerning the appointment, enlistment, and induction, and retention of homosexuals in the Armed Forces for a period of 6 months. I acknowledge that Senator NUNN has already announced his intentions to conduct hearings to study this matter, and I applaud his initiative. However, I believe that placing this into law sends the right signal—that Congress views this matter seriously, and is fully committed to a complete and thorough review.

Second, it directs that there be no change in the policies which were in effect as of January 1, 1993, until Congress has had the opportunity to have its say. Simply put, this is the time out America is calling for.

Third, this amendment calls for "expedited action" on Capitol Hill for any changes the President may recommend, which would be sent to Congress in a legislative package that would be voted on within 3 days upon arrival.

It would be my preference to have a separate bill on this issue, so that the Senate could have a clean up-and-down vote and not interfere with the pending legislation.

We have asked for such a "free standing" opportunity, but we could not get "unanimous consent," so therefore I am offering this amendment.

It is clear that President Clinton has already made up his mind. And he has already acted without congressional approval. I am convinced that he will continue down this road, regardless of the evidence, regardless of outcome of hearings—and against the advice of our military leaders. Only by making this a question of law can the Congress ensure our ability to meet our constitutional responsibilities.

In my view, this amendment puts things back into balance. This issue that President Clinton believes to be so important would get the attention it deserves; the President would receive expedited procedures to change the policy; Congress would get to vote; and the American people will have broken through the steel curtain currently surrounding the White House.

So let us be clear about today's vote: no matter how anyone tries to fuzz it up, or put some "teflon" on one of the most controversial issues we will debate all year, a vote against this amendment is a vote to put homosexuals in the military.

I thank my colleagues and urge the adoption of this amendment.

I want to say to those who say we are holding up the family leave bill, let us not kid ourselves. It is not effective for 6 months from date of enactment. So, in fact, if we do not pass it this evening, I do not think it is going to bring the country to a stop.

Second, let me suggest to those who have been nit-picking the amendment, that is an indication of how weak their case is.

There is a clear choice here. You can vote for a sense-of-the-Senate amendment, which, in effect, says we shall have hearings. I see no problem with it. In fact, I assume nearly everyone would support that amendment. Or you can vote for this amendment, which calls, in effect, for time out, does not change current practices, and that is the key vote. That is the key vote. This is statutory language, not a sense-of-the-Senate resolution.

This is a very sensitive issue. I hope we are not debating it every week or every month. I know we are not going to be taking action, but it does not prevent debate.

I know there have been a lot of efforts made to sort of downplay phone calls. They were great during the campaign, but now the campaign is over, we are told a bunch of kooks are calling in from my State and other States. Do not believe it. These are real people. These are not the Hollywood elite. These are not the big contributors. These are not the gay activists. These are people who live in my State, your State, every other State, and they are frustrated and they are disgusted and are calling us. It is about a 10-to-1 ratio, or more. They do not understand why we are doing this. We have troops in the gulf, in Somalia. We have problems in the military. We are discharging good men and women who want to stay and cannot stay.

What is the first national security issue? Whether we ought to relax rules on gays in the military? We are here tonight because President Clinton made the first move. I know that Mr. Stephanopoulos, his spokesman, said we are here because of the Senate. We are not debating this because of the Senate. Congress was ignored. As pointed out by the distinguished chairman of the Armed Services Committee, Congress does have a role to play, and we are going to continue to have a role to play.

Mr. President, I think this is a pretty important vote. We are going to lose. We do not have enough votes. We are going to lose on the Senate floor, only on the Senate floor, because with the American people, and with veterans groups, I think with a great majority of American people, we are going to win on this issue if not today, then 6 months from now, or 8 months or whenever it might be.

I happen to believe mainstream America—probably some in everybody's State—recognize it is bad policy when they see it. That is why in history making numbers Americans are calling Washington to tell Congress and the White House to back off, back off, do as earlier suggested by the chairman of the Armed Services Committee and many others, let us just have a time out, let us have the hearings.

There may be some room for accommodation. Nobody wants to discriminate in this body that I know of. The American people are calling us, telling us they do not care what happens in the French Army, they are not going to be in the French Army. They do not care what happens in the Dutch Army. They are not going to be in the Dutch Army. What some other country does with its armies, that is their business. But what Americans care about is America's Army and America's Armed Forces. They trust Gen. Colin Powell, and they trust Gen. Norman Schwarzkopf and just about every veterans group, and they tell us that gays in the military will compromise esprit de corps and discipline.

We have all said this is a sensitive issue because we are talking about human beings who may be different. So nobody is very comfortable in discussing this gay issue. We all condemn discrimination. It is wrong. But serving in the U.S. Army is not a right. It is not a right; it is a privilege. You might be too old, you might be disabled, you might be overweight, there are a lot of reasons you can be excluded. If you read this questionnaire, that covers a lot of areas. Everyday Americans are denied the opportunity to serve in our Armed Forces. Every day somebody is denied because of age, because of overweight, because of lack of conditioning, and all the other reasons that I have stated. You can be turned away for behavior deemed to be a threat to discipline, including if you have bad credit; you cannot get in the service. Or, if you have potentially disruptive behavior, you cannot get in the service.

These are the realities of military service. Some critics do not like it, but they have never been in the military probably. But these are the facts and those are the standards which have

helped make America's Armed Forces second to none.

So when I hear General Powell and the service chiefs state that dropping the ban on gays will destroy unit cohesion and morale, it is time to listen. Maybe they are wrong. The Joint Chiefs have been wrong before. When General Schwarzkopf, who the last time I checked was an American hero, says that this will cause a breakdown in order, I think it is time to listen. When they say it is time to slow down, let us have some hearings, I think it is time to listen. When I get a call from the sergeant in Kansas who says she will quit the Army if gays are welcomed into the force, then it is my view it is time to listen. That was a Kansan.

We can all find exceptions, and I have noted speeches that talked about exceptions. These are experts. But we have been trying, in the past several days, to just get a vote. We are going to get a vote. We are going to have a vote, very clear cut. You can vote for a sense-of-the-Senate resolution, which says let us have hearings. I will move to table that, and then I will vote against my motion to table. And then the Senator from Maine will move to table my amendment, which is the real amendment, which is statutory, and we will lose. We will not have the votes. But we will have the vote. I do not think it is going to be a party line vote. Some will support my amendment and some will not support my amendment on this side, and the same is true on the other side.

The President of the United States made up his mind on this issue before he ever consulted anybody. He never consulted the experts, never consulted Congress, and it has been a huge blunder. So if somebody is looking for blame down at the White House, saying it is the Senate's problem, we did not start this debate, we did not raise it. We were ready to deal with the economy, jobs, and health care. But if special interest groups and the President's Hollywood elite know more about national security than Colin Powell, and Norman Schwarzkopf, and our men and women in uniform, then the President should explain it to all of the American people.

Let us also set the record straight on another point. As I said, we did not set the timing of this debate. That was all because of actions taken by the President of the United States.

So it seems to me that for all of the reasons I can think of, my amendment should not be tabled. My amendment does not do anything except keep everything just as it is, just as it was on January 1.

There are a number of questions that must be answered. We must ask, will gay spouses be entitled to taxpayer-funded benefits, such as military retirement benefits, and taxpayer-funded housing? Military chaplains have complained to us that they are concerned they may be required to marry gay couples in military chapels. We have had veterans tell us—and we are repeating what they told us—the frontlines of blood supply is a walking blood bank where blood transfusions come from your fellow soldiers. What happens to recruiting? What happens to retention? And there are a lot of concerns expressed by a number of my colleagues on both sides of the aisle. The chairman of the Armed Services Committee raised some of these concerns, and many others.

So I suggest that the hearings are a good step. We need the hearings. But why should we change the policy? Normally around this place, we have the hearings before we make a judgment. Here, the judgment was made, and now we are going to have the hearings. I am not certain whether there will be any ultimate benefit or not.

Mr. President, I noted that my good friend and parliamentary expert, the distinguished Senator from West Virginia, Senator BYRD, takes issue with the amendment. But there is no quarrel about one thing. If you want gays in the military, then you oppose the amendment. That is the issue. That is it. If you want to keep everything just as it is, until after the hearings, and maybe some accommodation will be made, then you vote not to table the amendment.

We prefer to have a freestanding bill that would not interfere with family leave. We were not able to work that out. But I think we have an accommodation here that will give us at least an indirect vote, but also I think a very direct vote on this issue.

Nobody is going to be confused about this vote. The people back in all of our States are going to understand precisely where we were on this issue. You cannot fuzz it up, you cannot cover it up. You cannot say I voted for something else.

So it seems to me that, for the time being, I am going to stick with General Powell and General Schwarzkopf. The last time I checked, they were pretty good men, they were dedicated Americans, and they were concerned about our country. They were concerned about the armed services. Then we will have the hearings chaired by Senator NUNN, who will do an outstanding job—there is no question about that—with the help of Senator THURMOND and other Senators on both sides of the aisle. Then, hopefully, we will take some appropriate action at that time.

So it has been our effort from the start to have a vote. I want to thank my colleagues, the 41 or 42 Republicans, some of whom are cosponsors of the family leave bill, who said: OK, if we are going to have any influence in this Chamber, in the minority, we have to stick together. So 42 out of 43 said: OK, I will stick with you on a cloture vote. That is very important.

It is very important not only to this side of the aisle, but to the other side of the aisle, too, because we want to have some influence in this body. We want to have input. We want to be constructive, and we believe we are being constructive in this instance. So the issue is very clear. We will first vote to table the amendment of the distinguished majority leader, and without any further debate, we will go to my amendment, and there will be a motion to table, and there will be two rollcall votes. If you want the people back home that have been calling you to understand precisely where you stand, then vote not to table the Dole amendment.

Mr. MITCHELL. Mr. President, let us be clear about one thing. We are here tonight debating, and about to vote on, the question of homosexuals in the military services for one reason, and one reason only. That is because the sponsors of the underlying amendment insisted on bringing it before the Senate at this time.

This has nothing to do with the bill that is being considered. The Family and Medical Leave Act is important to millions of Americans, and we have wanted to pass that bill. There is nothing in the Senate rules, or in the Constitution, that requires an amendment to be offered regarding homosexuals in the military service. It is the sponsors of this underlying amendment who have insisted on bringing the issue here, who have demanded that this issue, above all other issues, be before us first and foremost.

This amendment sends a very clear signal to the American people of the priorities of its supporters. It would establish a special and extraordinary legislative rule, disregarding all of the rules of the Senate, just for the consideration of this one issue—homosexual service in the military—not for health care, not for economic growth, not for job creation, not for deficit reduction, not for education. Nothing else is as important to the sponsors of this amendment than getting up here and talking about homosexuals in the military.

If I, the majority leader, were to propose that a conference report on health care, or on economic growth, or on the budget be nondebatable, our colleagues would erupt with indignation and opposition. Yet, that is what they have proposed for this measure. If I, the majority leader, were to propose a bill I introduced on health care, or a bill I introduced on economic growth, or a bill I introduced on job creation, or a bill I introduced on dealing with the budget and the deficit, that had to be voted on within 3 days after introduction, our colleagues would erupt with opposition and indignation. Yet that is what they have proposed on this bill—a new and

different and unprecedented and extraordinary legislative procedure, disregarding all of the established rules of the Senate on this one issue. That tells us where their priorities are. Those are not my priorities, nor do I believe they are the priorities of a majority of the Members of the Senate.

A second reason this amendment should be rejected is that, by its very language, it extinguishes every Executive order, Defense Department directive, military regulation issued since January 1 that concerns, in any way, this subject matter, no matter how well-founded the regulation, if any small part of it affects this subject. That means that actions taken by the Defense Department to combat sexual harassment would be negated.

A vote for the underlying amendment is a vote against the efforts of the Defense Department to deal with the problem of sexual harassment. It sets back military efforts. It says that someone who votes for this underlying amendment is saying to his or her constituents: We want to roll back the Defense Department's efforts to deal with sexual harassment. We do not want to let the Defense Department deal with these issues. The Navy Department's regulation of January 6 would fall.

I agree with the minority leader on one thing—this is a clear vote. I do not think a Senator here really should want to be on record as saying we do not care about sexual harassment in the Defense Department, and we are going to roll back the efforts made by the Defense Department to deal with it; but that is what a vote for the underlying amendment would cause.

This amendment is not necessary. Nobody had to introduce this amendment. Nobody had to bring this issue up here. This is an effort to gain political advantage on a controversial issue. Let us all recognize it for what it is.

The President, the Secretary of Defense, the chairman of the Senate Armed Services Committee, the chiefs of the military services all agreed on a procedure. The amendment does not do anything to improve that agreement. To the contrary, the amendment may bring unprecedented disruption.

Let me get to the substance of the issue. There has been a lot of talk in this debate about the disruption caused by a change in policy.

My fellow Senators, all change threatens to bring disruption. The question is not whether a change will cause some disruption. The question is: Do we gain by making a change in a way that is sufficient to offset the disruption?

Let us look at our history. For 90 long years after our Nation declared its independence, black Americans were not citizens. They could be—and they were—bought and sold like property. They were enslaved.

It took the bloodiest war in the history to change that. That was disruption. But the result was expanded freedom, greater equality, a better America.

More than 150 years after America became a nation, American women could not vote. Decades of ridicule directed at women passed before the 20th amendment was ratified. That caused disruption. But the change meant greater democracy, greater freedom, a voice in the democratic process for half of our population—a better America.

More than 80 years after the Civil War ended—80 years during which black American men and women served in the Armed Forces, wore the uniform, took the bullets and died for their country, and were buried alongside white Americans in some places—80 years later, President Truman made the determination to integrate the American Armed Forces.

That was disruptive. But the result was greater freedom, more equality, a better America. And today, our military stands as the most fair, the most color blind, the most open institution for competition based on talent and skill and effort and not on prejudice of any institution in our country.

All change asks us to adapt. In every society there are some who fear and resist change. Change is not easy. It is demanding. But American history is a history of people changing with the times and always in the direction of greater freedom, more equality, more opportunity for all.

I say to my colleagues, let us lift our sights and our hopes and our votes above appeals to division, above appeals to the worst that is in our people, above all of the discrimination and the prejudice and the anxiety and the fear that is being created in this debate. Let us lift our debate, let us lift our votes, let us lift our country to what is best in humans, what is best in Americans, and what is best in this great country.

This amendment is completely unnecesary. It has nothing whatsoever to do with this bill. We could have passed this bill last night but for the insistence of the sponsors of presenting and pushing and demanding a vote on this amendment.

That has already been stated. And so let us get this behind us and let us pass the important legislation which this has delayed. And when we get back to this subject, let us remember: We are all Americans; we are all children of the same God; and let us lift our country above what we have heard during some of this debate.

Mr. President, I yield back the remainder of my time and I am prepared now for the vote.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. CONRAD). The question occurs on the motion to table amendment No. 18 offered by the majority leader. The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SIMPSON. I announce that the Senator from South Carolina [Mr. THURMOND] is absent due to a death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 1, nays 98, as follows:

[Rollcall Vote No. 8 Leg.]

YEAS—1

Byrd

NAYS—98

Akaka	Feingold	McCain
Baucus	Feinstein	McConnell
Bennett	Ford	Metzenbaum
Biden	Glenn	Mikulski
Bingaman	Gorton	Mitchell
Bond	Graham	Moseley-Braun
Boren	Gramm	Moynihan
Boxer	Grassley	Murkowski
Bradley	Gregg	Murray
Breaux	Harkin	Nickles
Brown	Hatch	Nunn
Bryan	Hatfield	Packwood
Bumpers	Heflin	Pell
Burns	Helms	Pressler
Campbell	Hollings	Pryor
Chafee	Inouye	Reid
Coats	Jeffords	Riegle
Cochran	Johnston	Robb
Cohen	Kassebaum	Rockefeller
Conrad	Kempthorne	Roth
Coverdell	Kennedy	Sarbanes
Craig	Kerrey	Sasser
D'Amato	Kerry	Shelby
Danforth	Kohl	Simon
Daschle	Krueger	Simpson
DeConcini	Lautenberg	Smith
Dodd	Leahy	Specter
Dole	Levin	Stevens
Domenici	Lieberman	Wallop
Dorgan	Lott	Warner
Durenberger	Lugar	Wellstone
Exon	Mack	Wofford
Faircloth	Mathews	

NOT VOTING—1

Thurmond

So the motion was rejected.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment (No. 18) was agreed to.

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

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

The motion to lay on the table was agreed to.

The VICE PRESIDENT. The Republican leader.

AMENDMENT NO. 19 TO AMENDMENT NO. 17, AS AMENDED

Mr. DOLE. Mr. President, under the agreement, I ask that amendment No. 19 which is at the desk be reported by the clerk.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. THURMOND, Mr. COATS, Mr. GRAMM, Mr. SMITH, Mr. FAIRCLOTH, Mr. KEMPTHORNE, Mr. WARNER, Mr. LOTT, Mr. MCCAIN, Mr. HELMS, Mr. NICKLES, Mr. MURKOWSKI, Mr. WALLOP, Mr. COVERDELL, Mr. SIMPSON, Mr. GREGG, Mr. MACK, and Mr. CRAIG, proposes an amendment numbered 19 to the Amendment No. 17, as amended.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in amendment No. 17 (as amended) add the following:

SECTION 1. REVIEW OF DEPARTMENT OF DEFENSE POLICY CONCERNING SERVICE OF HOMOSEXUALS IN THE ARMED FORCES.

A thorough review of all Executive Orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, shall be conducted by the Congress before July 15, 1993.

All Executive Orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, as in effect on January 1, 1993, shall remain in effect until the completion of this review with respect to the Army, Navy, Air Force, and Marine Corps and unless changed by law.

Any proposed change in this policy shall be submitted by the President in the form of a bill and shall be introduced in each House of Congress by the Majority Leader in each House. The bill introduced in the Senate, placed on the calendar, be amendable with germane or relevant amendments, and shall be voted on no later than the close of business three days of session after its introduction.

The bill introduced in the House shall also be voted on no later than the close of business three days after its introduction. If both houses agree to their separate bills, upon receipt of the House Bill, if it is identical, the Senate shall be deemed to have passed the House bill in lieu of its own bill and the same shall be transmitted forthwith to the President. Any conference report shall be non-debatable.

Mr. MITCHELL. Mr. President, pursuant to the prior agreement, I move to table the Dole amendment No. 19 and I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Mr. President, as Senators were earlier placed on notice, this will be a 10 minute rollcall vote.

The VICE PRESIDENT. The question is on agreeing to the motion to lay on the table amendment No. 19. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from South Carolina [Mr. THURMOND] is absent due to a death in the family.

The VICE PRESIDENT. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 37, as follows:

[Rollcall Vote No. 9 Leg.]

YEAS—62

Akaka	Feingold	Metzenbaum
Baucus	Feinstein	Mikulski
Biden	Ford	Mitchell
Bingaman	Glenn	Moseley-Braun
Boren	Graham	Moynihan
Boxer	Harkin	Murray
Bradley	Hatfield	Nunn
Breaux	Hollings	Packwood
Bryan	Inouye	Pell
Bumpers	Jeffords	Pryor
Byrd	Johnston	Reid
Campbell	Kennedy	Riegle
Chafee	Kerrey	Robb
Conrad	Kerry	Rockefeller
D'Amato	Kohl	Sarbanes
Daschle	Krueger	Sasser
DeConcini	Lautenberg	Simon
Dodd	Leahy	Specter
Dorgan	Levin	Wellstone
Durenberger	Lieberman	Wofford
Exon	Mathews	

NAYS—37

Bennett	Gorton	McConnell
Bond	Gramm	Murkowski
Brown	Grassley	Nickles
Burns	Gregg	Pressler
Coats	Hatch	Roth
Cochran	Heflin	Shelby
Cohen	Helms	Simpson
Coverdell	Kassebaum	Smith
Craig	Kempthorne	Stevens
Danforth	Lott	Wallop
Dole	Lugar	Warner
Domenici	Mack	
Faircloth	McCain	

NOT VOTING—1

Thurmond

So the motion to lay on the table the amendment (No. 19) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DODD addressed the Chair.

The VICE PRESIDENT. The Senator from Connecticut.

Mr. DODD. Mr. President, I am submitting two technical amendments——

The VICE PRESIDENT. If the Senator will withhold, the question is now on agreeing to the underlying Dole amendment, as amended.

The amendment (No. 17), as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

The VICE PRESIDENT. The Republican leader.

Mr. DOLE. Let the record reflect that Senator THURMOND, had he been here—he is absent because of a death in the family—would have voted no.

AMENDMENT NO. 20

(Purpose: To revise the duties and membership of the Commission on Leave)

Mr. DODD. On behalf of Senator PRESSLER and myself, I send an amendment to the desk and ask for its immediate consideration.

The VICE PRESIDENT. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. PRESSLER (for himself and Mr. DODD) proposes an amendment numbered 20.

Mr. DODD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

The amendment is as follows:

Strike section 302(1) of the bill and insert the following:

(1) conduct a comprehensive study of—

(A) existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;

(B) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees;

(C) possible differences in costs, benefits, and impact on productivity, job creation and business growth of such policies on employers based on business type and size;

(D) the impact of family and medical leave policies on the availability of employee benefits provided by employers, including employers not covered under this Act;

(E) alternate and equivalent State enforcement of title I with respect to employees described in section 108(a);

(F) methods used by employers to reduce administrative costs of implementing family and medical leave policies;

(G) the ability of the employers to recover, under section 104(C)(2), the premiums described in such section; and

(H) the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave.

In section 303(a)(1) of the bill, strike "and 2" and insert "and 4".

In section 303(a) of the bill, strike paragraph (1)(C)(ii) and all that follows through paragraph (2) and insert the following:

(ii) EXPERTISE.—Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor management issues. Such members shall include representatives of employers, including employers from large businesses and from small businesses.

(2) EX OFFICIO MEMBERS.—The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Commerce, and the Administrator of the Small Business Administration shall serve on the Commission as nonvoting ex officio members.

Mr. DODD. Mr. President, the senior Senator from South Dakota, Senator PRESSLER and I worked together to develop this technical amendment. I see the Senator from South Dakota on the floor now, and I will yield to him so that he can address, for the benefit of our colleagues, what this technical amendment will do.

Mr. PRESSLER. I thank my colleague from Connecticut for yielding and affording me the opportunity to address this amendment. Mr. President, as currently written, S. 5 establishes a Commission on Leave to study existing and proposed policies relating

to leave and the potential costs, benefits, and impact on productivity of such policies on employers. The amendment provides more specific reporting requirements of the Commission. For example, the amendment I authored would require the Commission to include an analysis of an employer's ability to collect premium payments from employees who do not return from leave. Also, the Commission will analyze the differences in costs and benefits of leave policies on businesses based on size. It is essential to determine if small businesses are adversely impacted by this legislation or if in fact, there is a net benefit for job creation and economic growth.

Mr. President, a number of us in this body remain concerned over the possible impact of S. 5 on business operations. A thorough analysis of the costs and benefits of this legislation is imperative. This amendment will ensure that the Commission on Leave takes a thorough look at this legislation's impact.

Mr. President, the amendment also adds the Secretary of Commerce and the Administrator of the Small Business Administration as ex officio members of the Commission on Leave, and ensures that leaders from both large and small businesses are represented on the Commission on Leave.

As my colleagues know, most American businesses are small businesses. That is more than true in my home State of South Dakota. Though most of these businesses are not covered under the family leave bill, they fear that it is only a matter of time before this legislation applies to them. Similarly, those small businesses that are covered under this bill are concerned that more restrictive mandates may be imposed. Small businesses need a voice in the process. Small businesses need to be represented on the Commission tasked to oversee and analyze this bill's implementation. This amendment ensures that the concerns of small businesses are heard and considered should Congress revisit the issue of mandated leave. I thank my colleague from Connecticut for his leadership and cooperation in the drafting of this technical amendment.

Mr. DODD. Mr. President, I commend the senior Senator from South Dakota for his commitment to the concerns of our Nation's small businesses. The amendment we developed is a testament to that commitment. I appreciate Senator PRESSLER's willingness to work with me to improve this legislation for the benefit of small business.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment (No. 20) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 21

Mr. DODD. Mr. President, I send a technical amendment which includes conforming section references, a technical amendment offered by Senator NICKLES, and a technical amendment offered by Senator BOND to strengthen employee protections.

The VICE PRESIDENT. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD] proposes an amendment numbered 21.

Mr. DODD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

The amendment is as follows:

In section 101 of the bill, add at the end the following:

(13) SPOUSE.—The term "spouse" means a husband or wife, as the case may be.

In section 102(b)(1) of the bill, in the first sentence, strike "paragraph (1)" and insert "subsection (a)(1)".

In section 102(b)(1) of the bill, in the second sentence, strike "subparagraph (B)" and insert "paragraph (2)".

In section 102(b)(1) of the bill, in the second sentence, strike "paragraph (1)" and insert "subsection (a)(1)".

In section 102(b)(2) of the bill, strike "paragraph (1)" and insert "subsection (a)(1)".

In section 103(b)(4)(B) of the bill, strike "and".

In section 103(b)(5) of the bill, insert ",or leave on a reduced leave schedule," after "leave".

In section 103(b)(5) of the bill, strike the period and insert a semicolon.

In section 103(b) of the bill, add at the end the following:

(6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(D), a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

(7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(C), a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

In section 104(c)(3)(C)(i) of the bill, strike "(A)(i)" and insert "(A)(ii)".

In section 104(c)(3)(C)(ii) of the bill, strike "(A)(ii)" and insert "(A)(i)".

In section 108(c) of the bill, in the heading, insert "OR LEAVE ON A REDUCED SCHEDULE" before "FOR INSTRUCTIONAL".

In section 6383(b)(5) of title 5, United States Code, as added by section 201 of the bill, insert ", or leave on a reduced leave schedule," after "leave".

In section 6387 of title 5, United States Code, as added by section 201 of the bill, strike "under" and insert "to carry out".

In section 303(a)(1)(C)(i) of the bill, strike "Members" and insert "members".

In section 502, in the heading, strike "CONGRESSIONAL EMPLOYEES" and insert "HOUSE EMPLOYEES".

In section 502(c) of the bill, strike "the resolution in".

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment (No. 21) was agreed to.

Mr. DODD. Mr. President, I believe under the previous unanimous-consent agreement now Senator BROWN is to be recognized.

The VICE PRESIDENT. The Senator from Colorado.

AMENDMENT NO. 22

(Purpose: To modify provisions relating to intermittent leave and leave on a reduced leave schedule)

Mr. BROWN. Mr. President, I send an amendment to the desk.

The VICE PRESIDENT. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. BROWN], for himself and Mrs. KASSEBAUM, proposes an amendment numbered 22.

Mr. BROWN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

The amendment is as follows:

On page 10, strike line 22 and all that follows through page 11, line 24, and insert the following:

(3) INTERMITTENT LEAVE.—

(A) IN GENERAL.—Leave under subparagraph (A) or (B) of paragraph (1) shall not be taken by an employee intermittently unless the employee and the employer of the employee agree otherwise. Subject to subparagraph (B), subsection (e), and section 103(b)(5), leave under subparagraph (C) or (D) of paragraph (1) may be taken intermittently when medically necessary.

(B) ALTERNATIVE POSITION.—If an employee requests intermittent leave under subparagraph (C) or (D) of paragraph (1) that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that—

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(b) REDUCED LEAVE.—On agreement between the employer and the employee, leave under subsection (a) may be taken on a reduced leave schedule. Such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

Mr. BROWN. Mr. President, this amendment is familiar to all the Members of the Senate. It is simply what we have passed for 7 years in a row or had before us for 7 years in a row. It is the so-called Goodling amendment. It involves the reduced leave schedule. It is exactly what this body has had before it all 7 years. It is exactly what the House of Representatives adopted on this bill by passing this. It should avoid conference problems in this area. I do not believe it needs debate. I would be happy to agree to limitation.

Mr. DODD. Mr. President, we do not have unanimous agreement. This is very different. The Senate bill, including the technical amendments that were just offered, strengthen employer protection substantially. Senator BOND of Missouri, Senator COATS, and I have worked on this language.

What is being offered here is different from what was in the House bill. Unfortunately, we are not able to work out the differences and so I would ask my colleagues to reject this amendment and stick with what we have worked on over these past number of weeks to try to craft strong protection amendments.

I would be glad to yield to Senator BOND of Missouri.

Mr. BOND. Mr. President, I do not believe a return to last year's language will solve the problem. I do not believe the business community ever had the right which it now claims to have lost; namely, unilaterally to keep an employee from taking leave when that employee had met the battery of requirements needed to obtain medical leave for herself or for a family member.

In the 1992 conference report vetoed by President Bush, we retained a section of the bill from years past which states that an employee who desires to take leave on a reduced leave schedule—defined as "a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee—must negotiate that schedule with her employer."

However, the conference report also contained a provision which entitled an employee to intermittent leave whenever medically necessary—in other words, it was not necessary to negotiate the leave with the employer if the leave was medically necessary and the employee met all of the certification requirements. The provisions were, then, contradictory.

At the urging of the Clinton Labor Department, the language was clarified to reflect the longstanding intent of Congress that medically necessary leave to care for an ill family member or to recover from one's own illness could not be unilaterally denied by an employer.

However, I stress that the rights and responsibilities of employers and employees are nearly identical under both versions. If we walk through the steps an employee must take before being entitled to take leave for his own or a family member's illness, we will see that nothing has really changed. Employers and employees have the same rights and responsibilities they had before.

Under the Bond-Ford-Dodd amendment:

Any employee wanting unpaid leave, whether for the full 12 weeks or on an intermittent basis, to care for a family member or for his own condition had to:

First, prove that she or the family member had a serious health condition;

Second, provide certification from a health care provider that she was unable to perform the functions of the job, or that she was needed to care for the ill family member;

Third, obtain a second or even third opinion if the employer requested it;

Fourth, in the case of intermittent leave, take the responsibility to schedule it in such a way that it did not disrupt the employer's operations.

If the employee met those strict standards, she was eligible for leave.

We further protected the employer under the Bond amendment by allowing him to transfer an employee to an equivalent position that better accommodated the periods of leave.

Under the new S. 5:

Any employee desiring medical leave or leave to care for a family member still has to meet the strict tests:

First, there must be serious health condition;

Second, there must be certification;

Third, there must be a second or even a third opinion if the employer requests it;

Fourth, leave must be scheduled so that it does not disrupt an employer's operations. And employers still have the right to transfer people on reduced or intermittent leave.

The change in language was necessary to clarify the long-standing intent of Congress that employers would not unilaterally have the power to deny leave to, for instance, a woman whose son needed chemotherapy treatments 2 afternoons a week when that woman had provided all of the necessary documentation and certification.

That is the case for retaining the current language. The technical amendment just passed contains an additional employer protection: We require that the doctor of an employee seeking leave on a reduced or part-time schedule state specifically on the certification the need for that part-time schedule, and its expected duration.

We have worked for over 2 years to implement protections for the employers under this bill, and this amendment also helps to guard against the potential for abuse of the leave.

A return to the old language would put us in the bizarre position of telling a mother whose child needed chemotherapy that if she wanted 2 afternoons off per week she would have to negotiate that with her employer, while if she was willing to take an entire 6-week period off while her son underwent treatments 2 afternoons a week, that would be allowed. Clearly that was never our intent, and the language simply clarifies that.

Mr. President, I recognize the confusion over this issue. Are intermittent and reduced leave synonymous? Are they different? But too often, as we quibble over the letter of the law, the intent gets lost.

That is where we are today. The amendment I offered last year specifically gave employers the option to transfer an employee to another position during the period intermittent leave was taken, in order to limit the disruptions. Obviously, we all believed that intermittent leave could be the twice a week afternoon trips for follow-up treatment—otherwise, we wouldn't have pushed for the flexibility.

So I can certainly state that as the author of the substitute, our intent was clear—all medically necessary leave.

Unfortunately, now that the Department of Labor has changed the interpretation of intermittent—must be over 1 week, but under 12 weeks—the change in this bill is required to stick with our intent.

Thus, I oppose this amendment.

I merely want to assure my colleagues that we will work long and hard to straighten out some very difficult technical language. Were we to accept the Goodling amendment, we would be in the very weird position where a mother with a child who needed chemotherapy would not be able to take off the so-called reduced leave of two afternoons a week to get that child to chemotherapy, unless her employer explicitly agreed she would not be entitled to it. But she would be entitled to take off 6 full weeks just to get those two-times-a-week chemotherapy treatments.

There is very great confusion that we worked to alleviate, based on the Department of Labor's interpretation of the language in this bill. The language that is now in as a result of the technical amendment solves the problem. And I assure my colleagues that moving back to the Goodling version would simply add a great deal of confusion and uncertainty.

Thus, I will join with my colleague from Connecticut in urging that this amendment be tabled.

Mrs. KASSEBAUM. Mr. President, I speak in strong support of the language that Senator BROWN has offered. It is the exact language that was approved last night by the House. It is the Goodling amendment, and it was approved by the House. I believe it increases significantly the employer's ability to plan when an employee knows in advance that he or she will have to be gone.

I realize that this is the last minute. But I think it is important for us to address this amendment.

I urge its support.

Mr. DODD. Mr. President, if there is no further debate on this, I move to table the Brown amendment, and I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Mr. President, we are trying to accommodate several Senators who have other commitments.

I ask that Senators remain in the Chamber so that we can complete this vote in 10 minutes, and then have the vote on final passage immediately thereafter; and try to do that one in 10 minutes, as well, to accommodate several Senators who have travel schedules that require them to leave shortly.

I thank my colleagues.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Connecticut to lay on the table the amendment of the Senator from Colorado.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Wyoming [Mr. WALLOP] is necessarily absent.

I further announce that the Senator from South Carolina [Mr. THURMOND] is absent due to a death in the family.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "nay."

The VICE PRESIDENT. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 59, nays 39, as follows:

[Rollcall Vote No. 10 Leg.]

YEAS—59

Akaka	Feingold	Mathews
Baucus	Feinstein	Metzenbaum
Biden	Ford	Mikulski
Bond	Glenn	Mitchell
Boxer	Graham	Moseley-Braun
Bradley	Harkin	Moynihan
Breaux	Heflin	Murray
Bryan	Hollings	Nunn
Byrd	Inouye	Packwood
Campbell	Jeffords	Pell
Coats	Johnston	Reid
Cohen	Kennedy	Riegle
Conrad	Kerrey	Robb
Danforth	Kerry	Rockefeller
Daschle	Kohl	Sarbanes
DeConcini	Krueger	Sasser
Dodd	Lautenberg	Simon
Dorgan	Leahy	Wellstone
Durenberger	Levin	Wofford
Exon	Lieberman	

NAYS—39

Bennett	Faircloth	McCain
Bingaman	Gorton	McConnell
Boren	Gramm	Murkowski
Brown	Grassley	Nickles
Bumpers	Gregg	Pressler
Burns	Hatch	Pryor
Chafee	Hatfield	Roth
Cochran	Helms	Shelby
Coverdell	Kassebaum	Simpson
Craig	Kempthorne	Smith
D'Amato	Lott	Specter
Dole	Lugar	Stevens
Domenici	Mack	Warner

NOT VOTING—2

Thurmond	Wallop

So the motion to table, the amendment (No. 22) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. WELLSTONE. I rise in support of S. 5, the Family and Medical Leave Act of 1993, which President Clinton, the Democratic leadership and the Labor and Human Resources Committee on which I serve have given first priority in the new Congress.

I am delighted that we are about to take this critical first step toward a comprehensive family support policy in this country. There are few measures currently before Congress that so richly deserve a fast track approach as does the family and medical leave bill.

Despite persistent efforts by the minority to derail this modest measure—or to gut it with damaging amendments—our persistence and the support of President Clinton is about to pay off for American workers. I commend Chairman DODD, Chairman KENNEDY, and Majority Leader MITCHELL for their tenacity and skill in bringing this bill to the Senate floor for consideration as the first major legislation of the 103d Congress.

I am very hopeful that this year we will finally be able—after almost a decade of struggle over this issue here in Congress—to enact this legislation and immediately get it signed into law by President Clinton. I hope that next week it will be the law of the land—a testament to our ability to get things done quickly and cooperatively with the new administration. The polls consistently show that over 80 percent of Americans from all different backgrounds support family and medical leave; we ought to have provided this modest benefit years ago. I am glad that we are finally moving toward enactment of this bill.

The Family and Medical Leave Act is designed to protect the jobs of American workers when they are faced with a family crisis. It establishes a policy that says that Americans should not have to choose between having a family and having a job. It says that we believe in families in America, that as a nation, we are willing to pay the small price necessary to make families possible for people who work.

I want to make it clear, Mr. President, that I consider this legislation to be just a beginning, a modest start toward a more comprehensive family policy. The legislation provides 12 weeks of unpaid, job-protected leave per year for employees who are faced with the birth or adoption of a child, or who need to take care of an immediate family member who has fallen seriously ill. This policy is very modest and it comes very late—most of our Western European competitors have had similar policies for years. It is long past time to adopt our own, modest plan.

This bill comes at a critical time for this country. More and more, we are a country of working families. Currently, 96 percent of all fathers and 66 percent of all mothers with school-aged children are in the work force. Over half of all women with infants work outside the home. With the rise in two-earner families, we must make it possible for at least one family member to take some time out of work in case of emergencies.

But let us not rest too long with this important first step. Over the years, numerous compromises have been made to ensure that this legislation would be enacted into law. Originally designed to cover virtually all employers almost a decade ago, the bill before us will exempt all those employers with less than 50 employees. With this change, it only covers 5 percent of all employers. While it is true that according to 1990 census figures this translates into coverage for about 60 percent of American workers, we can do better.

Further, the bill restricts eligibility to those who have worked at least 1,250 hours over the previous 12 months and allows employers to exempt certain key employees from coverage. All of these changes, and others, were made to accommodate certain categories of employers along the way in order to ensure prompt enactment. I am hopeful that we will be able to strengthen and expand this legislation to cover all working Americans as soon as possible.

While I would support expanding this measure to cover more employees, I think it is important that the bill be enacted and signed into law as soon as possible, to protect the approximately 150,000 employees per year who lose their jobs because they have no medical leave—not to mention family leave. We must not delay further.

I am delighted that the bill provides for a study commission to assess the real effects of this bill on our economy. The work of this commission, including its recommendations for any changes that might be needed in the law after it is implemented, will be especially important to the work of the Labor and Human Resources Committee in our ongoing oversight efforts.

I urge my colleagues to support this important step forward, and to oppose any additional weakening amendments. I thank all those who have worked so patiently for so many years to bring us to this point. Americans have waited for a long time for a government that works, that is sensitive to their needs, and that generates policies relevant to their daily lives. This bill is an important example of our renewed commitment to those goals.

Mr. GORTON. Mr. President, last November, people in Washington State and people across the Nation sent an unmistakable message that they want us to revitalize the economy; to create new jobs for the unemployed and better jobs for workers in low-wage jobs with few benefits. On the wall of candidate

Clinton's campaign headquarters was posted the poignant message, "It's the economy, stupid."

It's still the economy, Senators.

In poll after poll, the economy remains the No. 1 concern of Americans. Until we get our economy rolling again, other issues are secondary.

Yet, we stand here today, 1 month into a new Congress, elected to tend to the growing of the economy, as ready as ever to impose more and more regulations on struggling businesses.

Our intentions are, as ever, sterling: Families do need help. When children are sick, when babies are born or children adopted, when aging parents fall ill, families need help. That the Family and Medical Leave Act is a good and beneficial attempt to provide that help is beyond debate—if we look at it in a vacuum. But we haven't been in a vacuum, we've been in a recession, and the first order of business should be to provide people with jobs.

In my home State of Washington, the effects of the recession are particularly apparent. Just yesterday, the Seattle Post Intelligencer ran an article headlined, "Jobless Rate in State Hits 6-Year High." The accompanying story read, in part:

> Unemployment in Washington hit 8 percent in December, the highest level since April 1987. That was a full percentage point higher than the seasonally adjusted 7 percent recorded nationally during December and in the State in the same month in 1991.

The article continues with a grim report that in 1992 Washington lost 7,500 aerospace jobs and hundreds of positions were eliminated by bank mergers. Two major pulp and paper processing plants closed, as did several retailers, including the Seattle based "Frederick and Nelson" and "Pay 'N Pack." In 1993, Boeing, the largest employer in Washington, may have to eliminate from 10,000 to 20,000 more positions. That would be an 18-percent reduction in Boeing's work force in just 4 years.

The P-I article continues, "The economy [of Washington State] will also be coping with the indirect effects of last year's Boeing cuts. * * *" The effects are dire, Mr. President. For every Boeing job lost, it is estimated that 3 other jobs will also be lost—a net loss of 40,000 to 80,000 jobs.

When people lose their jobs, they don't buy new cars. They don't go out for dinner. They don't take a vacation. They put off having the house painted. They continue to rent a home instead of buying one. In effect, Mr. President, unemployed people simply are not able to trigger a growing economy.

Washington State is not alone. Nationally, even as economic indicators show that the recession is over, new jobs are not being created. More than 9 million people are out of a job or looking for better employment. Six million people are working part-time jobs and would like to move up to full time.

And now, with the jobless rate in my home State of Washington at 8 percent, and looking at losing a possible 40,000 to 80,000 more jobs in the coming year, and with the national economy still faltering, the first bill the U.S. Senate will pass is one more mandate on top of dozens on the businesses that provide the jobs people need.

At the same time the Senate talks about creating new job opportunities, it is imposing still more regulations on the businesses that it calls upon to provide these new opportunities. If a company goes bankrupt, it is not only the business owner who loses his job, but the employees as well. In the real world employers and employees work side-by-side toward a common goal. Each is dependent on the other in order to succeed.

Contrary to this reality, some of my colleagues portray business as a great purveyor of evil. They talk about the need to protect employees from the diabolic plotting of employers. As former Senator Tsongas wryly pointed out last year, "Democrats love employment, they just hate employers." But good or bad, there can be no argument that without employers there are no jobs.

After listening to the people of my State, it is overwhelmingly clear that small- and medium-sized businesses, the heart of the economy of the United States, are almost universally opposed to this bill. Not because of any adversarial feeling toward their employees; in fact, just the opposite is most often true. The people I have heard from feel that the Family and Medical Leave Act, as proposed, adds one more burden, one more inhibition to their ability to grow, to make appropriate management decisions, and, ultimately, to provide the jobs which, after all, are the basis for any benefits at all. The business people I have heard from do not display the miserly motives often attributed to them, rather, they feel overwhelmingly responsible for their employees. Many are wracked with fear that they will have to lay off employees—often lifelong friends—whose families depend on them.

From Spokane to Seattle, from Bellingham to Kennewick, employers with more than 50 employees have urged me to recognize their contribution to our economy and not to impose further unreasonable Government regulations—because jobs will be lost when their businesses fail.

The Senator from Connecticut, Mr. DODD, has admitted that the real costs of this bill to American businesses, as reported by the General Accounting Office, is about $2.4 billion per year. Other estimates go as high as $8 billion per year. When we add these numbers to the billions of dollars that other regulations are costing American businesses from legislation that is well meaning and important when considered along—it is little wonder that we face a dragging recovery.

No, Mr. President, there will indeed be real human costs to this legislation and the volumes of regulations that will follow. While we argue in the abstract about "cost-free, mandated benefits", we neglect or choose to ignore the real-life impact of our actions. To begin with, this legislation only encourages the pervasive bias by employers against hiring women of child-bearing age. Professor Maria O'Brien Hylton argues persuasively in the Winter 1991 volume of the University of Pittsburgh Law Review, that—

> The debate about parental leave has ignored the possibility that the cost of this mandated benefit is likely to be borne by poor, low-skilled working women who will find their job opportunities narrow as employers try to shift women of the costs of the benefit to employees.

Professor Hylton's detailed analysis amounts to what this Senate should realize is just common sense in the real world: This legislation will hurt people who are most in need of work.

I fear the Family and Medical Leave Act is a flawed bill, attempting to achieve a noble goal through means that will produce unwanted consequences. Nonetheless, it is the only bill before us that addresses this very real problem, and it therefore has been our task to evaluate its merits, with an eye toward achieving an acceptable compromise. I have done so by comparing it to a similar law passed 4 years ago in Washington State.

Washington's law, thoughtfully studied and carefully crafted to respond to the needs of working families without unduly burdening the businesses that provides their jobs, has worked well and yielded few violations since its inception.I regret to say that its Federal counterpart, the bill before us today, does not fare well in comparison.

In particular, the Washington State law directs businesses with more than 100 employees to provide up to 12 weeks of unpaid parental leave to care for a new or adopted child. The difference between a 100-employee threshold and a 50-employee threshold is significant. According to the Washington State Department of Employment Security, in 1990, the number of businesses in Washington with 100 or more employees was 2,830, with a combined employee payroll of 1,009,382 employees. The number of businesses with 50 or more employees is 6,512, with a combined payroll of 1,262,093 employees. Lowering the threshold for family leave from 100 to 50 employees would affect an additional 3,682 businesses—a 130 percent expansion in the number of companies now covered in Washington State.

Even so, in the spirit of bipartisan cooperation, I was prepared to agree to the lower threshold of 50 employees, had that been my only concern with the bill before us. But it was not. There

are several substantive provisions which differ dramatically from Washington State's law.

One provision, key to the Washington law's success, requires an employee to provide 30 days written notice prior to taking foreseeable leave. The FMLA does not require written notice, an omission that is sure to provide fertile new ground for litigation.

Another of the Washington law's provisions expands the instances in which an employee can provide less than 30 days notice to include the situation in which a pregnant mother is unable to care for her children.

Finally, Washington's law allows employers to determine the key personnel who may be denied reinstatement after leave, while the Federal family leave proposal stipulates that the highest paid 10 percent of an employer's work force must constitute the designated key personnel. While I support the 10 percent provision, the concept would be enhanced by allowing employers to decide who is most vital to their businesses, rather than relying on the capricious standard of pay—which may vary widely from year to year and have more to do with seniority than critical value to the company.

I offered two amendments incorporating these reasonable changes, and both were rejected. Some members alluded to the potential for abuse by employers. But according to the Washington State Department of Labor and Industries, there have been no violations of these provisions. Despite the real world success of these measures in preventing misunderstandings and litigation, the majority was unwilling to listen to reasonable proposals.

The major question facing me today, then, is this: As a representative of the people of Washington State, can I vote for a Federal mandate that usurps Washington's own successful policy? Washington's law has worked so well and with few violations because of the specificity in its statutes, and the flexibility provided to employers. The bill before us lacks those attributes, and is an inferior substitute to the law already in effect in Washington State.

Mine were not the only proposals discarded without reason. Other Senators also put forward beneficial amendments.

The Senator from Kansas [Mrs. KASSEBAUM] offered a proposal that would have mitigated some of the excess costs to businesses and detrimental effects on employees by providing that any business which offers a cafeteria of benefit options, one of which is family and medical leave at least as generous as provided for in this legislation, would then fulfill the requirements of the act. This would allow employees to choose the benefits most valuable to them. A single woman with no dependents may choose educational assistance or greater health benefits. A working father may choose the family leave option. The key is that it is the employees who decide what is best for them—not a distant and inflexible Government decree.

Unfortunately, despite its obvious merits, this amendment was also rejected.

Finally, Senator GRASSLEY offered an amendment which would have reduced litigation by allowing employees and employers to settle their disputes through arbitration rather than protracted court battles. In other situations, arbitration has resolved conflicts years earlier than litigation would have.

Once again, this reasonable amendment was rejected.

So I am left to consider my vote on a bill that does not measure up to the law already in effect in my home State. The bill before us today places enormous costs on mid-sized businesses already struggling for survival in today's economy; and whose proponents have steadfastly refused to consider reasoned amendments to the act, regardless of the benefit to American citizens.

I will not vote for the Family and Medical Leave Act in its present form.

In our struggling economy, I cannot vote for another edict to business that will further limit growth. We continue to suffer the effects of a recession caused and still driven by debt and regulation, both of which divert businesses' time and money from the creation of new jobs.

The driving force behind the economy is not Government; it is jobs. I am disappointed that the first move of the new administration and the first move of the Congress was not to live up to their promise of focusing on economic growth, but to develop new mandates—new obstacles to growth—on the creators of jobs.

Before they cast their vote on this legislation, I ask each of my colleagues, to consider the effects of this legislation.

Envision yourself as an employer, responsible for meeting a payroll that supports families and even communities. Would you welcome this law? Would you consider adding more employees in its wake, or would you stay as lean as possible?

Since very few of us in this Chamber have actually been in that position, I would like to close my remarks by quoting from someone who has been. This person paints an eloquent and powerful portrait of the effect of our good intentions. His story appeared last year in the Wall Street Journal.

On retirement from a nonbusiness career, the author purchased an inn in Connecticut, fulfilling a lifelong entrepreneurial dream. Describing his tenure as a businessman, he says:

> * * * my business associates and I * * * lived with Federal, State and local rules that were all passed with the objective of helping employees, protecting the environment, raising tax dollars for schools, protecting our customers from fire hazards, etc. While I never doubted the worthiness of any of these goals, the concept that most often eludes legislators is: Can we make consumers pay the higher prices for the increased operating costs that accompany public regulation and Government reporting requirements?

In his case, he could not charge his consumers that higher price and still stay in business. His inn—and his dream—went bankrupt. He concluded that—

> * * * "one-size-fits-all" rules for business ignore the reality of the marketplace. And setting thresholds for regulatory guidelines at artificial levels—e.g., 50 employees or more, $500,000 in sales—take no account of other realities, such as profit margins, labor intensive versus capital intensive businesses, and local market economics.

This businessman who saw his dream buried is former Senator and 1972 Democratic Presidential candidate George McGovern. To his credit, he has shown remarkable courage in coming forward publicly with this new position. He opened his article with this quote from Justice Felix Frankfurter:

> Wisdom too often never comes, and so one ought not to reject it merely because it comes late.

Were he before us today, I suspect that Senator McGovern might tell us this: it's always been the economy, Senators.

And I would not be surprised if he joined this Senator in voting against the well-intentioned but flawed Family and Medical Leave Act.

Mr. JEFFORDS. Mr. President, I think we should begin by putting this debate in context. We are talking about unpaid leave.

Are employee's really going to beat down the doors to have their pay docked? I think not.

But let us take the case of the disgruntled employee who is out to make life difficult for his boss. What must he do?

First, as I have said, the employee must decide to cut off his nose to spite his face, taking money out of his wallet to get at his employer.

Second, the employer can require that a health care provider certify to the illness. If the employer doubts the first opinion, it can secure another, and then a third. It can request periodic recertification for a continuing illness. And it can request certification for every continuous period of leave or episode of illness.

Third, if the employer, chooses, it can transfer the employee to another, less disruptive position.

Fourth, if the employer suspects the employee is simply taking vacation time, it can substitute any paid leave the employee may have for the time the employee is absent.

Finally, if an employee takes leave for a purpose other than intended under the bill, that employee loses his entitlement to reinstatement.

So I hope it is clear to my colleagues that even the disgruntled employee has several hoops to jump through if he wants to make life miserable for his employer. I don't think there are very many employees who will go to these lengths.

But there are some, and we should be open to any proposal that would protect employers without undermining the purposes of the bill.

This amendment is not such a proposal. Instead of fixing a drafting problem that is universally acknowledged, it would codify it. And by doing so, instead of protecting employers, it would leave ambiguous language in the bill that would befuddle the regulators and send business to the litigators.

A bit of history may be in order. Reduced leave began as a unilateral right for the employee that applied to birth, adoption, or a family illness. Intermittent leave, also a unilateral right, applied to family illness as well as the employee's own illness.

MARGE ROUKEMA and I convinced BILL CLAY to make reduced leave a matter of mutual agreement. But that mutual-consent provision did not apply to medical leave. I think it was probably the merging of the family and medical leave sections that in part created the drafting problem we now face.

There has always been some tension between the concept of reduced leave, which is defined by the statute, and intermittent leave, which is not. In fact, although I know my colleague from Colorado is well intentioned, I think he would be hard pressed to provide a definition of intermittent leave that comports with both his amendment and the purposes of this bill.

Here is the problem. A reduced leave schedule is defined as a leave schedule that reduces the usual number of hours per workweek, or hours per workday. No problem there, especially since it is agreed upon by employer and employee.

Intermittent leave, as I mentioned, is undefined. The problem comes in that a court might very well conclude that intermittent leave is something entirely different from reduced leave, a strained interpretation I think but one that could be drawn from the text.

In fact, I think even my colleague from Colorado and other proponents of the amendment must concede that intermittent leave overlaps with the definition of reduced leave. And since it does overlap, we have to fix last year's language.

Let me give two examples, familiar to those who have been debating the issue.

First, an employee who must undergo continuing treatment, chemotherapy every Friday for example, is without question entitled to intermittent leave for such treatment and no employer veto may be exercised. If it's foreseeable, there must be notice to the employer, and the employee must make a reasonable effort to work with the employer to schedule the leave.

Second, if an employee is afflicted with an unpredictable, episodic illness, like migraines, he is clearly entitled to leave subject to the requirements of the bill.

I do not think it could be argued that the sponsors have ever intended otherwise. And yet each of these categories of intermittent leave would entail leave of less than a day or less than a week—exactly the definition of reduced leave. One is scheduled, one is not, but neither should be subject to an employer veto.

This is unfortunately exactly the result of the Brown amendment. Because of the legislative history we have created here, if we adopt the Brown amendment we rise the distinct possibility that an employer may be able to wield veto power over an employee who seeks treatment of his cancer, or who is afflicted with a crippling illness.

I doubt that is the intention of my colleague, but it might well be the result of his efforts. It is imperative that this amendment, which runs so contrary to the purposes of this legislation, be defeated.

Mr. MCCAIN. Mr. President, I am pleased to support S. 5, the Family and Medical Leave Act.

S. 5 would do the following:

Establish a reasonable, fair minimum labor standard. This bill is not a mandate, it is a minimum labor standard, such as minimum wage, child labor laws, and safety standards.

Requires only unpaid leave.

Exempts all small business, defined as businesses with 50 employees. This effectively exempts 95 percent of all employers in America.

Limits employee eligibility to those who have worked at least 1 full year and worked at least 25 hours per week.

Exempts key employees from the leave provision, defined as the highest paid 10 percent of the employees.

Requires 30 days notice for foreseeable leave.

Requires medical certification of illness and permits the employer to require a second opinion.

Allows employers to transfer employees taking intermittent leave to less disruptive, equivalent positions.

Allows men and women to take up to 12 weeks leave for illness, birth or adoption of a child, or care of an ill child, spouse or parent.

Mr. President, when S. 5 becomes law, it will allow for families to take care of their own without risking the loss of their job. If we are to successfully promote the family in light of the reality that more fathers and mothers and more daughters and sons who must take care of loved ones may be working, we must pass the Family and Medical Leave Act.

Mr. President, for those who are concerned about mandated paid leave, let me again emphasize that this bill only establishes criteria for unpaid leave. In addition, the bill expressly exempts all small businesses with 50 or less employees. I would also note that the bill contains necessary protections to prevent abuses of these provisions by employees.

Small businesses are the backbone of our economy and the Congress has an obligation to protect our Nation's small business men and women. If this bill had adversely affected small businesses in any way, I would have led the fight against S. 5. Further, if S. 5 had called for paid leave, I also would have opposed it.

In the past, previous versions of S. 5 did not offer protections for small businesses. Versions of this bill were inflexible, did not have sufficient safeguards against abuse of the law by employees, and did not require enough accountability on the part of the employee. It is for those reasons that I opposed such early versions of family and medical leave.

Over the course of the last 2 years, it became clear that this legislation was changing. Many of my colleagues and I negotiated with the current sponsors of S. 5 and convinced the sponsors to trim the bills excesses, limit its reach, and mirror other minimum labor standards that govern the work place.

Mr. President, I have always believed that the government must play a minimal, hands-off role in the area of business. Business owners and consumers know what is best for American industry, not the government. Government mandates and harsh regulations that bind the hands of business are wrong. I have always opposed these kinds of measures and will continue to do so.

However, for the reasons I have stated, this bill is different. It sets a reasonable minimum standard that encourages strong, self-sufficient families and is at the same time business friendly. I yield the floor.

Mr. DORGAN. Mr. President, today we will have the opportunity to vote on landmark legislation to strengthen families across our Nation.

The Family and Medical Leave Act will provide up to 12 weeks of unpaid leave to employees to care for a seriously ill family member, a new baby, or their own serious illness. It's an important labor issue, because it gives working men and women more flexibility in balancing the competing demands of work and family.

But more importantly, this legislation is an investment in our Nation's future. No longer will parents have to choose between their jobs and caring for a new baby. No longer will workers have to choose between their jobs and caring for a dying parent. With the passage of the Family and Medical Leave Act, we will be sending the message that Americans shouldn't have to choose between financial independence

and coping with family emergencies. And by emphasizing the importance of families to our Nation's social and financial framework, we are ensuring a strong future for ourselves and our children.

However, I agree with those who say that we have to be careful that our investment in the future doesn't become a financial or administrative drag on the very businesses that are our employers and our livelihoods. As in all things, Congress needs to approach this issue with a generous dose of common sense.

That's why, in past years, I have opposed initial proposals for family and medical leave that would have applied stringent leave requirements to small businesses. A business with 5 or 10 employees depends fully on every employee every day, and doesn't have the flexibility that larger companies do to provide extended leave benefits. And no one would benefit from requirements so burdensome that businesses couldn't function effectively.

The Family and Medical Leave Act that I'm voting for today has an exemption for small businesses, and imposes leave requirements only on employers with 50 or more employees. In addition, the legislation has a "key" employee exemption for businesses of all sizes to make sure that no business is unduly burdened by this law.

The GAO has estimated that the cost to businesses of providing health insurance while an employee is on unpaid leave is about $5.30 per year, a fraction of the typical annual fringe benefits package. And, in fact, several studies have found that it is far less expensive for employers to accommodate unpaid family and medical leave than it is for them to terminate and replace employees.

I wouldn't vote for this bill if I didn't think it made good sense both for families and for businesses. This Family and Medical Leave Act is both pro-family and pro-business, and it's the right investment for our country.

Mr. ROCKEFELLER. Mr. President, I want to join my other colleagues in commending Senator DODD for his extraordinary leadership over the past 7 years in advancing the issue of family and medical leave. I also want to recognize the bipartisan efforts of Senators FORD, BOND, and COATS to reach a strong compromise on this issue. I am proud to be an original cosponsor of this historic legislation.

As chairman of the National Commission on Children, and as an individual who cares passionately about children and families, I am thrilled that this bill is slated to be the first piece of legislation from the 103d Congress signed by President Clinton and enacted into law.

Enactment of family and medical leave signals that gridlock is broken. It also signals that children and families are a priority in our country.

This historic legislation will provide fundamental support for families. Thanks to this bill, fathers and mothers in the workforce will have real job protection when they must take time off for the birth or adoption of a child, or to respond to a serious medical crisis in their immediate family.

Despite what opponents have said during the debates, family and medical leave should not be treated as an optional benefit. It should be a minimum labor standard for workers, like minimum wage, child labor regulations, and OSHA standards. The bill provides needed job protection for workers who face the challenge of balancing parental and family obligations against the needs to earn a living and support their families. At the time of birth or an adoption, or during a family medical emergency, it's impossible for workers to do it all.

This bill is a compassionate response to the pressures facing families and a reasonable request of American employers. Great efforts were made to accommodate the concerns of every employer, and especially small businesses. Companies who have already implemented family leave policies report gains in productivity and morale.

Family and medical leave is a "win-win" situation for employees and their families, and for employers as well.

Enactment of this historic bill is also a "win" for American voters. It signals that we have heard their message. I know they expect action on the priority issues facing American families. It's time for government to respond to the problems facing workers, children, and families. Passage of the Family and Medical Leave Act is a major step in the right direction.

Mr. KERRY. Mr. President. I rise to express my support for S. 5, the Family and Medical Leave Act. I am proud to be a cosponsor of this bill because I believe the Family and Medical Leave Act will enable employees to care for a child upon his or her birth or adoption; to care for a child, spouse, or parent who is suffering from a serious health condition; or to use the leave when they themselves are ill. The Family and Medical Leave Act also will enable employees to focus on providing needed help, rather than worrying about keeping their jobs. Mr. President, the Family and Medical Leave Act is an example of what we ought to mean when we talk about helping families help themselves.

We should be clear about what the Family and Medical Leave Act will not do. This bill will not encourage employees to leave their jobs because they want a reduced work schedule. Nor will it undermine the ability of an employer to have a stable workforce or successfully conduct business operations because employees will frequently take leave. After all, under this bill, workers are being given the ability to use unpaid leave. It is doubtful that workers who are struggling to make ends meet will choose not to receive compensation for a period of time, whether a few days or 12 weeks unless there is a strong need to do so. The workers taking unpaid leave will do so because their family responsibilities necessitate it. And because they will know that they can properly care for their families, it is likely that workers taking leave will be more productive workers before they leave and after they return. Taking leave from a job to care for an ill parent or child is not something that most workers anticipate. Few of us think about adjusting our work schedules for medical emergencies, chronic illnesses, or the addition of a child to a family until that situation is upon us. At that point, all we know is that our child or our spouse or our parent needs us and we must respond. Instead of feeling anxiety over what may happen to a job in the event of a birth or adoption of a child or medical crisis, employees should feel confident that they now will be able to maintain their jobs without sacrificing their families. It is my hope that with the passage of this bill, uniform minimum leave standards will bring the United States in line with the practices of more than 75 other countries that offer family-related leave.

Mr. President, it is important also to note that with the passage of the Family and Medical Leave Act, the first bill passed by the Senate in the 103d Congress, the gridlock that has paralyzed the legislative agenda for years will be broken. It is fitting that the bill that breaks the gridlock and demonstrates to the American people that the Congress is serious about addressing the issues affecting the Nation is a bill that will permit millions of employees to be responsive to the needs of their families and be productive in the workplace. I congratulate the Senator from Kansas [Mrs. KASSEBAUM] and my colleague, the senior Senator from Massachusetts [Mr. KENNEDY] for their tireless efforts to bring this bill before the Senate quickly in the 103d Congress. I particularly want to express my appreciation to the senior Senator from Connecticut [Mr. DODD]. It is a testament to this persistence that the debate no longer focuses on whether family and medical leave should be guaranteed to employees but how it can best be offered to employees. Mr. DODD is to be commended for his commitment over many years to bringing family and medical leave to workers throughout our Nation.

Mr. DOLE. Mr. President, there has never been any real question that this bill will pass and that the president will sign it. We have known it from the start.

I had hoped that some of the amendments offered by this side of the aisle

would have passed but that did not occur.

I had very much hoped that the Republican alternative, S. 10, offered by Senator CRAIG, myself, and others, would have passed but I knew it was a long shot.

While we all support family leave and while we all want to do everything we can so that working Americans do not have to choose between their jobs, on the one hand, and their families on the other—S. 5 is not the solution.

It is a bad fit to an important problem. It is the easy way out that will ultimately do more harm for working Americans than good.

S. 5 is a mandate; the democrats like mandates.

With the country broke and States broke, my colleagues on the other side of the aisle have decided that the best way to get their programs enacted is to spend other people's money.

Not having the guts to raise taxes directly to pay for this bill, the proponents of this legislation have opted for a hidden tax approach. In short, S. 5 dips into the pocketbooks of small and large businesses and ultimately, their employees.

In my opinion, this approach is dishonest.

It is Washington, DC telling everyone what is best for them—that we inside the beltway know best how to spend their benefit dollars. That we inside the beltway are going to mandate that you do this—but when it comes time to pay for it, don't look to the U.S. Congress. We're too irresponsible to pay for anything or to even acknowledge that this legislation has a cost.

But we all know that there is no free ride. The cost of S. 5 is in the billions of dollars and thousands of jobs.

Contrary to what my colleagues on the other side of the aisle think, not all companies are the same.

Some businesses will easily absorb the costs of this legislation. But others will not and their workers will pay dearly for this benefit—a benefit that a Gallup Poll found only 1 percent of 1,000 respondents willing to list as their most valuable.

It goes without saying that this mandate legislation creates enormous pressures on—and incentives for—employers to cut staffs and benefits.

Indeed, I wouldn't be surprised to see a lot of companies in the 50 to 60 person range cut enough jobs or reduce the hours of certain workers to fall below the mandate trigger level.

In my State of Kansas, there are almost 580 companies that employ between 50 and 60 people. There are about 71 companies that employee 50 persons.

If I were a worker in one of these companies, I would be scratching my head wondering why the U.S. Congress—which should be working to create jobs, is putting expensive mandates on employers and encouraging them to cut jobs.

The new administration had better get cracking on their jobs creation bill because it will be needed just to mitigate the long-term effects of this legislation.

Already, my State is reeling from the effects of recent job cut announcements. Kansas is looking to lose 1,700 jobs from Sears, as many as 6,000 jobs from Boeing, and 400 jobs from Beech.

And this legislation—which will only add to job losses—is the first major piece of legislation we send to the President. I don't get it.

And so Mr. President, at this point, all I ask for is a little honesty in what we are doing.

We can honestly say that we all support family and medical leave. It is an important benefit—as are health insurance, retirement, and sick leave benefits.

We can also honestly say that we do not know how much this bill will cost business.

We do not know how many jobs will be lost because of this bill.

We do not know how many other employee benefits will be cut because of this bill.

In fact, when it comes right down to it, we do not know a whole lot about many of the potentially harmful effects of this bill.

For these reasons, I had hoped we would adopt an incentive tax credit approach for business—a tax credit that is paid for so that we know exactly the cost on the economy of the program we are enacting.

But perhaps such an approach does not satisfy the political spin and political gamesmanship that unfortunately has governed the debate on this issue.

I urge my colleagues to vote against S. 5.

Mr. RIEGLE. Mr. President, I come to the floor once again to talk about problems people in my State of Michigan are facing because of the health care crisis in this country.

Kathy Thomas, of Muskegon, MI, is an example of how the loss of a job can mean the loss of health insurance. Kate attended a forum I held in Muskegon last October where we heard from people who are having problems with the health care system.

Kate is a single parent of a 16-year-old daughter, Jennifer. For 4½ years, Kate and Jennifer had Blue Care network insurance through Kate's employer. Unfortunately, Kate was laid off last May from the Muskegon Regional Center for the Developmentally Disabled. The center was subsequently closed permanently, so Kate has no hope of going back to her job. Kate's union continued to pay the insurance premiums of $400 per month through last September. However, that coverage was temporary, so the Thomases have been uninsured for the past 4 months.

Kate has been offered extended coverage under her previous employer's plan but she cannot afford to pay the $400 month premium. She has looked for a more affordable private plan but has found that she would still have to pay $380 per month, and would not have coverage for prescriptions, office visits, and there would be major limitations on hospital and emergency care coverage. At this time, she cannot afford this expense.

Kate has applied for Medicaid and has been denied because she is receiving unemployment benefits of $566 every 2 weeks. Kate is in a catch-22 situation: Her income is not enough to afford health care coverage but too much to qualify for Medicaid. To supplement her income she has resorted to using her retirement funds which will quickly run out, leaving her with no protection in her old age.

Mr. President, Kate doesn't want to be in this situation. She is searching hard for employment which will provide health care coverage for herself and her daughter. But because she was laid off, through no fault of her own, she is now put at risk for huge medical expenses should she or her daughter become ill or injured.

Kate has already had to put off treatments for herself and Jennifer. She has a thyroid condition which requires daily prescription drug medication and since she lost her job last fall, she has discontinued using the medication because of the cost.

Last September, Jennifer fell and injured her leg and did not obtain medical care. Recently, Jennifer has complained that her leg is still bothering her especially when she kneels. Kate has stated that if she had health care coverage she wouldn't hesitate to take her to the doctor, but the costs make doing this impossible at this time. This week, after Jennifer complained of a chronic stomach pain for some days, Kate decided to make an appointment, but without insurance, Kate is worried about the costs.

Kate struggles with the dilemma facing many who have no health insurance; putting off treatment now may result in bigger problems and high costs later. She is understandably worried about what's in store for her and her daughter. She says, "I'm afraid of the future. I'm afraid for the future that my daughter inherits, and I'm afraid of any illness that could impact our lives financially."

The loss of a job and the high cost of health care coverage have caused Kate and her daughter to lose not only their health care coverage but also their peace of mind. We need comprehensive reform of the health care system now to guarantee access to a full range of health services. I will do everything I can to guarantee health care coverage for every American, including those who are between jobs, so that everyone will be able to get the health care they need, when they need it, and end the

fear that an illness or injury could result in financial devastation.

Mr. NICKLES. Mr. President, the Family and Medical Leave Act imposes a whole series of requirements on employers. The bill requires them to give employees up to 12 weeks unpaid leave when they become parents through childbirth, adoption or foster care. It requires them to give similar time off to employees with serious health conditions. And it requires them to give unpaid leave to care for family members and spouses who have serious health conditions.

It is no secret that I object to imposing these mandates on employers. But it is also no secret that this bill will pass and that the President will sign it into law. For that reason, it is especially important that we leave no doubt about what we are requiring of employers and what rights we are granting employees, because any doubts will end up being resolved in the courts.

That's why I am grateful to the managers of this legislation for including in their package of technical amendments a definition of the term "spouse." The bill as reported clearly defines other terms like "parent" and "eligible employee" and "son or daughter," but it did not define "spouse."

My technical amendment accepted by the managers fills this gap. The definition it supplies is brief, simple and clear. It reads: "The term 'spouse' means husband or wife, as the case may be." This is the same definition that appears in Title 10 of the United States Code (10 U.S.C. 101).

Under this amendment, an employer would be required to give an eligible female employee unpaid leave to care for her husband and an eligible male employee unpaid leave to care for his wife. No employer would be required to grant an eligible employee unpaid leave to care for an unmarried domestic partner.

This simple definition will spare us a great deal of costly and unnecessary litigation. Without this amendment, the bill would invite lawsuits by workers who unsuccessfully seek leave on the basis of the illness of their unmarried adult companions.

Mr. President, this amendment supplies a definition that is essential to the bill. It is a clear definition, one that already is in effect in Federal law, and one that captures what I'm sure the bill's sponsors had in mind when they wrote the term "spouse" into this legislation.

I commend the distinguished managers of the bill for including this definition in their technical amendment.

Mr. KOHL. I thank the Senator from Connecticut, the chief Senate sponsor of this bill regarding family and medical leave, for his willingness to clarify the intent of this Federal legislation. As he is aware, the State of Wisconsin already has in place the Wisconsin Family and Medical Leave Act and agency rules, section 103.10, Wisconsin Stats., and Wisconsin Administrative Code Ch. 86. There is some concern with the way in which this and other Federal legislation impacts that law and Senator FEINGOLD and I would appreciate the Senator's understanding of that.

Mr. DODD. Wisconsin has certainly been a pioneer in providing these benefits to employees and I would be happy to respond to the questions of the Senators from Wisconsin.

Mr. FEINGOLD. A few years ago a Wisconsin administrative law judge concluded that the provision of the Wisconsin FMLA enabling employees to substitute accrued paid leave for unpaid family leave was preempted by ERISA to the extent it impacted an employer's ERISA plan that paid out sick leave. Is it the intent of the sponsors of this bill that the provisions of the Employee Retirement Income Security Act of 1974, as amended, shall not prevent the substitution of accrued paid leave, regardless of the source of funding for the paid leave?

Mr. DODD. Yes. This Federal legislation provides that either an employer or an employee may elect to substitute accrued paid leave for unpaid family and medical leave, although the scope of an employee's rights in that regard are more generous under the Wisconsin law. The provisions of this Federal Family and Medical Leave Act are intended to supersede ERISA and any Federal law. The authors of this legislation intend to prevent ERISA and any other Federal law from undercutting the family and medical leave laws of States that currently allow the provision of substitution of accrued paid leave for unpaid family leave, regardless of the nature of the family leave, so long as those State law provisions are at least as generous as those of this Federal legislation. Certainly, if Wisconsin law allows either an employer or an employee to substitute accrued paid leave to care for a newly born or adopted child on terms at least as generous as in this legislation, it is our intent that no Federal law prevent Wisconsin law from making this allowance.

Mr. KOHL. A decision by a New Jersey lower court held a few years ago that the provision of New Jersey's leave legislation requiring employers to continue their contributions to workers' health insurance coverage during leave is preempted by ERISA. Is it the intent of the sponsors of this bill that the provisions of the Employee Retirement Income Security Act of 1974, as amended, shall not prevent the continuation of employers' contributions to workers' health insurance coverage during family or medical leave available under State laws on terms at least as generous as provided under this Federal legislation?

Mr. DODD. Yes. The Federal Family and Medical Leave Act also requires that employers continue their contributions to workers' health insurance coverage during leave. It is the intent of the sponsors of this bill that the provisions of this legislation serve as a floor, not a ceiling. If the study of the Commission on Leave which is being created by this Federal legislation is to be meaningful, it is vital for States to be experimenting, without Federal constraints, in their various efforts to provide leave on terms at least as generous as those provided by this Federal legislation.

Mr. FEINGOLD. Is it the intent of the bill sponsors that the provisions of neither ERISA nor any other Federal law would preempt any provisions of any State family or medical leave law to the extent those provisions are at least as generous as the provisions in this Federal legislation?

Mr. DODD. Yes; it is certainly our intent that, as Federal legislation enacted subsequent to ERISA, the Federal Family and Medical Leave Act supersedes ERISA to the extent ERISA preempts any State leave law provisions which are at least as generous as the provision of the Federal Family and Medical Leave Act. The same principle applies to any other previously enacted Federal law. Enactment of the Federal FMLA allows States to provide leave on terms as generous or beneficial, or even more generous or beneficial, to workers. Both ERISA and all other Federal laws which would interfere with this intent in any way are clearly superseded to that extent. The Federal FMLA makes clear that any provisions of any State leave laws that are at least as generous or beneficial to workers as those in the Federal FMLA will not be preempted by ERISA or any other Federal law.

Mr. KOHL. If only some of the provisions of a State law are at least as generous or beneficial to workers as the Federal FMLA, is it the intent of the sponsors that those provisions are not preempted by this or any other Federal law?

Mr. DODD. Yes.

Mr. KOHL. Senator FEINGOLD and I thank the colleague of Connecticut. I understand from his remarks that, should any provision of any State law allow leave on terms at least as generous or beneficial to workers as the Federal FMLA, neither this nor any other Federal law will prevent that State law from making that allowance to workers.

Mr. BOND. A number of businesses have contacted my office over the last few days to express concern about what they perceive as a substantive change to the family and medical leave bill prior to introduction.

I believe we must clarify that the changes were necessary to clarify the intent of Congress and do not have a

substantive effect. I believe we can best do that by walking through the steps an employee must take before being entitled to take leave for his own or a family member's illness. An examination of the rights and responsibilities of both employers and employees under both the conference report of last year and S. 5 now before us will show that nothing has changed.

Employers and employees have the same rights and responsibilities they had before.

Under the Bond-Ford-Dodd amendment:

Any employee wanting unpaid leave, whether for the full 12 weeks or on a reduced or intermittent basis, to care for a family member or for his own condition had to:

First, prove that he or the family member had a serious health condition;

Second, provide certification from a health care provider that he was unable to perform the functions of the job, or that he or she was needed to care for the ill family member;

Third, obtain a second or even third opinion if the employer requested it.

Fourth, in the case of intermittent leave, take the responsibility to schedule it in such a way that it did not disrupt the employer's operations.

If the employee met those strict standards, he was eligible for leave.

We further protected the employer under the Bond amendment by allowing him to transfer an employee to an equivalent position that better accommodated the periods of leave.

Nothing has changed. Under the new S. 5:

Any employee desiring medical leave or leave to care for a family member still has to meet the strict tests:

First, there must be serious health condition;

Second, there must be certification;

Third, there must be a second or even third opinion if the employer requests it;

Fourth, leave must be scheduled so that it does not disrupt an employer's operations. And employers still have the right to transfer people on reduced or intermittent leave.

The change in language was necessary to clarify the long-standing intent of Congress that employers would not unilaterally have the power to deny leave to, for instance, a woman whose son needed chemotherapy treatments two afternoons a week when that woman had provided all of the necessary documentation and certification.

Mr. DODD. I thank the Senator from Missouri for making that clarification. In addition, at the request of you and Senator COATS, we have taken yet another step to guard against potential abuse of the unpaid leave policy. We have amended the certification section of the bill to include the requirement that the health care provider indicate the necessity of reduced and intermittent leave; the amount of time needed; and a schedule.

Mr. BOND. I appreciate your willingness to work with us on this.

Mr. President, I commend my colleague from Connecticut on clearing another hurdle towards enactment of this bill.

I can testify to the long hours he has put in, and to his willingness to negotiate with us in an effort to make the bill better, and more workable.

I am proud to have been a part of this great effort. I believe the final bill strikes exactly the right balance between the needs of employees to attend to family emergencies, and the legitimate needs of their employers to ensure that their businesses continue to run smoothly. I would also like to thank Senator COATS, as he has been key in our effort to help American families without burdening businesses.

As I have said many times before, I believe this modest job protection while employees attend to family needs is an essential part of keeping families together.

And family preservation, in turn is crucial to our long term economic health.

So I congratulate the Senator from Connecticut, and would like to extend a special thanks to Rich Tarplin of his staff and to Julie Dammann and Leanne Jerome of my staff for their hard work.

Mr. HARKIN. I would like to enter into a colloquy with the distinguished author of the pending legislation.

It is my understanding that under S. 5, the Family and Medical Leave Act of 1993, the term "serious health condition" means an illness, injury, impairment, or physical or mental condition. It is also my understanding that the term includes those conditions that require inpatient care in a medical care facility or continuing treatment by a health care provider.

In addition, is my understanding that the term is intended to cover conditions that affect an employee's health to the extent that he or she must be absent from work, as well as conditions that affect the health of an employee's family member such that he or she is similarly unable to participate in school or in his or her regular daily activities. Examples of such serious health conditions include but are not limited to heart attacks, most cancers, back and other conditions requiring therapy, strokes, secondary conditions which accompany certain disabilities, appendicitis, pneumonia, nervous disorders, and injuries caused by accidents on and off the job.

It is also my understanding that this definition of "serious health condition" is intended to include emergency health conditions that require immediate short-term treatment to prevent serious aggravation of the condition or to minimize the likelihood of longer-term illness or injury, or a more severe disability. Severe concussions, which often require a brief but immediate medical treatment to ensure against long-term damage provide an example of such conditions as does the treatment of decubitus ulcers—pressure sores—in people with physical disabilities. I would like to ask the Senator from Connecticut, is it the intent of S. 5 to cover such conditions?

Mr. DODD. As the Senator stated, leave is not limited to just cases of injury or illness, but extends also to "* * * a physical or mental condition." It is the intent that if such conditions otherwise meet the requirements of the bill, leave should be granted.

Mr. HARKIN. It is also my understanding that the definition of serious health condition under S. 5 includes conditions that require intermittent visits to a health care provider for treatment, such as periodic chemotherapy treatments for a cancer patient or periodic speech and other therapies for children with hearing impairments or other disabilities. Is that understanding correct?

Mr. DODD. Yes, intermittent care is provided under the bill for qualifying serious health conditions.

Mr. HARKIN. Another question please. Sometimes parents of children with disabilities need to take time off so that they can do such things as monitor and regulate medication levels before their child can safely return to school. Additionally, people with physical and mental disabilities sometimes experience certain conditions which may limit their abilities and require some time off from work to get the condition under control. Is it the intent of S. 5 to cover such conditions?

Mr. DODD. As I pointed out, it is the intent that such qualifying conditions be covered.

Mr. KENNEDY. The family and medical leave bill, S. 5, states that in order to take leave in case of illness, the employee or his family member must be under the care of a health care provider as defined in the bill and as determined by the Secretary under section 101(6). Am I correct?

Mr. DODD. Yes, the gentleman is correct.

Mr. KENNEDY. Mr. President, we have had a well-established principle of religious tolerance for those who provide spiritual treatment through prayer alone. Is it the Senator's intent that the term "health care provider" be defined by the Secretary of Labor to include Christian Science practitioners, when they are properly accredited by their national organization, and have received appropriate training?

Mr. DODD. Yes it is.

The VICE PRESIDENT. The question is on the engrossment and third reading of the bill.

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The bill was ordered to be engrossed for a third reading and read the third time.

The bill was read a third time.

Mr. WELLSTONE. Mr. President, may we have order in the Chamber?

The VICE PRESIDENT. The Senate will be in order.

Does the majority leader seek recognition?

Mr. MITCHELL. Yes.

The VICE PRESIDENT. The majority leader.

Mr. MITCHELL. Mr. President and Members of the Senate, this will be the last rollcall vote. The Senate will not be in session tomorrow. The Senate will return to session following the Lincoln Day recess.

Mr. President, in the early weeks of each new Congress, the majority and minority leaders put on a reception and dinner honoring the new Members of Congress. That reception and dinner is being held this evening in the Great Hall of the Thomas Jefferson Building of the Library of Congress just a few feet from here.

I have been advised that, through some mixup, some Senators did not receive invitations to this. I do not know how it happened, but I apologize for it. In any event, I hope that all Senators who can do so will attend. We will obviously be a little late now—the dinner started at 7:30—but we are going to proceed as soon as we can upon the completion of the business here before the Senate.

The VICE PRESIDENT. The clerk will report H.R. 1.

The assistant legislative clerk read as follows:

A bill (H.R. 1) to grant family and temporary medical leave under certain circumstances.

The VICE PRESIDENT. All after the enacting clause of H.R. 1 is stricken and the text of S. 5, as amended, is inserted in lieu thereof.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The VICE PRESIDENT. The question is on passage of the bill.

Mr. PRYOR. I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The bill having been read the third time, the question is, shall the bill pass?

The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Wyoming [Mr. WALLOP] is necessarily absent.

I further announce that the Senator from South Carolina [Mr. THURMOND] is absent due to a death in the family.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "nay."

The result was announced—yeas 71, nays 27, as follows:

[Rollcall Vote No. 11 Leg.]

YEAS—71

Akaka	Durenberger	Mikulski
Baucus	Exon	Mitchell
Biden	Feingold	Moseley-Braun
Bingaman	Feinstein	Moynihan
Bond	Ford	Murkowski
Boren	Glenn	Murray
Boxer	Graham	Nunn
Bradley	Harkin	Packwood
Breaux	Hatfield	Pell
Bryan	Inouye	Pryor
Bumpers	Jeffords	Reid
Burns	Johnston	Riegle
Byrd	Kennedy	Robb
Campbell	Kerrey	Rockefeller
Chafee	Kerry	Roth
Coats	Kohl	Sarbanes
Cohen	Krueger	Sasser
Conrad	Lautenberg	Shelby
D'Amato	Leahy	Simon
Danforth	Levin	Specter
Daschle	Lieberman	Stevens
DeConcini	Mathews	Wellstone
Dodd	McCain	Wofford
Dorgan	Metzenbaum	

NAYS—27

Bennett	Gramm	Lott
Brown	Grassley	Lugar
Cochran	Gregg	Mack
Coverdell	Hatch	McConnell
Craig	Heflin	Nickles
Dole	Helms	Pressler
Domenici	Hollings	Simpson
Faircloth	Kassebaum	Smith
Gorton	Kempthorne	Warner

NOT VOTING—2

Thurmond	Wallop

So the bill (H.R. 1), as amended, was passed; as follows:

Resolved, That the bill from the House of Representatives (H.R. 1) entitled "An Act to grant family and temporary medical leave under certain circumstances", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Family and Medical Leave Act of 1993".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—GENERAL REQUIREMENTS FOR LEAVE

Sec. 101. Definitions.
Sec. 102. Leave requirement.
Sec. 103. Certification.
Sec. 104. Employment and benefits protection.
Sec. 105. Prohibited acts.
Sec. 106. Investigative authority.
Sec. 107. Enforcement.
Sec. 108. Special rules concerning employees of local educational agencies.
Sec. 109. Notice.

TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Leave requirement.

TITLE III—COMMISSION ON LEAVE

Sec. 301. Establishment.
Sec. 302. Duties.
Sec. 303. Membership.
Sec. 304. Compensation.
Sec. 305. Powers.
Sec. 306. Termination.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Effect on other laws.
Sec. 402. Effect on existing employment benefits.
Sec. 403. Encouragement of more generous leave policies.
Sec. 404. Regulations.
Sec. 405. Effective dates.

TITLE V—COVERAGE OF CONGRESSIONAL EMPLOYEES

Sec. 501. Leave for certain Senate employees.
Sec. 502. Leave for certain House employees.

TITLE VI—SENSE OF CONGRESS

Sec. 601. Sense of Congress.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;

(2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;

(3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;

(4) there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;

(5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men; and

(6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) PURPOSES.—It is the purpose of this Act—

(1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity;

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;

(3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;

(4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

(5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

TITLE I—GENERAL REQUIREMENTS FOR LEAVE

SEC. 101. DEFINITIONS.

As used in this title:

(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 (1) and (3) of section 501 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (1) and (3)).

(2) ELIGIBLE EMPLOYEE.—

(A) IN GENERAL.—The term "eligible employee" means an employee who has been employed—

(i) for at least 12 months by the employer with respect to whom leave is requested under section 102; and

(ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

(B) EXCLUSIONS.—The term "eligible employee" does not include—

(i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code (as added by title II of this Act); or

(ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(C) DETERMINATION.—For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply.

(3) EMPLOY; EMPLOYEE; STATE.—The terms "employ", "employee", and "State" have the same meanings given such terms in subsections (c), (e), and (g) of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203 (c), (e), and (g)).

(4) EMPLOYER.—

(A) IN GENERAL.—The term "employer"—

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes—

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer; and

(iii) includes any "public agency", as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(B) PUBLIC AGENCY.—For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an 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 group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

(6) HEALTH CARE PROVIDER.—The term "health care provider" means—

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(B) any other person determined by the Secretary to be capable of providing health care services.

(7) PARENT.—The term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(8) PERSON.—The term "person" has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(9) REDUCED LEAVE SCHEDULE.—The term "reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(10) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(11) SERIOUS HEALTH CONDITION.—The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider.

(12) SON OR DAUGHTER.—The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, 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.

(13) SPOUSE.—the term "spouse" means a husband or wife, as the case may be.

SEC. 102. LEAVE REQUIREMENT.

(a) IN GENERAL.—

(1) ENTITLEMENT TO LEAVE.—Subject to section 103, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(2) EXPIRATION OF ENTITLEMENT.—The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(b) LEAVE TAKEN INTERMITTENTLY OR ON A REDUCED LEAVE SCHEDULE.—

(1) IN GENERAL.—Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 103(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

(2) ALTERNATIVE POSITION.—If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that—

(A) has equivalent pay and benefits; and

(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) UNPAID LEAVE PERMITTED.—Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), the compliance of an employer with this title by providing unpaid leave shall not affect the exempt status of the employee under such section.

(d) RELATIONSHIP TO PAID LEAVE.—

(1) UNPAID LEAVE.—If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.

(2) SUBSTITUTION OF PAID LEAVE.—

(A) IN GENERAL.—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection.

(B) SERIOUS HEALTH CONDITION.—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C) or (D) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection, except that nothing in this title shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(e) FORESEEABLE LEAVE.—

(1) REQUIREMENT OF NOTICE.—In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) DUTIES OF EMPLOYEE.—In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

(B) shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(f) SPOUSES EMPLOYED BY THE SAME EMPLOYER.—In any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken—

(1) under subparagraph (A) or (B) of subsection (a)(1); or

(2) to care for a sick parent under subparagraph (C) of such subsection.

SEC. 103. CERTIFICATION.

(a) IN GENERAL.—An employer may require that a request for leave under subparagraph (C) or (D) of section 102(a)(1) be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) SUFFICIENT CERTIFICATION.—Certification provided under subsection (a) shall be sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

(4)(A) for purposes of leave under section 102(a)(1)(C), a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and

(B) for purposes of leave under section 102(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee;

(5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;

(6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(D), a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

(7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(C), a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(c) SECOND OPINION.—

(1) IN GENERAL.—In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 102(a)(1), the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave.

(2) LIMITATION.—A health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employer.

(d) RESOLUTION OF CONFLICTING OPINIONS.—

(1) IN GENERAL.—In any case in which the second opinion described in subsection (c) differs from the opinion in the original certification provided under subsection (a), the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) FINALITY.—The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) SUBSEQUENT RECERTIFICATION.—The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

SEC. 104. EMPLOYMENT AND BENEFITS PROTECTION.

(a) RESTORATION TO POSITION.—

(1) IN GENERAL.—Except as provided in subsection (b), any eligible employee who takes leave under section 102 for the intended purpose of the leave shall be entitled, on return from such leave—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) LOSS OF BENEFITS.—The taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) LIMITATIONS.—Nothing in this section shall be construed to entitle any restored employee to—

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) CERTIFICATION.—As a condition of restoration under paragraph (1) for an employee who has taken leave under section 102(a)(1)(D), the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of such employees.

(5) CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 102 to report periodically to the employer on the status and intention of the employee to return to work.

(b) EXEMPTION CONCERNING CERTAIN HIGHLY COMPENSATED EMPLOYEES.—

(1) DENIAL OF RESTORATION.—An employer may deny restoration under subsection (a) to any eligible employee described in paragraph (2) if—

(A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(B) the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such injury would occur; and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) AFFECTED EMPLOYEES.—An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) MAINTENANCE OF HEALTH BENEFITS.—

(1) COVERAGE.—Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 102, the employer shall maintain coverage under any "group health plan" (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

(2) FAILURE TO RETURN FROM LEAVE.—The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 102 if—

(A) the employee fails to return from leave under section 102 after the period of leave to which the employee is entitled has expired; and

(B) the employee fails to return to work for a reason other than—

(i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 102(a)(1); or

(ii) other circumstances beyond the control of the employee.

(3) CERTIFICATION.—

(A) ISSUANCE.—An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by—

(i) a certification issued by the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(C); or

(ii) a certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(D).

(B) COPY.—The employee shall provide, in a timely manner, a copy of such certification to the employer.

(C) SUFFICIENCY OF CERTIFICATION.—

(i) LEAVE DUE TO SERIOUS HEALTH CONDITION OF EMPLOYEE.—The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired.

(ii) LEAVE DUE TO SERIOUS HEALTH CONDITION OF FAMILY MEMBER.—The certification described in subparagraph (A)(i) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

SEC. 105. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—

(1) EXERCISE OF RIGHTS.—It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) DISCRIMINATION.—It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title; or

(3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this title.

SEC. 106. INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) OBLIGATION TO KEEP AND PRESERVE RECORDS.—Any employer shall make, keep, and preserve records pertaining to compliance with this title in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations issued by the Secretary.

(c) REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.—The Secretary shall not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 107(b).

(d) SUBPOENA POWERS.—For the purposes of any investigation provided for in this section,

the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

SEC. 107. ENFORCEMENT.

(a) CIVIL ACTION BY EMPLOYEES.—

(1) LIABILITY.—Any employer who violates section 105 shall be liable to any eligible employee affected—

(A) for damages equal to—

(i) the amount of—

(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 105 proves to the satisfaction of the court that the act or omission which violated section 105 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 105, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) RIGHT OF ACTION.—An action to recover the damages or equitab½ relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of—

(A) the employees; or

(B) the employees and other employees similarly situated.

(3) FEES AND COSTS.—The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) LIMITATIONS.—The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate—

(A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1),

unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) ACTION BY THE SECRETARY.—

(1) ADMINISTRATIVE ACTION.—The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 105 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(2) CIVIL ACTION.—The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in subsection (a)(1)(A).

(3) SUMS RECOVERED.—Any sums recovered by the Secretary pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums not paid to an employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) LIMITATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(2) WILLFUL VIOLATION.—In the case of such action brought for a willful violation of section 105, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(3) COMMENCEMENT.—In determining when an action is commenced by the Secretary under this section for the purposes of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) ACTION FOR INJUNCTION BY SECRETARY.—The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary—

(1) to restrain violations of section 105, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees; or

(2) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(e) SOLICITOR OF LABOR.—The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.

SEC. 108. SPECIAL RULES CONCERNING EMPLOYEES OF LOCAL EDUCATIONAL AGENCIES.

(a) APPLICATION.—

(1) IN GENERAL.—Except as otherwise provided in this section, the rights (including the rights under section 104, which shall extend throughout the period of leave of any employee under this section), remedies, and procedures under this title shall apply to—

(A) any "local educational agency" (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))) and an eligible employee of the agency; and

(B) any private elementary or secondary school and an eligible employee of the school.

(2) DEFINITIONS.—For purposes of the application described in paragraph (1):

(A) ELIGIBLE EMPLOYEE.—The term "eligible employee" means an eligible employee of an agency or school described in paragraph (1).

(B) EMPLOYER.—The term "employer" means an agency or school described in paragraph (1).

(b) LEAVE DOES NOT VIOLATE CERTAIN OTHER FEDERAL LAWS.—A local educational agency and a private elementary or secondary school shall not be in violation of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result of an eligible employee of such agency or school exercising the rights of such employee under this title.

(c) INTERMITTENT LEAVE OR LEAVE ON A REDUCED SCHEDULE FOR INSTRUCTIONAL EMPLOYEES.—

(1) IN GENERAL.—Subject to paragraph (2), in any case in which an eligible employee employed principally in an instructional capacity by any such educational agency or school requests leave under subparagraph (C) or (D) of section 102(a)(1) that is foreseeable based on planned medical treatment and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the agency or school may require that such employee elect either—

(A) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or

(B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and that—

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(2) APPLICATION.—The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an eligible employee who complies with section 102(e)(2).

(d) RULES APPLICABLE TO PERIODS NEAR THE CONCLUSION OF AN ACADEMIC TERM.—The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity by any such educational agency or school:

(1) LEAVE MORE THAN 5 WEEKS PRIOR TO END OF TERM.—If the eligible employee begins leave under section 102 more than 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if—

(A) the leave is of at least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of such term.

(2) LEAVE LESS THAN 5 WEEKS PRIOR TO END OF TERM.—If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if—

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of such term.

(3) LEAVE LESS THAN 3 WEEKS PRIOR TO END OF TERM.—If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

(e) RESTORATION TO EQUIVALENT EMPLOYMENT POSITION.—For purposes of determinations under section 104(a)(1)(B) (relating to the restoration of an eligible employee to an equivalent position), in the case of a local educational agency or a private elementary or secondary school, such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements.

(f) REDUCTION OF THE AMOUNT OF LIABILITY.—If a local educational agency or a private elementary or secondary school that has violated this title proves to the satisfaction of the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of this title, such court may, in the discretion of the court, reduce the amount of the liability provided for under section 107(a)(1)(A) to the amount and interest determined under clauses (i) and (ii), respectively, of such section.

SEC. 109. NOTICE.

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the

premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) PENALTY.—Any employer that willfully violates this section may be assessed a civil money penalty not to exceed $100 for each separate offense.

TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. LEAVE REQUIREMENT.

(a) CIVIL SERVICE EMPLOYEES.—

(1) IN GENERAL.—Chapter 63 of title 5, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

"§6381. Definitions

"For the purpose of this subchapter—

"(1) the term 'employee' means any individual who—

"(A) is an 'employee', as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia and any individual employed on a temporary or intermittent basis; and

"(B) has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));

"(2) the term 'health care provider' means—

"(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; and

"(B) any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services;

"(3) the term 'parent' means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter;

"(4) the term 'reduced leave schedule' means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee;

"(5) the term 'serious health condition' means an illness, injury, impairment, or physical or mental condition that involves—

"(A) inpatient care in a hospital, hospice, or residential medical care facility; or

"(B) continuing treatment by a health care provider; and

"(6) the term 'son or daughter' means a biological, adopted, or foster child, a stepchild, a legal ward, 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.

"§6382. Leave requirement

"(a)(1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

"(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

"(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

"(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

"(D) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

"(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

"(b)(1) Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 6383(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

"(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1), that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that—

"(A) has equivalent pay and benefits; and

"(B) better accommodates recurring periods of leave than the regular employment position of the employee.

"(c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.

"(d) An employee may elect to substitute for leave under subparagraph (A), (B), (C), or (D) of subsection (a)(1) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.

"(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

"(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee—

"(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

"(B) shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

"§6383. Certification

"(a) An employing agency may require that a request for leave under subparagraph (C) or (D) of section 6382(a)(1) be supported by certification issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employing agency.

"(b) A certification provided under subsection (a) shall be sufficient if it states—

"(1) the date on which the serious health condition commenced;

"(2) the probable duration of the condition;

"(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

"(4)(A) for purposes of leave under section 6382(a)(1)(C), a statement that the employee is needed to care for the son, daughter, spouse, or parent, and an estimate of the amount of time that such employee is needed to care for such son, daughter, spouse, or parent; and

"(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

"(5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

"(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.

"(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.

"(d)(1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employing agency and the employee concerning the information certified under subsection (b).

"(2) The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employing agency and the employee.

"(e) The employing agency may require, at the expense of the agency, that the employee obtain subsequent recertifications on a reasonable basis.

"§6384. Employment and benefits protection

"(a) Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave—

"(1) to be restored by the employing agency to the position held by the employee when the leave commenced; or

"(2) to be restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

"(b) The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

"(c) Except as otherwise provided by or under law, nothing in this section shall be construed to entitle any restored employee to—

"(1) the accrual of any employment benefits during any period of leave; or

"(2) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

"(d) As a condition to restoration under subsection (a) for an employee who takes leave under section 6382(a)(1)(D), the employing agen-

cy may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work.

"(e) Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on leave under section 6382 to report periodically to the employing agency on the status and intention of the employee to return to work.

"§6385. Prohibition of coercion

"(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of any rights which such other employee may have under this subchapter.

"(b) For the purpose of this section—

"(1) the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation); and

"(2) the term 'employee' means any 'employee', as defined by section 2105.

"§6386. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in such leave status and arrange to pay currently into the Employees Health Benefits Fund (described in section 8909), the appropriate employee contributions.

"§6387. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall, to the extent appropriate, be consistent with the regulations prescribed by the Secretary of Labor to carry out title I of the Family and Medical Leave Act of 1993.".

(2) TABLE OF CONTENTS.—The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

"6381. Definitions.
"6382. Leave requirement.
"6383. Certification.
"6384. Employment and benefits protection.
"6385. Prohibition of coercion.
"6386. Health insurance.
"6387. Regulations.".

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended—

(1) by striking "or" at the end of subparagraph (C); and

(2) by adding at the end the following new subparagraph:

"(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or".

TITLE III—COMMISSION ON LEAVE

SEC. 301. ESTABLISHMENT.

There is established a commission to be known as the Commission on Leave (referred to in this title as the "Commission").

SEC. 302. DUTIES.

The Commission shall—

(1) conduct a comprehensive study of—

(A) existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;

(B) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees;

(C) possible differences in costs, benefits, and impact on productivity, job creation and business growth of such policies on employers based on business type and size;

(D) the impact of family and medical leave policies on the availability of employee benefits provided by employers, including employers not covered under this Act;

(E) alternate and equivalent State enforcement of title I with respect to employees described in section 108(a);

(F) methods used by employers to reduce administrative costs of implementing family and medical leave policies;

(G) the ability of the employers to recover, under section 104(c)(2), the premiums described in such section; and

(H) the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave.

(2) not later than 2 years after the date on which the Commission first meets, prepare and submit, to the appropriate Committees of Congress, a report concerning the subjects listed in paragraph (1).

SEC. 303. MEMBERSHIP.

(a) COMPOSITION.—

(1) APPOINTMENTS.—The Commission shall be composed of 12 voting members and 4 ex officio members to be appointed not later than 60 days after the date of the enactment of this Act as follows:

(A) SENATORS.—One Senator shall be appointed by the Majority Leader of the Senate, and one Senator shall be appointed by the Minority Leader of the Senate.

(B) MEMBERS OF HOUSE OF REPRESENTATIVES.—One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the Minority Leader of the House of Representatives.

(C) ADDITIONAL MEMBERS.—

(i) APPOINTMENT.—Two members each shall be appointed by—

(I) the Speaker of the House of Representatives;

(II) the Majority Leader of the Senate;

(III) the Minority Leader of the House of Representatives; and

(IV) the Minority Leader of the Senate.

(ii) EXPERTISE.—Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor management issues. Such members shall include representatives of employers, including employers from large businesses and from small businesses.

(2) EX OFFICIO MEMBERS.—The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Commerce, and the Administrator of the Small Business Administration shall serve on the Commission as nonvoting ex officio members.

(b) VACANCIES.—Any vacancy on the Commission shall be filled in the manner in which the original appointment was made. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

(d) QUORUM.—Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

SEC. 304. COMPENSATION.

(a) PAY.—Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.—Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

SEC. 305. POWERS.

(a) MEETINGS.—The Commission shall first meet not later than 30 days after the date on which all members are appointed, and the Commission shall meet thereafter on the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title, if the information may be disclosed under section 552 of title 5, United States Code. Subject to the previous sentence, on the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) USE OF FACILITIES AND SERVICES.—Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(e) PERSONNEL FROM OTHER AGENCIES.—On the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to serve as an Executive Director of the Commission or assist the Commission in carrying out the duties of the Commission. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(f) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of the report of the Commission to Congress.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE ANTIDISCRIMINATION LAWS.—Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.

(b) STATE AND LOCAL LAWS.—Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.

SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act.

(b) LESS PROTECTIVE.—The rights established for employees under this Act or any amendment made by this Act shall not be diminished by any

collective bargaining agreement or any employment benefit program or plan.

SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.

Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act.

SEC. 404. REGULATIONS.

The Secretary of Labor shall prescribe such regulations as are necessary to carry out title I and this title not later than 120 days after the date of the enactment of this Act.

SEC. 405. EFFECTIVE DATES.

(a) TITLE III.—Title III shall take effect on the date of the enactment of this Act.

(b) OTHER TITLES.—

(1) IN GENERAL.—Except as provided in paragraph (2), titles I, II, and V and this title shall take effect 6 months after the date of the enactment of this Act.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph (1), title I shall apply on the earlier of—

(A) the date of the termination of such agreement; or

(B) the date that occurs 12 months after the date of the enactment of this Act.

TITLE V—COVERAGE OF CONGRESSIONAL EMPLOYEES

SEC. 501. LEAVE FOR CERTAIN SENATE EMPLOYEES.

(a) COVERAGE.—The rights and protections established under sections 101 through 105 shall apply with respect to a Senate employee and an employing office. For purposes of such application, the term "eligible employee" means a Senate employee and the term "employer" means an employing office.

(b) CONSIDERATION OF ALLEGATIONS.—

(1) APPLICABLE PROVISIONS.—The provisions of sections 304 through 313 of the Government Employee Rights Act of 1991 (2 U.S.C. 1204–1213) shall, except as provided in subsections (d) and (e)—

(A) apply with respect to an allegation of a violation of a provision of sections 101 through 105, with respect to Senate employment of a Senate employee; and

(B) apply to such an allegation in the same manner and to the same extent as such sections of the Government Employee Rights Act of 1991 apply with respect to an allegation of a violation under such Act.

(2) ENTITY.—Such an allegation shall be addressed by the Office of Senate Fair Employment Practices or such other entity as the Senate may designate.

(c) RIGHTS OF EMPLOYEES.—The Office of Senate Fair Employment Practices shall ensure that Senate employees are informed of their rights under sections 101 through 105.

(d) LIMITATIONS.—A request for counseling under section 305 of such Act by a Senate employee alleging a violation of a provision of sections 101 through 105 shall be made not later than 2 years after the date of the last event constituting the alleged violation for which the counseling is requested, or not later than 3 years after such date in the case of a willful violation of section 105.

(e) APPLICABLE REMEDIES.—The remedies applicable to individuals who demonstrate a violation of a provision of sections 101 through 105 shall be such remedies as would be appropriate if awarded under paragraph (1) or (3) of section 107(a).

(f) EXERCISE OF RULEMAKING POWER.—The provisions of subsections (b), (c), (d), and (e), except as such subsections apply with respect to section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), 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. No Senate employee may commence a judicial proceeding with respect to an allegation described in subsection (b)(1), except as provided in this section.

(g) SEVERABILITY.—Notwithstanding any other provision of law, if any provision of section 309 of the Government Employee Rights Act of 1991 (2 U.S.C. 1209), or of subsection (b)(1) insofar as it applies such section 309 to an allegation described in subsection (b)(1)(A), is invalidated, both such section 309, and subsection (b)(1) insofar as it applies such section 309 to such an allegation, shall have no force and effect, and shall be considered to be invalidated for purposes of section 322 of such Act (2 U.S.C. 1221).

(h) DEFINITIONS.—As used in this section:

(1) EMPLOYING OFFICE.—The term "employing office" means the office with the final authority described in section 301(2) of such Act (2 U.S.C. 1201(2)).

(2) SENATE EMPLOYEE.—The term "Senate employee" means an employee described in subparagraph (A) or (B) of section 301(c)(1) of such Act (2 U.S.C. 1201(c)(1)) who has been employed for at least 12 months on other than a temporary or intermittent basis by any employing office.

SEC. 502. LEAVE FOR CERTAIN HOUSE EMPLOYEES.

(a) IN GENERAL.—The rights and protections under sections 102 through 105 (other than section 104(b)) shall apply to any employee in an employment position and any employing authority of the House of Representatives.

(b) ADMINISTRATION.—In the administration of this section, the remedies and procedures under the Fair Employment Practices Resolution shall be applied.

(c) DEFINITION.—As used in this section, the term "Fair Employment Practices Resolution" means rule LI of the Rules of the House of Representatives.

TITLE VI—SENSE OF CONGRESS

SEC. 601. SENSE OF CONGRESS.

It is the sense of the Congress that:

(a) The Secretary of Defense shall conduct a comprehensive review of current departmental policy with respect to the service of homosexuals in the Armed Forces;

(b) Such review shall include the basis for the current policy of mandatory separation; the rights of all service men and women, and the effects of any change in such policy on morale, discipline, and military effectiveness;

(c) The Secretary shall report the results of such review and consultations and his recommendations to the President and to the Congress no later than July 15, 1993;

(d) The Senate Committee on Armed Services shall conduct (i) comprehensive hearings on the current military policy with respect to the service of homosexuals in the military services; and (ii) shall conduct oversight hearings on the Secretary's recommendations as such are reported.

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

Mr. DODD. I move to lay that motion on the table. The motion to lay on the table was agreed to.

FAMILY AND MEDICAL LEAVE ACT

Mr. MITCHELL. Mr. President, this family leave legislation is the result of years of hard work by a large number of people, but no individual deserves greater credit than does the distinguished Senator from Connecticut [Mr. DODD]. Senator DODD had enormous help from Senator BOND, who acted courageously and with foresight, and from Senator KENNEDY, the chairman of the committee; but it was Senator DODD'S perseverance, commitment and leadership that led the way to passage of this important measure.

I commend Senator DODD on his initiative and his endurance.

While millions of Americans will benefit from this Family and Medical Leave Act, it is primarily American women who will benefit the most.

Over the past decade, the United States has witnessed an ever increasing number of women entering the work force. Many have very young children. Many seek to rejoin the work force shortly after the birth of their children.

These women are working out of economic necessity. They need to work to raise their family's income to a level that will provide them with decent and safe housing, utilities, food, and other basic necessities.

This legislation is as much about giving women an equal economic opportunity as it is about providing a national policy to protect jobs during times of family crises.

The General Accounting Office estimates that over the past 40 years, the female civilian labor force has grown by nearly a million workers per year. By the year 2000, it is predicted that women will comprise two out of every three new entrants to the work force.

Despite the changing demographics of the work force, over the last several years the Family and Medical Leave Act has been a legislative exercise only.

At the same time, millions of women have been forced to make a painful choice between the economic imperative of working to supplement their families' income and the anxiety of caring for a seriously ill child.

The facts are clear. Well over a majority of women do not have maternity leave. Well over the majority of parents do not have leave to care for seriously, or for that matter, terminally ill children. Very little consideration is given to those working adults, primarily women, who are also caring for their aging parents.

We ought not force women to choose between job and their families. As the composition of the American work force changes, those changes ought to be reflected in our Nation's labor policies.

Enactment of this legislation will give women an equal economic opportunity. It will give parents, particularly women, the flexibility to take care of a newborn child or take care of an ailing parent without the fear of losing a job.

Equally important, this legislation will give workers the flexibility and job protection to take care of their own serious health condition.

In November, Americans called for change. The Family and Medical Leave Act delivers on that call. The United States will no longer be the only Western nation without a family leave policy in place.

THANKS TO SENATE PAGES

Mr. MITCHELL. Mr. President, I would like to take this opportunity to recognize and thank the Senate pages. Tomorrow marks the end of service for our current group of pages. I cannot overstate how important their work has been to the Senate.

The pages have ensured that necessary information about amendments and pending legislation has been available to all Senators. Whether that has required making copies or bringing the information directly to Senators' offices, the pages have performed their jobs quickly and responsibly.

They have always been available to attend to Senators' needs on the Senate floor. Whether this has involved finding a podium, tracking down a copy of an amendment or delivering a bill to a Senator, the pages have gladly assisted.

I am impressed with the ambition and drive of our pages. These young people have chosen to leave home for a semester, to work long and erratic hours while attending school full time. That is an extraordinary commitment. Their energy and idealism are inspiring.

This group of young people were of tremendous assistance to all members during the rush to sine die adjournment last October. They never complained about late nights or the amount or work that was required to assist members and their staff. I applaud them for the fine work in helping to bring the 102d Congress to a close.

Their tenure involved the swearing in of a new administration and confirmation of the President's Cabinet. This has been an exciting time of change and opportunity. Their service has given them a rare firsthand look at the workings of their Government. This is an experience few high school students have. It is an experience I hope the pages have found rewarding.

We, in the Senate, have appreciated their service and wish them well as they return home.

I would now like to read the names of those pages who have served so diligently.

DEMOCRATIC PAGES

Sarah J. Adams (Falmouth, Massachusetts);
Julie E.M. Burke (Canaan, Maine);
Rachel E. Crawford (West Burke, Vermont);
Kate L. Fernald (Farmington, Maine);
Daniel L. Goldberg (Janesville, Wisconsin);
Meghan A. McCormick (Dubuque, Iowa);
R. Jarrett Patterson (Texarkana, Texas);
Erin E. Potter (Wilmington, Delaware);
Mary M. Sheridan (Spokane, Washington);
Ashley M. Slinkard (Rogers, Arkansas); and
Cara N. Stillings (Canton, Michigan).

REPUBLICAN PAGES

Steve Tolifson (Benson, Minnesota);
Melissa McGuinn (Smithfield, Rhode Island);
Ray Joiner, III (Meridian, Mississippi); and
Sabrina Sorenson (Charlotte, North Carolina).

COMMENDATION TO THE PAGES

Mr. SIMON. Mr. President, let me also commend the pages who have just been consistently terrific. We do not thank the people around here enough. The pages have been absolutely superb, as well as the others, those who have to transcribe what we say, those who are in the front, who, in addition to everything else, have to listen to what we say day after day. We are grateful to them all.

Mr. KENNEDY. Mr. President, just a few moments ago, the Senate passed what I am sure will be one of the more important pieces of legislation of this Congress. As has been mentioned by the majority leader, I think all of us in the body, particularly those of us on the Human Resources Committee, want to acknowledge in a very personal way the extraordinary legislative achievement of our good friend and colleague, the Senator from Connecticut [Mr. DODD]. I acknowledged at the outset of our consideration of this legislation the strong work of Senator BOND and others in helping to bring us to where we are.

Over the years, it has been his perseverance and persistence on this issue in raising it not only in committee but also here on the floor that really helped to develop the national consensus in favor of this legislation. A number of votes have been taken here over the years on this issue and on each and every occasion the support for this legislation has increased and strengthened. In 1988, we were able to get just 50 votes for cloture to break a filibuster on the bill. In 1991, we had 65 votes for passage, and then 68 votes to override President Bush's veto. And tonight, 71 votes were cast in favor of final passage of this bill. Support for this bill has grown and grown because the American people have understood what Senator DODD and parents and families have understood—that this is basically an issue of fairness for working families in this country. I think the overwhelming support of the Members of this body is a clear indication of that.

So, Mr. President, I want to thank as well the majority leader and the Clinton administration. The majority leader indicated to our committee that because of his own strong support of this program, he wanted early action; he wanted the committee to give consideration to it and then have early action. It has really been because of his scheduling and his support for this legislation all the way through that we were able to achieve the outcome we achieved tonight.

President Clinton, in his visits up here with the Members urging the House of Representatives and the Senate to take this action as well as in his public statements strongly in support of this legislation during the course of the campaign demonstrated his own commitment to putting people first, putting families first, putting working families first in this country.

So tonight there will be scores of families, working families, that will give a sigh of relief. The President, as I understand, will sign this legislation tomorrow. What a difference an election makes. It will take a few months to have the legislation actually implemented, but our action tonight is a clear indication to families, working families across this country that we are prepared to take action to give them the kind of support that they very richly deserve. It is a small downpayment on what I hope and believe will be action by this body and by the administration on a wide range of issues to give a greater sense of hope to working families in this country.

I want to particularly thank Sarah Fox of my staff who has done so much work in behalf of the Labor and Human Resources Committee in helping and assisting the committee in moving this legislation along. I know Rich Tarplin of Senator DODD's staff has been an extraordinary help to all of us on the committee, as he has been to Senator DODD over a long period of time. All of us in this body are grateful, again, for the leadership that has been provided by Senator DODD.

Mr. DODD. Mr. President, I will not take a great deal of time.

But I am, first of all, deeply appreciative to my colleagues in this body, those who voted with me and those who voted against me, for their patience and tolerance over these many years in grappling with the family and medical leave legislation. I am obviously greatly appreciative of those who supported me, as well as those who did not. It does not mean they totally disagree, as the distinguished Senator from Kansas said on numerous occasions over the past several years. They merely disagree with parts of the legislation and how it would work. So I am deeply appreciative to them.

I want to begin by thanking my chairman. I know that people expect you to do that if you are a subcommittee chairman, but in this case, Mr. President, it is not fulfilling some perfunctory responsibility. We would not have passed this bill had Senator KENNEDY not worked with me, for me, by my side, guiding and assisting through

this process. He deserves a tremendous amount of the credit.

I got tremendous advice from him on how to proceed. I remember about 5 years ago when I lost the first time on this matter and was feeling down about it, he pulled me aside and said let me tell you, first of all, a good idea takes time and, second, it is not uncommon for a good piece of legislation to take 5 or 6 years. He depressed me at the time when he said 5 or 6 years, but he turned out to be extremely knowledgeable, almost to the year. So I begin with thanking him for a tremendous effort on so many issues, but particularly on this one. Without him, we would not have been able to achieve our success.

I want to thank the majority leader, obviously, for working with us over the years—this is the third time now we have passed this legislation—and his team. I will get to Senator FORD and his staff on what a critical role they played here.

Senator BOND, of course, Senator SPECTER, Senator DAN COATS were principally involved among my colleagues on the other side. But again—and I do not want to repeat myself—without their input, without bringing some tremendous ideas on strengthening the employer protection provisions of the legislation, I do not think we would have had as good a bill or done as well with it.

The best pieces of legislation, in my view, that have passed this body in my experience here over the past 12 years have been pieces of legislation which have truly been bipartisan. That was my experience on this bill. The best legislation brings the best ideas together under one topic or heading, in this case, family and medical leave. I think it was a good idea to begin with and became a better idea because of the input and involvement of my colleagues on the other side of the aisle.

I want to thank the minority leader as well. He disagreed with me on the bill. He showed great humor and patience with me over the years, constantly teasing me about when I was going to get through with this bill. I presume, even though he disagreed with it, Mr. President, he is almost as happy as I that it is done. While he is not on the floor this evening, I want to thank him for his patience and understanding.

My staff, Mr. President—they are not just mine but those of other Members. Senator KENNEDY properly has recognized Rich Tarplin for the tremendous work he did on this bill and on so many other pieces of legislation; the child care legislation, countless other ideas that have come out of the Subcommittee on Children and Families.

Rich Tarplin will be leaving shortly. This is his last involvement with any kind of legislation. But he has done a great job, not only for this Member but I think for this institution. I would like the record to reflect that staff do not always get their names on bills, they do not get to make speeches on the floor, they do not get to go on television or appear on radio programs and there is a lot of criticism from time to time about staff on Capitol Hill, but if anyone wants a model of an ideal staff person in making a constructive and positive contribution to the history of this country, then they can look no further than to the name of Richard Tarplin who has contributed greatly.

Patty Cole, Anne Ford, Evvie Becker-Lausen, and Judy Ezzell of the committee staff, Jackie Ruff, who left in November but played a critical role over the years, all of these people have been involved on the committee staff and I am deeply grateful to each one.

Patty Cole has been on the floor during the consideration of this bill and has provided help; Anne Ford as well. I am grateful to all. Sarah Fox, of Senator KENNEDY's staff, and Nick Littlefield have done a great job and again been extremely helpful.

Julie Dammon and Lee Anne Jerome of Senator BOND's staff deserve great credit for their efforts and support; Grace Reef from Senator MITCHELL'S staff; Stephanie Monroe of Senator COATS' staff, I am also deeply grateful to them. And Gary Slayman and Greg Watchman of Senator METZENBAUM'S staff did a tremendous job as well; Marsha Olmiller of Senator PACKWOOD'S staff.

Senator PACKWOOD was early involved in this legislation. In fact, he was reminding me of my door-to-door lobbying on this bill, going back a number of years ago when I brought a pile of charts to his room and sat there going down all the various ideas and solicited his comments. I think that was 5 years ago, but he became a strong supporter and backer of the legislation, and I am grateful to him.

Mark Powden, from Senator JEFFORD'S staff, did a great job. Kennie Gill from Senator FORD'S staff was tremendously helpful. Senator FORD, along with Senator BOND and Senator COATS at a very critical moment in the history of this legislation brought together a substitute idea which I think made it a stronger and a better bill and certainly increased its chances of passing the political test of our colleagues in the Senate. I am deeply grateful to my colleague, the majority whip, for his guidance and support and for his staff as well over the years. I appreciate it.

Mr. President, I will submit the names of the various groups, 1,240 organizations from across this country, the last of which was the National Retail Federation, for their support. Just to name a few, the Women's Legal Defense Fund, Judith Lichtman has been a tremendous help on so many pieces of legislation. She is well known to our colleagues. She has a deep commitment to this country and she did a great job; Donna Lenhoff and Helen Norton, also from the Legal Defense Fund, were terrific assets and supporters in this particular effort. I would not want the RECORD to end without referencing and mentioning them for their support and backing.

Mr. President, I look forward to a ceremony tomorrow that I have long anticipated, and that is a bill-signing ceremony now that this legislation has passed both Chambers. My hope is that the legislation will work well—what, of course, none of us know until it actually ends up in practice.

I want to let my colleagues know this evening that we intend to hold hearings down the road and invite the business communities and others to come in and to testify about how this legislation is working, what the impact is, and any ideas and suggestions that can strengthen this, make this a better piece of legislation. I will welcome it and hopefully in the years to come, we will find the legislation is working well. But if changes are needed, I want the record to show this evening, that I am prepared to make those exchanges, to make this work because I think it is a great asset for families.

While it will be 6 months before it is actually enforced to giving time for the regulations to be developed, I hope, many people in this country tonight have been through the agony of wondering how they would tell their employees they needed time to be with a family member during a critical crisis, employers wondering how they can accommodate people in the past, will now know we have a law in the United States that says you will never ever have to again if you are employed by someone who employs more than 50 people have to be in a situation where you face a serious medical crisis with a new birth of a child, an adoption, where you will have to lose your job or lose health care if your employer provides it while you take care of that family member. To me that is something as basic as anything else I can think of.

Tonight by an overwhelming vote in this body, a strong vote in the other, with the signing tomorrow by the President of the United States, we will make that idea a reality.

I am very proud to have been a part of it. I am deeply grateful to my colleagues for their support. I look forward to seeing this legislation actually be implemented.

Mr. President, I ask unanimous consent to add some additional remarks for the RECORD.

I know there are other matters that you want to discuss this evening.

Mr. President, I ask unanimous consent that a list of organizations that have endorsed the Family and Medical Leave Act be printed in the RECORD.

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

ORGANIZATIONS THAT HAVE ENDORSED THE FAMILY AND MEDICAL LEAVE ACT

OVERALL CHAIR

Women's Legal Defense Fund.

ORGANIZATIONS

Nine to Five, National Association for Working Women.
ACORN, Association of Community Organizations for Reform Now.
Adoptive Families of America.
AFL-CIO.
Aid to Adoption of Special Kids—Oklahoma.
Amalgamated Clothing & Textile Workers Union.
American Academy of Child and Adolescent Psychiatry.
American Academy of Pediatrics.
American Adoption Congress.
American Association for Counseling and Development.
American Association of Retired Persons.
American Association of University Professors.
American Association of University Women.
American Bar Association.
American Civil Liberties Union.
American Federation of Government Employees.
American Federation of State, County, and Municipal Employees.
American Federation of Teachers.
American Home Economics Association.
American Jewish Committee.
American Jewish Congress.
American Life League.
American Medical Women's Association.
American Nurses Association.
American Occupational Therapy Association.
American Postal Workers Union.
American Psychological Association.
American Psychiatric Association.
American Society on Aging.
American Speech-Language-Hearing Association.
Americans for Democratic Action.
Archdiocese for St. Louis, Commission on Human Rights.
Arkansas Women's Project.
Association Nacional pro Personas Mayores.
ASPO/Lamaze.
Association for Children and Adults with Learning Disabilities.
Association for Gerontology in Higher Education.
Association for Retarded Citizens.
Association of Flight Attendants.
Association of Junior Leagues International.
Association of Professional Flight Attendants.
B'nai B'rith Women.
Black Professional Women of Dallas.
California Family Action.
Cancer Care, Inc.
Candlelighters Childhood Cancer Foundation.
Catholic Charities USA.
Catholic Golden Age.
Center for Law and Social Policy.
Center for Women's Policy Studies.
Child Care Action Campaign.
Child Welfare League of America.
Children's Defense Fund.
Church of the Brethren.
Church Women United.
Citizen Action League.
Clearinghouse on Women's Issues.
Coal Employment Project.
Coalition of Labor Union Women.
Colorado Coal Mining Women.
Colorado Psychiatric Association.
Commission on Human Rights.
Committee for Children.
Committee of Interns and Residents.
Communication Workers of America.
Communications Consortium.
Council for Children, Inc.
County of Santa Clara Commission on the Status of Women.
Disability Rights Education and Defense Fund, Inc.
Displaced Homemakers Network.
Eastern Kentucky Coal Mining Women's Support Team.
Economic Policy Counsel, United Nations Associations.
Employment Law Center.
Equal Rights Advocates.
Epilepsy Foundation of America.
Evangelical Lutheran Church in America.
Families for Private Adoption.
Families USA.
Fathering Support Services.
Federally Employed Women.
Federation of Organizations for Professional Women.
Feminists for Life of America.
Food and Allied Service Trades Department, AFL-CIO.
Georgetown University Sex Discrimination Clinic.
Gray Panthers.
Hawaii Women's Political Caucus.
Highlander Research and Education Center.
Hollywood Women's Political Committee.
Human Rights Campaign Fund.
Illinois Coal Mining Women's Support Team.
Independent Federation of Flight Attendants.
Independent Union of Flight Attendants.
Indiana Coal Mining Women's Support Team.
Industrial Union Department of the AFL-CIO.
Institute of Child Mental Health.
Institute for Peace and Justice.
Institute for Women's Policy Research.
International Association of Fire Fighters.
International Association of Machinists.
International Brotherhood of Teamsters.
International Federation of Professional and Technical Engineers.
International Ladies' Garment Workers Union.
International Longshoresman's & Warehouseman's Union.
International Union of Electronic, Electrical, Salaried Machine and Furniture Workers.
Jewish Labor Committee.
JustLife.
Lady Miners of Utah.
Lambda Legal Defense Fund.
Latin American Parents Association—National Capital Region.
Lawyers of Alternative Work Schedules.
Leadership Conference on Civil Rights.
League of Women Voters of the United States.
Longshoreman's and Warehouseman's Union, International.
Lutheran Office for Government Affairs.
Maine Commission on Women.
Maine People's Alliance.
March of Dimes.
Men's Rights, Inc.
Mennonite Central Committee, U.S. Peace Section, Washington, DC.
Mental Health Law Project.
Mexican American Business and Professional Women's Clubs of San Antonio.
Mexican American Legal Defense and Education Fund.
Mothers at Work.
Mothers Matter.
NA'AMAT USA.
NAACOG: The Organization for Obstetric, Gynecologic and Neonatal Nurses.
National Abortion Rights Action League.
National Adoption Center.
National Alliance for the Mentally Ill.
National Assembly of Volunteer Organizations.
National Association for the Advancement of Colored People.
National Association for the Education of Young Children.
National Association of Area Agencies on Aging.
National Association of Commissions for Women.
National Association of Developmental Disability Councils.
National Association of Foster Grandparents Program Directors.
National Association of Letter Carriers.
National Association of Mature People.
National Association of Pediatric Nurse Associates and Practitioners.
National Association of Older American Volunteer Programs.
National Association of Oncological Social Workers.
National Association of Protection and Advocacy Systems.
National Association of Retired Federal Employees.
National Association of RSVP Directors, Inc.
National Association of Senior Companion Project Directors.
National Association of Social Workers, Inc.
National Association of State Units on Aging.
National Black Child Development Institute.
National Coalition for Cancer Survivorship.
National Coalition of 100 Black Women.
National Committee to Preserve Social Security and Medicare.
National Conference of State Legislatures.
National Conference of Women's Bar Associations.
National Congress for Men.
National Consumers Union.
National Council for Children's Rights.
National Council for Research on Women.
National Council of Catholic Women.
National Council of Churches.
National Council of the Churches of Christ in the USA.
National Council of Jewish Women.
National Council of Negro Women.
National Council Senior Citizens.
National Council on the Aging, Inc.
National Council on Family Relations.
National Down's Syndrome Congress.
National Education Association.
National Federation of Business and Professional Women's Clubs.
National Federation of Federal Employees.
National Federation of Temple Sisterhoods.
National Interfaith Coalition on Aging.
National Jewish Community Relations Advisory Council.
National Multiple Sclerosis Society.
National Organization for Women.
National Parent Teacher Association.
National Perinatal Association.

National Tay Sachs and Allied Diseases Association, Inc.
National Treasury Employees Union.
National Union of Hospital and Health Care Employees.
National Woman's Party.
National Women's Business Enterprise Association.
National Women's Law Center.
National Women's Political Caucus.
NETWORK: A Catholic Social Justice Lobby.
New Jersey Coalition for Family and Medical Leave.
New Ways to Work.
Newspaper Guild.
North American Council on Adoptable Children.
North Carolina Council of Churches.
North Carolina Center for Laws Affecting Women.
North Carolina Equity.
North Carolina Women's Legislative Agenda.
North Carolina Women's Resource Center.
Northeastern Gerontological Society.
Northern West Virginia Coal Mining Women's Support Team.
Northwest Women's Law Center.
NOW Legal Defense and Education Fund.
Office and Professional Employees International Union.
Oil, Chemical, & Atomic Workers International Union.
Older Women's League.
OURS, Inc.
Pennsylvania Coal Mining Women's Support Team.
Pension Rights Center.
Planned Parenthood Federation of America.
Public Employee Department of AFL-CIO.
Religious Network for Equality for Women.
Retired Members Department of UAW.
Service Employees International Union.
Southern West Virginia Coal Mining Women's Support Team.
Southwestern Virginia Coal Mining Women's Support Team.
Spina Bifida Association.
Stepfamily Association.
Texas Coalition for Nontraditional Professions.
Union of American Hebrew Congregations.
Union of Flight Attendants/IAM.
United Auto Workers.
United Cerebral Palsy Association, Inc.
United Church Board for Homeland Ministries.
United Church of Christ, Office for Church in Society.
United Electrical, Radio and Machine Workers of America.
United Food and Commercial Workers.
United Methodist Church, General Board of Church and Society.
United Mine Workers of America.
United States Catholic Conference.
United Steel Workers of America.
United Women Fire Fighters of New York.
Washington Council of Lawyers.
Western Kentucky Coal Mining Women's Support Team.
Wider Opportunities for Women, Inc.
Women Employed.
Women in Communications, Inc.
Women in the Fire Service.
Women Lawyers' Association of Michigan.
Women for Racial and Economic Equality.
Women on the Job.
Women to Women.
Women's Bar Association of D.C.
Women's Center of Southeastern Connecticut.
YWCA of the USA, National Board.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. I would like to add, too, Mr. President, my admiration and support for the tributes that have been paid to the Senator from Connecticut.

Senator DODD has provided extraordinary leadership on the passage of this family and medical leave legislation with perserverance and dedication through the years, with great good humor, which has assisted in the efforts for those of us both for and against it, to work well together and achieve the success that he has. All of us, I think, agree on the ends. There were those of us who disagreed on the means to reach those ends. I would just like to suggest that I, too, and I think I speak for all of my colleagues who voted in opposition, wish success for this legislation.

It is important. It will mean a great deal to many who have worried about the ability to feel comfortable in meeting family needs as they are in the workplace and this holds great potential for them.

I would like to thank Richard Tarplin. He has been very supportive to those of us who have argued against various aspects of the bill. But whether we were for or against, he has been very helpful, as has Ted Verheggen of my staff; and Steve Sola, Carla Widener, and Dan Bolen; Senator BROWN: Peggy Walker and Roxie Burris; Senator COCHRAN: Jim Lofton; Senator GREGG: Pat Rich; Senator HATCH: Kris Iverson; Senator GORTON: John Kelly and Stan Bowman; Senator CRAIG: Damon Tobias; Senator PRESSLER: Ann Begeman and Robert Hoffman; and Senator WALLOP: Jodi Brayton.

Thank you, Mr. President.

I salute those who have won on this, and wish every success to this legislation.

I yield the floor.

Mr. SIMON. Mr. President, I want to join in commending Senator DODD for his leadership on this bill.

MORNING BUSINESS

LAWRENCE WALSH: THE RIPOFF GOES ON AS TAXPAYERS PICK UP THE TAB

Mr. DOLE. Mr. President, for the past several years, I have been a frequent critic of Special Prosecutor Lawrence Walsh. And I have got to say that it's been an easy job, because Mr. Walsh's record has always left much to criticize. Let me list just a few of his failings:

The ever-increasing bill he's charged the taxpayers for his endless 6-year investigation—now somewhere in the $30–$40 million range.

The frequent reversals of the few convictions he managed to obtain.

His violation of Washington, DC, tax laws.

His taxpayer-paid suite at the Watergate, and the countless taxpayer-paid first-class air trips between his home in Oklahoma City and Washington, DC.

All of these have been topics of mine in remarks delivered here on the Senate floor. But as detailed today in an article by Michael Ledeen in the Wall Street Journal, there is a complete category of abuses by Mr. Walsh that I have not peviously called to the Senate's attention: and those abuses involve his obvious disdain for and frequent violation of America's national security regulations.

According to Mr. Ledeen: CIA cables, complete with highly sensitive markings, were publicly released as exhibits during trials, in violation of security requirements.

During a discussion of a motion to quash a subpoena, Mr. Walsh's minions identified a covert agent by name.

Pleadings from Mr. Walsh have contained classified information that should have been deleted.

Highly sensitive documents were delivered to receptionists at defense counsels' offices, instead of being placed in special secure facilities.

And finally, and most egregiously, Mr. Walsh violated every known security regulation by giving his luggage—which included a satchel of classified documents—to his staffers and asking them to check it for him at the airport for a flight back from Los Angeles to Washington.

Not only did the satchel never arrive at its destination, but Mr. Walsh did not report its loss for several weeks—in violation of regulations requiring the immediate reporting of any such loss.

It goes without saying that if any Government employee so consistently violated national security regulations, they would be in deep legal trouble.

But Mr. Walsh has only dug deeper into the wallets of America's taxpayers.

President Clinton campaigned for office promising that the highest ethical standards would be a hallmark of his administration. These standards will never be achieved as long as Mr. Walsh continues his one-man vendetta.

BUSH RECOVERY STEAMS AHEAD

ECONOMIC INDICATORS UP AGAIN; PRESIDENT CLINTON SHOULD RESIST TAX HIKES AND HIGHER DEFICITS

Mr. DOLE. Mr. President, the good news on the national economic front continues to pour in. The Commerce Department's latest report on the index of leading indicators rose 1.9 percent in December. Growth was up 3.8 percent in the fourth quarter of 1992—the largest increase in 4 years and the seventh consecutive quarterly gain. No

doubt about it, the Bush recovery that left the station last fall is continuing to pick up steam.

America boasts the finest workers in the world, and today, the Labor Department reported that the productivity of American workers jumped 2.7 percent in 1992—the biggest annual increase in 20 years.

Through the third quarter of 1992, the U.S. outperformed all of our major trading partners. Our economy grew faster than Japan, Germany, Canada, France, the United Kingdom, or Italy. And, U.S. economic growth was even stronger in the fourth quarter.

American car sales hit a 2-year high. Housing starts are up more than 16 percent from a year ago, and single-family unit starts are at the highest level since 1987. Factory orders for durable goods rose 9.1 percent in December, the biggest surge in more than 18 months.

In the markets, Standard & Poor's 500-stock index and the NASDAQ Composite Index are at record levels.

But, there are still some problems. A number of economists have pointed out that job creation has lagged behind other economic indicators. Most people in the private sector—the ones who create the jobs—know why. When faced with rising health care costs and more Government redtape, they can't afford to hire new workers.

Higher taxes and more Government mandates will not create jobs. More Government red ink will hurt our ability to compete in the long run.

We are all looking forward to the President's announcement on February 17th. But, I'm not sure that a stimulus package—whether it is $15 billion, $20 billion or $25 billion—can do much to help a $6 trillion economy. But, one thing is for certain—it will add to our $300 billion deficit.

SENATOR CHAFEE'S ADVICE TO PRESIDENT CLINTON

Mr. PELL. Mr. President, in this time of change and challenge in our national political life, it is refreshing and helpful indeed when constructive ideas come from both sides of the aisle.

Such advice came recently from my distinguished colleague from Rhode Island, Senator CHAFEE, who recently offered for publication an adaptation of a letter he sent to President Clinton prior to the inauguration.

In addition to indicating support for the President's priorities, Senator CHAFEE recommended several specific actions, many of which are of special interest to our State and the surrounding region.

His suggestions are constructive and worthy of serious consideration and I commend them to the attention of the Senate.

I ask unanimous consent that the article entitled "Dear Mr. President * * *" from the Providence Business News of January 26, 1993, be reprinted in the RECORD.

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

[From the Providence Business News, Jan. 26, 1993]

DEAR MR. PRESIDENT * * *

(Editor's note: The following is adapted from Sen. Chafee's letter to Bill Clinton delivered several days before the president was inaugurated.)

Dear Mr. Clinton: In my view there are three pressing domestic challenges facing our nation today, and they are all interrelated: the deficit, the rising cost of health care and our sluggish economy. I applaud your pledge to address these issues in a comprehensive and speedy manner.

The rising cost of health care and the number of individuals without access to basic services is an urgent problem confronting our nation. Managed Competition has much to offer in reforming our system. Refining this theory so that it will work in practice will take much thought and creativity. As chairman of the Senate Republican Health Care Task Force, I look forward to working with your administration on this challenge.

Although the condition of the national economy shows signs of recovery, New England—and in particular my home state of Rhode Island—is still in the grips of recession. Many economists believe that Rhode Island's economic problems will be prolonged due to the continuing shrinking of the defense industry. I welcome your commitment to preserving the vitality of our nation's submarine industrial base, and I hope that you will support the construction of the third Seawolf submarine.

Job creation must be the first goal of any recovery package. I recommend strongly several proposals that enjoy popular support in Congress and would create new employment opportunities for thousands of American workers:

Credit availability: I urge you to review all appropriate federal regulations that could increase lending to the nation's small-business community. In my view, it is possible to promote responsible lending while ensuring the safety and soundness of the nation's banking system.

Investment tax credit: A targeted investment credit is the most cost-effective way to encourage businesses to expand and modernize. Limiting the credit to productive equipment and making it available only on an incremental basis is not only good policy, it is essential, given our obvious budget constraints.

Mortgage Revenue Bond program: In Rhode Island, the availability of Mortgage Revenue Bond financing was responsible for 25 percent of all homes purchased in 1991.

Small Issue Bond Program: This program allows state and local governments to issue tax-exempt bonds and use the proceeds to provide capital to these small businesses. It is imperative that this program be continued if we are to meet our goal of creating jobs.

Repeal the luxury tax on boats: The nation's boat-building industry has been devastated by the luxury tax imposed as part of the 1990 budget agreement. More than 19,000 boat-building jobs have been lost in the past two years, and Rhode Island's once-profitable industry has been all but wiped out.

On the environmental front, I also have a number of suggestions. As the Ranking Member on the Senate Committee on Environment and Public Works, I offer the following thoughts:

First, any infrastructure investment proposal in your economic recovery plan should not be limited to the construction or repair of highways. Environmental infrastructure, such as safe drinking water supply systems and support for the extension and expansion of the Clean Water Act's State Revolving Fund, could be key components.

Second, as soon as possible, the United States should sign the treaty on biological diversity that was negotiated last spring and, in the interim, an Executive Order on immediate implementation of the treaty's conservation provisions would be helpful.

Third, all agencies, especially the Environmental Protection Agency, the Department of Transportation, the Department of Energy and the Department of Defense, should be directed to implement immediately and aggressively legislation such as the recently enacted Federal Facilities Compliance Act, the Intermodal Surface Transportation Efficiency Act, the Clean Air Act and the Residential Lead-Based Paint Hazard Reduction Act.

Fourth, Executive Order 12630 on interference with constitutionally protected property rights needs to be reviewed to determine whether implementation of this overly broad order is having a chilling effect on the development or implementation of environmental, health and safety regulations.

Fifth, the Treasury Department should be directed to examine and comment on S-2957, a bill I introduced last year to provide tax incentives for the preservation of open space, wildlife habitat and family farms. The tax code may hold the greatest promise as a source of market incentives to achieve environmental goals.

I look forward to working with you in the coming months to address the many challenges facing our nation.

SCHOOL REFORM BEGINS IN CLASS

Mr. PELL. Mr. President, I would like to bring to the attention of my colleagues a recent opinion piece which appeared in the Providence Journal last week. Ms. Barbara Tucker Cervone rightly points out that no matter what we do with respect to national policy in education, it is in the classroom that rubber meets road.

Last Congress, we took significant steps in the Higher Education Act reauthorization to strengthen Federal support for professional development. Title V only needs adequate funding in order for the programs to begin.

I urge my colleagues to read Ms. Cervone's article in preparation of our work this Congress on the Elementary and Secondary Education Act of 1965 reauthorization. So much of what we do in education begins and ends with the relationship between the student and the teacher.

Mr. President, I ask that the full text of Ms. Cervone's article be printed at this point in the RECORD.

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

[From the Providence Journal, Jan. 28, 1993]

SCHOOL REFORM BEGINS IN CLASS

(By Barbara Tucker Cervone)

Never before in the history of U.S. education has there been so much talk about

school reform. Yet the notion that our schools need fixing is long-standing. Each decade of the 20th century has produced pleas to change something about the way American schools do business, bolstered by dire predictions of what would happen to children—or the nation—if the desired reforms were not adopted. Like the dieter who has tried one "weight loss reduction plan" after another with meager results, however, schools have remained largely impervious to attempts to change their shape.

Perhaps today's calls for reform will succeed. If so, the education buzz words of the 1980s and '90s—"site-based management," "school choice," "performance-based assessment," etc.—may truly change the contours of American education. But, alone, they won't fix the day-to-day problems many teachers and students face, such as discipline, teacher isolation, low attendance, racial tension or plain boredom.

What many reform plans, old and new, fail to address fully are two truths of how schools work. First, it is in the classroom—not at the state, school district, or even "building" or school level—that teaching and learning happen. Second, it is the relationships among students, parents and faculty—the degree of trust and respect—that hold a school together or tear it apart.

These assertions are bolstered by a growing body of research. One of its most consistent findings is that students' achievement is determined by the classroom to which they belong and what happens there daily. A 1989 Rand Corp. study of student achievement among 6,300 students, for example, found that classroom differences substantially influenced student achievement, while policy differences did not.

Research on relationships within schools is far less extensive, but compelling nonetheless. A recent, year-long study of four Southern California schools found unsatisfactory relationships among students and staff the most troubling underlying problem. "If the relationships are wrong between teachers and students, for whatever reason," commented one of the researchers, "you can restructure until the cows come home, but transformation will not take place." And in a new survey of 1,000 public school teachers completing their second year of teaching, 40 percent of those who said they intended to leave teaching cited poor relations with parents as the main reason.

So what does this mean for current school reform efforts? It means quite simply that new reforms, if they are to reach deep into schools, must include policies that directly strengthen classrooms.

What might some of these policies be? Topping the list are policies that affect who ends up in a particular classroom. Teacher recruitment and selection, transfers for tenured teachers, assignments of new teachers to specific schools, and other personnel policies must be revised so as to attract and retain the most effective teachers, to match teachers with schools, and to maintain consistent leadership in individual classrooms. Policies that invite the input of teachers and parents in assigning students to classrooms also merit attention. Students should be placed where they might learn best.

Equally critical are policies that support teachers and help them solve problems in their own classrooms. Heading the list here, certainly, is sustained teacher training on topics that teachers, themselves, select. Too often "in-service" training is a one-shot affair on a subject chosen by administrators in offices (pressured to meet the latest curriculum mandate) and not by teachers in classrooms. But just as critical is a process for identifying teachers who are struggling and, through classroom observation and ongoing counseling, devising ad hoc strategies to strengthen their skills.

Principals are obvious candidates for undertaking this supportive intervention. Policies that support classrooms might also include such seemingly farfetched notions as keeping a group of students and teachers together for several years, allowing them the time and space to adjust to one anothers' styles.

And how might one alter the unsatisfactory relationships that weaken not just individual classrooms but whole schools? Team teaching, teacher visits to other classrooms, and more collegial sharing among school staff are a place to start. Also helpful would be opportunities for teachers and small groups of students to explore racial differences, air complaints, build trust or work side-by-side on a community service project. Stimulating more informal, positive communication between parents and teachers (rather than talking only when there is a problem) could introduce warmth into this often adversarial relationship. Indeed, there are countless ways to begin addressing the issue of poor relationships.

In sum, of the various reform plans swirling around schools today, the most promising include strategies that breathe hope and purpose into the daily lives of teachers and students. Failure to do so will surely fall short. As Edward Pauly, the author of a recent book on the role of classrooms in school reform, notes: "In the end, we must rely on the people in classrooms to carry out the work of education—not because they will always do it perfectly, but because they are the only ones who can do it all."

TRIBUTE TO DR. ALLAN GEORGE THURMOND

Mr. SIMPSON. Mr. President, I have said on many occasions that the Senate is more than just a collection of individuals trying to do their jobs. No matter what one's position is in the Senate, all of us share an incredibly unique sense of family. That sense of family extends to our Members when he or she suffers the loss of a loved one. On Tuesday morning, February 2, Dr. Allan George Thurmond, the brother of our dear friend, Senator STROM THURMOND, passed away.

Senator THURMOND is one of the most cherished and loved Members of the Senate family. He inspires us all and has contributed so much to his Nation, and to his State, by virtue of his service in this body since he was elected in 1954.

His brother, Dr. Allan George Thurmond, chose a different, yet very important, avenue of providing service to the public. Dr. Thurmond was a much beloved physician for over half a century. He was born on September 4, 1907, in Edgefield, SC. He was the son of the late Eleanor Gertrude Strom and John William Thurmond. He graduated from Edgefield High School, attended Clemson College, and received his medical degree from the Medical College of Georgia in 1933.

He was an Army veteran of World War II and practiced medicine in Waynesboro, GA, Augusta, GA, and North Augusta, SC. He was affiliated with the University Hospital in Augusta, GA, and specialized in the practice of obstetrics and gynecology. He retired in 1984 after a long and illustrious career in which he provided health care to many families, regardless of socioeconomic background.

Dr. Thurmond was a member of the First Baptist Church in North Augusta, SC, and belonged to the American Medical Association and the Medical Association of Georgia. Other survivors include his sisters, Miss Anna Gertrude Thurmond of Columbia, SC, Mrs. Walter G. Bishop, Sr.—Martha—of Greenwood, SC, and Mrs. J. Robert Tompkins—Mary—of Edgefield, SC.

The Thurmond family has every right to be so fiercely proud of their family's accomplishments and contributions—including the outstanding contributions to society which Dr. Thurmond made. All of those who knew him held Dr. Allan George Thurmond in the very highest esteem.

We in the Senate extend our deepest sympathies to the Thurmond family and especially to our beloved colleague and friend, STROM. Our thoughts and our prayers go winging out to our dear friend during this difficult time.

LARRY BIRD—THE MAN AND THE LEGEND

Mr. KENNEDY. Mr. President, tonight, at the Boston Garden, the people of Boston are honoring the Hoosier who won the hearts of Boston, one of the greatest basketball players of all time, the incomparable Larry Bird, who is retiring from the Boston Celtics. It is Larry Bird Night in Boston, and his famous No. 33 Jersey will be enshrined in the rafters of the Garden.

Since October 12, 1979, the night of his first game with the Boston Celtics, Larry Bird has been dazzling basketball fans, and even nonfans, with his amazing skill. One month after his professional debut, he recorded his first triple-double—23 points, 19 rebounds, and 10 assists. He went on to even greater heights that year and he was named NBA Rookie of the Year.

Between 1981 and 1986, he led the Celtics to the first of the three Bird-era world championships. At the end of the 1986 season, the NBA named him "Most Valuable Player" for the third season in a row, an achievement previously attained only by Bill Russell and Wilt Chamberlain.

And, as we all remember last summer, Larry Bird and other members of the U.S. Dream Team brought home Olympic gold. He was recognized by the entire world as the champion he has always been to us.

There is so much about Larry Bird that all the trophies, medals, and

championship rings do not tell. The incredible statistics—a free-throw percentage of .896, a 3-point shooting percentage of .423, an overall scoring record of 25.8 points a game, 10.4 rebounds, and 2 steals a game—barely begin to measure his achievement.

His extraordinary ability was always matched by hard work. He is legendary for always being the first one at the Garden, warming up for every game. He has played brilliantly even when hurt, without complaining, inspiring his teammates to do the same.

Most of all, Larry Bird is a team player, always crediting fellow players for their success—and for their indispensable role in his own achievements. He is a shining inspiration to the youth of America and to all Americans, and I am proud to join millions of his fans on this special night as we wish him well in his retirement.

RURAL RAIL INFRASTRUCTURE

Mr. PRESSLER. Mr. President, when the Senate returns from its February recess, I intend to introduce the Rural Rail Infrastructure Act of 1993. Today, I will offer a general outline of this important policy issue. I urge my colleagues to review my remarks, and I welcome their thoughts and ideas.

Rural America has suffered a decline that has been accelerated by Government policy, or to be frank, the lack of a policy. This is particularly true with respect to rural transportation. Transportation companies have divested in rural America because business and capital have not been there to support the infrastructure. Deregulation has accelerated this decline with a severe loss of air, rail, and bus service.

In other areas involving basic infrastructure, Congress has moved boldly to address the needs of small States. The Rural Electric Administration provides power and telephone service to the most remote regions of America. The Interstate Highway System connects our small cities and towns, and continues to be the lifeline of our freight trucking industry. The Essential Air Service Program is a modest but vital component of small city air service. We also are seeing efforts to reestablish small city bus links.

Rail, however, is the transportation mode that was left behind. The abandonment of small State rail service has been massive. As a result, economic development options are reduced, and entire communities lose industrial opportunities. In areas like my home State of South Dakota, it is becoming more and more difficult to move our bountiful harvests from the field to the American table and markets abroad. President Clinton has called on Congress to reinvest in America. I believe it's time we reinvest in America's rural rail service.

This commitment to small State rail service is shared by a number of my colleagues. The senior Senator from Nebraska [Mr. EXON] and the Senator from Iowa [Mr. HARKIN] and others have worked diligently in the U.S. Senate to restore quality rail service to small States. We reestablished the Local Freight Assistance Program, after it was killed in the early 1980's. That program provides modest but vital help at a level of about $10 million each year. On two occasions, the Senate approved as much as $100 million in Federal loan guarantees for light density lines. However, House-Senate conference committees dramatically reduced the Senate's recommenations.

The 40,000 miles of local and regional railroads are America's most vulnerable transport infrastructure. Meanwhile, we are making funding to our highways that will total $130 billion over the next few years.

We are making commitments to mass transit. We are making commitments to Amtrak. High-speed rail is a high priority. I support all of these initiatives. All reflect our desire to reinvest in America. However, reinvesting in America means reinvesting in rural America. It means reinvesting in South Dakota, and other States from Montana to Maine.

Mr. President, it is time for our Nation to make an equal commitment to rural rail infrastructure. My proposed legislation is based on existing law. My legislation will not create any new programs or layers of bureaucracy. Instead, it combines and builds on current statutes. My legislation will consist of the following:

I. LOCAL RAIL FREIGHT ASSISTANCE

One hundred million dollars per year for 4 years. Funds would be concentrated on small railroads and light density lines. Safety and bridge projects will have priority.

II. AUTHORIZE RAILROAD LOAN GUARANTEES

Section 511 of the Rail Revitalization and Regulatory Reform Act authorized $1 billion in Federal loan guarantees to assist railroads. Almost the entire amount remains available for commitment. My proposed legislation would modify the program to make it more workable and easier to get the funds out quickly. My bill would authorize a funding commitment of $500 million.

III. INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT [ISTEA] ELIGIBILITY

States would be given the flexibility to commit ISTEA surface transportation funds to rail projects that the FRA certifies would otherwise be eligible for Local Rail Freight Assistance funding. This will give the States an expanded ability to participate in rail projects that are in the public interest.

IV. SOUTH DAKOTA-MINNESOTA-NEBRASKA RURAL RAIL DEMONSTRATION PROJECT

The bill will earmark $15 million a year for 4 years for a rail project that will demonstrate the benefits of bringing rural rail infrastructure to a safe and viable condition.

The Regional Railroads of America [RRA] recently presented me with a policy proposal entitled the "Green Map." The RRA Green Map provides excellent justification for the legislative package I am developing for rural America. I bring it to the attention of each of my colleagues and ask that it be printed in the RECORD at the conclusion of my remarks.

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

REGIONAL RAILROADS OF AMERICA, THE GREEN MAP PROGRAM

INTRODUCTION

Railroads safely move people and freight using less energy, relieving highway congestion and lowering pollution. If 10% of the freight moving by truck were diverted to rail we would reduce emissions of carbon dioxide by 2.46 million tons, save 200 million gallons of fuel and eliminate 220 highway fatalities a year.

Highway congestion today wastes two billion hours and costs $100 billion in lost wages and excess fuel consumption each year. Air passengers sit through 20,000 hours of flight delays, costing us some $5 billion in wasted time and fuel. Over 100 suburban areas fail to meet Clean Air standards. Sixty eight cities fail pollution goals for ozone. Almost as many can't meet carbon monoxide guidelines. Some 150 million Americans live where the air quality in unacceptable.

Unlike our gridlocked highways and airports, the existing rail system can carry four times today's traffic. Railroads could in fact, take 10 million trucks off the highways without laying another mile of track. With a modest investment, high speed rail service could be initiated over existing rights of way between city pairs of 400 miles or less. This could eliminate the need for thousands of daily flights between near-by metropolitan areas.

Taken together, the rail commuter and rail freight lines of this country comprise a Green Map that can make a major contribution to the environmental, energy and transportation goals of this country.

Unfortunately, the totality of federal transportation policy and the federal funding that supports that policy enhances the Grey Map of highways.

The basis of that federal policy is an enormous Tax Gap between railroads and their modal competitors. The Tax Gap is created by two factors. First, the government undercharges the trucking and barge industries for the construction and repair of their rights of way. Second, the government overcharges the railroad industry by imposing billions of dollars in unique costs for federally mandated railroad retirement, FELA and labor protection.

The Federal Tax Gap is the fundamental problem for our industry. It is the reason railroads continue to lose market share as measured by revenue. It is the reason railroads rank near the bottom among 21 industry groups when measuring return on investment. It is the reason rail industry jobs have shrunk by half in a decade.

For regional railroads this problem is particularly acute. Regional Railroads are small start-up companies that cannot absorb the financial penalties imposed on it by bad public policy.

Regional Railroads of America is proposing a new program to the Clinton Administra-

tion and the 103d Congress. RRA's program eliminates the inequities in current law, and it establishes programs that maximize the transportation and environmental advantages inherent in the rail mode.

THE COST GAP

The rail industry absorbs billions of dollars in Cost Gap charges through railroad retirement, FELA, labor protection, FRA safety user fees. These are not unquantifiable expenses assumed by fuzzy headed economists as the cost of regulation. They are actual dollars that can be quantified. The first part of our Tax Gap Agenda is to repeal or modify those laws to make us more competitive with truck and barge.

The non-partisan arm of Congress, the General Accounting Office (GAO) agrees. GAO found Railroad Retirement imposes a $1 billion extra burden on the rail industry, the equivalent of approximately 25,000 jobs.

Likewise, the GAO determined that railroads pay $1.51 in FELA costs, while their competitors average $0.27 per hour under workers' compensation. FELA adds at least $608 million to the railroad's costs, or the equivalent of approximately 15,200 jobs.

According to a National Railway Labor Conference estimate (based on a 1985 survey), federally imposed labor protection for routine transactions adds $380 million in annual costs, the equivalent of 9,505 jobs.

The Safety User Fee will cost railroads some $34 million this year, the equivalent of 850 railroad jobs.

While trucks and barges operate on subsidized infrastructure, railroads pay out more than $300 million in property tax to state and local government for the privilege of owning and maintaining rights of way. While not a federal policy, this adds to the Tax Gap in a way that makes it difficult to compete.

THE MODAL SUBSIDY GAP

The Assocation of American Railroads (AAR) estimates that the taxpayers give other modes of transportation (highway, airports and waterways) up to $7 billion in rights of way subsidies annually. In 1991, the federal government reauthorized the Highway Trust Fund, providing over $125 billion to be spent exclusively on highways over six years. While this legislation acknowledged the need to consider other modes of transportation, it still puts all the federal financial resources at the disposal of the trucking industry.

Netted against this huge investment in the Grey Map, the federal government's annual expenditure on the Green Map totals some $500 million for Amtrak, and some $8 million for the Local Rail Freight Assistance program. The disparity is overwhelming, and it creates a competitive barrier that is equal to more than 25% of the entire gross revenue of the rail industry. It is unlikely the rail industry's competitors could survive a similar disparity.

THE GREEN MAP PROGRAM

The Green Map comprises the freight and passenger rail lines that can help relieve highway congestion, reduce pollution, save energy and reduce highway repair costs. These benefits are public benefits and they should be considered as such by the federal government. Preserving and enhancing the Green Map should become an important consideration of the federal government.

RRA is proposing a five point program that will help move federal policy in that direction.

1. A targeted investment tax credit for eligible Green Map track and equipment rehabilitation.

2. An expansion of the Local Rail Freight Assistance Program (LRFA) to $100 million annually over four years, and the funding of the current Section 511 Loan Guarantee Program at $200 million annually over four years.

3. Adding "rail" as an eligible category in the Surface Transportation Fund of ISTEA.

4. Creation of a dedicated trust fund to finance: Amtrak capital needs, high speed rail equipment, technology and corridor development, safety improvements of track, bridges and grade crossings; and the FRA safety program.

A TRIBUTE TO SMYRNA, DE

Mr. ROTH. Mr. President, I rise today to pay tribute to Smyrna, DE, the only town in the First State to be ranked among the top 100 towns in the country, as stated in a recent book by Norman Crampton, "The 100 Best Small Towns in America." Smyrna ranks 31st overall, for towns with populations between 5,000 and 15,000.

Mr. Crampton based his comparison by using eight main factors. Those included: growth rate; per capita income; proportions of residents age 25–34; population diversity; crime rate; number of physicians in the area; proportion of residents with a college education; and expenditures for public education. He also looked at the town's climate, cost of living, availability of employment, schools, churches, health care, libraries, recreation areas and radio and television stations. And, Smyrna passed the test.

Smyrna is located one half-hour from Wilmington, the largest city in Delaware, and it is just a stones throw from Dover, our State capital. It is recognized as being a progressive community, with an independent spirit and a charm that is reflected by its 5,500 residents. When the rating was released, several State papers asked Smyrna's mayor, George Wright, for comment, to which he simply responded: "This is quite an honor; but it really doesn't surprise me."

To give you a brief history, Smyrna was named by the Delaware Assembly in 1806 and, just 70 years later, it was a distinguished transportation center noted for its grain, lumber, and peaches. The town has survived two world wars and a depression, and its land area has quadrupled since 1955. Smyrna's downtown historic district—Four Corners—reflects 200 years of architecture and enterprise.

Today, Smyrna is a thriving community, with recreational activities that include fishing, crabbing, boating, swimming, and hunting. Smyrna also has an active retail center and there are several industrial and light manufacturing businesses within its limits. Many Smyrna residents are employed by the State of Delaware and they work in government offices there.

We are proud to have Delaware well represented by Smyrna among the top 100 small towns in the Nation. So, Mr. President, let us honor this town and the other top 99 towns in America—and let us tell them all to keep up the good work.

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

[From the News Journal (DE), Feb. 3, 1993]

SMYRNA RANKED AMONG TOP U.S. TOWNS

(By Al Mascitti)

SMYRNA.—To most Delawareans, especially upstate who vacation in Sussex County, Smyrna is a bottleneck on U.S. 13, best known as the location of a rest stop, a diner and the state prison (which is not really in town, residents are quick to point out).

But those passing through might be surprised to learn that Smyrna ranks as the best small town in Delaware.

In fact, Smyrna is not only first in the First State, it's No. 31 in the nation, according to author Norman Crampton's new book, "The 100 Best Small Towns in America" (Prentice Hall, $12). Elko, Nev., ranks No. 1 in the country.

Crampton, a waste management specialist at Indiana State University in Greencastle Ind., (No. 97 on the list) based his rankings on several statistical criteria. He considered only places with populations between 5,000 and 15,000 that lie outside the federal government's metropolitan statistical areas. Some of the factors he considered were population growth and diversity, local government spending for education, crime rate and health care.

When the numbers were crunched, Smyrna was No. 31 in the country.

"It's no surprise," said town councilman Kenneth Brown.

"It's something we know, but other people don't," said his wife, Regina.

"And we're not so sure we want other people to know," added Bettielou Wagner.

While it rates No. 1 in Delaware, Smyrna isn't tops on the Delmarva Peninsula. That honor went to Easton, Md, which ranked No. 26.

[From the Smyrna (DE) Sun, Feb. 3, 1993]

WE'RE NO. 1

(By Ben Mace)

Residents of Smyrna, if you've always thought you lived in a special town, you're right.

Smyrna has been named in the new book, "The 100 Best Small Towns in America," a ranking of towns with populations between 5,000 and 15,000, by Norman Crampton.

Smyrna was the only town in Delaware selected for the book, which is published by Prentice Hall and sells for $12 in book stores.

"It's quite an honor, but it really doesn't surprise me," said Smyrna Mayor George C. Wright Jr.

"I don't know if people realize this or not, but Smyrna is recognized throughout Delaware as being quite a progressive little town," said Wright, who is executive director of the Delaware League of Local Government.

"A lot of the things we've done have been followed by other towns and larger cities like Dover," he said.

Smyrna ranked 31st overall out of the 100 towns selected for the book.

The nearest municipalities also named in the 100 best were Easton, Md., ranked 26th, and Shippensburg, Pa., 19th.

The author's goal was to identify towns "where the traditional values of family,

community, faith, hard work, and patriotism remain strong. . . . [towns] that are helping to preserve the American dream."

Crampton has chosen towns that are ideal places to live, work, and raise families.

He used eight main factors to rank the towns:

Growth rate from 1980-90 (Smyrna was tied for 30th at 9 percent; the leading town was Plymouth, New Hampshire with 45 percent).

Per capita income, as of 1988 (Smyrna was 75th at $8,535; the leader: Essex, Connecticut with $17,593).

Proportion of residents age 25-34 in the town's county, as of 1988 (Smyrna was 21st with 17.5 percent; the leader: Glenwood Springs, Colorado, 24.6 percent).

Percentage of non-white population in the town's county, as of 1988 (Smyrna was 15th with 19.3 percent; the leader: Cleveland, Mississippi, 64.6 percent).

Crime rate in the town's county, as of July, 1985 (Smyrna was 86th with 4,674 serious crimes per 100,000 people. The leader was Bolivar, Missouri with just 341 serious crimes in its county per 100,000 people).

Number of physicians in the town's county, as of 1988 (Smyrna was 19th with 157 per 100,000 people. The leaders: three New Hampshire towns with 683 physicians per 100,000 people in their respective counties).

Proportion of residents with a college education in the town's county (Smyrna was 23rd with 16.6 percent; the leader: Nevada, Iowa with 33.9 percent in its county).

Expenditures for public education in the town's county (Smyrna ranked 62nd with $410 per person. The leader was Douglas, Wyoming with $1,012 per person in its county).

Other questions which weighed in the selections were:

Is the town a county seat?

Does the town have a newspaper?

Is there a college in the town?

What's the scenery like?

Is it close to a large metropolitan area without being a suburb?

The book also notes each town's climate, cost of living, availability of employment, schools, churches, health care, libraries, recreational areas, and television and radio stations.

The final step was interviewing town residents, leaders, and business people so the author would have a better idea about the town's personality.

For the section on Smyrna, the author used excerpts of interviews from Mayor Wright; Smyrna Councilman Ken Brown; Smyrna resident George Caley, "unofficial" town historian; the Rev. Frank Wismer, pastor of St. Peter's Episcopal Church; Bettelou Wagner, director of Loving Care Nursery and Pre-school; and Nancy Vodvarka, co-owner of Tully's Ale House.

AUTHORIZING THE USE OF THE UNITED STATES ARMED FORCES IN SOMALIA

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of an original joint resolution introduced by Senators MITCHELL, DOLE, PELL, and HELMS, relating to the situation in Somalia and authorizing the use of United States Armed Forces in Somalia; that no amendments of motions with respect to the joint resolution be in order; that debate on the joint resolution be limited to 10 minutes, equally divided and controlled between the two leaders or their designees; and that at the conclusion or yielding back of time on the joint resolution, the joint resolution be deemed read for the third time and passed; the preamble be considered agreed to; and the motion to reconsider these actions, en bloc, be laid upon the table.

The PRESIDING OFFICER (Mr. DECONCINI). Without objection, it is so ordered. The joint resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 45) authorizing the use of United States Armed Forces in Somalia.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I do not rise to object to the passage of this joint resolution but I think the point ought to be made, and emphasized, that the United States has done a commendable job, a tremendous job of securing control of that region to ensure that food assistance could be made available to those who are in need, those who are desperate.

Were it not for the leadership of the United States, this would not have been possible. But it was with the understanding that the U.N. Security Council would assume responsibility at the earliest possible time for this peacekeeping operation. It is my firm view and hope that we will be able as a Government to get the United Nations, the Secretary General, and the U.N. Security Council to proceed as quickly as possible to make a decision, to organize an international force for peacekeeping in that region so that the United States is not required to continue to provide, virtually by itself, the sole military force and the responsibility for that operation.

I am glad we were able to react as we did. I commend the military, and we will continue to support the effort there, but as a part of a multinational force, not solely exercising the responsibility in that region.

The time has come for an agreement to be reached. There have been meetings; there have been discussions. I understand negotiations continue with our Secretary of State and with the Secretary General of the United Nations. I hope that we can put some pressure to move those negotiations to the point of an agreement so that our Marine Corps personnel can be brought home and that we can participate instead in a multilateral peacekeeping force.

The PRESIDING OFFICER. Has all time been yielded back on Senate Joint Resolution 45? The Senator from Illinois was seeking the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, before Senator KASSEBAUM leaves the floor, let me also express my gratitude to her for her interest in Somalia, that goes way back.

Interestingly, on January 15, Senator KASSEBAUM and I sent a letter to the Secretary of State, Jim Baker, saying we are going to have to pay more attention to Somalia. There is an impending disaster. She has been absolutely superb. She has been the ranking minority of, the former chair of the African Subcommittee. I regret that she is no longer going to be the ranking member. She shifted to another subcommittee. But I am pleased she is continuing to serve on that subcommittee. I am grateful for her continuing interest.

Mr. President just very briefly, I think this resolution is the proper thing. I am pleased to a have strong bipartisan support. I have seen a lot of grim things around the world. I have been to refugee camps in Asia, Africa, everywhere else. I have never seen anything like I saw in Somalia when Senator METZENBAUM and I took a trip there in early November.

I hope I never see anything like it again.

We were faced with the probability of an additional 2 million deaths; about 350,000 people did die. Had nothing happened, the deaths in Somalia would have been the greatest single number of deaths in any nation due to starvation since the Irish famine of the 1840's.

To the credit of President Bush, Secretary of State Eagleburger, Secretary of Defense Dick Cheney, Gen. Colin Powell, and the others, they made a decision to move ahead. Eleven days after that decision was made, our first troops were there. It is something that, frankly, every American can be proud of.

I heard our colleague, Senator COCHRAN, express the wish that American troops can be out very shortly. I think that can be worked out for the bulk of the troops. There will be a residual force that will have to stay to help on technical problems like water, and some of the other things. Twenty-one nations have committed to be of assistance there. I think we can move very, very quickly.

I commend our President, who was then President elect, who made it very clear when this matter came up that it had his strong support also.

Here is an action where we are using 5 percent of the troops that we used in Desert Storm to save lives, not to save real estate, not to save oil, but to do a humanitarian gesture. In addition to the humanitarian gesture, I think it helps the United States politically. Had we not acted, had the most powerful nation in the world militarily and economically not acted, I think it would have looked terrible to the rest of the world.

President Bush deserves great credit. Those in both parties in Congress who

were consulted, and to the credit of President Bush, he did consult with many of us, everyone I think can take pride, and every American citizen can take pride in what our Armed Forces are doing over there.

Mr. President, I should like to take this occasion to express my wholehearted support for the Joint Resolution recently submitted in the Senate by my friend and colleague, Majority Leader George Mitchell, concerning the authorization of U.S. Armed Forces in Somalia. In short, what the resolution does is to authorize the use of U.S. Armed Forces in Somalia pursuant to United Nations Security Council Resolution 794, which called for the use of "all necessary means to establish a secure environment for humanitarian relief operations in Somalia." I think we can all agree that the U.S. Armed Forces, working also with military contingents from many other nations, have done an exemplary job so far in fulfilling the Security Council mandate and that their efforts should be explicitly authorized by the Congress.

I believe most of my colleagues would agree that in modern times, there has hardly been a more desperate humanitarian situation than in Somalia, where the majority of an entire country was threatened with extinction due to starvation. Indeed, an estimated 300,000 Somalis have died in the past 2 years of starvation, and a further two million people—out of an estimated national population of about six million—were in danger of imminent starvation when President Bush established Operation Restore Hope in early December of last year. I applauded President Bush's decision then to offer to the United Nations U.S. troops to serve as part of a multinational force to bring humanitarian relief to Somalia. We can all take great pride in what the U.S. troops have done in Somalia. Food is getting to those who desperately need it, and order is being restored on the streets.

The previous administration's decision to offer troops to the United Nations for use in Somalia, of course, was not made in a vacuum. The Africa Subcommittee I chair had urged the President for over a year to take more responsibility for Somalia, especially within the U.N. context. Following my trip to Somalia in November, I once again called for redoubled U.S. and U.N. efforts in Somalia, particularly for the deployment of armed U.N. security forces to aid in the distribution of relief assistance. My colleague on the subcommittee, Senator NANCY KASSEBAUM, had also vigorously made such recommendations, especially following her trip last July to Somalia.

I should like to draw the attention of my colleagues to the proposed joint resolution's final paragraph, which calls on the President to consult with the U.N. Secretary General and the Security Council to ensure that U.N. peacekeeping forces are deployed to Somalia to maintain a secure environment and to allow the withdrawal at the earliest date of U.S. forces. This section of the proposed resolution is vitally important, because without sufficient United States consultation and leadership, the United Nations will find it harder to put together the kind of peacekeeping forces necessary to keep the momentum that United States forces have already established in Somalia.

The United Nations has already taken several important steps in helping to facilitate a political reconciliation among Somali leaders. Under United Nations leadership, the major factional leaders, meeting in Addis Ababa in early January, agreed to a cease-fire and to hold a more comprehensive conference on national reconciliation in March in Mogadishu. It will be a long and difficult effort to work with all Somali leaders, including clan elders, to put together a functioning local authority again in Somalia. It is something only Somalis can do for themselves.

In the meantime, most United States forces should be brought back from Somalia as quickly as is prudent. I am pleased that some units have, indeed, already been withdrawn. We can all be thankful that there have been very few American casualities, but unfortunately, there have been several deaths of Americans serving in Somalia. Our hearts go out to the families of those who gave their lives so that desperate Somalis could live. These Americans are true heroes. We fervently hope that a withdrawal of U.S. forces can be achieved quickly and without further loss of life.

Thank you, Mr. President, for this opportunity to speak on behalf of this important resolution on Somalia now before the Senate.

Mr. MITCHELL. Mr. President, I am pleased to join the distinguished Republican leader in offering a joint resolution to authorize the deployment of United States troops to Somalia.

I consider it important that the Congress express its views regarding this deployment under Operation Restore Hope.

The joint resolution is straightforward. It begins by stating that an estimated 300,000 Somalis have died since 1991 and that relief organizations have had great difficulty delivering assistance to that conflict-ridden nation.

It notes the United Nation's authorization of multilateral action in Somalia and America's leading role in helping to create a secure environment for humanitarian relief operations.

The joint resolution then authorizes the President to use U.S. Armed Forces pursuant to U.S. Security Council resolutions to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.

It spells out that this constitutes specific statutory authorization within the relevant section of the War Powers Resolution.

Finally, the resolution expresses the sense of the Senate that the President should consult with the Secretary General of the United Nations and other Security Council members to ensure that the United Nations can swiftly assume primary responsibility for the operation in Somalia.

As a practical matter, this vote could be considered pro forma.

Over 20,000 American servicemen and women already are on the ground in Somalia, helping to establish a secure environment for relief efforts. Operation Restore Hope has received widespread praise both at home and abroad. Most Members of Congress already are on record in support of this effort.

But this vote has legal, constitutional, and political significance.

The Constitution states that only Congress has the power to declare war. The 1973 War Powers Resolution was written to prevent the President from deploying troops to situations that could lead to war without first obtaining consent of the Congress.

But the deployment of troops into situations short of war is likely to become common in the decades ahead.

The frequency of U.S. participation in multilateral humanitarian or peacekeeping actions was not foreseen by the Founding Fathers when they drafted the Constitution.

Nor could those who wrote the War Powers Resolution have known that American troops deployed in such operations could face hostilities but not what commonly would be considered war.

But the changing nature of the deployment of U.S. troops abroad does not render Congress irrelevant.

U.N. Security Council resolutions are no substitute for congressional authorization.

The support of foreign countries cannot substitute for the support of the American people, and the support of the American people is critical for any role the United States plays abroad.

We may find ourselves on increasingly murky legal and constitutional terrain with respect to future deployments under the auspices of multilateral humanitarian or peacekeeping operations.

But this murkiness does not obviate the clear political necessity of obtaining congressional consent for military operations overseas—even those conducted for humanitarian or peaceful purposes, even those conducted under the auspices of an international body.

The nature of Congress' role, like the role of American troops overseas, may well be forced to adjust to the new realities of the post-cold war world.

But Congress must continue to share war powers in the broadest sense.

Congress has a political responsibility to express its view on major troop deployments overseas, whether they seek war or enforce peace, whether they are unilateral or under the auspices of the United Nations, whether they last 3 months or 3 years.

There are more than 20,000 American men and women in the Armed Forces currently serving in Somalia. These committed and courageous servicemen and women deserve to know that the American people, not just an American President or members of the U.N. Security Council, believe in an fully support their mission.

American troops have, by all accounts, done an outstanding job in Somalia. Their mission is a compelling one: secure transport and food distribution points and ensure free passage and security for the delivery of relief supplies. There is little doubt that their action has saved tens if not hundreds of thousands of lives.

American forces have completed the first two phases of their operations: securing the airfield and seaport in Modagishu and expanding security operations into Baidoa and central Somalia. Executing phase 3 of the operation, expanding security operations to the south, our forces have been able to make a significant difference in stemming the widespread starvation that faced these areas of Somalia as well.

As successful as the United States operation has been to date, I consider it important that we begin the last phase of Operation Restore Hope as soon as possible, and start turning over the bulk of responsibility in Somalia to the U.N. force.

The United States will remain a critical catalyst for action in international institutions, but we cannot and must not unilaterally assume responsibilities that more properly belong to the collective whole of nations. Somalia is an illustrative example.

The United States had the capability and the will to move decisively to halt the continuing chaos and starvation in Somalia. We offered this capability to the United Nations, which agreed to assume responsibility for Somalia once a secure environment had been established.

I have strongly supported American involvement in international relief and peacekeeping operations. I have urged the United States to fully meet its assessed contribution to U.N. peacekeeping by transferring funding responsibility to the Defense Budget. I have urged the United States to support an expanded concept of the duty to intervene, precisely as was done in the case of Somalia.

I believe it is significant that U.N. Resolution 794 established some types of constraints on U.S. military action: It established a multinational command that must consult with the U.N. Secretary-General throughout operations and gives the Secretary-General the right to decide whether the American-commanded force has achieved its objectives.

But disagreements with the Secretary-General about the precise nature of American engagement—such as whether to disarm Somalis—and the timing of the transition to UNOSOM raise important questions.

It is obvious that such issues must be more clearly adjudicated in advance of another United States-led international humanitarian mission. This will result in less confusion and miscommunication at a later date.

It will also help preclude the possibility of Americans becoming resentful about participating in the first place.

This is my major remaining concern about Operation Restore Hope.

The Secretary General must identify clear criteria for determining the end of the U.S. operation, and he should make the United Nations assumption of this mission a higher priority.

If Americans believe that the United Nations has stuck them with a continuing leading role in Somalia, they will be less supportive of participating in future missions.

And this, I believe, would be a tragedy. Many Americans believe that our Nation can and should assist in helping avert catastrophe and preserve peace overseas. Many Americans believe that this should be done in an international or multilateral context, not on our own. And many Americans support a stronger United Nations.

Building on these positive sentiments, transforming and institutionalizing them, is a great and inspiring challenge for the United States and the international community in the years ahead.

I hope that Operation Restore Hope will be a positive step in this direction, an adumbration of America's future role abroad.

I am pleased to join Senator DOLE in offering and supporting this resolution to authorize the deployment of American troops to Somalia. I wish our troops well, and look forward to their speedy return home to savor a job well done.

MITCHELL RESOLUTION ON SOMALIA

Mr. PELL. Mr. President, I am pleased to join the distinguished majority leader in cosponsoring this resolution which authorizes the use of American Armed Forces in Somalia. The situation in Somalia turned into chaos after the fall of Somali President Siad Barre in January 1991. Fighting erupted between and within clans and subclans. Armed bandits roamed the cities and the countryside. The economy ceased to function and famine set in. As civil authority evaporated at the point of a gun, the people of Somalia became helpless victims of famine and civil war. International relief efforts were thwarted and ultimately halted by banditry and lawlessness. The tragic result of this chaotic situation is the death of an estimated 300,000 Somalis over the last 2 years.

In response to this heart-wrenching situation, the U.N. Security Council, on December 3, 1992, enacted Resolution 794 authorizing the use of all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia. After this, President Bush met with congressional leaders to discuss the deployment of American Armed Forces pursuant to the U.N. resolution. At my request, Senator SIMON, chairman of our Subcommittee on African Affairs, attended that meeting. On December 9, American troops began to be deployed to Somalia under Operation Restore Hope in support of the Security Council's decision to intervene in that country. The following day the President made a formal report to Congress on the U.S. deployment.

The resolution now pending before the Senate authorizes the use of United States Armed Forces in Somalia consistent with the War Powers Resolution. The authorization set forth in section 2(a) of this resolution is intended to constitute specific statutory authorization within the meanings of section 5(b) of the War Powers Resolution (PL 93-148).

Mr. President, Operation Restore Hope is an historic undertaking because it represents one of the first times that American military forces have intervened in another nation solely for humanitarian reasons. Some have argued that this deployment will drag us into the quagmire of Somalia and that it will be difficult to get out. As one who has had a chance to see our forces at work in Somalia, I strongly believe that the decision to send them there was the right one.

As chairman of the Foreign Relations Committee, I went to Somalia 2 months ago with Senator BOREN, then chairman of the Intelligence Committee, and Senator LEVIN. The devastation that had been perpetrated against the Somali people was dramatically brought home to me in the eyes of painfully thin men, women, and children. That sight reinforced my view that we have a moral and humanitarian obligation to help the people of Somalia. I was impressed by the dedicated spirit and good will of our troops. I am convinced that this kind of mission brings out the best not only in our military but in the American people.

Mr. President, the authorization provided for in the resolution before us reaffirms the support of Congress and the American people for Operation Restore Hope. We all hope and expect that the good work of our troops will be completed expeditiously and that their mission will be carried on by other forces under U.N. auspices.

SOMALIA RESOLUTION

Mr. GORTON. Mr. President, there is no debate in this body about the efficacy, to date, of Operation Restore Hope. The United States has saved hundreds of thousands of lives and created an environment in which productive talks to create a government in Somalia can begin. Former President Bush, President Clinton, and especially America's troops, should be commended.

As the U.S. Congress authorizes this use of force, I do, though, wish to express some of my concerns with the stated goals of this operation, and to support the resolution's language which will clarify those goals and help the United States better understand when its troops will return home and when we can expect its armed services to become involved in future operations.

I have misgivings about any humanitarian effort which does not solve the core problems creating the suffering. Our stated goal in Somalia is to secure an environment in which food can be safely delivered. In the view of our military, fulfilling this goal includes disarming bandits posing an immediate threat to our soldiers; it does not—and for good reason—include a systematic disarming of the gangs now posing a threat to our soldiers. Such an effort would clearly require of our Armed Forces a considerably larger and more dangerous commitment.

Unfortunately, without disarming these bandits, we have not attacked the core problem of the manmade portion of this tragedy. Guns remain rife in Somalia, and while we hope that the United Nations presence in Somalia will create a deterrence and eventually a lasting goodwill, the same people will likely have those guns upon the United States withdrawal. I fear we have initiated a humanitarian operation without clearly understanding how we will change the nature of the problem.

We hope that once the United States has withdrawn, the United Nations can maintain peace while brokering peace talks. This effort attempts to preclude the need to disarm the Somalis who bear most of the responsibility for Somali's problems.

I hope that this effort will be successful. There are, though, a number of crucial issues which must be resolved if our effort in Somalia is to have a longlasting worth. What will be the composition of the U.N. forces that will secede our efforts and, more importantly, what will be these troops' rules of engagement? How will they respond if armed banditry reemerges? And what will be required of the United Nations to create a peace in Somalia that survives its withdrawal?

The only long-term solution to this tragedy is a pacification and reconstruction of Somalia. The U.N. operation in Somalia therefore will, more so any prior peacekeeping effort, rely on the blue helmets' ability to make rather than keep peace. The U.N. soldiers forced to hunker down in the midst of fighting in Sarajevo will not suffice in Somalia. Peace in Somalia will require a definitive military presence of a U.N. force with an unprecedented ability to fight.

Mr. President, while I have some misgivings about this operation, I nonetheless support this resolution because I hope that we can use it as an opportunity to reaffirm our commitment to understanding clearly the goals of any U.S. operations abroad. I wish to thank Senator BROWN for his work to include language in this resolution which will require that the President report on the status of our operation in Somalia, that he restate our goals there, and that he submit a list of criteria for future U.S. commitments. This report, I hope, will help us better pursue humanitarian missions.

SOMALIA: ASSESS THE COSTS

Mr. PRESSLER. Mr. President, from the time former President George Bush deployed United States troops to Somalia as a part of the global humanitarian aid effort, Operation Restore Hope, I have stood strongly against the unfair burden-sharing of this project. Let there be no misunderstanding: I support the international relief effort in Somalia. My concerns are with the need for a more equitable cost-sharing effort.

From the outset of the aid project, the United States has been assessed the majority of Operation Restore Hope's costs. With the primary financial burden, our taxpayers deserve assurances that the intervention has been cost-effective and that it has fulfilled its humanitarian objectives. For this reason, I authored language that is included in the joint resolution authorizing United States troops to Somalia. My language expresses the sense of the Congress that the President provide Congress with an assessment of Operation Restore Hope, indicating the costs assessed to the United States, the United Nations, and other countries and related organizations involved in the operation.

We have a moral obligation to the starving Somalis. However, other countries in addition to the United States must share in this humanitarian obligation. The burdens should be shared equitably among more of the world's wealthy nations. The precedents the United States sets regarding payments for operations like the Somali aid project will set the stage for United States' future financial obligations. We must be wary of setting just such a precedent.

Mr. President, I ask unanimous consent that letters I wrote to President Bush and Richard Darman and two articles from the Sioux Falls, SD, Argus Leader regarding the burden sharing of Operation Restore Hope be placed in the RECORD.

I thank the Republican leader and the majority leader for their leadership and cooperation in the preparation of the joint resolution.

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

U.S. SENATE,
Washington, DC, December 2, 1992.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: This letter is in regard to the United States assessed financial commitment for Somali aid. I am disturbed by the U.N.'s altered position on the financial assessment for protectorate costs, food aid, and long-term Solmali aid commitments. Recent proposals have targeted the United States as the primary financial supporter of the project. Without the financial involvement of other countries, the United States could be assessed as much as 80 percent of the protectorate costs and the military assistance. There is absolutely no reason for the United States to pay the lion's share of the cost for relief in Somalia.

I ask that you formally request monetary support from Japan, the oil rich Arab nations, wealthy European and Asian countries, and other nations with financial stability. Because this project is largely humanitarian, more countries than just the United States should be involved. Before the United States is stuck with the majority of the costs to aid Somalia, at the very least other wealthy nations should be formally asked to contribute.

I propose the following percentage cost break-down for country to country financial assessments:

	Percent
United States	15
Japan	10
Arab Oil Nations	20
European Nations	40
Asian Nations	15
	100

Other countries besides the United States should pledge monetary support for any troop intervention in Somalia. The United States should not be forced to foot a large portion of the bill. Before the United States spends one cent for the Somali project, a full cost estimate should be refunded. The American people deserve that much.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

U.S. SENATE,
Washington, DC, December 4, 1992.

Mr. RICHARD G. DARMAN,
Director, Office of Management and Budget, Washington, DC.

DEAR RICHARD: This letter is in regard to United States assessed financial commitment for Somali aid. Before the United States spends one cent for the Somali project, a full cost estimate should be conducted. To this date, I have seen no cost projections for troop intervention and protectorate costs in Somali. I request that the Office of Management and Budget conduct a study of the best case and the worst case scenarios concerning Somali aid projections.

I am disturbed by the U.N.'s altered position on the financial assessment for protectorate costs, food aid, and long-term Somali aid commitments. The position has changed, leaving the United States as the primary fi-

nancial supporter of the project. Other countries besides the United States should pledge monetary support for troop intervention in Somalia. The United States should not be forced to foot the whole bill. The American people deserve to know what we are getting into.

Without the financial involvement of more countries, the United States could be assessed as much as 80 percent of the protectorate costs and the military assistance. There is absolutely no reason for the United States to pay the lion's share of the cost, particularly without a full assessment of the projects cost. I believe that, at the very least, a cost assessment should be prepared.

I would appreciate it if you could contact me concerning my request as soon as possible. Should you have any questions or comments, please do not hesitate to contact Ann Waltner of my staff at 224-5842.

Thank you very much for your consideration of this matter.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

[From the Argus Leader, Dec. 14, 1992]

SENATOR QUESTIONS FINANCING OF SOMALIAN RELIEF OPERATION

Sen. Larry Pressler has loudly opposed the U.S. role in Somalia, asking a reputation as what he calls "the Christmas Grinch." His opposition stems from what Pressler feels is the unfair burden the United States is made to pay for such operations.

Under current United Nations rules, the United States will be charged $326 million of the $1.3 billion budget in 1993, or about 25 percent. For all peacekeeping costs in the coming year, projected at $1.4 billion, this country will be assessed another $480 million, or about 30 percent.

"Nobody can be against feeding hungry people, and I'm not," Pressler explains. "But it depends on which ones, where, where the national interests are and so forth. I think we could have gotten an agreement to collect a lot of the money back (for the Somalia effort)—3 percent from each oil-rich country, 3 percent from each of 12 rich European countries, 15 percent from Japan, and we maybe would do the rest. But we're doing it all now."

". . . God, we spend a lot of money," he said, shaking his head.

"I want them helped, but it should have been done by regional forces," he adds of the Somalis.

Pressler has also called for a congressional investigation into the cost of the Somalia operation.

"Unless the good ol' U.S.A. does it, why, nobody does it," he complained. "As a senator, I'm really getting weary of how much everybody wants us to give aid. Like the African ambassadors this morning (who requested more aid). I told them, you know, we have a deficit. I don't hear anything about Europe doing more, or Japan doing more. They're just kind of beating me down. Everybody expects us to have the troops, us to pay the bills . . . so, it is wearisome around here sometimes."—CHET LUNNER.

[From the Argus Leader, Dec. 27, 1992]

COST OF FEEDING SOMALIA SHOULD BE SHARED

(By Larry Pressler)

With the collapse of Soviet-style communism, an end to the Cold War, and the opening of free market economies in many formerly state-run countries, a new global order has emerged with the United States as the preeminent power. In this unfolding global drama, the role the United States chooses to play in current international struggles will set a precedent for future U.S. actions. This is true whether the United States opts to play the lead role as the top global policeman or a supporting role as an interested, morally-obliged deputy.

The role chosen by the United States in providing aid to Somalia surely will influence future U.S. involvement on the international stage. It is an international precedent with serious domestic implications. With a huge federal budget deficit, serious small town and urban problems, senior citizen concerns, and countless other domestic needs, there is no reason the United States should be held responsible for the lion's share of Operation Restore Hope in Somalia. Unless the United States takes a strong stand urging other capable nations to assist in such international humanitarian projects, the world stage will be set for the United States to continue taking primary, if not full, economic responsibility in future world crises.

The United States and other countries have a moral obligation to help feed the starving people in Somalia, then they also have a moral obligation to help the war-ravaged Liberians, the "ethnically-cleansed" Yugoslavians, Haitian refugees, the thousands of economically disadvantaged youth in our inner cities and, closer to home, on our Indian reservations. Other countries besides the United States should step forward and pledge monetary support for the current military intervention in Somalia. The United States should not be forced to foot most of the bill.

With the primary financial burden of Operation Restore Hope currently placed on the United States, we as taxpayers, deserve assurances that the intervention will be cost-effective and will fulfill humanitarian objectives. Why pay for U.S. military intervention when troops from other nations may be more effective? Egyptian or Nigerian troops, for example, have more in common linguistically and religiously with the Somalis than any U.S. force.

In recent letters to President Bush, President Clinton, Office of Management and Budget (OMB) Director Richard Darman, and U.N. Secretary General Boutros Boutros-Ghali, I have asked these officials to carefully review the Somali aid costs assessed to individual countries. Without increased financial assistance from our neighbors, the United States could be assessed as much as 80 percent of the costs of establishing a protectorate, and for military operations and humanitarian aid. The United States does not possess 80 percent of the world's wealth. Thus, I see no reason for the United States to operate as Somali's major financier.

I have suggested to these officials that the following percentages be used as a starting point for more equitable Somali aid burden sharing: United States—15 percent, Japan—10 percent, OPEC Nations—20 percent, European Nations—40 percent, and Other Nations—15 percent.

I don't want to be the "Scrooge" or the "Grinch" in this situation. There is no question that we have made a heartfelt commitment to end the famine and anarchy faced by the people of Somalia. I strongly support humanitarian relief efforts. However, we have serious economic problems of our own. There is no reason the American taxpayer should play 80 percent of the "Santa" role in providing military and economic assistance to Somalia. Before Somalia becomes a precedent for future disproportionately U.S.-led relief efforts, at the very least, other wealthy nations should be asked formally to contribute.

President Bush and President-Elect Clinton should call for a stronger European and Japanese presence in global crises. The United States, although it remains the world's sole superpower, should not be held responsible for providing the bulk of financial and military assistance to the world war-torn regions. Japan, the rich oil producing countries and the wealthy European nations are fully capable of providing additional assistance for Somalia and other trouble spots. They, too, have moral obligations to assist in the war against hunger, disease and tyranny.

In his last days as President, George Bush could establish a precedent for future efforts to alleviate plagues of violence and famine, one that is based on the multinational strategy he successfully employed in Operation Desert Shield and Desert Storm.

The moral obligation in Somali is clear—the outside world must help. However, the economics and the long-term ramifications of this operation remain cloudy. I believe the United States should remain cautious in its world commitment. Can we really afford to accept far more than our proportionate share of world responsibilities?

The PRESIDING OFFICER. Is there further debate on Senate Joint Resolution 45?

If not, the joint resolution is passed and the preamble is agreed to.

The joint resolution (S.J. Res. 45), with its preamble, reads as follows:

S.J. RES. 45

Whereas an estimated 300,000 Somalis reportedly have died of hunger or as casualties of widespread violence since the fall of Siad Barre in January 1991;

Whereas international relief agencies had been unable to deliver adequate assistance to those most in need due to increasingly difficult and dangerous security conditions, including pervasive banditry and looting;

Whereas Congress has expressed its support for a greater United Nations role in addressing the political and humanitarian situation in Somalia through Senate Resolutions 258 and 132 and House of Representatives Resolution 370;

Whereas the United Nations Secretary General and United States officials had concluded that massive intervention in Somalia would be necessary to avert further starvation on this scale;

Whereas the United Nations Security Council on December 3, 1992, enacted Resolution 794, authorizing the use of "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia";

Whereas President Bush began deploying United States armed forces on December 8, 1992, in response to United Nations Resolution 794;

Whereas more than 20,000 American servicemen and women are now in Somalia under Operation Restore Hope and have been joined by troops from many other nations;

Whereas President Bush has emphasized that United States Armed Forces will be withdrawn and that the security mission will be assumed by the United Nations' UNOSOM operation as soon as a "secure environment" for the delivery of food has been created; and

Whereas, on December 10, 1992, President Bush formally reported to Congress on the deployment of United States Armed Forces in Somalia: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Authorization for Use of United States Armed Forces in Somalia".

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) AUTHORIZATION.—The President is authorized to use United States Armed Forces pursuant to United Nations Security Council Resolution 794 in order to implement the Resolution, which authorizes the use of "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia".

(b) WAR POWERS RESOLUTION REQUIREMENTS.—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

SEC. 3. SENSE OF CONGRESS.

(a) UNITED NATIONS PEACEKEEPING FORCES.—It is the sense of Congress that the President should consult with the Secretary General of the United Nations and with the other member countries of the United Nations Security Council to ensure that peacekeeping forces from other countries of the United Nations continue to be deployed in Somalia to maintain a secure environment and to allow United States Armed Forces to transfer the mission to a United Nations-led force at the earliest possible date.

(b) MEASURES OF SELF-PROTECTION.—It is the sense of Congress that the President should make every effort to ensure that United States Armed Forces serving in Somalia as part of a United Nations-led force are permitted to take all reasonable measures to protect themselves.

(c) ASSESSMENT OF COSTS.—It is the sense of Congress that the President should submit a report to Congress providing an assessment of the costs of Operation Restore Hope, indicating the costs assessed to the United States, the United Nations, and other countries and related organizations involved in the operation.

SEC. 4. REPORTING REQUIREMENT.

Not later than September 1, 1993, the Secretary of State and the Secretary of Defense shall jointly submit to Congress a report on the introduction and commitment of United States Armed Forces into combat situations. This report shall include—

(1) a specific review of the goals of United States policy in Somalia and an outline of objective criteria which will enable the United States to evaluate when those goals are achieved;

(2) a review of all actions taken to ensure that United States material contributions to United Nations forces in Somalia are counted against United States assessments in Somalia;

(3) a review of United States international interests and their correlation to the commitment of United States Armed Forces;

(4) a description of the factors to be used in evaluating future commitments of United States combat forces;

(5) specifically, a review of the many situations in the world where there are intense humanitarian needs and a means of evaluating what elements, when present, would permit these situations to rise to a level of importance necessary for the commitment of United States combat forces; and

(6) considerations which will affect whether United States Armed Forces will be permitted to be engaged as a portion of an international peacekeeping force, including—

(A) United States command of United States troops;

(B) equitable financial contributions of nations so engaged; and

(C) the right of United States combat forces to defend themselves throughout all levels of conflict.

The PRESIDING OFFICER. Without objection, a motion to reconsider is laid on the table.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

CONDITIONAL RECESS OR ADJOURNMENT

Mr. FORD. Mr. President, I send a Senate concurrent resolution to the desk and ask for its immediate consideration.

Mr. SIMON. Point of order, Mr. President.

The PRESIDING OFFICER. The Senator will please state the question.

Mr. SIMON. Have we adopted the Somalia resolution?

The PRESIDING OFFICER. We have not adopted it. We will do it shortly. The clerk will report the resolution.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 10) providing for a conditional recess or adjournment of the Senate from Thursday, February 4, 1993, or Friday, February 5, 1993, until Tuesday, February 16, 1993, and a conditional adjournment of the House from Thursday, February 4, 1993, or Friday, February 5, 1993, until Tuesday, February 16, 1993.

Mr. FORD. Mr. President, this is the adjournment resolution we need to adopt and get over to the House.

Mr. CRAIG. I have no objection.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 10) was agreed to, as follows:

S. CON. RES. 10

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Thursday, February 4, 1993, or Friday, February 5, 1993, pursuant to a motion made by the majority leader, or his designee, in accordance with this resolution, it stand recessed or adjourned until 12 noon, or until such time as may be specified by the majority leader, or his designee, in the motion to adjourn or recess, on Tuesday, February 16, 1993, or until 12 noon on the second day after Members are notified to reassemble pursuant to section 2 of this resolution, whichever occurs first; and that when the House of Representatives adjourns at the close of business on Thursday, February 4, 1993, or Friday, February 5, 1993, pursuant to a motion made by the majority leader, or his designee, in accordance with this resolution, it stand adjourned until 12 noon on Tuesday, February 16, 1993, or until 12 noon on the second day after Members are notified to reassemble pursuant to section 2 of this resolution, whichever occurs first.

SEC. 2. The majority leader of the Senate and the Speaker of the House, acting jointly after consultation with the minority leader of the Senate and the minority leader of the House, shall notify the Members of the Senate and the House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

Mr. FORD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 20, the nomination of Laura Tyson to be a member of the Council of Economic Advisers. I further ask unanimous consent that statements appear in the RECORD as if read; that the nominee be confirmed; that the motion to reconsider be tabled; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

The nomination considered and confirmed is as follows:

EXECUTIVE OFFICE OF THE PRESIDENT

Laura D'Andrea Tyson, of California, to be a member of the Council of Economic Advisers.

STATEMENT ON THE NOMINATION OF LAURA TYSON

Mr. RIEGLE. Mr. President, I strongly support the nomination of Laura Tyson for the position of Chairman of the Council of Economic Advisers. This is an extremely important position. No issue is more important to the future of our Nation than the design and implementation of our national economic policies. The Council has the critical job of providing the analysis underlying that process. This nominee brings excellent qualifications, and she will bring fresh, strong leadership at a critical time in our national history.

The Banking Committee held a hearing on her nomination January 21. Her testimony was articulate, knowledgeable over the broad range of issues she must confront, and insightful with regard to possible remedies. On Wednesday, February 3, the committee voted unanimously to report her nomination favorably to the Senate.

The seriousness of our current economic weakness is clear. We have now gone 4 years without any meaningful

economic growth. In fact, real per capita gross domestic product for last quarter was below its level at the end of the Reagan administration. Unemployment remains at 7.3 percent, half a percentage point higher than where it was when the National Bureau of Economic Research told us the recession ended. And the number of Americans with jobs is still below the level it was before the recession began 2½ years ago. That is not a recovery, that's long-term stagnation and a sign of failed economic strategies.

Recent economic indicators have shown slight improvement, but the underlying trend lines are headed the wrong way. Consumer debt is high and consumer saving rates are extremely low, so we can't expect to see consumer led growth. Debt levels of our corporations remain very high. Commercial real estate markets remain overbuilt. Weakening foreign economies are depressing U.S. exports. Defense spending will continue to decline and jobs vanish. Real interest rates remain high, especially on long-term debt, and money growth has persistently fallen short of the Fed's targets. Many of the major layoffs and plant closings announced by companies have not yet actually taken place. When these announced layoffs occur it will add to the future unemployment rate.

Over the longer term, the outlook is even more worrisome. We are not investing in the future adequately. Net business investment over the past 4 years has fallen to about 1½ percent of net domestic product, down by half from the levels of the 1960's and 1970's. What investment we have had has depended heavily on foreign capital inflows. That has transformed us from the world's largest creditor to the world's largest debtor. That meant that many of the benefits of that meager investment will be sent overseas to foreign owners.

We have also cut back sharply on public investment in infrastructure and as a result our cities continue to decline. And the condition of our schools, where we develop human capital, has deteriorated markedly. On top of all that, over the last 20 years we've lost many of our high-technology industries, essential to America's future growth and prosperity, to foreign competitors.

At her hearing, Ms. Tyson expressed her concerns about these trends, and I would like to quote from her opening statement to the committee. She said:

The competitiveness of the American economy has exhibited continuing and disturbing signs of erosion—during the last decade our trade imbalances have totaled over a trillion dollars, our producers have lost market shares in several key international markets, like computers, commercial aircraft, telecommunications products, and machine tools. At the same time, our gross domestic product per capita has grown more slowly than that of any other advanced market economy, real wages have stagnated for most American workers for more than two decades, and our investment rate has persistently lagged behind that of our competitors in plant and equipment, in worker training, and in civilian technology. Many statistics can be used to tell the story of our eroding competitiveness, but perhaps most disturbing is the fact that since 1980, the proportion of full-time workers with annual incomes below the poverty rate for a family of four increased from 12 percent to nearly 20 percent. In short, full-time work in the United States no longer secures a bright future for our children.

Clearly, powerful new economic strategies are needed. The President has said that we need 8 million new private sector jobs in the next 4 years. Our nominee understands this need and recognizes the vital importance of our strategic industries to our national well being and the growth of the U.S. job base. She has argued for tough positions on critical trade issues to help ensure the survival of such industries. She understands that our trade policy must be part of a coordinated and integrated national economic strategy, and supports innovative—and responsible—fair trade policies to spur investment and growth in our economy.

She comes with superb credentials for the job. She graduated summa cum laude from Smith, received her Ph.D. from MIT, has taught at Princeton, and at the Harvard Business School. She is now a full professor at the University of California at Berkeley. She has written 3 books, edited 5 others, and authored more than 40 articles. I have a large number of letters of support for Professor Tyson from leading economists, including Nobel Prize winners Lawrence Klein of the University of Pennsylvania and Robert Solow of MIT, and if there is no objection I will place some of them in the RECORD. I expect Laura Tyson will play a critical role in helping the President design an economic program to resuscitate our economy in the near term and to reshape our long-range strategies for competing effectively in world economic markets and reestablishing healthy growth in family living standards. I urge my colleagues to confirm her expeditiously.

I ask unanimous consent that the materials to which I referred be printed in the RECORD.

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

UNIVERSITY OF CALIFORNIA
AT BERKELEY,
January 13, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR RIEGLE: I am pleased to have the opportunity to write in support of the nomination of Laura D'Andrea Tyson to be Chair of the Council of Economic Advisors. I have known her as a valued colleague and fellow administrator at the University of California, Berkeley over the past fourteen years. She clearly possesses the economic capacities and skills requisite for this important position, but goes beyond to have the qualities of political and public leadership equally required.

Her purely academic pursuits are impressive. She has basically focused on two large subject matters over her career. In the first instance are her earlier interests related to the economic structure and future prospects of Yugoslavia and Eastern Europe more generally. Her publications in this arena have been notable for their ability to combine state of the art technology with a clear sense of what changing political conditions were beginning to make possible. I simply cite one sentence she wrote in 1985: "In the countries of Eastern Europe there are signs that the experience of austerity is promoting a rethinking of development strategy and, in some countries, a renewed interest in reform of the economic structure as well." Her sense of the changes that began to emerge clearly some years later is tribute to her skills as economist as well as her political instincts.

The second area of Ms. Tyson's particular specialization has been the broad issue of American responsiveness to economic policies pursued by competitors in Europe and Japan. She has been among the leaders in asserting that trade policies followed by our competitors matter, but at the same time, she has avoided the excesses sometimes associated with this view. Thus she has been opposed to simple United States protectionism as a solution, and has advocated more leadership in policies like encouraging expenditures in research and development. What is clear is, that once more, her innovative positions have gradually emerged into broad consensual professional stands. Attitudes about trade policies have been much influenced by her research and her clearly written conclusions.

As Chair of the Council of Economic Advisors, Ms. Tyson will bring such unique skills with her. But she brings much more. She has a high degree of competence as a general professional economist. As such, she has full ability to oversee and respond to general macroeconomic projections of activity as well as sectoral microeconomic issues in the important policy arenas of health, environment, education, etc. Her personal talents in utilizing the opinions and abilities of her coworkers and assistants are quite important aids to this essential task. She has the capacity to understand the broad consequences of economic policy, and to work extraordinarily well with others in developing a consensus position.

A final word should also be said of her considerable competitence to communicate effectively. She does so over the widest gamut, ranging from the most skillful of economists to those active politically to those only casually interested in economic matters. This extraordinary talent will permit her to play a position of considerable importance in the discussion of economic policy to be carried out by the Clinton administration.

In sum, I heartily endorse her appointment and recommend her confirmation. The nation gains immensely from her commitment to public service, as we will all soon become aware.

Sincerely,

ALBERT FISHLOW,
Dean, International and Area Studies.

UNIVERSITY OF CALIFORNIA,
BERKELEY,
January 15, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR RIEGLE: I have known Laura Tyson as a professional economics colleague for over twenty years. We were first fellow graduate students at MIT. We then taught together in the economics department at Princeton University and are now colleagues at the University of California at Berkeley.

My overall assessment of Laura Tyson is extremely positive. She is an outstanding teacher and scholar on applied economics topics. She is without question the best teacher of economics at Berkeley. Her research on mixed economies, international trade, and competitiveness issues is pragmatic and of the highest quality. Laura Tyson is not an economic theorist and so should not be judged on that basis (some of the negative comments in the press are implicitly making this type of judgement.) She combines common sense and good economic judgement to attack policy problems. Her prescriptions, at times, challenge the mainstream prescriptions of orthodox economists. I view that as a great virtue which makes her policy input more valuable. Any economist can mouth the orthodox economics policy solutions but few can define new activist policies as well as Laura Tyson.

On a personal basis, Laura Tyson is an easy person to work with. She forcefully represents her views, but is willing to compromise and listen to all sides of an issue. She is ideal for the role of Chairman of the Council of Economic Advisors.

I recommend her in the strongest way for the position.

Sincerely,

KENNETH T. ROSEN,
Professor, Economic Analysis and Policy, Chairman, Center for Real Estate and Urban Economics.

UNIVERSITY OF CALIFORNIA,
BERKELEY,
January 15, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR RIEGLE: I write in support of the nomination of Dr. Laura D'Andrea Tyson as Chair of the Council of Economic Advisers (CEA). I have been a colleague of Professor Tyson's at the University of California, Berkeley, for over 13 years. I worked at the CEA in 1983–84, as Senior Staff Economist under Martin Feldstein. In addition to my position at Berkeley, I am Associate Director for International Finance and Macroeconomics at the National Bureau of Economic Research of Cambridge, MA.

Professor Tyson is an outstanding economist. Like many successful academics, her career thus far could be viewed in two stages. First, she proved her worth within the profession by means of scholarly publications in a specific area of expertise, Eastern European economies. Then, more recently, she branched out to address broader issues of policy concern for the benefit of broader audiences, largely in the area of international trade policy. Her communications skills are spectacular, whether as an expositor to the public, as a participant in high-level meetings, or as one of the most popular teachers we have ever had at Berkeley.

Some mainstream academic economists have been quoted in the press as expressing skepticism regarding Professor Tyson's nomination. She has no lack of defenders, who point out correctly that the skills desirable for CEA chairperson are not identical to these skills desirable for maximum academic publication, that some critics are jealous, that she is indeed a bit of a "West Coast outsider," and that the American people elected Bill Clinton President in anticipation that he would bring in new ideas. I am concerned that such defense, coming from non-economists, may confirm in the minds of my fellow economists, most of whom do not know Professor Tyson as well as I, the notion that she is not a "real economist." Perhaps my concern is needless, because the American people are as likely in any case to heed these defenders as to heed the views of academic economists, probably more likely. Nevertheless, I would like to try to set the record straight.

Laura Tyson is a real economist. She is not one of those social commentators who publicly opines on "managed trade" and other questions of economic policy without first deeply investigating, pondering, and understanding the issues involved. She is, indeed, a careful scholar who checks her facts, consults the published wisdom, and thinks analytically. I recommend to anyone her November book on recent trade issues in high-tech sectors, particularly to those who say she believes in protectionist managed trade without having read anything she has written. Who's Bashing Whom?, published by the Institute for International Economics, is well-written, informative, thoughtful and well-balanced. I say this as a strong free-trader myself.

One measure of Professor Tyson's academic repute is that for the last five years U.S. Berkeley and the Harvard Business School have been fighting a prolonged tug-of-war over her.

The charge of the Council of Economic Advisers is to argue for good economics. When other cabinet agencies promote regulations, tax breaks, and spending for special interests, the Council member is typically the only one at the table to defend the economic interests of the average citizen. This is true regardless of political party, regardless of who is President, and regardless who is Chairperson of the Council. It will continue to be true with Laura Tyson, a highly knowledgeable and skilled economist, as Chair. The CEA will be in good hands.

Sincerely,

JEFFREY A. FRANKEL,
Professor of Economics.

UNIVERSITY OF CALIFORNIA,
BERKELEY,
January 15, 1993.

Hon. DONALD RIEGLE,
Senate Banking Committee,
U.S. Senate, Washington, DC.

DEAR SENATOR RIEGLE: This is a letter in support of the confirmation of Professor Laura D'Andrea Tyson, who has been nominated to be the Chairperson of the Council of Economic Advisers.

This is a very important position. The Council of Economic Advisers, in addition to OMB, serves as a watchdog over governmental policy. I am happy to say that I can think of no one who could fill this job better than Ms. Tyson. She has that unique combination of economic ability, intelligence, personal tact and persuasiveness which will, I believe, make her the best Chairperson in the history of the Council. Her already brilliant choices for other members of the Council and for economic positions elsewhere in the government, which have been leaked to the press, confirm that she can assemble and lead the best possible team to head the government's economic policy.

Let me first say a few words about Professor Tyson's intellectual accomplishments. She has a reputation for being the leading economist of her generation in one area, socialist economics, and within a very short period of time has established her reputation as a leading economist in another very significant area, trade policy. Her early papers on Yugoslavia established a very interesting finding: that inflation in Yugoslavia was not due to the unusual demands of the worker managed firms, but rather were the results of macroeconomic policies which had simply gotten out of control. Fifteen years later this Milton Friedman style analysis, if we wish to call it that, of a socialist society seems exactly right, if not obvious. But at the time Tyson's analysis was very novel and it immediately made her one of the leading authorities on socialist economies. Indeed to this very day her analysis of the behavior (we should say misbehavior) of socialist and emerging socialist economies exactly hits the mark. It has been the socialist governments' inability to control their macroeconomics policies which has caused the inflation which almost everywhere has been their undoing.

Professor Tyson's research on Yugoslavia was indeed nothing but common sense, which was however, not so common. This of course is one of the most marked features of all of her writings, and one of her qualities which will make her a superb Chairperson of the Council of Economic Advisers. In this regard I refer you to her next major contribution, her work on trade policy, which is summarized in her magnificent book Who's Bashing Whom? In this book Professor Tyson gives a very detailed picture of the trade issues facing America's high technology industries. Indeed this is the very best account any where of the complex problems facing these industries. It gives the facts. It is aware of the economic theory. And it does not simplify or distort the issues. This book is a "must read" for everyone who is interested in these important topics. Everywhere it conveys the sound judgement of its author. These are talents which I stress because they are so apparent in her work and also because they are so needed by a Chair of the Council of Economic Advisers.

So far I have been reviewing Professor Tyson's intellectual accomplishments. They are indications of her intelligence which is a necessary qualification for her proposed job. But she also has in very high degree those other talents which are needed to be a superb Chairperson. She has an ability to explain economics to others. Her first-year economics classes were the best taught classes on campus. With 600 to 800 students she received course ratings which would make instructors teaching just ten people envious. Indeed her courses have been almost impossibly well taught. Furthermore, whatever the occasion, I have never seen Laura in any way lose her cool. She is indeed unflappable. And she listens to others. In sum, with all these qualities, in such high degree, there is no one better to lead the new administration's economic team.

In sum, a new day is dawning. And under the leadership of Laura Tyson I expect U.S. economic policy to again be restored to the world's best.

Yours sincerely,

GEORGE A. AKERLOF,
Professor.

UNIVERSITY OF CALIFORNIA
AT BERKELEY,
January 15, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: I am writing in support of the nomination of Professor Laura d'Andrea Tyson to serve as Chair of the President's Council of Economic Advisers. I have had the pleasure of working with Professor Tyson on a number of projects during the past 4 years and am confident that she will uphold the tradition of integrity, intellectual honesty, and effectiveness established by such predecessors as Walter Heller, Gardner Ackley, and Charles Schultze.

Improvements in U.S. economic performance require new policies that acknowledge the limits of the laissez-faire economics of the past 12 years and the theories underlying many of them. Professor Tyson is well suited to the task of advising President Clinton on these policies. She will also be extremely effective in another critical function of the CEA Chair, communicating these policies to Congress, industry, and the American public.

Professor Tyson's research acknowledges the strengths of market-based mechanisms for resource allocation, while underlining their occasional limitations in supporting innovation and investment in the assets that are essential to U.S. competitiveness in a global economy. I interpret her "cautious activism" as a presumptive preference for market-based solutions, subject to the caveat that markets are known to fail. Professor Tyson correctly notes that the postwar development of such economies as Japan did not rely exclusively on the market. Instead, government policies supported investments in the skills, assets, and institutions needed to complement and support market forces. The impressive productivity and innovative performance of such U.S. industries as agriculture and commercial aircraft also has rested on a mix of robust market institutions and public programs. In refreshing contrast to many of her professional peers, Professor Tyson bases these conclusions on observation of the real world, rather than derivations of mathematical formulae in her study. But her analytic and methodological skills are strong, as one would expect in a scholar with a Ph.D. from M.I.T. holding appointments as a full professor in both the Economics Department and the Haas School of Business at U.C. Berkeley, and will enable her to serve this Administration with distinction.

The policy agenda of the Clinton Administration and the prospects for improvements in the living standards of the U.S. population require policies that recognize the need for open markets for international trade and investment, along with policies that create a strong U.S. economic infrastructure of human skills, technology, and public investment. Professor Tyson's background has prepared her to meet this challenge and oversee the coordination and consistency of trade and technology policies. I urge you to support her confirmation as Chair of the Council of Economic Advisers.

Sincerely,

DAVID C. MOWERY,
Associate Professor.

MASSACHUSETTS INSTITUTE
OF TECHNOLOGY,
Cambridge, MA, January 13, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: It is my privilege to write a letter in support of Laura Tyson's nomination by President Clinton to be Chairman of his Council of Economic Advisers. I am writing you both as the 1993 Vice President of the American's Economics Association and as the Dean of MIT's Sloan School of Management.

I have known Laura Tyson since she was a student here at MIT in our Ph. D. Program and worked with me on a project looking at the banking systems and the activities of central banks in a number of different industrial countries. She is well trained and on top of the major developments in all major fields of economics, including macro-economics which everyone must present as a field of study. I found it a pleasure to work with her then.

Since then I have followed her intellectual activities closely and she has been a visiting professor here at MIT. The good qualities she demonstrated as a student have remained with her. She does her homework, she is on top of the analysis required to make good judgments, she listens to contrary arguments, and it is still a pleasure to work with her—as I have from time to time done in jointly authored articles.

Perhaps the highest recommendation that I can give to her is that both the MIT Management School and the Harvard Business School have been trying to lure her away from Berkeley and the University of California. I wanted to have her here at MIT and thought she would have been a great addition to my faculty. In the same mode, she will be a great addition to President Clinton's official family.

Intellectually her work in recent years has focused on industrial economics. Professor Tyson thoroughly understands macro-economics but I think that an understanding of industrial economics is even more important for today's Chairman of the President's Council of Economic Advisers. As severe as our macro problems are, the major economic problems facing the United States are not how do you get macro-economic policies right. That can be done perfectly and the United States will still fail economically.

The central problem is how do you restore productivity growth and make American industry more competitive in international markets. If we do this, Americans' real wages can start rising after a 20 year period of decline. If we cannot, Americans' real wages will continue to fall.

Laura Tyson's intellectual strengths match America's long run economic needs.

I urge you to confirm her and support her strongly

Sincerely yours,

LESTER C. THUROW,
Dean, MIT Sloan School of Management; Vice President, American Economics Association.

MASSACHUSETTS INSTITUTE
OF TECHNOLOGY,
Cambridge, MA, January 14, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: I am jumping at the chance to offer to your Committee a very strong endorsement of Dr. Laura D'Andrea Tyson, who has been nominated to be the Chairman of the Council of Economic Advisors. I have known Dr. Tyson since she was a first-year graduate student at M.I.T. about twenty years ago, and I have followed her work ever since.

We are proud of running a tough, highly-competitive Ph.D. program at M.I.T. I can tell you that Dr. Tyson got an A from me (in a course in macroeconomic theory, by the way) and came through as one of the ablest graduate students of her cohort. She has had first-rate training and has profited from it.

Dr. Tyson is an excellent economist. Her work has built on the latest developments in our understanding of international trade, and has argued from them to important conclusions about commercial policy. These are always worth listening to; she argues them forcefully and well.

In one of her papers she has described herself as "a cautious activist" in trade policy. That sounds to me like a fair description. It is not a bad category to be in. I would not want any other sort of person on the job, and I hope you feel the same.

My summary view is that Dr. Tyson will be an able, knowledgeable and effective Chairman of the Council. She will be able to bring the best economic knowledge of the country to the service of President Clinton. It is an excellent nomination, and should be confirmed with enthusiasm.

Sincerely yours,

ROBERT M. SOLOW.

HARVARD UNIVERSITY,
Cambridge, MA, January 15, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington DC.

DEAR SENATOR RIEGLE: It is a pleasure for me to support the nomination of Laura D'Andrea Tyson as Chairman of the Council of Economic Advisors. Her knowledge, intellect, communication skills, and character combine to make her a superb selection.

Dr. Tyson has been a major contributor to the academic and the public debates on how to make the U.S. economy more competitive. As a participant in the field, I have always found her research insightful, well-written, provocative and firmly grounded in the real world. Indeed, when Charles L. Schultze of the Brookings Institution and I were looking for the best protagonists of the case for a new strategy for US trade we naturally chose Laura Tyson to write one of the three key papers in our book An American Trade Strategy: Options for the 1990s (Brookings Institution; 1990).

When presenting her views in person, Laura Tyson is highly articulate. I also admire her integrity. She has never flinched from stating her views, even when they differed from many of her colleagues. Both the President and the country will benefit greatly from her leadership and her commitment to improving America's economic performance.

Sincerely yours,

ROBERT Z. LAWRENCE,
Albert L. Williams Professor of International Trade & Investment.

HARVARD UNIVERSITY,
Cambridge, MA, January 6, 1993.

Professor LAURA D. TYSON,
Department of Economics, University of California, Berkeley, CA.

DEAR PROFESSOR TYSON: With others, I am sure, I was more than slightly appalled, even

disgusted, by the suggestion, prominently featured in the press, that your economic work and views do not extend competently to the larger range of economic policy. Of course they do. Suggestions to the contrary carry over from academic life and the refined division of labor of the university world. No one can suppose, as to Washington, that you will be so confined.

You will not be distressed by having Alan Blinder on the Council. But his appointment in no way suggests any inadequacy on your part. That no one who knows you work and interests—and the post to which you move—will believe. Your arrival in Washington will be a great step up for the profession, as I will certainly tell anyone who happens to ask.

Yours faithfully,

JOHN KENNETH GALBRAITH.

HARVARD UNIVERSITY,
Boston, MA, January 14, 1993.

Senator Donald W. Riegle, Jr.,
Chairman, Committee on Banking, Housing & Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR RIEGLE: Laura D'Andrea Tyson is extremely well-qualified to serve as Chair of the Council of Economic Advisers, and I am happy to give her my strongest endorsement.

Professor Tyson's accomplishments as an international institutional economist are vital resources for the U.S. at this time when many of the important debates center around U.S. industrial competitiveness, national technology policy, and trade relations, especially with Japan. It is important to have leadership from an economist like Professor Tyson who has contributed outstanding scholarship to these debates—especially Dr. Tyson's new book on high tech trade with Japan, published by the prestigious Institute—and who connects the abstract and theoretical field of economics to practical policy concerns. Professor Tyson possesses a shrewd intellect and stunning knowledge of the application of economic models and principles to the key policy choices facing America.

It is to her credit that many of her publications appear in journals that are interested in practice and policy as well as theory. She wants to delve into the meaning of economic facts and statistics and use them to build strategy. She was one of the early economists to warn that the U.S. was losing our manufacturing edge and under-investing in new technology. She has marshalled the evidence on the impact of foreign investment on the U.S. economy to show why domestic ownership of assets matters for America. She has examined with depth and great insight the way that economic outcomes were shaped by political choices, especially in the case of Japan. And her book is the best discussion yet of how to ensure that free trade means fair trade. The focus of her recent book has been on the high tech industries essential for America's future, and their prospects in light of Japanese strength and political policy. Yet she is also an expert on Eastern Europe, an area that interests American business as an opportunity for expansion.

Her considerable academic and professional skills and achievements were recognized by Harvard University. In 1989-90 she was offered tenure in the Harvard Graduate School of Business Administration after a highly rigorous selection process in which about 90 distinguished senior faculty members reviewed all of her academic work and discussed her credentials. She is considered the leading economic scholar on trade policy and has been invited to contribute to nearly every major forum or national committee on these issues.

I urge you to confirm this appointment.

Sincerely,

ROSABETH MOSS KANTER.

KARL F. LANDEGGER PROGRAM IN INTERNATIONAL BUSINESS DIPLOMACY, SCHOOL OF FOREIGN SERVICE, GEORGETOWN UNIVERSITY,
Washington, DC, January 14, 1993.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: I am writing with great enthusiasm on behalf of Dr. Laura D'Andrea Tyson's nomination to be Chairman of the Council of Economic Advisers in the Clinton Administration.

Dr. Tyson's chairmanship greatly expands and enhances the traditionally rather narrow focus of the Council on aggregate macroeconomic analysis. Her particular expertise comes from looking closely at the international context in which high technology industries are created, rise, struggle with competition across borders, and (if successful) expand to new heights. The outcome is particularly important because such industries typically offer great positive spill-overs for the countries where they are located and generate high skilled, high wage jobs in the communities where they are found.

The kind of detailed knowledge that Dr. Tyson possesses about competition in high tech industries has been alarmingly rare within the ranks of prior Chairmen of the Council of Economic Advisers. Yet it is precisely this kind of background that will be vital in making the policy decisions we need to enhance American competitiveness as we approach the twenty-first century.

The issues that Dr. Tyson has established her reputation addressing are particularly sensitive, since they deal with sectors where many governments have kept markets closed by subsidizing as well as protecting their own national firms. Given the publicity that Dr. Tyson's nomination has generated in the press, I would urge the Members of the Committee to go ahead and question her closely on matters concerning managed trade and public sector targeting. What the Members will discover is that Dr. Tyson is extraordinarily careful and precise in delineating the exceptional circumstances in which intervention on the part of the U.S. government might be warranted. When she describes herself as a "cautious activist," I believe she will place emphasis on the "cautious." Overall, her commitment to enhance the working of markets is no less firm than her predecessors in the Chairmanship of the Council. But she is acutely sensitive to the dangers of ignoring protectionism and intervention on the part of other governments in high tech industries where the economies of scale are large and the pace of change in extremely rapid.

Finally let me make a few observations about Dr. Tyson's personal qualities. She is open, engaging, approachable, frank, persuasive, and honest. I mention these personal qualities because, given the legacy of aloof disdain toward Congress on the part of several senior officials of the previous administration, the Members of the Committee will find, I am sure, that they will come to look forward to exchanging ideas with Dr. Tyson and working together with her in addressing the major economic challenges that confront our nation.

I hope that these remarks are helpful to your deliberations.

Respectfully,

THEODORE H. MORAN.

UNIVERSITY OF PENNSYLVANIA,
Philadelphia, PA, January 13, 1993.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: The designation of Professor Laura Tyson as Chairperson of the Council of Economic Advisers is a very thoughtful selection. I enjoyed participating with her for several years (2 rounds) on the Cuomo Commission, dealing with matters of competitiveness and growth of the US economy.

I found her to be an excellent committee participant who consistently did the appropriate homework and had much to contribute. I sympathize a great deal with her position on our country's trade and the need to advance our position both through vigorous market competition and associated policies at all levels of government. Her latest book on this subject, Who is Bashing Whom?, shows strong professional competence, as well as an ability to see through trade problems from various sides—business, government, multilateral agencies.

At an earlier stage of her career, she participated very constructively in lively discussions on the building of statistical models of the Soviet economy. Her economics background on the economies of Eastern Europe showed up clearly in the interchanges among specialists, and she impressed me as one who has certainly mastered the technical details.

Without hesitation, I support Professor Tyson's selection for appointment as head of the Council of Economic Advisers.

Sincerely,

LAWRENCE R. KLEIN.

COUNCIL ON COMPETITIVENESS,
Washington, DC, January 15, 1993.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR RIEGLE: I am writing to strongly endorse the nomination of Professor Laura Tyson to be the Chair of the President's Council of Economic Advisers.

She brings to the position solid academic credentials and a growing body of scholarly work. In her latest volume, she explores the question of international trade in a range of industries where markets are imperfect and there is, as well, an active government role. The Council's current project on trade, technology and investment is building on Professor Tyson's work and insights.

In addition to her research, Professor Tyson brings several other very important qualities to the position. She has taught in business schools as well as departments of economics which has given her a heightened sense of a world in which risk and uncertainty are common elements. She will bring that added perspective to her advice for a President who, like the private sector, faces an uncertain economic future.

As the country enters the post-Cold War era, we are adding a growing concern about our long-term economic prospects to a decade-long preoccupation with a geopolitics of containing international communism. Professor Tyson and her colleagues at the Berkeley Roundtable on International Economics have been among the leaders in thinking about the long term road strategy

for an America that is very much part of the global economy. Several of her colleagues contributed to the report of President Reagan's Commission on Industrial Competitiveness, better known as the Young Commission after its chairman John Young, just retired CEO of Hewlett Packard.

I am sure that Professor Tyson will be an effective and creative voice in the Clinton Administration. Out economic policy will be the better for her advice. It is with real enthusiasm that I can speak on her nomination.

Sincerely,

KENT H. HUGHES,
President.

INSTITUTE FOR INTERNATIONAL ECONOMICS,
Washington, DC, January 14, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Dirksen Building, Washington, DC.

DEAR MR. CHAIRMAN: I write in support of the appointment of Dr. Laura D'Andrea Tyson to the position of Chairman of the Council of Economic Advisers.

I first became acquainted with Dr. Tyson's work seven or eight years ago. At that time I was working for a high-technology American company with growing business interests overseas. I also chaired a working group on Japan at the National Association of Manufacturers. Dr. Tyson's analysis of what other governments do to promote their own industries struck me as extremely well-informed and realistic.

Here at the Institute I'm working on a book about what to do with the post-Cold War global defense industry. I continue to draw inspiration from Dr. Tyson's work, especially her clear, rigorous and well thought out discussion of "strategic" industries.

Dr. Tyson combines many virtues: intelligence, modesty, tough-mindedness and warmth. She is a well trained economist with "mainstream" credentials, but she has had the courage to depart from conventional economic thinking. She will bring fresh perspectives to what may well be a critical turning point for the U.S. economy. I strongly support her confirmation.

Sincerely,

ELLEN L. FROST,
Senior Fellow.

JANUARY 15, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

DEAR SENATOR RIEGLE: I would like to endorse in the strongest possible terms the candidacy of Laura D'Adrea Tyson for the position of chairwoman of the Council of Economic Advisors.

I have known Ms. Tyson for over five years, and, in my view, she is an excellent economist, an extremely astute and balanced policy analyst, an extraordinary team player. You will not find anyone else who has given more thought—and original thought—to national and international problems, nor someone with a greater gift for articulating her ideas to experts and laymen alike. You will not find anyone who is more capable of making a valuable contribution to heated debates where the "right" answer is not black or white but painted in shades of gray.

Without question, her contributions to deliberations in the Executive Branch will be enormous, and I predict that she will elevate the CEA's position in all the arenas of national policy. But I also believe that she will become one of the Congress' most sought after officials to exchange views privately and in public hearings, so powerful is her ability to explain the complicated intersection of economics and public policy, to separate the real choices, and to put forward thoughtful recommendations.

I hold these views not just as someone who has one foot in the academic world, being as I am a professor at the Columbia Graduate School of Business. In addition, I have spent the past fourteen years on Wall Street, and prior to that I held a variety of senior economic policy posts in the Nixon, Ford and Carter administrations. I have also had the privilege, I might add, to testify before your committee on such subjects as third world debt, competitiveness, and Japan. In all these experiences I have had the chance to interact with a broad range of the nation's most accomplished economists.

I can put it simply. Ms. Tyson represents the very best that America has to offer.

Sincerely,

JEFFREY E. GARTEN.

ECONOMIC STRATEGY INSTITUTE,
Washington, DC, January 14, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR DON: I am writing concerning the nomination of Laura Tyson as Chairman of the Council of Economic Advisors.

I believe she is an outstanding choice. She brings a knowledge of the real world that has been sorely missing at the CEA for a long time.

I urge her speedy confirmation.

Best regards,

CLYDE V. PRESTOWITZ, Jr.,
President.

MICROELECTRONICS AND COMPUTER TECHNOLOGY CORP.
Austin, TX, January 14, 1993.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: I am pleased and honored to support the nomination of Dr. Laura Tyson for the Chair of the President's Council of Economic Advisors. I have known and worked with Dr. Tyson for several years, when I was Director of the Defense Advanced Research Projects Agency (DARPA) and currently as Chairman and CEO of the Microelectronics and Computer Technology Corporation (MCC) consortium of information technology and aerospace companies. Dr. Tyson has assumed a leadership role in focusing, most effectively, on U.S. economic competitiveness, productivity and growth.

Dr. Tyson has superb training and experience in classical economics. She has such deep command of her craft and science that she is able to innovate in light of changing circumstances and environment for the U.S. Changes include a U.S. economy increasingly driven by worker and management skills and training, rather than natural resources or geography; globalization of corporations, finance and markets; and, high technology as a key to success not only in "high tech" industry but in all industry, large corporations and small businesses alike. Anybody with a lesser background would be adrift, applying textbook lessons by rote rather than reason.

Dr. Tyson's sphere of experience extends well beyond academia. She has had sufficient engagement with Federal and state government to realistically understand what can and cannot be done. She has strong and long standing relationships with industry, appreciating the problems and prospects for the U.S. business and labor communities. When her nomination was announced there was uniform support from the industry segments in my consortium, electronics and aerospace—two of the industries providing the most medium- and high-value-added jobs for the Nation. He understanding of and constructive relationships with industry means that she is trusted. That trust can be an invaluable asset for the new Administration as it seeks to build a partnership between industry and government.

On a personal level Dr. Tyson is warm, open and easy to work with. When she makes a decision everyone is sure they have had their fair opportunity to express their views. She is one of the fastest learners I have ever encountered, and is open to new ideas. She can play an important role in building consensus on the Nation's economic future among departments in the government and with committees of the Congress.

History will show that Dr. Tyson's nomination is one of the wisest of President-Elect Clinton, and I have every confidence she will be confirmed by, and fully supported by, the Senate.

Sincerely,

CRAIG FIELDS,
Chairman and CEO.

MOTOROLA, INC.,
Schaumburg, IL, January 18, 1993.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: I am delighted to support Laura Tyson's nomination as Chair of the Council of Economic Advisors. Dr. Tyson has been in irregular contact with Motorola throughout her involvement in the Berkeley Roundtable for International Economy. She also has been advisor to and facilitator for Motorola University. In all of these interactions, Dr. Tyson has demonstrated superb intellectual skills, excellent judgment, and outstanding communications abilities.

Based on her extensive knowledge of the trade distorting practices often used by our global economic competitors, I believe Dr. Tyson would bring a much needed dimension of realism to the economic policies of this country. I believe Laura Tyson is eminently qualified to Chair the Council of Economic Advisors, and I wholeheartedly support her nomination.

Regards,

GEORGE FISHER.

HARVARD UNIVERSITY,
Cambridge, MA, January 15, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: Laura D'Andrea Tyson has my highest recommendation and endorsement for the position of Chairman of the Council of Economic Advisors. Professor Tyson played a major role in the development of issues and action programs relating to competitiveness in the United States—first with the Young Commission, then the Cuomo Commission, and then the Conference at the Carter Center.

As Chairman of Scientific-Atlanta, Inc., a global manufacturer of telecommunications and instrumentation equipment, and as chair of the EIA/ATV Committee, I had the oppor-

tunity to work closely with Laura Tyson. Professor Tyson prepared a thorough review of a national position on high-definition television.

My recommendation of Laura Tyson comes from the perspective of a CEO of a major high-tech company. I have always found that her viewpoints combine a scholarly background with the deep knowledge of the realities of the corporate world, global market place and the nation-at-large. Professor Tyson articulates her positions in a thoughtful and persuasive manner. The nation is fortunate indeed to have a distinguished woman of her stature to represent us and chair the Council.

I appreciate the opportunity to present this letter of endorsement.

SIDNEY TOPOL,
Retired Chairman and CEO, Scientific-Atlanta, Inc., Atlanta, GA.

TRW INC.,
January 13, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Senate Dirkson Building, Washington, DC.

DEAR CHAIRMAN RIEGLE: It is my understanding that your Committee will be holding a confirmation hearing on January 21st for Laura D'Andrea Tyson as Chairman of the Council on Economic Advisors. I am writing to support her nomination.

I have worked with Laura during the last several years, first during 1990 and 1991 when I served as Chairman of the Manufacturing Forum of the National Academies of Science and Engineering, and then during 1992 as Chairman of the Manufacturing Subcouncil of the Competitiveness Policy Council. She was a member of the Subcouncil.

As you know, Laura has been in a leadership position at the Berkley Roundtable on International Economics at the University of California at Berkley for a number of years and has done extensive personal research and writing on issues and policies related to economic growth, international trade, technology development, industrial productivity, and competitiveness. She has participated in a wide variety of public policy study groups related to these subjects.

Her high integrity and distinguished relevant experience qualify her for confirmation. She will serve the nation well.

With best regards.

Sincerely,

RUBEN F. METTLER,
Retired Chairman and CEO, TRW Inc.

DAVIS POLK & WARDWELL,
New York, NY, January 15, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: I write to urge your favorable consideration of the nomination of Laura D'Andrea Tyson to head the Council of Economic Advisers. As Chairman of Governor Cuomo's Commission on Competitiveness, I have worked closely with Laura Tyson during the past six years on our studies of national economic policy. This experience convinces me that she is an outstanding choice to lead the Council.

It should be evident that Laura Tyson has the academic and intellectual credentials for the task. Her work has demonstrated that she has a realistic understanding about the economy and the many factors that influence economic performance. Just as significant, Laura Tyson has the personal qualities and skills to make an important contribution to the President-elect's economic team. Throughout our work together on the Cuomo Commission, she has been an outstanding team player, advocating her position effectively and at the same time helping form a consensus and responding with grace and style to the positions advocated by others.

On Sunday, the New York Times Business Section will publish an op-ed piece by Lee Smith and myself on Laura Tyson's appointment. I am enclosing a copy of that article. It makes the argument, which I would like to repeat to the members of your Committee, that the challenge of global competition makes it important that the head of the CEA be able to articulate not only the options available for macroeconomic policy, but also the initiatives needed to address long term structural problems that influence economic performance and the standard of living for all Americans. America's competitiveness determines how well Americans live. Our economic performance turns not just on macroeconomic factors but also on such factors as technology, trade, education, training, corporate governance and public investment. During the campaign the President-elect spoke of a realistic and aggressive program to deal with the underlying structural issues that have contributed to stagnating standards of living and sub-par performance of America's economic system. Laura Tyson's expertise on these issues as well as her understanding of macroeconomics gives the new Administration a leader for the Council of Economic Advisers capable of participating with other members of the economic team in shaping a long-term program to rebuild America's economic strength.

In addition to these important qualifications, Laura Tyson is a terrific person, who will bring to the job personal qualities of openness, integrity and candor that will help all of you as you tackle the serious challenges confronting our economy.

For all these reasons, I commend Laura Tyson to you and your colleagues. I hope that your consideration of her nomination will convince you, as my experience with her has convinced me, that she will be a distinguished leader of the Council of Economic Advisers.

Very truly yours,

LEWIS B. KADEN.

TYSON'S A TERRIFIC CHOICE

(By Lewis Kaden and Lee Smith)

A few disgruntled economists have criticized the appointment of Laura Tyson, suggesting that she lacked sufficient background in quantitative theory to head the Council of Economic Advisers (CEA). We know Laura Tyson well, having worked closely with her for the past six years on the development of new national economic policies. We believe that her far-ranging knowledge, her realism about the global economy, and her consensus-building skills make her an outstanding choice to chair the CEA.

By tradition, past presidents have given the top job at the CEA to economists with reputations in macroeconomics—experts on how government monetary and fiscal policies influence the level of demand, hence the rate of growth and level of unemployment. For most of the post-World War II era, we could afford to worry just about managing the business cycle. With little global competition and the world's most modern factories. American industry achieved the high levels of productivity growth necessary for a steadily rising standard of living.

Starting in the late 1970s America's economic problems spread beyond the cyclical problem of growth and recession to the long-term structural problem of a declining standard of living caused by diminishing competitiveness. The conventional view was that our competitiveness problem was due to an overvalued dollar, which would be corrected by the proper macroeconomic policy—dollar devaluation. Yet despite a cheaper dollar for the past five years, our trade deficits remain huge, and American standards of living continue to stagnate.

Tyson, like our Commission,has argued that a purely macroeconomic response to competitiveness problems, primarily by lowering the value of the dollar, was too narrow a policy. How well we produce determines how well we live. Excellence in production in turn depends on factors such as technology, trade policy, public investment, education, employee participation, and corporate governance. These concerns are now widely understood, in and outside academia, to be critical to economic performance.

To address these problems, the president-elect is seeking a more realistic, structural approach to economic policy that will hasten the needed reforms in America's economic system. One element of the strategy is a new macroeconomic policy to increase private and public investment, thus spurring demand to strengthen the current recovery, as well as to make industry more competitive and to achieve major deficit reduction over the course of the next five years.

But we should not stop with investment and long-term deficit reduction. The second element is structural reform of schools, training systems, corporate governance, and the policy-making process. The shortcoming of America's institutions—from labor markets to inner-city schools—are holding Americans back. While managers, workers, investors, parents and educators will have to take the lead in most of these reforms, Washington can help enormously if policymakers understand the institutions that make for excellence in production and the role for positive government action.

The president's chief economist has to be able to articulate the administration's structural economic policy. That is one of the reasons that Tyson is such an excellent choice for CEA. She will provide the economic realism and expertise in trade, investment, industrial structures, technology as well as macroeconomics needs to help the president-elect shape a long-term program of economic renewal.

DEWEY BALLANTINE,
Washington, DC, January 15, 1993.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

DEAR SENATOR RIEGLE: I am writing in support of the nomination of Laura D'Andrea Tyson to be Chairman of the President's Council of Economic Advisors. Ms. Tyson is a superb choice whom I believe will serve with great distinction in this position.

The choice of Laura Tyson represents an obvious departure from past Presidential appointments to chair the CEA in one significant respect. Laura Tyson's published work, her extensive experience, and her interest emphasize the importance of the composition of the American economy as well as aggregate levels of activity. This is a profound difference that is vital to our country's interests as we enter the Post Cold War Era. U.S. manufacturing and high value-added services have been ignored by much of the academic economic profession and by many of the economists who have served in govern-

ment. The United States can no longer afford to be indifferent.

The time has come for the Executive, Congress, industry and labor to work together to improve American competitiveness. I know that the Semiconductor Industry Association, with whom I have worked for the last 13 years, is very favorably impressed with Ms. Tyson and her work. Basic industries can benefit equally from the fresh approach and interest which Ms. Tyson brings to this field. Many in industry believe that she can help formulate public policies that will support America's maintaining and enhancing its position in world industry. The Committee should recognize that the appointment of Ms. Tyson is clearly part of the mandate which the President-elect received for change.

I urge prompt and favorable action on Ms. Tyson's nomination.

Very truly yours,

ALAN WM. WOLFF.

NEW YORK, NY,
January 14, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR DON: I know that you will be holding hearings on the confirmation of Laura Tyson for Chairman of the Council of Economic Advisors. I have had the pleasure of knowing and working with Ms. Tyson, most recently as a member of the Cuomo Commission which did extensive work on the economy over a period of two years or so. I have the highest regard for Ms. Tyson as an economist and I have found her a pleasure to work with and to know personally.

I support her confirmation without any hesitation whatsoever.

Kindest regards.

Sincerely,

FELIX G. ROHATYN.

WASHINGTON, DC.,
January 14, 1993.

DEAR SENATOR RIEGLE: I am writing to express enthusiastic support for the nomination of Laura Tyson to the chair of Council of Economic Advisors. In my view, the choice of Ms. Tyson for this post is the single best selection President-elect Clinton made in naming his senior appointees. I hope, and assume, that your committee will approve her easily.

I am sure that you are aware of Ms. Tyson's professional background. She has written for more than a decade about the very issues that have concerned your committee and that President-elect Clinton has said he will emphasize strategies for raising the national growth rate, the ingredients of national competitiveness, the proper conditions to foster high-tech industries, and the right interaction between government policy and private industrial growth. Her new book, *Who's Bashing Whom*, considers these issues and many others in a thoughtful and practical-minded way.

You are aware that the selection of Ms. Tyson initially provoked grumbling from a number of other economists. Some of this was pure sour grapes, from young men who had felt entitled to the job. More of it reflected a difference within the profession—and a difference that reflects entirely to Ms. Tyson's credit. The CEA has often been considered a redoubt for theoretically-oriented macroeconomists, whose main specialty was abstract modeling of the economy. Ms. Tyson's specialty has been a much more realistic, detailed analysis of how the modern economic world actually functions. In my view, at least, the time is certainly right for her approach. (I attach a commentary I did for National Public Radio on this subject.)

For purposes of identification, I should disclose that I am the Washington Editor of the *Atlantic Monthly* magazine, and a regular commentator for National Public Radio. This is, however, a personal letter of support for Ms. Tyson, based on having followed her work for several years. Naturally the organizations for which I work are not taking any position on this issue.

Again, I hope very much that you recommend Ms. Tyson for confirmation. I am sending a signed copy of this letter by regular mail.

Sincerely,

JAMES FALLOWS.

NPR COMMENTARY, JANUARY 6, 1992

Another of President-elect Clinton's nominations is expected to encounter very little resistance in Congress: that of Laura Tyson, an economist from the University of California at Berkeley, to head the Council of Economic Advisors. But other economists have been loudly criticizing the choice in the press. Commentator James Fallows says that the complaints say more about the deficiencies of the profession than those of the nominee.

Laura Tyson has spent the last decade on subjects that would seem quite relevant in the Clinton age—shifts in national competitiveness, how high-tech industries rise and fall. But when her appointment was announced squeals of wounded pride went up from the economics establishment. Robert Lawrence of Harvard, for instance, said the choice must mean that Clinton wanted to advise himself. Paul Krugman of MIT, an early favorite for the job, pointed out that the established "pecking order" among economists had been ignored. There were many similar complaints.

Why should economists be such sore losers, compared, say, to disappointed candidates for secretary of state? The dispute has less to do with Tyson than with the conflict between two approaches to economics; hers, with its look at specific bureaucracies and policies and firms, and the highly theoretical economics now in academic vogue.

In the days of Adam Smith or even John Maynard Keynes, economists wrote mainly with words, not graphs or numbers, and they knew that their real subject was human behavior, which followed certain patterns but was not subject to hard scientific proof. After World War II university economics, especially in America, became much more math-bound and abstract. Its big names, the macroeconomic analysts, rose above the details of how factories or government agencies actually behaved—the kind of details Tyson has emphasized. They specialized instead in theoretical models of how economies should behave. The creation of a Nobel Award in economics in 1969 reinforced the idea that economics was a branch of pure science, a kind of physics that happened to deal with the velocity of money rather than the speed of light.

In reality economics remained about as precise as political science. That is, it used mathematical tools and constantly refined its understanding but was completely in the dark about many big questions. Since the Nobel Award was established, American economists have virtually monopolized it, and Japanese, Koreans, and Germans have been shut out. During that same period, of course, the dollar lost two thirds of its value against the yen. Good theoretical economists and a good economy remain two different things.

Nonetheless, theoretical economics retained its glamour, and its scientific aura—and, to bring us back to Laura Tyson, its view of the Council of Economic advisors as the entitlement for its brightest math-genius stars. Many of these same high-flyers, as the columnist Robert Kuttner has pointed out, display a Bobby Fischer-like imbalance between their analytical and their social skills. And so when Tyson—a woman who wrote about history and semiconductor policies and was perhaps not as "good at math"—took the job that was rightfully theirs, their sense of basic justice was outraged, and they let out their primal cry.

As we wait for the din to die down, the rest of us know how we'll judge Laura Tyson: not on the elegance of her models but by whether her ideas work.

WEIL, GOTSHAL & MANGES,
New York, NY, January 18, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: I write on behalf of Laura Tyson to Chair President-Elect Clinton's Council of Economic Advisers.

I have known Dr. Tyson, professionally and socially, since the early 1980's, when I met her at the Berkeley Roundtable on the International Economy. My professional and academic interests were, and have been, largely focused on competition issues, and increasingly on our corporate sector's capacity to meet international competition in global markets. Accordingly, I had, and have, a real interest in Dr. Tyson's works and writings, and have read much of them. I have, moreover, participated in professional meetings with her, and served with her as a member of Governor Cuomo's Commission on Competitiveness.

I believe, therefore, that I am qualified to speak of her competence as an economist, and as the potential Chairperson of the Council.

I enclose a copy of an Op-Ed piece from the New York Times of January 17, 1993. I concur totally with the views expressed by the Chairman and Executive Director of Governor Cuomo's Commission, with whom Dr. Tyson and I served. I could not say it any better.

Of equal importance to me, however, are two more of Dr. Tyson's characteristics: she is articulate, and can communicate complex concepts in an understandable manner. While I hesitate to say this is uncharacteristic of some in her field, it surely is a useful and desirable characteristic for someone who will need to articulate complex economic concepts; and, she has, additionally, a capacity to listen patiently, and to understand many points of view. I have never found her to be doctrinaire or unwilling to listen meaningfully to all sides of an issue being considered. Indeed, at close hand, in earlier work with her on the Governor's Commission, I observed her ability to bring consensus out of some highly divergent views on the trade issue.

In short, I believe Dr. Tyson will bring to her new position high intelligence, outstanding integrity, and leadership qualities, in addition to the qualities described in the enclosed Op-Ed piece.

Very truly yours,

IRA M. MILLSTEIN.

Ira M. Millstein is Chairman of the Board of Advisors of Columbia University School of Law's Institutional Investor Project, the Lester Crown Visiting Faculty Fellow at the Yale School of Organization and Management, and Senior Partner at the law firm of Weil, Gotshal & Manges. In 1989, he served as Chairman of the New York State Pension Investment Task Force. He recently served on the Project Advisory Committee of the Council on Competitiveness and as a member of the Corporate Governance & Financial Markets Subcouncil of the Competitiveness Policy Council, and the Cuomo Commission on Competitiveness.

JUST LEAVE LAURA TYSON ALONE

(By Lewis B. Kaden and Lee O. Smith)

A few disgruntled economists have criticized the appointment of Laura Tyson, the University of California at Berkeley economics professor, to head the President's Council of Economic Advisers. We know Laura Tyson well, having worked closely with her for the past six years on the development of new national economic policies. We believe that her far-ranging knowledge and her realism about the global economy make her an outstanding choice for the job.

By tradition, past Presidents have given the top job at the council to economists who were experts on how the Government's monetary, and fiscal policies influence the level of demand; the rate of growth and the level of unemployment.

For most of the post-World War II era; this was enough. With little global competition and the world's most modern factories; American industry achieved the high levels of productivity growth necessary for a steadily rising standard of living.

But beginning in the last 1970's; America's economic problems spread beyond the cycles of growth and recession to the long-term structural problem of a declining standard of living caused by diminishing competitiveness. The conventional view among economists was that the competitiveness problem was due to an overvalued dollar, curable by devaluation. Yet despite five years of a cheaper dollar, our trade deficits remain huge and our standard of living continues to stagnate.

Ms. Tyson's approach to the problem is different. She has argued that a purely macroeconomic response to competitiveness problems—primarily, lowering the value of the dollar—is inadequate. She has argued that how well we produce determines how well we live and she recognizes that excellence in production in turn depends on factors such as technology, trade policy, public investment, education, employee participation and corporate governance.

To hasten the reform of the nation's economic system, President-elect Clinton is seeking to create a realistic, structural approach to economic policy. One element of the strategy is a new macroeconomic policy to increase private and public investment, thus spurring demand to strengthen the current recovery, as well as to make industry more competitive and to achieve major deficit reduction in the next five years.

But we should not stop with investment and long-term deficit reduction. The shortcomings of many of America's most important institutions—from our labor markets to our inner-city schools—are holding us back. While managers, workers, investors, parents and educators will have to take the lead in most of these reforms, Washington can help enormously if policymakers understand the institutions that make for excellence in production and the role for positive government action.

Rather than produce narrow forecasts of growth, the President's chief economist has to be able to articulate the Administration's far-reaching structural economic policy. That is one of the reasons that Ms. Tyson is such an excellent choice to head the council. She will provide economic realism and expertise in trade investment, industrial structures and technology as well as the macroeconomics needed to help Mr. Clinton shape a long-term program of economic renewal.

ECONOMIC POLICY INSTITUTE,
Washington, DC, January 15, 1993.

Senator DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR RIEGLE: It is with great pleasure that I write to support President-elect Clinton's choice of Laura D'Andrea Tyson to be the Chair of the Council of Economic Advisers and to urge the Senate to confirm her nomination.

Laura Tyson will bring to the leadership of the Council an impressive academic background and strong expertise in economic research which will enable her to lead the Council in its traditional role of providing macroeconomic analysis and advice to the President. In addition, her work on international competitiveness and trade, and on the link between technology and manufacturing will help the President and his Administration promote the national interest in this new era in which other nations are using government policy to create comparative advantage in industries which are crucial to economic success.

Dr. Tyson's academic career of scholarship, research and teaching at MIT, Princeton, and at the University of California at Berkeley have put her at the forefront of the economics profession. Her work as a founder of the Berkeley Roundtable on the International Economy, as a member of the Economic Policy Institute's Economic Advisory Board, as a member of the Cuomo Commission, and as an active participant in policy fora in Washington and around the country has made her a leading voice in the debate about what government can and cannot do to build a strong economy. Her work has also given her a systematic exposure to the problems faced by government, business and labor in trying to devise policies to build successful firms and high performance (and high-wage) workforces.

When he announced this nomination, President-elect Clinton indicated that "the Council of Economic Advisers will be more central to my administration than in any since the administration of President Kennedy." In Laura Tyson he made the perfect choice of someone who can lead the Council, advise him and his Administration, and work in a collegial fashion with the other members of his National Economic Commission to forge the policies to rebuild the American economy and economic opportunity for Americans.

I highly recommend Dr. Tyson for this position and urge you to approve her nomination.

Sincerely,

JEFF FAUX,
President.

UNIVERSITY OF CALIFORNIA,
BERKELEY,
January 15, 1993.

Hon. DONALD RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR RIEGLE: I am pleased to write in support of the appointment of Professor Laura Tyson to the chair of the President's Council of Economic Advisers. I believe she will make a brilliant appointment.

Laura Tyson is a colleague of mine at Berkeley, where she has dual appointments in both the Department of Economics and the Haas School of Business. I have known Laura since I accepted an appointment at Berkeley in 1982. Like her, my Ph.D is in economics; my fields of study include industrial organization, technological change, and international business. Overall, my philosophy is one that supports minimalist government where possible and desirable, incentives that favor investment over consumption, an open and liberal international order, and the rebuilding of American competitive strengths through private and public sector restructuring.

My enthusiastic support for Laura's appointment is based on my respect for her intellect, my understanding of her views and economic thinking, and my great confidence in her character and values. Let me briefly deal with each.

Laura has impeccable academic credentials: a BA from Smith, and a Ph.D from MIT. She has had appointments at top level institutions throughout her academic career. Her interests have migrated from the study of comparative economic systems to the study of trade, technology and competitiveness.

Laura is clearly a reformist. She notes in her book that "the policies and institutions that served the nation well when we were the world's unquestioned technological leader require overhaul now that Japan and Europe have emerged as our economic equals" (p. 296). I suspect she will bring fresh insight to bear on many issues.

For several years she hasn't been quite in the mainstream of economic thinking. That's mainly because while we have had a competitiveness problem for almost two decades, the mainstream of the profession has wanted to deny its existence until quite recently. The reason Laura has so much to say about many contemporary policy questions is that the profession swept many of them under the rug, or simply couldn't deal with complex institutional policy questions. Indeed, use of the word "competitiveness" was said to signal woolly thinking.

Laura's approach to problems is to bring economic and institutional analysis and behavioral evidence to bear on policy questions. Unlike many of her colleagues, she is less inclined to accept the conventional wisdom when the evidence flatly contradicts it. Her courage to advance new ideas, modify them when necessary, and learn from the ensuing debate is one that will serve her and the nation well. Her willingness to challenge orthodox presumptions is not motivated by political tastes but by the desire to clear out a good deal of economic religion which protects the sacred cows of the status quo. I am very confident that Laura's deepest passion is to improve the long run competitive performance of the American economy and its people. The quote from Abraham Lincoln which adorns the introduction to her latest book Trade Conflict in High Technology Industries captures the spirit behind her con-

cerns about how the nation is dealing with problems of US competitiveness:

The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise to the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves and then we shall save our country.

Some of Laura's views on current policy questions are contained in her writings. Significantly, Laura believes "that what we as a nation make and what we trade matters. The composition of our production of trade does influence our economic well being"—p. 11–12 of "Who's Bashing Whom?" This is obviously correct, but her position irks more stolid economic theorists. The proposition helps undergird Laura's leanings towards a more activist trade policy, because she's worried that the industries the US gets to own is in part the consequence of other nations' industrial policies. That is, to the extent that industrial policies expand high technology activities abroad, US industry is impaired in its ability to export, and may simultaneously lose market share in the US to foreign firms which are supported by their governments. To the extent that existing multilateral rules don't adequately regulate such policies, Laura favors modifications to US law to deter or compensate for foreign practices. Otherwise our own industrial structure will be dictated by foreign governments. Put differently, complete laissez faire approaches are problematic especially if other countries are playing by different rules. Laura also favors a more determined technology policy to support industries with positive spillovers.

Laura's views on other matter of policy are not so apparent from her writings, though I'm sure you will ferret them out. I suspect when you probe you will find that her positions are quite pragmatic. I believe she favors deficit reduction and policies which favor investment in education and infrastructure over consumption. On macro policy issues, which haven't been her primary academic interest, she has a firm understanding of foundations, and is capable of listening to others when appropriate. She is keenly aware of her own areas of relative strength and weakness, and has the courage and capacity to reach out for specialized expertise when needed.

Finally, let me point out that Laura is of the finest moral caliber. She is extremely honest, and has the highest ethical standards. She has gained great respect in the academic world for her ability to establish consensus and move the enterprise forward. These qualities will be much needed in Washington, and I look forward to observing her help shape the policies that are needed to help improve the nation's prosperity and well being.

Sincerely yours,

DAVID J. TEECE.

AMERICAN ELECTRONICS ASSOCIATION,
Santa Clara, CA, January 19, 1993.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking Housing & Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As members of the Advanced Technology Coalition (ATC), we wish to express our strong support for the confirmation of Dr. Laura D'Andrea Tyson as Chair of the Council of Economic Advisors.

As you may know, the ATC is a broad coalition of high-tech companies and associations, traditional manufacturing industries, labor, professional societies, and research consortia that have a common goal of ensuring America's industrial and technological leadership. The Coalition includes organizations which represent 5 million U.S. workers, 3,500 electronics firms, 325,000 engineers and 13,500 companies in other manufacturing sectors.

We believe that Laura Tyson will be an exceptionally influential and imaginative Chair of the CEA. Dr. Tyson's work has concentrated on some of the most important policy issues that face the United States economy. Her recent book (Who's Bashing Whom? Trade Conflict in High-Technology Industries) is based on exhaustive research of key high-tech industries and a sophisticated understanding of the global environment in which American firms and workers compete. Her policy recommendations are thoughtful and balanced, and firmly grounded on first-rate empirical research.

If America is to maintain its industrial and technological leadership, our top economic decision makers must have a thorough understanding of the realities of the global economy, and have innovative ideas for strengthening America's economic competitiveness. America's standard of living and economic and geopolitical strength will increasingly be determined by its ability to commercialize new technologies. We believe that Dr. Tyson's insights into trade and technology policy will be invaluable as the United States seeks innovative solutions to the challenges of the post-Cold War era, and we urge you to join us in supporting her confirmation.

Sincerely,

J. Richard Iverson, President & CEO, American Electronics Association; Edward A. Miller, President, National Center for Manufacturing Sciences; Jack Russell, President, The Modernization Forum; Luanne James, President, Information Technology Association of America; Kent Hughes, President, Council of Competitiveness; Arvid Larson, Chairman, IEEE-USA Technology Policy Council; James W. Bishop, Executive Director, Southeast Manufacturing Technology Center; Albert W. Moore, President, AMT-The Association for Manufacturing Technology.

UNIVERSITY OF CALIFORNIA,
BERKELEY
January 14, 1993.

Hon. DONALD RIEGLE,
Senate Banking Committee

DEAR SENATOR RIEGLE: I should like to add my voice to that of other professional economists supporting Laura Tyson for appointment as Chair of the Council of Economic Advisors.

I have known Laura Tyson for over 20 years. I first met her when she was a third year graduate student at MIT. At the time, I was a Senior Economist at the World Bank, charged with initiating a study to explore the relationship between economic development patterns and income distribution and poverty. The study involved two countries: South Korea and Yugoslavia. I asked Laura to work with me on the Yugoslavia portion of the study. During my collaboration with her, I became impressed with her, both as an economist and as a person. Since then, I have followed her career closely. Indeed, I served on the University of California committee which reviewed (and endorsed) the economics department's recommendation to promote Laura to full professor. This forced me to familiarize myself in detail with all of Laura's professional writings.

Over the last ten years or so, Laura has shifted from an interest in Eastern European economies to an interest in industrial policy and economic competitiveness in the United States. Her writings in this area are unique in that they meld a first rate understanding of trade and macroeconomic theory with good policy judgment. She has become one of the top half dozen analytic economists in the World working in the area of international trade policy. Among them, she is the only one with good policy sense.

Laura is a talented economist, with sound judgment, good analytic training and substantial familiarity with key industries in the United States and abroad. She is an excellent administrator, concerned with the welfare of her staff and colleagues, and able to run a well managed ship while commanding loyalty and respect. Her ability to communicate her views is superior, and she can engage in professional debate in a manner which puts forth her position without antagonizing the opposition and without losing her cool.

I believe she is an inspired appointment as Chair of the Council of Economic Advisers. Indeed, my confidence in her (and other members of President Clinton's economic team) is reflected in the switch I have recently made in my portfolio from primarily Treasuries to primarily stocks, for the first time since August 1987.

Sincerely yours,

IRMA ADELMAN,
Fellow Royal Society of Arts and Commerce, Thomas Forsyth Hunt Chair.

STATEMENT ON THE NOMINATION OF LAURA TYSON

Mr. D'AMATO. Mr. President, I support the nomination of Laura D'Andrea Tyson to be the Chairperson of the Council of Economic Advisers.

Dr. Tyson clearly has the qualifications to serve in this important position. She is a professor of economics and business administration at the University of California and has taught at Princeton, MIT, and the Harvard Business School. Laura Tyson has received a bachelor of arts degree, summa cum laude, from Smith College and a Ph.D. degree in economics from the Massachusetts Institute of Technology. Dr. Tyson is also a prolific author in the area of trade, international competitiveness, and the economics of Eastern Europe.

During her confirmation hearing, Dr. Tyson demonstrated a considerable understanding of the economic issues confronting our Nation. I was pleased that she appreciates the importance of reducing our Government's budget deficit and the need to revitalize our stagnant economy. Dr. Tyson also made clear her strong support for fair and free trade as a means of opening markets and expanding economic opportunity for our country. At the same time, she recognizes, and is committed to correcting, those trade practices that create competitive inequality in global markets.

In confronting the economic challenges facing our country, President

Clinton is going to need strong pragmatic advice. I believe that Laura Tyson is well suited to this task. I wish her well as she fulfills her responsibilities as the next Chairperson of the Council of Economic Advisers.

STATEMENT ON THE NOMINATION OF LAURA TYSON

Mr. BOND. Mr. President, I want to spend a few minutes of the Senate's time today to discuss the nomination of Laura Tyson to be the Chairman of the Council of Economic Advisers.

As the economy was the No. 1 issue in the campaign, and remains the No. 1 issue for most Americans today, I believe the Senate should take a little time to review the record of the nominee for the Nation's No. 1 economic adviser.

Over the past month I have had the opportunity to read much of Ms. Tyson's writings. I have had a good discussion with her in my office, and I have had the chance to question her at her confirmation hearing before the Senate Banking Committee.

The results of this review of her record I wish to share with the Senate today.

As the chief economic adviser to the President, Ms. Tyson's role will be to give the Clinton administration frank advice on policy options and proposals. As the lone adviser without a specific constituency—unlike the Departments of Labor, Commerce, Agriculture, et cetera—it will be her job to look at the big picture.

In fact, some economists argue this aspect of the job is so important that unless the CEA Chair is a big picture person they shouldn't have the position.

Herb Stein's article of December 21, 1992, in the Wall Street Journal best makes the case for the need for someone to be a "spokesman for the market" as he believes that the pressures always exist for special treatment or policies for select industries—and someone has to be the one to stand up for market principles.

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

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

[From the Wall Street Journal, Dec. 21, 1992]

WHO SPEAKS FOR THE MARKET?

(By Herbert Stein)

I plan to resume wearing my Adam Smith necktie on Jan. 20. I stopped wearing it about 10 years ago in protest against the tendency of some people to wrap themselves in the mantle—or necktie—of Adam Smith to justify their neglect of the proper functions of government. I will resume wearing it in protest against what I fear will be the tendency of the new administration to use government to suppress or supplant the proper functions of the market.

This sartorial note is prompted by the naming of Mr. Clinton's economic team—composed, so far, of Lloyd Bentsen, Leon Panetta, Laura Tyson, Robert Rublin, Roger Altman, Alice Rivlin, Robert Reich and Ron Brown. This team has been described, and in some cases hailed, by the media as an artful balancing of moderates and liberals; politics, business and academia; deficit hawks and big spenders; men and women. I have not seen it described as two teams, one defensive and one offensive, although I suppose those words have been used somewhere.

This description of the team probably conveys some information. But it misses an important point. There does not seen to be anyone on the team who will reliably speak for the market. When I refer to the market I do not, of course, refer either to the stock market or to my local supermarket. I refer to the pervasive system of free exchange that coordinates economic activity to yield outcomes in production and distribution that are, with some exceptions, better than can be achieved by other methods. The fact that members of the president's team may be "conservative" or have backgrounds in business and finance does not necessarily mean that they will understand, appreciate and represent that function of the market.

WHAT CLINTON NEEDS

There are always many private interests and government agencies that make claims for government promotion of particular industries, by tax preferences, subsidies, expenditures, loans or loan guarantees, regulations, or protection against foreign competition. There will probably be more of these claims under the Clinton administration even than in the past, because Mr. Clinton gives the impression of being more receptive to them than past presidents have been. Mr. Clinton needs someone around him who will say:

"We have a system, the free market, that in general makes good determinations about the behavior of the economy. There may be exceptional cases in which this is not true and a better result can be obtained by government intervention. But claims for such exceptions need to be objectively analyzed by people who understand in general how markets work. If the claims do not clearly and strongly withstand such analysis they should be rejected."

For the past 40 years the president's Council of Economic Advisers has been the most consistent advocate of this position. From time to time other officials—from Treasury, Budget or the White House—have also represented this position, but the CEA has always been there. That is perfectly natural, because understanding and appreciation of the market is the unique quality that economists possess and can bring into government deliberations.

The role of the CEA as defender of the market was formalized about 30 years ago when the president gave instructions that the Agriculture Department should make no decisions about price supports or acreage restrictions without consulting the CEA. This did not, of course, give the CEA a veto, but it enabled the CEA to appeal to the president if it had strong disagreement with the proposals of the Secretary of Agriculture. Since then, the CEA has been regularly involved in analyzing major proposals for government intervention in the market and offering recommendations about them. The CEA did not always get its way. Perhaps it did not get its way most of the time. But the president certainly gained from being aware of its views.

One may say that this pro-market attitude of the economists who have constituted the CEA is a bias, a kind of "professional deformation." I do not think so, any more than the presumption of geographers that the earth is round is a bias. But that is not the point. The arguments the president hears will be full of ideological bias, self-interest and misinformation. It is important that he should also hear the views of economists, even if they reflect a kind of bias.

I have two worries—they are no more than that—about the role of the CEA in the Clinton administration as champion of the case for reliance on the market.

One worry relates to the possible operation of the interagency committee on economics, now to be called the National Economic Council with a director of its own, Mr. Rubin. Presumably the chairman of the CEA will be a member of the National Economic Council. The existence of the National Economic Council does not necessarily prevent the CEA from serving its function. It can do that if the CEA is recognized as having a special point of view, method of analysis and body of knowledge—not more important than those of other agencies, but different and deserving of serious consideration. But if the chairman of the CEA is just one fish in a pool of 10 cabinet secretaries, all with more resources and constituents than the CEA has, the CEA could be swallowed up and the voice for the market could be left unnoticed. Much will depend, therefore, on the degree to which Mr. Clinton and Mr. Rubin want to hear what economics has to say.

My second worry is about the attitude of the new chairman of the CEA, Mrs. Tyson. She undoubtedly knows the classical theory of the virtues of the market. But she certainly does not wear the Adam Smith tie. Aside from her research on Yugoslavia, her professional career has been mainly devoted to arguing that there are many important cases in which more government intervention would improve the working of the economy and that she is able to identify those cases. Although this argument sets my teeth on edge I would, as they say, defend her right to say it—as a professor writing one of the hundreds of journal articles that professors write every year. But I do not think it is a good position for the president's only economist adviser.

There will be plenty of people in and out of government making the case for specific government interventions. It should be the responsibility of the chairman of the CEA to represent what economists uniquely know: that markets work; that while there are exceptions to that general proposition, the exceptions are truly exceptional; and that most claims for the existence of an exception are self-serving and must be regarded with great skepticism.

A LOSING APPROACH

If the chairman abandons that position, and becomes only one more claimant on behalf of targeted expenditures, tax preferences, protectionism, subsidies, regulations and loans and loan guarantees, in competition with all the other departments, she is going to lose. If she accepts the proposition that the cases for and against intervention have equal probability of being valid, she will lose to other claimants who have just as sophisticated analysts and much more political clout than she.

While I worry about this, I have a feeling that is not going to happen. When Mrs. Tyson gets in the meeting room with a secretary of agriculture who wants to protect potato chips and a secretary of commerce who wants to protect computer chips and a secretary of transportation who wants an electric automobile and a secretary of education who wants more fellowships for chiropodists, etc., she may see the wisdom of re-

lying on the general proposition that markets work. And if she then wants an Adam Smith tie, I will be happy to send her one.

Mr. BOND. Mr. President, Herb Stein is a former Chairman of the CEA, so he knows of what he speaks, but he has couched his views in terms of advice, not opposition to Ms. Tyson's nomination—a course I intend to follow today.

Thus, while I do not see anything in her record indicating a strong interest or complete understanding of the big picture, I respect the right of the President to choose who he wishes as his chief economic adviser. But that will not keep me from criticizing or critiquing her ideas and performance. For example, I am not convinced her consistent approach of targeting, narrowing the scope, and defining as strategic various industries and sectors is the area of expertise we need at the CEA.

Of course, her supporters have pointed out that her work in comparative economics is by nature a "small picture" effort. And that her focus on real world business or trade policies by studying real world cases is one of her major strengths—namely an understanding of the real problems facing business and industry in the international marketplace.

However, it is one thing to undertake a case study; it is another to understand an industry, accurately identify its problems, and then prescribe the correct solutions.

Two descriptive phrases are repeated time and time again by her supporters and reporters—"cautious activist" and "real world economist." These terms are also often used by Ms. Tyson to describe herself. Although in this city it is always better to define yourself rather than allow your components to do so, I must admit the two terms were jarring when I first heard them, and now, after much review of Ms. Tyson's record, they are even more so.

I must admit that I have some difficulty accepting the phrase "a real world economist" when she spent her first 10 years of academic life studying the Yugoslavian and Romanian economies, and based on information provided by those Governments, dutifully reported on their progress. This does not meet my definition of the real world.

Ms. Tyson is also an economist who, since the mid-1980's has done a series of studies of various U.S. industries, and while she eloquently describes their plight, can provide no evidence that her policy prescriptions would have led to better results than what occurred. What is "real world" about that? Her approach is typical economics—boldly define a problem, lay out a proposed solution—but provide no evidence that your solution has worked or will ever work. Mr. President, put me in the category of unconvinced as to her real world credentials.

But what about the cautious activist? Is that an activist who believes Government can solve all, or that Government can create a better, freer market—but is cautious in the actual application of the theory?

Or is it a cautious economist who wants to be right, is not sure what to do, so talks generally about the need to be an activist?

Mr. President, regardless of what I believe, it is clear to me what Ms. Tyson's strongest supporters see—an activist who will intervene in the market to protect or encourage certain key industries.

A quick review of comments made at the hearing by her supporters tells the tale.

"Tough positions on trade";

"Outlines a progressive trade policy to assist American companies";

"Understands we live in a world of imperfect competition and does not worship at the alter of free markets as many do";

"Has stated that we need to formulate effective programs and policies to assist American companies to compete overseas";

"Look forward to working with you on education, trade, competitiveness, industrial policy, and a whole range of issues where reform is so greatly needed * * *."

These supporters do not want to quibble over the details; they simply are pleased to know they have an ear for their save-our-industry industrial policy proposals.

Of course, if they had listened carefully to the testimony, perhaps they wouldn't be so sanguine.

Mr. President, knowing of Ms. Tyson's work on the need for a nation to define its strategic industries and then first, to avoid policies which would harm these industries, and second, to pursue policies which would help, I asked Ms. Tyson if she felt "the Council of Economic Advisers should help us identify strategic industries?

Her response? "No. I don't think that the Council of Economic Advisers should do that. And it will not do that."

Now, Mr. President, does this mean that her supporters have got it all wrong? That she's really a Michael Boskin clone?

In 15 seconds she disavowed and tossed away her entire academic career, which was built on the promise—her words, not mine—certain activities and industries are measurably more important than others to the Nation's well-being." and "strategic thinking requires that we assess policies in terms of their implication for such activities or industries over the long run."

That is what her supporters like about her. that's the real world economist who's book, "Who's Bashing Whom," adorns their coffee table.

So why did she testify at the Banking Committee,

It is definitely not an active policy of setting up lists of * * * these are the industries we should promote. * * * I haven't advocated that in any place.

Except, Mr. President, in her writings, most recently her book "Who's Bashing Whom," chapter 7, subheading "The Need for Complementary Technology and Industrial Policies." In it she writes:

The U.S. Government must develop an institutional mechanism for assessing industries on an ongoing and timely basis. The Government should either designate an existing agency or create a new one to perform several related tasks, including evaluating the likely course of key American industries * * * and monitoring the activities of foreign government and firms in these industries to provide an early warning of competitive problems in the future.

I presume the key American industries would be divinely discerned, or so intuitively obvious that no effort would need to be made to develop or set up the list?

And, of course, this raises yet another question: Do we want Government agencies keeping close track of competitive problems caused by foreign firms—even if foreign governments are not involved, so we can, in Ms. Tyson's words, "make wise decisions on a variety of trade policy questions."

Mr. President, who is kidding whom?

President Clinton's nominee for his chief economic adviser is cautious only when discussing her positions in her confirmation hearing; she is an industrial policy interventionist the rest of the time.

And that is why her supporters like her so much.

And that is why most of the rest of us are skeptical. Picking winners and losers is tough enough from the safety of the ivy-coated walls of academia—it's impossible when politics and bureaucrats get involved.

Thus, I hope it is Ms. Tyson's strong supporters who are disappointed and her skeptics who are surprised that it is the adviser who said "no" to list-making and picking strategic industries who shows up to work, rather than the prolific writer of the past decade.

I, for one, will be watching.

But, Mr. President, what about the rest of the economy—interest rates, savings, M-2 growth, budget deficit, exchange rates, tax policy? Shouldn't the President's chief economic adviser be involved in these issues as well—or will the Council of Economic Advisers become known as the White House outpost for the Special Trade Representative?

Part of the concern many have over the selection of Ms. Tyson is that, while important, trade is only a piece of our economic puzzle. Sears laying off thousands has nothing to do with the

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Japanese or the EC—it has everything to do with new competitors such as Wal-Mart and Home Depot beating it in the market place.

High labor costs, inefficient inventory management, coupled with aggressive competitors and a weak retail market these past few years have put Sears in the spot its now in.

Sears is not a key industry. It is not strategic. So what does Ms. Tyson have to say about its fate? Is competition good only when it is U.S. products beating foreign products, but bad when new U.S. companies beat other U.S. companies?

IBM is another example. Failing to understand the mood and desires of their market have let newer companies eat into their marketplace. Is IBM strategic? Should the Clinton team prepare a strategy to preserve it?

Robert Samuelson's op-ed in Wednesday morning's Post makes the point better than I that competition is not pretty, but it works. Thus, I ask unanimous consent to insert his article in the RECORD at this point.

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

SURVIVAL OF THE FITTEST

(By Robert Samuelson)

"We must reverse the slide that brings us headlines like Sears cutting 50,000 jobs and IBM taking out nearly 75,000 jobs."—Treasury Secretary Lloyd Bentsen.

Bentsen's got it backward. The convulsions shaking some of America's biggest companies—IBM, Sears, General Motors—are actually a sign of vitality. Our economy adapts to change. Companies that have grown inefficient or whose products are in decline give way to more productive enterprises. It is precisely this process that ultimately raises, incomes and living standards. We would not want an economy stuck in the past.

There is a great contradiction here. Almost no one likes to admit that the hardships of the few (which everyone deplores) lead to benefits for the many (which everyone applauds). But this is undeniably true. The harsh disciplines of recessions, fierce competition and new technologies help make the economy more efficient, even while creating layoffs and bankruptcies. Companies are forced to cut costs. Weaker firms shrink or vanish.

Grasping this provides some perspective on the latest economic gripe: The recovery isn't generating jobs. Strictly speaking, this isn't true. There are two government job surveys. One shows a gain of 1.6 million jobs over the past year; the other indicates 560,000. Either way, the increase is modest. But the explanation is not that the economy can't create jobs. Rather, the rapid growth of some companies is being offset by the deep cuts of firms struggling to improve profitability.

Everyone knows about the Sears cuts. But you don't hear much about the job increases at Wal-Mart (up 142,000 since 1990) or Home Depot (up 16,500 since 1990). In 1985, Sears was the nation's biggest retail chain with $21.5 billion in sales. Since then, it's stagnated—1992 sales totaled roughly $25 billion—while Wal-Mart became the largest chain. From $8.5 billion in 1985, its sales have grown to an estimated $54 billion in 1992. Sales at Home Depot, a hardware and lumber chain, have nearly doubled to $7 billion since 1990.

These chains and others like them have simply undersold Sears. In 1991, overhead costs at Sears (wages, rent, advertising, utilities etc.) came to 29 percent of sales. By contrast, over-head at Wal-Mart and Home Depot ranges between 19 and 21 percent of sales. These chains have been more skillful at using computers to minimize inventories and to stay stocked with popular items. They consistently keep prices low and avoid sales. This cuts advertising and the expense of constant price changes.

The same thing is occurring in countless industries. In 1980, U.S. shipments of mainframe computers were worth about six times the shipments of personal computers. By 1984, they were about equal, and now personal computers are about 40 percent higher. IBM underestimated the speed of this change and also is being underpriced by younger companies with lower costs—companies like Compaq and Dell. In 1992, these two firms' share of the global personal computer market (10.1 percent) nearly matched IBM's (12.4 percent), according to Dataquest, a market research firm.

Shakeouts don't last forever. Sooner or later, older companies either adapt to new competition or disappear. Sales and job growth become concentrated in more efficient firms. But the adjustment is traumatic while it's happening. The trauma is now being compounded by the aftershocks of the 1980s boom. Perversely, booms can breed inefficiency. The longer they last, the more people think they will never end. Toward its end, the 1983-90 expansion lapsed into this sort of mindless optimism.

Entire industries acted as if a recession would never again occur. Take airlines. Between 1985 and 1990, U.S. air carriers increased employment 54 percent while passenger traffic rose only 36 percent. Hundreds of new planes were ordered and delivered. Everyone assumed that travel would continue to expand rapidly. When it didn't, the industry found itself saddled with enormous costs. Not surprisingly, it has suffered massive losses (more than $10 billion since 1990), bankruptcies and job cuts.

In a perfect world, mistakes would never happen. But in our imperfect world, they need to be corrected. Competition and recessions do that. This sometimes brutal process has nothing to recommend it except that the alternative is worse: letting the mistakes persist. What we now regard as unwholesome turmoil probably portends improved income gains later in the decade, as economist Stephen Roach of Morgan Stanley, the investment banking firm, argues. The vast service sector—stores, banks, airlines, restaurants, utilities—is being pressured to be more productive.

This is crucial. Services account for about 60 percent of the economy's output. But their productivity growth has been meager, less than one percent annually. By contrast, productivity growth in manufacturing (a fifth of output) has averaged about 3 percent annually. Some of the service sector's poor performance may be a statistical fluke, as economist Robert Gordon of Northwestern University points out. When more people shop at discount stores, the statistics don't indicate that average prices are dropping. Still, higher living standards require a productive service sector that can either raise wages or cut prices.

Once, Sears, IBM and other ailing giants were upstarts. They dislodged entrenched enterprises and pushed down prices. A century ago, the Sears mail-order business gave farmers an alternative to high-priced local stores. The 1899 Sears catalogue warned its readers: "This book tells you just what your storekeeper pays for everything he buys—and will prevent him from overcharging you." The company's early success was as astounding as Wal-Mart's is today. Between 1894 and 1905, Sears sales jumped from $785,000 to $38 million.

Our economy is operating as it has in the past. It's survival of the fittest. We should keep the concern for jobs in perspective. They will come in time. By contrast, a quick explosion of unproductive jobs won't make a more productive economy. Survival of the fittest seems heartless, and it is. Competition and change are scary and unsettling. They also inspire creativity and impose discipline. Without them, we face stagnation. Does anyone really favor survival of the unfittest?

Mr. BOND. Mr. President, it is questions like this that are unsettling. For every easy choice to protect an industry—"Who's Bashing Whom" discusses Boeing; Motorola; Cray—there exist 10 others with equally compelling cases to be made.

So where is the line drawn? And who draws it? Congress, the most protectionist force in government? The Special Trade Representative? The CEA? The Department of Commerce? A new special bureaucracy in charge of keeping tabs on key industries as advocated by Ms. Tyson in her book.

Both the New Republic and the Economist have made these points in recent articles. I would ask they too be inserted in the RECORD and would commend them to my colleagues. All of us would like to know who will make the case that the fate of one company may be less important to the Nation than the cost of propping it up?

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

[From the New Republic, Feb. 1, 1993]

ECONOCLAST

(By Michael Lewis)

Like most economic controversies, the one over the appointment of Laura Tyson to chair the Council of Economic Advisers has something of the flavor of a theological dispute. Just about everyone qualified to pronounce on her suitability for the job is partisan, especially within her profession. Paul Krugman of MIT has said that Bill Clinton's selection ignores the "pecking order" in academic economics. Robert Lawrence of Harvard says the choice can only mean that Clinton wants to advise himself.

There is, of course, an element of jealousy in objections of this sort, but there may be more to it than that. Among many economists there is the feeling that Tyson has abandoned the profession. It isn't that she lacks book learning. She's got plenty of credentials: summa cum laude from Smith, Ph.D. from MIT—the high church of mathematical economics—early tenure at Berkeley, a forest of publications with bodice-ripping titles such as "Incentives," "Income sharing and Institutional Innovation in the Yugoslav Firm" and "Modelling Structural Adjustments: Micro and Macro Elements in a General Equilibrium Framework." It is what she had done with her credentials that so unsettles many university economists. Now 46, Tyson has spent the last ten years ignor-

ing some of the most sacred assumptions about international trade. As Herbert Stein, who chaired Richard Nixon's Council of Economic Advisers, says, "The role of the White House economist is largley to explain that markets work. She starts with more of a predisposition toward government intervention in the market than most past chairmen of the council, and then most economists."

That's putting it mildly. The essence of the neoclassical comparative advantage trade theory, which has guided American policy since the end of World War II, is that it always pays for a country to keep its markets open and free of government interference, even if other countries do not. But the essence of the better part of Tyson's academic work is that government should interfere, especially in high-tech industries,which she accords a special place in our economic future. Left to their own devices, American high-tech industries invest too little in themselves, she argues, especially in the face of heavily subsidized foreign competition. In many cases companies are constrained by high start-up costs. And all companies fail to account for the other spill-over benefits—externalities, in economics jargon—from high technology. "Exporting a dollar's worth of oranges may have the same effect on the trade balance as exporting a dollar's worth of computers," she writes in her newly published book, "Who's Bashing Whom?," "but the two have radically different effects on other crucial determinants of economic health, including employment, productivity, wages, skill formation and investment in research and development."

The book is an extension of Tyson's faith in government activism. The problem with the argument, however, is that neither she nor anyone else has proved that the benefits justify the costs. Tyson's work, including the work she has overseen at the Berkeley Roundtable of International Economics, has consisted largely of assembling case studies. These show persuasively that foreign governments have intervened successfully on behalf of their high-tech industries to tip the markets in their directions. They also show how foreign governments have played a role in putting American companies out of business, in some cases—as with the semiconductor industry—costing our producers more than it benefits our consumers.

Nowhere do they show that the interventionist policies actually benefit the country that puts them in place. Studies of both the $26 billion spent by a consortium of European governments to get Airbus off the ground and of the Japanese semiconductor industry confirm what the free trader theorists would expect; that the policies actually decreased social welfare. As Krugman has put it, "There just isn't any evidence that an aggressive strategic trade policy can produce large gains."

As a result, one feels that the prevailing trade theory is being chucked out of the White House without an intellectually respectable replacement. The argument that markets don't work comes along at a suspiciously convenient time, when everyone is looking to explain the perceived market failure of American companies. In view of the obvious gap in Tyson's argument—the absence of persuasive quantitative evidence of the welfare gains of government intervention—it is also a little suspicious that she has made no attempt herself to fill it with measurements. A cynic might say there is no place for science in Tyson's work: because her theories aren't couched in such a way that they can be tested, they can't ever be proved wrong. Evidence that Japan actually would have been better off had it not intervened in its semiconductor industry, for example, can be dismissed in a variety of ways: that the measurement of the benefits are too narrow; that only time will reveal the full benefits to the economy of a thriving trade in semiconductors; that the Japanese spent more money intervening than was needed.

But this sort of positivist talk—so central to academic economics—is suddenly even less pertinent than ever. The conceit that economics should be subjected to the same standards as physics has no place either in Tyson's thought or in the Clinton administration. There wasn't anyone at the December economic conference in Little Rock who stood up for the scientifically correct free trade ideology. At the heart of Clinton's choice of economic advisers is the view, seconded by Tyson's writings, that economic policy-making is less like science than like cooking. From now on we'll be adding our subsidies to taste, or as Tyson puts it, "We need to improvise in a world that provides no ideal models."

It's hard to say exactly what this means in practice. No doubt everyone will agree on Tyson's proposal to intensify the demands for access to foreign markets, especially the technology markets of Japan. The Clinton economic team may also agree on a set of subsidies for research and development in high-tech industries that may be labeled industrial policy. In the past, one of the main political brakes on government intervention in the market has been the State Department's fear of alienating allies, which is much weaker in the aftermath of the cold war. And if it happens, depending upon how our trading partners respond, we may end up in a trade war fought with arms race logic, with each trading bloc trying to outsubsidize the others in order to acquire the comparative advantage.

If there are risks that come with Tyson's appointment, though, there are also some spillover benefits. A clear-eyed view of what is important within our economy implies a view of what is not, such as the subsidy to honeybee farmers. Tyson describes herself as a "cautious activist," one who "supports general policy measures such as a more generous R&D tax credit and increases in public funding for civilian R&D and education." Nowhere in her writing is she anything but hostile to simple protection—quotas and tariffs—even for high-technology industries. Her lack of free market dogmatism may make her more credible when it comes time to discuss the self-defeating protectionism that is now routinely endorsed in Washington because we lack any coherent view of how government should relate to industry.

The second side effect is that we may, for a change, have a White House economist with a bit of integrity. There has been a disturbing tendency for CEA economists to abandon their science the moment they are hired, at which point they become economic hucksters waving cheery forecasts of higher employment and lower inflation. One vice to which Tyson is not prone is the intellectual dishonesty born of cowardice. There are a number of ways she could have couched her views on trade so that they seemed more mainstream than they are. For instance, she could have advocated the same blend of policies in the interest of national security. So she deserves some credit for having the nerve to break explicitly with the catechism of her profession. She was also willing to jeopardize her political future with a negative review of Robert Reich's recent book, "The Work of Nations, in The American Prospect." In any case, it will be refreshing on the heels of Michael Boskin to have a White House economist who will do something other than promise that the recovery is right around the corner.

[From the Economist, Jan. 9, 1993]

SELECTIVE REALISM

Of the senior people whom Bill Clinton has appointed to his new administration, Laura D'Andrea Tyson is one of the most intriguing. The next head of the president's Council of Economic Advisers comes from the "liberal" (ie, illiberal) end of America's economic spectrum; she has been one of the country's leading advocates of active trade and industrial policies. Unlike many others of that group, though, she is not merely a professional economist—and therefore schooled in the arguments against that sort of state intervention—but also a very accomplished one, who commands wide respect among her academic peers. If anybody is going to make the case for trade-policy activism convincing, it is Ms. Tyson.

Washington's Institute for International Economics published Ms. Tyson's new book[1] on the subject just days before the news of her next job became public, confirming the institute's remarkable knack of being in the right place at the right time. For its subject (which is of pressing importance), for the standing of its author, and for its topicality, "Who's Bashing Whom?" deserves to be widely read. For its conclusions, however, one can only hope it will be ignored.

The book begins with a sketch of international trade in high-technology industries—computers, electronics, drugs, aircraft and so on. Ms. Tyson's premise is that such trade is everywhere strongly influenced by government policy of one sort or another: industrial policies (subsidies, regulatory regimes, international collaboration on standards and so on), trade barriers (tariffs, quotas, procurement policies for state-owned industries, etc) and assorted other policies that create or permit "structural impediments" to trade (especially tolerance of restrictive practices). In other words, trade in these industries is anything but "free".

Ms. Tyson next argues that high-technology industries are especially valuable to an economy; they are, in the current jargon, "strategic". This is true, Ms. Tyson argues, in two ways. First, high-tech industries typically have formidable barriers to entry, because the costs of research and development, and of creating manufacturing capacity, are often high. This means that firms already in the industry will enjoy a degree of monopolistic power; with that go monopolistic profits, or "rents". Second, high-tech industries shower a variety of external benefits on the rest of the economy—for example, by training a pool of highly skilled labour, and by creating a demand for intermediate goods that local producers may have a competitive advantage in meeting.

Of course, Ms. Tyson argues, it is no coincidence that high-tech industries are both especially valuable and subject to lots of government interference. Outside America, governments have realised that with a subsidy here, a trade barrier there, and a structural impediment to be on the safe side, they can gather for their own economies a bigger share of those monopolistic rents and economic benefits. America, which is keener than other countries on freeish trade and little industrial intervention, has put itself at a disadvantage—and its lead in critical industries is disappearing.

Ms. Tyson acknowledges that trade and industrial policies are easily "captured" by producer-interests, and that a policy which makes a producer better off may not make the economy as a whole better off. She also says that she is a multilateral free-trader at heart—i.e., she believes in the Gatt and all that. As a "cautious activist", however, she wants to intervene in cases where trade and industrial policies can do most good. For instance, she wants to use measures such as section 301 of America's trade law to force foreigners to open their markets, by threatening to raise new barriers against their exports to America. Reviewing the recent history of American "aggressive unilateralism" on trade, she finds it, by and large, a success.

Ms. Tyson is not so much a "cautious activist" as a "selective realist". She is realistic about markets: sometimes they do, indeed, fail. But she is unrealistic about governments; they fail too—and how. Although the book agrees that intervention can be captured by producers, and that helping those who lobby successfully may not make the economy better off, these points, once made, are soon forgotten. In the case studies that make up the bulk of the book, the reader is nearly always invited to identify the producer interest with the public interest. Where there is evidence to the contrary—e.g., studies have shown that Europe's subsidies for the Air-bus programme reduced Europe's overall welfare—Ms. Tyson is content to pick holes in the researchers' methods, without offering quantified evidence to support her own position.

Since most such evidence, one way or the other, is likely to be inconclusive, a lot depends on where the burden of proof is placed. Ms. Tyson implicitly puts it on America's non-interventionists; they must explain why they want to be different. But this is surely incorrect. What is certain about most sorts of intervention is that, in the first place, they impose costs (a subsidy requires higher taxes, a trade barrier raises prices to consumers). The burden of proof must be on those who claim that there are benefits to offset these costs. Ms. Tyson offers no such proof.

You could argue that section 301 actions are an exception to this—that no proof is needed. Such measures arguably impose no costs on America: the mere threat of trade barriers is enough to open foreign markets. That may seem true, as long as the threat succeeds—which, so far, it usually has. But in this case the eventual cost may be greatest of all. Such actions erode the mainly liberal trading system that Ms. Tyson insists she wants to uphold: an agreement to expand imports by decree (the typical outcome of a section 301 action) is a victory for managed trade, not liberal trade.

America retains enormous economic clout, as Ms. Tyson agrees—for if it did not, the trade measures she favours could never succeed. It can use this clout to lead the world to freer trade, as it has for nearly 50 years; or to lead it somewhere else, enriching lobbyists and hobbling itself and the world in the process. Ms. Tyson urges the latter course.

[1]Who's Bashing Whom?" By Laura D'Andrea Tyson, Institute for International Economics, Washington, DC. Price $40.

[From the Economist, Jan. 9, 1993]

WHEN THE STATE PICKS WINNERS

During his election campaign Bill Clinton promised to put the American economy back on its feet. Lately it has shown signs of reviving without his help, so the new president will have to be quick if he is to win any credit. One group of advisers offers the answer: trade and industrial policies should be used more ambitiously. Instead of trusting in the market, as naive Republicans are said to have done, these advisers want to bolster American competitiveness by helping the country's critical industries—with subsidies, trade protection and in other ways. To show he means business, Mr. Clinton has appointed one such economist, Laura D'Andrea Tyson, to be the head of his Council of Economic Advisers.

The idea could catch on. Mr. Clinton will hear no complaints from companies that stand to gain from an industrial policy. And few that stand to lose will object, because they are largely unaware of the fact. In other countries, trade and industrial policies have been more common than in the United States; because they failed, many governments spent much of the 1980s paring them back. But the advocates of this approach remain keen. Nothing would cheer them more than to see Mr. Clinton take up their cause.

If the new interventionists get their way, it will be, at best, a setback for America. At worst, if such policies were allowed to undermine the global trading system, they could cripple the world economy. For everybody's sake, Mr. Clinton should satisfy his activist appetites in safer and more useful ways—of which, as it happens, there are plenty.

ASSUME GOOD GOVERNMENT

The first refuge of a policy scoundrel is "realism". Free enterprise, the new interventionists say, is fine in theory: in a world of perfect competition, firms could be left to get on with it. In practice, they point out, competition is far from perfect, so none of the theoretical benefits of free enterprise may come about and intervention therefore makes sense. In short, the new interventionists present themselves as hard-headed realists, pitted against free-market dreamers.

The opposite is closer to the truth. Market-minded thinkers since Adam Smith have acknowledged that the case for intervention by governments is strong—in theory. That is because "market failure" (caused, for instance, by too few producers of any given product) is indeed common and because—again in theory—governments are wise, disinterested and technically competent. In practice, as you may have observed, governments rarely measure up to those standards, least of all when trying to spur growth by intervening. That is why, in the real world, government failure has done more harm than market failure. Interventionists have been allowed their propaganda advantage too long. It is they who are the sellers of textbook theories. Those who favour markets are the pragmatists.

That settled, the task is to understand more precisely why these texbook theories go wrong. Interventionists say that some industries are "strategic", meaning one of two things: either profits are higher than they would be under pure competition (because of barriers to entry, for instance), or social gains from the industry exceed private gains because of "external benefits" (for example, the industry may train workers who later raise productivity elsewhere). A subsidy, or protection from competition, may serve the public interest if it enables such an industry to stay in business.

This interventionist argument has many awkward corners. For a start, which industries are strategic? On the vague criteria of "abnormal profits" and/or positive externalities, it is hard to think of any that would not be candidates. But industrial policy is intended to discriminate, to favour certain industries at the expense of others; you cannot favour them all.

To meet this objection, many new interventionists narrow their case to high-tech industries—aircraft, drugs, computing and electronics. This, too, is not as obvious as it sounds. Wages are higher in high-tech industries than in others, but this many be due to differences in skills rather than to abnormal profits—i.e., the market may be working well. And Paul Krugman of MIT, though a pioneer of the new theories, says the claim that the social returns to high-tech industries significantly exceed the private returns is "at best unsupported by the evidence".

Unimpressed by such nit-picking, the new interventionists call for vision. Surely, they argue, it is better to risk supporting the odd industry that is falsely reckoned to be strategic than to allow the collapse of others that are falsely reckoned not to be. It might be so, if support cost very little. Actually, it costs a lot. The direct cost of any subsidy or trade barrier is merely the downpayment. The possibility of such help causes firms to invest resources in lobbying for it. And the political character of this competition makes it all the harder to ensure that aid is well spent. Europe's efforts to promote its high-tech industries illustrate the risks and difficulties only too well (see pages 19-21).

America's new interventionists see such evidence in a different light. Everybody else is intervening, they say, so America needs to. But must America really copy other countries' mistakes? Interventionists point to Japan, whose government has arguably used trade and industrial policies successfully; but they ignore or misunderstand the scores of other countries, rich and poor alike, that have wasted billions on such initiatives. Many cite Europe's state-financed Airbus programme as a success story. Undeniably, from America's point of view, the venture has hurt Boeing, America's biggest aircraft producer. So much so, indeed, that Boeing is trying to undermine Airbus by drawing some of the consortium's members into a new transatlantic alliance (see page 57). Some Americans conclude that their government should help Boeing as European governments help Airbus. What they forget is that Airbus has cost Europe's taxpayers dear. Its aircraft makers have gained, but the project has left Europe as a whole worse off.

AN ACTIVISTS' CHARTER

Governments need not, and should not, be idle. There is much they can do to spur competitiveness and economic growth. Choosing the right policies is a matter of cost-effectiveness: do what costs little and is sure to work well; avoid what costs a lot and probably will not work at all.

One highly cost-effective policy, especially in America, would be to curb public borrowing. By reducing the government's call on the supply of capital, a smaller budget deficit would lower the long-term cost of finance. That would directly spur investment of all sorts, with no need for fallible governments to decide what is or is not strategic. The other top priority would be to deal with aspects of the tax system that favour debt over equity; reducing that bias, especially powerful in America, would encourage firms to think, and invest, for the long term.

Next come policies whose cost-effectiveness is less clear-cut, but which are probably worth undertaking so long as they can be reconciled with prudent public finance. In descending order of merit, increase public investment in education, in infrastructure and

in certain sorts of research and development. The first two are expensive commitments; but there are good reasons for thinking that firms and consumers will spend too little on them if left alone, and the evidence that such investment promotes growth is strong. Greater public support for R&D (in the firm, say, of grants to universities and firms working together on pre-competitive research) is tricky to administer, but need not be expensive; again, the evidence suggests that this can foster growth.

At the bottom of the list come the policies that are best avoided: policies that seek to pick and protect winners. With much better ideas waiting to be acted on, it is a pity that these are even being discussed—but they are. A new book by Ms Tyson, Mr. Clinton's top economic adviser, advocates them (see page 59). For the world economy's sake, it must therefore be hoped that the new president will follow his chief economist's advice as closely as his predecessors did.

Mr. BOND. Interestingly, Ms. Tyson makes this argument herself in her opposition to the McDonnell Douglas Taiwan aerospace deal. She states:

The American government has not asked the hardest question of all * * * would the entry of this new aircraft into a global market already suffering from substantial excess capacity be in the national interest?

But then goes on to say:

The McDonnell Douglas case clearly demonstrates that a civilian industrial policy is sorely needed to guide the American aircraft industry through the difficult days of conversion, restructing, and intensified foreign competition that lie ahead.

Mr. President, reading this one can only conclude that without an activist government helping, Ms. Tyson believes an industry she calls strategic will fail. Unfortunately, she does not describe her prescription for the cure, thus giving us no opportunity to assess whether her treatment is worse than the illness. And as Michael Lewis notes in his article in the New Republic: "A cynic might say there's no place for science in Tyson's work because her theories aren't couched in such a way that can be tested, they cannot ever be proved wrong."

So what are Ms. Tyson's views on the other issues facing the economy?

On the Federal Reserve's recent policies, she told me that she felt they had done about as much as possible, and that a real threat of rekindling inflation expectations did exist if they were to cut the discount rate further. This, of course, would drive long-term rates up, and could choke off some new investment.

She stated she believed that M-2 was too diverse and variable to really be controlled by policymakers, seeming to imply that the recent concern over low growth in M-2 was over blown.

I would recommend to her Chairman Greenspan's recent comments that M-2 may no longer be a good determiner as to what the financial system as a whole is doing. He noted that a substantial amount of M-2 deposits have apparently moved out into mutual funds as interest rates have stayed low for savings. What is not clear is if this is a temporary phenomenon or a permanent shift. I would hope Ms. Tyson would keep an eye on this issue.

I would also hope she would be willing to articulate a series of basic principles that policies would be measured against.

As a nation who's cost of capital as well as cost of labor are becoming uncompetitive against international competitors, all policies should be weighed as to how they affect these two costs.

Mr. President, the role of the CEA will change dramatically under Ms. Tyson if she acts as her supporters devoutly wish. I can only repeat that I, and I hope, many others in this body will be watching with great interest to see which of the Laura Tyson's shows up for work.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

MESSAGES FROM THE HOUSE

At 10:17 a.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 bill, in which it requests the concurrence of the Senate:

H.R. 1. An act to grant family and temporary medical leave under certain circumstances.

The message further announced that pursuant to the provisions of section 2(b) of Public Law 98-183, the Speaker reappoints Ms. Mary Frances Berry from private life to the Commission on Civil Rights on the part of the House.

The message also announced that pursuant to section 1 of House Concurrent Resolution 192, 102d Congress, as enacted by section 317 of Public Law 102-392, the minority leader designates Mr. DREIER to serve as Vice Chairman of the Joint Committee on the Organization of the Congress; and appoints Ms. DUNN to said committee, to fill an existing vacancy thereon.

The message further announced that pursuant to the provisions of sections 5580 and 5581 of the revised statutes (20 U.S.C. 42-43) and the order of the House of Wednesday, January 27, 1993, authorizing the Speaker and the minority leader to accept resignations and to make appointments authorized by law or by the House, the Speaker on January 27, 1993, did appoint as members of the Board of Regents of the Smithsonian Institution the following Members on the part of the House: Mr. NATCHER, Mr. MINETA, and Mr. MCDADE.

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-499. A communication from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, copies of D.C. Act 9-337 adopted by the Council on December 1, 1992; to the Committee on Governmental Affairs.

EC-500. A communication from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, copies of D.C. Act 9-336 adopted by the Council on December 1, 1992; to the Committee on Governmental Affairs.

EC-501. A communication from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, copies of D.C. Act 9-335 adopted by the Council on December 1, 1992; to the Committee on Governmental Affairs.

EC-502. A communication from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, copies of D.C. Act 9-334 adopted by the Council on December 1, 1992; to the Committee on Governmental Affairs.

EC-503. A communication from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, copies of D.C. Act 9-340 adopted by the Council on December 1, 1992; to the Committee on Governmental Affairs.

EC-504. A communication from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, copies of D.C. Act 9-341 adopted by the Council on December 1, 1992; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. Res. 65. An original resolution to authorize expenditures of the Committee on the Judiciary.

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. LEAHY (for himself, Mr. PRYOR, Mr. BOREN, Mr. DASCHLE, Mr. CONRAD, Mr. FEINGOLD, Mr. SHELBY, Mr. WELLSTONE, Mr. ROCKEFELLER, Mr. KOHL, Mr. SIMON, Mr. AKAKA, Mr. HARKIN, Mr. HEFLIN, and Mr. BREAUX):

S. 309. A bill to make emergency supplemental appropriations to provide a short-term stimulus to promote job creation in rural areas of the United States, and for other purposes; to the Committee on Appropriations.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 310. A bill to amend title V of Public Law 96-550, designating the Chaco Culture Archaelogical Protection Sites, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BUMPERS:

S. 311. A bill to amend section 2511 of Title 18, United States Code, to make lawful the interception of an oral, wire, or electronic

communication that is made with the consent of all parties to the communication; to the Committee on the Judiciary.

By Mr. DOMENICI:

S. 312. A bill to suspend temporarily the duty on rifabutin (dosage form); to the Committee on Finance.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 313. A bill to amend the San Juan Basin Wilderness Protection Act of 1984 to designate additional lands as wilderness and to establish the Fossil Forest Research Natural Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SARBANES (for himself, Mr. PELL, and Mr. HATFIELD):

S. 314. A bill to authorize appropriations for the National Historical Publications and Records Commission for fiscal year 1994 through fiscal year 1999; to the Committee on Governmental Affairs.

By Mr. GRAMM:

S. 315. A bill to authorize negotiation of free trade agreements with the countries of the Americas, and for other purposes; to the Committee on Finance.

By Mr. DECONCINI (for himself and Mr. MCCAIN):

S. 316. A bill to expand the boundaries of the Saguaro National Monument, and for other purposes; to the Committee on Energy and Natural Resources..

By Mr. DECONCINI:

S. 317. A bill to reform Customs Service operations, and for other purposes; to the Committee on Finance.

By Mr. JOHNSTON (for himself and Mr. KRUEGER):

S. 318. A bill to provide for the energy security of the Nation through encouraging the production of domestic oil and gas resources in deep water on the Outer Continental Shelf in the Gulf of Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WOFFORD:

S. 319. A bill to require the Secretary of Defense and the Defense Base Closure and Realignment Commission to make recommendations in 1993 and 1995 for the termination and reduction of United States military operations at military installations outside the United States; to the Committee on Armed Services.

S. 320. A bill to provide for certain reforms with respect to unemployment programs; to the Committee on Finance.

By Mr. DECONCINI:

S. 321. A bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide on-site daycare facilities for dependents of their employees, and for other purposes; to the Committee on Finance.

S. 322. A bill to amend the Land and Water Conservation Fund Act of 1965 to ensure sufficient funding for Federal and State projects and for maintenance and security needs, to encourage multipurpose acquisitions, and for other purposes; to the Committee on Energy and Natural Resources.

S. 323. A bill to establish an Office of Hispanic American Affairs in the Executive Office of the President, and in various Federal departments and agencies, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BAUCUS:

S. 324. A bill to improve monitoring of the domestic uses made of certain foreign grain after importation, to use the export enhancement program to promote the export of wheat to Mexico, and for other purposes; to the Committee on Finance.

By Mrs. KASSEBAUM (for herself, Mr. DANFORTH, and Mr. BURNS):

S. 325. A bill to provide for comprehensive health care access expansion and cost control through reform and simplification of private health care insurance and other means; to the Committee on Finance.

By Mr. WARNER (for himself and Mr. ROBB):

S. 326. A bill to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself, Mr. BUMPERS, Mr. DURENBERGER, Mr. GLENN, and Mr. HATFIELD):

S. 327. A bill to amend the Internal Revenue Code of 1986 to permit rollovers into individual retirement accounts of separation pay from the Armed Services; to the Committee on Finance.

By Mr. BRADLEY:

S. 328. A bill to provide for the rehabilitation of historic structures within the Sandy Hook Unit of Gateway National Recreation Area in the State of New Jersey, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DANFORTH (for himself, Mr. HOLLINGS, and Mr. INOUYE):

S. 329. A bill to amend section 315 of the Communications Act of 1934 with respect to the purchase and use of broadcasting time by candidates for public office, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KOHL:

S. 330. A bill amend section 101 of title 11, United States Code, relating to eligibility to serve on chapter 11 committees; to the Committee on the Judiciary.

By Mr. KENNEDY:

S. 331. A bill to amend the Federal Food, Drug, and Cosmetic Act to revise the authority under that Act to regulate pesticide chemical residues in food; to the Committee on Labor and Human Resources.

By Mr. SPECTER:

S. 332. A bill to amend the Unfair Competition Act and Clayton Act to provide for private enforcement of the Unfair Competition Act in the event of unfair foreign competition, and to amend title 28, United States Code, to provide for the enforcement of the customs fraud provisions; to the Committee on the Judiciary.

By Mr. HOLLINGS (for himself, Mr. DANFORTH, and Mr. INOUYE):

S. 333. A bill to clarify the congressional intent concerning, and to codify, certain requirements of the Communications Act of 1934 that ensure that broadcasters afford reasonable opportunity for the discussion of conflicting views on issues of public importance; to the Committee on Commerce, Science, and Transportation.

S. 334. A bill to amend the Communications Act of 1934 regarding the broadcasting of certain material regarding candidates for Federal elective office, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. DANFORTH, Mr. KERRY, and Mr. BURNS):

S. 335. A bill to require the Secretary of Commerce to make additional frequencies available for commercial assignment in order to promote the development and use of new telecommunications technologies, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BINGAMAN:

S. 336. A bill to amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BINGAMAN (for himself and Mr. METZENBAUM):

S. 337. A bill to amend the Public Health Service Act to prohibit physicians from referring patients to health entities in which they have a financial relationship and for other purposes; to the Committee on Labor and Human Resources.

By Mr. FORD (for himself and Mr. KRUEGER):

S. 338. A bill to amend the Petroleum Marketing Practices Act to clarify the Federal standards governing the termination and nonrenewal of franchises and franchise relationships for the sale of motor fuel, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS:

S. 339. A bill to amend the Internal Revenue Code of 1986 to extend for 6 months the deduction for health insurance costs of self-employed individuals; to the Committee on Finance.

By Mr. HEFLIN (for himself, Mr. PRESSLER, Mr. SHELBY, Mr. DASCHLE, Mr. CONRAD, Mr. CAMPBELL, Mr. BROWN, Mr. DECONCINI, Mrs. KASSEBAUM, Mr. DANFORTH, Mr. MACK, Mr. COATS, Mr. DORGAN, Mr. ROTH, Mr. HOLLINGS, Mr. WARNER, Mr. WOFFORD, Mr. FEINGOLD, Mr. INOUYE, Mr. CHAFEE, Mr. MCCONNELL, Mr. BOREN, Mr. PRYOR, Mr. KEMPTHORNE, Mr. CRAIG, Mr. EXON, Mr. REID, Mr. NICKLES, Mr. COCHRAN, Mr. JOHNSTON, Mr. BOND, Mr. DODD, and Mr. GRASSLEY):

S. 340. A bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the Act with respect to alternate uses of new animal drugs and new drugs intended for human use, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. CAMPBELL (for himself and Mr. BROWN):

S. 341. A bill to provide for a land exchange between the Secretary of Agriculture and Eagle and Pitkin Counties in Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BOREN (for himself, Mr. PACKWOOD, Mr. DANFORTH, Mr. BRYAN, and Mr. HARKIN):

S. 342. A bill to amend the Internal Revenue Code of 1986 to encourage investment in real estate and for other purposes; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mrs. BOXER, Mr. DODD, Mr. FEINGOLD, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LIEBERMAN, Mr. SARBANES, and Mr. SIMON):

S. 343. A bill to amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980 to provide relief to local taxpayers, municipalities, and small businesses regarding the cleanup of hazardous substances, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 344. A bill to direct the Secretary of the Interior to conduct a study to determine the suitability and feasibility of designating the Fox and Lower Wisconsin River corridors in the State of Wisconsin as a National Heritage Corridor, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. PELL (for himself, Mr. STEVENS, Mr. DECONCINI, Mr. MOYNIHAN, and Mr. HATFIELD):

S. 345. A bill to authorize the Library of Congress to provide certain information products and services, and for other purposes; to the Committee on Rules and Administration.

By Mr. AKAKA:

S. 346. A bill to amend the Internal Revenue Code of 1986 to adjust for inflation the dollar limitations on the dependent care credit; to the Committee on Finance.

By Mr. RIEGLE:

S. 347. A bill to amend the Internal Revenue Code of 1986 to promote long-term investment and economic growth in the manufacturing sector, restore capital gains incentives, encourage research and experimentation, restore and make permanent the exclusion for employer-provided educational assistance, and for other purposes; to the Committee on Finance.

By Mr. RIEGLE (for himself, Mr. CHAFEE, Mr. MITCHELL, Mr. AKAKA, Mr. BAUCUS, Mr. BOREN, Mr. BRYAN, Mr. CAMPBELL, Mr. COHEN, Mr. CONRAD, Mr. DANFORTH, Mr. DASCHLE, Mr. DECONCINI, Mr. DURENBERGER, Mr. GRASSLEY, Mr. HATCH, Mr. HOLLINGS, Mr. JEFFORDS, Mr. PACKWOOD, Mr. PELL, Mr. PRESSLER, Mr. SARBANES, Mr. THURMOND, and Mr. WOFFORD):

S. 348. A bill to amend the Internal Revenue Code of 1986 to permanently extend qualified mortgage bonds; to the Committee on Finance.

By Mr. LEVIN (for himself, Mr. COHEN, Mr. GLENN, Mr. ROTH, and Mr. BOREN):

S. 349. A bill to provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes; to the Committee on Governmental Affairs.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 350. A bill to amend the Federal Water Pollution Control Act to require the Administrator of the Environmental Protection Agency to make grants to the Massachusetts Water Resources Authority for construction of wastewater treatment; to the Committee on Environment and Public Works.

By Mr. STEVENS:

S. 351. A bill to exclude deposits into a capital construction fund account under section 607(d) of the Merchant Marine Act from net earnings from self-employment; to the Committee on Finance.

S. 352. A bill to provide for the self-employment tax treatment of qualified withdrawals from a capital construction fund account under section 607(d) of the Merchant Marine Act; to the Committee on Finance.

S. 353. A bill to provide Alaska Native Corporations, through an election process, standing to contest the disallowance of certain tax losses by the Internal Revenue Service if the purchasers of the losses agree; and to offset any associated revenue losses by increasing the interest rate on certain related tax deficiencies; to the Committee on Finance.

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S. 354. A bill to section 108(f) of the Internal Revenue Code of 1986 to clarify the tax treatment of discharges of indebtedness under certain student loans; to the Committee on Finance.

By Mr. SIMON (for himself, Mr. HATCH, Mr. DECONCINI, Mr. THURMOND, Mr. HEFLIN, Mr. GRASSLEY, Mr. KOHL, Mr. BROWN, Ms. MOSELEY-BRAUN, Mr. COHEN, Mr. DASCHLE, Mr. PRESSLER, Mr. BRYAN, Mr. CRAIG, Mr. SHELBY, Mr. BENNETT, Mr. KRUEGER, Mr. SMITH, Mr. MATHEWS, Mr. KEMPTHORNE, Mr. CAMPBELL, Mr. NICKLES, Mr. GRAHAM, and Mr. LUGAR):

S.J. Res. 41. A joint resolution proposing an amendment to the Constitution of the United States to require a balanced budget; to the Committee on the Judiciary.

By Mr. BUMPERS (for himself, Mr. BROWN, Mr. BRYAN, Mr. COATS, Mr. D'AMATO, Mr. DODD, Mrs. FEINSTEIN, Mr. FORD, Mr. HATCH, Mr. HEFLIN, Mr. HELMS, Mr. JOHNSTON, Mr. KOHL, Mr. LIEBERMAN, Mr. METZENBAUM, Mr. MOYNIHAN, Mr. NUNN, Mr. PELL, Mr. PRYOR, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, Mr. STEVENS, and Mr. WARNER):

S.J. Res. 42. A joint resolution to designate the month of April 1993 as "Civil War History Month"; to the Committee on the Judiciary.

By Mr. LIEBERMAN (for himself, Mr. DODD, Mr. MOYNIHAN, Mr. D'AMATO, and Mr. LAUTENBERG):

S.J. Res. 43. A joint resolution designating the week beginning June 6, 1993, and June 5, 1994, as "Lyme Disease Awareness Week"; to the Committee on the Judiciary.

By Mr. LIEBERMAN (for himself, Mr. DODD, Mr. D'AMATO, and Mr. COHEN):

S.J. Res. 44. A joint resolution designating the week beginning April 18, 1993, as "Primary Immune Deficiency Awareness Week"; to the Committee on the Judiciary.

By Mr. MITCHELL (for himself, Mr. DOLE, Mr. PELL, Mr. HELMS, Mr. NUNN, Mr. DECONCINI, Mr. DASCHLE, Mr. MURKOWSKI, Mr. WELLSTONE, Mr. GORTON, Mr. BUMPERS, Mr. D'AMATO, Mr. INOUYE, Mr. SIMPSON, Mr. DORGAN, Mr. LUGAR, Ms. MIKULSKI, Mr. MCCAIN, Mr. CAMPBELL, Mr. DURENBERGER, Mr. FORD, Mrs. KASSEBAUM, Mr. KERRY, Mr. WARNER, Mr. ROBB, Mr. JOHNSTON, Ms. MOSELEY-BRAUN, Mr. SIMON, Mr. SARBANES, Mr. LEAHY, Mr. MATHEWS, Mr. COHEN, and Mr. GLENN):

S.J. Res. 45. A joint resolution authorizing the use of United States Armed Forces in Somalia; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LUGAR (for himself, Mr. DOLE, Mr. LOTT, Mr. BOND, Mr. GRASSLEY, Mr. SMITH, Mr. PRESSLER, Mr. KEMPTHORNE, Mr. GORTON, Mr. MCCAIN, Mr. HATFIELD, Mr. DANFORTH, Mr. WALLOP, Mr. BURNS, Mr. ROTH, Mr. THURMOND, Mr. COCHRAN, Mr. COATS, Mr. GRAMM, Mr. NICKLES, Mr. COVERDELL, Mr. SIMPSON, Mr. D'AMATO, Mr. SHELBY, and Mr. BROWN):

S. Res. 64. A resolution expressing the sense of the Senate that increasing the effective rate of taxation by lowering the estate tax exemption would devastate homeowners, farmers, and small business owners, further hindering the creation of jobs and economic growth; to the Committee on Finance.

By Mr. BIDEN:

S. Res. 65. An original resolution to authorize expenditures of the Committee on the Judiciary; from the Committee on the Judiciary; to the Committee on Rules and Administration.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. Res. 66. A resolution expressing the opposition of the Senate to the imposition of an import fee on crude oil and refined petroleum products; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. MCCAIN):

S. Res. 67. A resolution to remove "Select" from the title of the Select Committee on Indian Affairs and to designate room 485 in the Richard Brevard Russell Senate Office Building as the "Room of the First Americans; to the Committee on Rules and Administration.

By Mr. MITCHELL (for himself, Mr. HATFIELD, Mr. EXON, Mr. LEAHY, Mr. PELL, Mr. BIDEN, Mr. JEFFORDS, Mr. KENNEDY, Mr. DASCHLE, Mr. LEVIN, Mr. ROCKEFELLER, Mr. FORD, Mr. WELLSTONE, Mr. HARKIN, Mr. DODD, Mr. FEINGOLD, Mr. KOHL, Mr. SARBANES, Mr. CAMPBELL, Mr. AKAKA, Mr. KERRY, and Mr. SASSER):

S. Con. Res. 9. A concurrent resolution urging the President to negotiate a comprehensive nuclear weapons test ban; to the Committee on Foreign Relations.

By Mr. FORD (for Mr. MITCHELL):

S. Con. Res. 10. A concurrent resolution providing for a conditional recess or adjournment of the Senate from Thursday, February 4, 1993, or Friday, February 5, 1993, until Tuesday, February 16, 1993, and a conditional adjournment of the House from Thursday, February 4, 1993, or Friday, February 5, 1993, until Tuesday, February 16, 1993; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY (for himself, Mr. PRYOR, Mr. BOREN, Mr. DASCHLE, Mr. CONRAD, Mr. FEINGOLD, Mr. SHELBY, Mr. WELLSTONE, Mr. ROCKEFELLER, Mr. KOHL, Mr. SIMON, Mr. AKAKA, Mr. HARKIN, Mr. HEFLIN, and Mr. BREAUX):

S. 309. A bill to make emergency supplemental appropriations to provide a short-term stimulus to promote job creation in rural areas of the United States, and for other purposes; to the Committee on Appropriations.

RURAL JOBS AND INVESTMENT ACT OF 1993

Mr. LEAHY. Mr. President, in a few weeks President Clinton will unveil an economic program which will create jobs, promote economic growth through job-creating investments—and reduce the deficit.

The economy will not turn around until there are more jobs. I know that. President Clinton knows that. Secretary Reich knows that. Rural America has known that for a decade.

Mr. President, the theme of this bill is very simple. There is no future in rural America if there are no jobs.

That is why today I am introducing the Rural Jobs and Investment Act of 1993. This bill—an investment in rural America—is an essential part of any national economic package.

Rural America has suffered from a decade of neglect. The gains of the 1970's in combating rural poverty, unemployment, and population loss were reversed in the 1980's.

In 1992, 1 in 10 rural Americans was unemployed. One out of four rural children live in poverty. While economic reports show improvement in our economy, large layoffs continue. The adjusted unemployment number remains at a rate of over 10 percent.

Many of these Americans that are back at work are in part-time jobs. But this is nothing new for rural communities—persistent unemployment is a serious problem for our rural areas. If we are going to provide an economic stimulus package for the Nation, we must not neglect rural America.

While the most recent rural unemployment numbers appear to be closing the gap with our urban counterparts, they also highlight a persistent unemployment problem in our rural areas. Urban unemployment shifted dramatically during the recession while rural unemployment remained basically static. Adjusted figures show that urban unemployment rates swung from a low of 7.4 in 1990 to a high of 10.7 in the second quarter of 1992, whereas in rural areas during the end of the 1980's the unemployment rate hovered around its average adjusted rate of 10.9 percent—its low in 1990 was only 8.9 percent.

Declining population is an alarming problem for rural America as well. Nearly half of all rural counties lost population during the mid-1980's.

Too often, the best and brightest of our young people are leaving rural America. Not because they want to, but because they have to.

There is no future in rural America if our children are forced to move away in search of economic opportunity. There will be no future for rural America if there are no new jobs.

That is why I am introducing today the Rural Jobs and Investment Act of 1993.

The Rural Jobs and Investment Act of 1993 is built on the premise that we must provide the capital that new and expanding businesses need to create new jobs and revitalize rural America. We must invest in our infrastructure to attract businesses and investment and improve the quality of life.

This legislation is simple. It throws a life preserver to our rural economy. The bill will create an estimated 160,000 jobs quickly. It is an investment that will make rural America more competitive in the future.

The key to the success of this initiative is to create jobs and to do it quickly. There are no gimmicks here—this is an investment that will help rural Americans.

Instead of creating new Federal programs, this bill supplements 1993 funds that Congress already approved last fall. OMB Director Leon Panetta stated last week that one piece of the President's economic program would target "quick 'spend out' projects" to create jobs. This bill specifically targets money to programs that have proven records and to those that have backlogs of unfunded projects.

This will help speed up the process of getting the money out to communities so projects can begin and workers can be hired now. These projects include affordable housing, water, and sewer construction and repair, electric power transmission, and business expansion.

During the 1980's, while we spent billions of taxpayer's dollars on defense, S&L bailouts, and foreign aid, the needs of rural America were ignored. In a void created by a decade of neglect, rural America needs help now.

We can build strong rural communities that remain proud of their rural heritage. We can reclaim our American dream of prosperity and progress in Vermont and across America. We need to invest in our communities, invest in our people, and invest in our future.

President Clinton recognizes the importance of investing in our future. This bill is a clear message that rural America will be a partner in our Nation's economic future.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 309

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Rural Jobs and Investment Act of 1993".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. General appropriation authority.

TITLE I—AGRICULTURE, RURAL DEVELOPMENT AND RELATED AGENCIES

SUBTITLE A-FARMERS HOME ADMINISTRATION

Sec. 101. Rural housing insurance fund program account.
Sec. 102. Rental assistant program.
Sec. 103. Rural development insurance fund program account.
Sec. 104. Rural development loans program account.
Sec. 105. Rural water and waste disposal grants.
Sec. 106. Very low-income housing repair grants.
Sec. 107. Supervisory and technical assistance grants.
Sec. 108. Rural housing preservation grants.
Sec. 109. Rural development grants.
Sec. 110. Local technical assistance grants.

SUBTITLE B—RURAL ELECTRIFICATION ADMINISTRATION

Sec. 121. Rural electrification loans program account.

SUBTITLE C—OFFICE OF THE ASSISTANT SECRETARY FOR SCIENCE AND EDUCATION

Sec. 131. Alternative agricultural research and commercialization.

TITLE II—INTERIOR

Sec. 201. Energy conservation.

TITLE III—VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT

Sec. 301. Community development and planning.
Sec. 302. EPA construction grants and state revolving loan fund.

TITLE IV—COMMERCE, JUSTICE, AND STATE

Sec. 401. Microloan Demonstration Program.

SEC. 2. GENERAL APPROPRIATION AUTHORITY.

(a) IN GENERAL.—Subject to subsection (b), the sums described in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, to provide emergency supplemental appropriations for the fiscal year ending September 30, 1993.

(b) OFFSETTING REDUCTIONS.—Funds under this Act are available only to the extent that there is an offsetting rescission in the budget authority available for carrying out budget function 050 (National Defense) or budget function 150 (International Affairs), or both.

TITLE I—AGRICULTURE, RURAL DEVELOPMENT AND RELATED AGENCIES

SUBTITLE A—FARMERS HOME ADMINISTRATION

SEC. 101. RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT.

(a) GROSS OBLIGATIONS.—For additional gross obligations for direct loans as authorized under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.), to be available from funds in the Rural Housing Insurance Fund, as follows:

(1) $500,000,000 for loans to borrowers made under section 502 of such Act (42 U.S.C. 1472), as determined by the Secretary.

(2) $50,000,000 for housing repair loans made under section 504 of such Act (42 U.S.C. 1474).

(3) $250,000,000 for rental housing loans made under section 515 of such Act (42 U.S.C. 1485).

(b) COST OF LOANS.—For an additional amount for the cost, as defined in section 502(5) of the Congressional Budget Act of 1974 (2 U.S.C. 661a(5)), including the cost of modifying loans, of direct loans, as follows:

(1) $121,750,000 for low-income housing loans under section 502 of the Housing Act of 1949 (42 U.S.C. 1472).

(2) $20,090,000 for housing repair loans under section 504 of such Act (42 U.S.C. 1474).

(3) $132,500,000 for rental housing purposes under section 515 of such Act (42 U.S.C. 1485).

SEC. 102. RENTAL ASSISTANCE PROGRAM.

For additional rental assistance agreements entered into under or renewed under section 521(a)(2) of the Housing Act of 1949 (42 U.S.C. 1490a(a)(2)), $70,000,000.

SEC. 103. RURAL DEVELOPMENT INSURANCE FUND PROGRAM ACCOUNT.

(A) GROSS OBLIGATIONS.—For additional gross obligations for the principal amount of direct loans as authorized by sections 308, 309A, 310A, and 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1928, 1929A, 1931, and 1932), to be available from funds in the Rural Development Insurance Fund, as follows:

(1) Water and sewer facility loans, $600,000,000.

(2) Community facility loans, $250,000,000.

(b) COST OF LOANS.—For an additional amount for the cost, as defined in section 502(5) of the Congressional Budget Act of 1974 (2 U.S.C. 661a(5)), including the cost of modifying loans, of direct loans, as follows:

(1) $87,360,000 for water and sewer facility loans.

(2) $21,025,000 for community facility loans.

SEC. 104. RURAL DEVELOPMENT LOANS PROGRAM ACCOUNT.

(a) COST OF LOANS.—For an additional amount for the cost, as defined in section 502(5) of the Congressional Budget Act of 1974 (2 U.S.C. 661a(5)), including the cost of modifying loans, of direct loans from the Rural Development Loan Fund established under section 623(a) of the Community Economic Development Act of 1981 (42 U.S.C. 9812(a)), $50,000,000.

(b) PRINCIPAL AMOUNT OF LOANS.—The funds made available under subsection (a) shall be available to subsidize gross obligations for the principal amount of direct loans of not to exceed $100,000,000.

SEC. 105. RURAL WATER AND WASTE DISPOSAL GRANTS.

(a) IN GENERAL.—For additional grants pursuant to paragraphs (2) and (6) of section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), $500,000,000, to remain available until expended, pursuant to section 306(d) of such Act.

(b) PURPOSES.—The funds made available under subsection (a) shall not be used for any purpose not specified in section 306(a) of the Consolidated Farm and Rural Development Act.

SEC. 106. VERY LOW-INCOME HOUSING REPAIR GRANTS.

For additional grants to the very low-income elderly for essential repairs to dwellings pursuant to section 504 of the Housing Act of 1949 (42 U.S.C. 1474), $50,000,000, to remain available until expended.

SEC. 107. SUPERVISORY AND TECHNICAL ASSISTANCE GRANTS.

For additional grants pursuant to section 525 of the Housing Act of 1949 (42 U.S.C. 1479 and 1490e), $10,000,000, to remain available until expended.

SEC. 108. RURAL HOUSING PRESERVATION GRANTS.

For additional grants for rural housing preservation as authorized by section 533 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 1490m), $50,000,000.

SEC. 109. RURAL DEVELOPMENT GRANTS.

(a) IN GENERAL.—For additional grants authorized under section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)) to any qualified public or private nonprofit organization, $100,000,000.

(b) LIMITATIONS.—Effective for fiscal year 1991 and thereafter, grants made pursuant to subsection (a) shall not be subject to any dollar limitation unless the limitation is set forth in law.

SEC. 110. LOCAL TECHNICAL ASSISTANCE GRANTS.

For additional local technical assistance grants authorized under section 306(a)(11) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(11)), $15,000,000.

SUBTITLE B—RURAL ELECTRIFICATION ADMINISTRATION

SEC. 121. RURAL ELECTRIFICATION LOANS PROGRAM ACCOUNT.

(a) INSURED LOANS.—For additional insured loans pursuant to section 305 of the Rural Electrification Act of 1936 (7 U.S.C. 935) for rural electrification loans, $700,000,000, to remain available until expended.

(b) COST OF LOANS.—For the additional cost, as defined in section 502(5) of the Congressional Budget Act of 1974 (2 U.S.C. 661a(5)), including the cost of modifying loans, of direct rural electrification loans authorized by section 305 of the Rural Electrification Act of 1936 (7 U.S.C. 935), for the additional cost of direct rural electrification loans, $131,000,000.

SUBTITLE C—ALTERNATIVE AGRICULTURE RESEARCH AND COMMERCIALIZATION

SEC. 131. ALTERNATIVE AGRICULTURAL RESEARCH AND COMMERCIALIZATION.

For an additional amount for necessary expenses to carry out the Alternative Agricultural Research and Commercialization Act of 1990 (7 U.S.C. 5901 et seq.), $20,000,000.

TITLE II—INTERIOR

SEC. 201. ENERGY CONSERVATION.

For additional amounts to enable the Secretary of Energy to make grants under title III of the Energy Conservation and Production Act (42 U.S.C. 6831 et seq.)—

(1) $150,000,000 to be used for the weatherization assistance program for low income persons; and

(2) $150,000,000 to be used for the Institutional Conservation Program and the State Energy Conservation Program.

TITLE III—VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT

SEC. 301. COMMUNITY DEVELOPMENT AND PLANNING.

(a) IN GENERAL.—For an additional amount to carry out a community development grants program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.), $1,000,000,000, to be obligated for making grants to States and units of local government under such Act.

(b) LIMITATION.—For purposes of applying the limitation contained in section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(8)) to amounts made available under this section, the maximum percentage of funds received by a unit of general local government under this section that may be used for the provision of public services shall be 20 percent.

SEC. 302. EPA CONSTRUCTION GRANTS AND STATE REVOLVING LOAN FUND.

For an additional amount to carry out the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and the Water Quality Act of 1987 (33 U.S.C. 1251 et seq.), $1,000,000,000, of which—

(1) $500,000,000 shall be made available for grants under title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.); and

(2) $500,000,000 shall be made available for State water pollution control revolving funds established under title VI of such Act (33 U.S.C. 1381 et seq.).

TITLE IV—COMMERCE, JUSTICE, AND STATE

SEC. 401. MICROLOAN DEMONSTRATION PROGRAM.

(a) TECHNICAL ASSISTANCE GRANTS.—For an additional amount for necessary expenses, not otherwise provided for, of the Small Business Administration for making technical assistance grants under the Microloan Demonstration Program established by section 7(m) of the Small Business Act (15 U.S.C. 636(m)), $3,000,000.

(b) BUSINESS LOANS PROGRAM ACCOUNT.—For the cost, as defined in section 502(5) of the Congressional Budget Act of 1974 (2 U.S.C. 661a(5)), including the cost of modifying loans, of direct loans for carrying out not more than 50 microloan programs under the Microloan Demonstration Program, $2,600,000, to be made available until expended for the subsidy cost of $15,000,000 in direct loans for the Microloan Demonstration Program.

Mr. FEINGOLD. Mr. President, I am pleased to cosponsor S. 309, the Rural Jobs and Investment Act of 1993, introduced today by my friend the senior Senator from Vermont [Mr. LEAHY]. He properly signals, with this legislation, the need to include rural America in our efforts to stimulate economic growth and the creation of new jobs.

The legislation also demonstrates an appreciation for the larger, longer term economic problem we face, the Federal budget deficit, by providing for full funding of the proposed legislation with spending cuts.

That feature is key and essential.

If we are ever to make progress in reducing our budget deficit, new appropriations must be funded by equal or greater cuts in spending or increased revenues or both.

Mr. President, I want to emphasize that I fully support this legislation with its offsetting cuts from existing programs. I also want to underscore my own strong feeling that we need to proceed with deficit reduction.

Indeed, I strongly prefer, and may at some point offer, language which requires additional deficit reduction as a condition of the new spending in any economic stimulus legislation. Beyond what is accomplished in this bill, namely funding the spending levels outlined in it, such a provision would require additional deficit reduction through either spending cuts or revenue increases.

Mr. President, we must proceed with deficit reduction at the same time we pursue efforts to stimulate the economy. Failure to do so dooms the short-term effort, and makes the longer term problem that much more difficult.

Recent economic forecasts indicate that the deficit is even worse than it was through to be just a few months ago. Our economy suffers under its weight. It diverts needed private capital away from job-creating investment into Government debt; it restricts growth in national productivity; it denies future generations the ability to shape their Government and their economy.

Fully funding new appropriations may not worsen the deficit, but neither does it reduce it, and being deficit neutral is not enough.

Mr. President, as the body considers various packages to stimulate the economy, I will support efforts that fully fund those packages, and that go beyond that to lower the Federal deficit. In addition, though, I will support and join in efforts that seek to lower the deficit directly.

In recognizing that the economy needs targeted stimulation, we must also be mindful that the deficit is the overriding problem facing our economy.

Mr. President, having said that, we must also note that much of rural America is suffering. One out of every four children living in our rural communities lives in poverty and 1 out of 10 rural Americans is unemployed. Rural Americans and their commu-

nities cannot and should not be ignored if we are to revitalize our Nation's economy, accordingly, any effort to stimulate the economy must include a significant rural component.

I am proud to support this needed catalyst for the rural economy.

Mr. WELLSTONE. Mr. President, the needs and troubles of rural Americans have received less attention than has been warranted in recent years. But those of us who have lived in nonmetropolitan areas for much of our lives, or who represent States with large nonmetropolitan populations, know that those troubles have been great. I have spoken many times here on the subject.

I will have many more opportunities to address this topic, especially since, I am proud to announce, I have just this week been named chairman of the Senate Small Business Committee's Subcommittee on Rural Economy and Family Farming. I will not, therefore, spend time today cataloguing our heartland's problems. I am committed to making sure that rural revitalization is part of any national economic recovery program.

I am pleased to join the chairman of the Agriculture Committee, my friend Senator LEAHY, in cosponsoring the Rural Jobs and Investment Act of 1993. I was an original cosponsor of the same bill last year.

The bill takes immediate and concrete steps to address the economic difficulties of rural America. It mobilizes Federal Government resources immediately to build and maintain necessary economic infrastructure in rural communities. It will create new jobs right away, when jobs are exactly what those communities most urgently need. The programs for this measure already exist, and the administrative structure is in place. Implementing this bill will not add to the deficit because funds would be provided by offsets in defense spending.

I hope that this bill, which will provide an immediate infusion of $5.6 billion for backlogged projects that meet urgent needs in rural housing, sewer and water, energy conservation and weatherization, electrification, and other infrastructure categories, will become part of a comprehensive economic recovery package soon to be considered by the Senate.

In addition to funding for infrastructure, the measure also promotes rural economic development through community development block grants, Small Business Administration microloans and the Alternative Agricultural Research and Commercialization Program. I have a particularly strong commitment to these latter two items, which I will continue to support through my actions in the Small Business Committee.

This bill will give people jobs quickly doing needed work. In Minnesota there is a great deal of outstanding demand for such projects. There is a backlog of rental housing applications which, if fully funded, could bring nearly $10 million to Minnesota in direct construction spending. Similarly, Minnesota has over 600 applications outstanding for single-family housing loans, loans which nationally average over $45,000 apiece. There is clearly a strong need for more housing in rural Minnesota.

Thirteen Minnesota rural electrical cooperatives also have outstanding applications for loans that would be guaranteed or insured under the provisions of this bill, to the total tune of over $30 million. In addition, the backlog for sewer and water projects in rural Minnesota totals over $50 million in loans and grants.

Funding for projects such as these will directly benefit my State, as it will every other State with rural project backlogs in these program areas. We estimate that this measure will create over 160,000 jobs nationwide. Rural jobs and infrastructure have been too long neglected in our economic policy, and we as a Nation are suffering the consequences. I urge my colleagues to support this legislation.

Mr. HARKIN. Mr. President, this legislation represents the kind of investment in economic growth and quality of life for rural America that has been neglected for too long. I am pleased to be a cosponsor of this important legislation, and I am hopeful that it can be substantially included in the stimulus economic package that is now being crafted.

This bill is designed to create over 160,000 jobs quickly, putting people in rural America to work on useful jobs. But it is not a make-work bill. It will put people to work on the kinds of projects that constitute investments in the economic growth and competitiveness of rural America, building a future of opportunity instead of decline for rural America. No one who knows rural communities are going to continue the wrenching decline that has become so acute in recent years. This bill will go a long way in turning our policy in the right direction.

Our country has paid a steep price for failing to make the necessary investments that promote economic growth and competitiveness. Net public investment in the United States in basic infrastructure, as a percentage of total economic output, is the lowest of all major industrial nations. Overall capital investment in the United States as a percentage of GDP also lags that of other countries. And as our investment has declined so has our economic growth and our competitiveness. In the 1960's, productivity grew at annual rate of 1.8 percent in the United States. That rate had fallen to 0.7 percent during the early 1980's.

The legislation would provide money for a range of programs that are vital to economic recovery in rural America: rural housing, rural electrification and telecommunications, water and sewer projects, rural development revolving loans, energy conservation and weatherization, community development block grants, waste water treatment, and small business microloans. In addition, I am pleased that Chairman LEAHY has included in the bill $20 million for the Alternative Agricultural Research and Commercialization Program. I have long stressed the importance of developing new markets for farm commodities—while also promoting economic development in rural areas—through research and commercialization of alternative agricultural products. In addition, I am hopeful that the economic stimulus package will include critically needed investments in agricultural research facilities.

This legislation will put $5.58 billion into overdue, vital investments in the future America. Yet it will do so without increasing the Federal budget deficit, since the spending would not occur without reductions in defense and other spending. In any event, the investment provided in this legislation is the kind of spending that will help us reduce the Federal budget deficit by lowering Federal assistance costs and by increasing employment, tax revenues, and economic growth.

Mr. President, this legislation will put us on the right track in reversing the decline that has blighted rural America. I hope that my colleagues will support this bill and that its provisions will soon be enacted as part of a comprehensive economic stimulus package.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 310. A bill to amend title V of Public Law 96-550, designating the Chaco culture archaeological protection sites, and for other purposes; to the Committee on Energy and Natural Resources.

CHACOAN OUTLIERS PROTECTION ACT

Mr. DOMENICI. Mr. President, I rise today to introduce the Chacoan Outliers Protection Act of 1993. This legislation will expand the Chaco culture archaeological protection sites to include an additional 5,516 acres containing structures and artifacts associated with the Chacoan Anasazi Indian culture of the San Juan Basin of New Mexico.

I am pleased to have the support of Senator BINGAMAN on this legislation, which will preserve sites of major cultural significance for future generations and assure that the sites are protected from further degradation.

The San Juan Basin is an area of major significance to the cultural history of North America. It is estimated that the first human occupation of the area dates as far back as 10,000 years ago, when Paleo-Indian hunters entered the area.

The culture of these hunter-gatherers evolved quickly. Within the period spanning from 500 to 900 A.D., the culture of the people of the San Juan Basin, part of a larger culture known as the Anasazi, a Navajo term meaning "the ancient ones," had developed more quickly than nearby Anasazi communities and cultures.

While modern-day Chaco Canyon is a remote and barren site, ancient Chaco Canyon was the center of the Anasazi civilization. The Anasazi flourished, building many pueblos and structures around Chaco Canyon and establishing a large network of outlying communities, which are what we now refer to as the Chacoan outliers. These outliers were spread over an area of more than 30,000 square miles and linked by an extensive system of roads.

As suddenly as the Anasazi evolved and thrived in the San Juan area, by A.D. 1300 the culture had quickly disappeared, lasting only a brief 400 years. The sudden evolution and disappearance of the Anasazi, as well as the purpose of Chaco Canyon and its outliers, are two of archeology's more intriguing mysteries.

It is traditionally believed that Chaco was a trade center for as many as 75 outlying communities in the area. Others maintain that Chaco was a religious and ceremonial site. While no one is certain exactly what function Chaco served in its time, all agree that it remaining sites must be preserved and protected.

Chaco Canyon has long been recognized as a nationally and internationally significant site. In March 1907, a Presidential proclamation established Chaco Canyon as a national monument. The monument was further enlarged in 1928 by another Presidential proclamation.

In 1980, I introduced and the Congress passed the Chaco Culture National Historical Park Establishment Act, which became Public Law 96-550. This act enlarged the park and reestablished it as the Chaco Culture National Historical Park, consisting of the main body of the park and three noncontiguous units. The act also mandated procedures for the protection, preservation, and administration of archeological remnants of the Chacoan culture.

When Chaco Canyon was first afforded Federal protection in 1907, numerous archeological sites were known to exist outside the boundaries of the national monument. Their relationship to Chaco Canyon, however, was unclear. Archeologists subsequently determined that many of these sites—some as far as 100 miles from Chaco Canyon—were part of the Chacoan culture.

To the untrained eye, the physical remains of the Chacoan outliers are difficult to discern. At some of the sites, walls still stand. At most sites, however, the magnificent structures of the Anasazi people have collapsed into a mound of rubble, which over the years have been buried by the desert sands and eroded by sand and wind. Unfortunately, many of these sites were further vandalized by unscrupulous pot-hunters or degraded by development activities.

In order to protect these outliers, the Chaco Culture National Historical Park Establishment Act designated 33 sites as Chaco culture archeological protection sites. The Secretary of the Interior is charged with managing these sites in order to preserve them and provide for their interpretation and study. Activities that would endanger the cultural values of the sites are prohibited.

Ownership of the lands containing the archeological protection sites is a checkerboard of private, State, Federal, and Indian interests. The Indian interests include trust, allotted, and fee parcels. In addition, some surface and subsurface ownerships are divided between two or more entities. Therefore, the act mandated that these lands be protected by cooperative agreements, rather than Federal acquisition, where possible.

The Chacoan outliers are not included in the National Park System. Rather, they are managed primarily by the Bureau of Indian Affairs and the Bureau of Land Management. These entities are responsible for resource protection and preservation at the sites.

This legislation will expand the existing Chaco culture archeological protection sites system to add a total of 8 new sites to the 33 existing sites in the Chaco cultural archeological protection sites system. Those sites are: Casamero; Chimney Rock; Dittert; Guadalupe; Manuelito-Atsee Nitsaa; Manuelito-Kin Hochoi; Navajo Springs; and Salmon Ruins.

Included in these new archeological protection sites is the first Forest Service site, Chimney Rock in southern Colorado. The Manuelito sites have been designated as "Priority 1 National Historic Landmarks" because severe erosion has damaged the sites.

The bill also will expand the boundaries of 13 of the existing protection sites by a total of 2,368 acres. The sites to be expanded are: Allentown; Andrews Ranch; Bee Burrow; Coolidge; Dalton Pass; Great Bend; Grey Hill Spring; Haystack; Hogback; Jacques; Newcomb; Peach Springs; San Mateo; and Standing Rock.

Three sites—Las Ventanas, Morris 41, and Squaw Springs—would be deleted from the system, and four sites—Muddy Water, section 8, and Skunk Springs/Crumbled House—would be reduced by a total of 205 acres.

The net results of the changes to be made by the Chacoan Outliers Protection Act would be to increase the number of Chaco culture archeological protection sites from 33 to 38 and to increase the acreage of the system by 5,516 acres to 14,287 acres.

The bill also includes technical changes to the Chaco Culture National Historical Park Establishment Act to clarify that some sites lie outside the San Juan Basin, to correct the spelling of the name of the Jacques site, and to direct that maps of the sites be filed with various agencies that have management responsibility for the sites. We have also directed the Secretary to assist the Navajo Nation in the protection and management of the sites located on lands under the Navajo Nation's jurisdiction.

These changes, which are the result of dedicated years of research by Federal, State, and Indian archaeologists, were recommended by the Interagency Management Group for the Chaco culture archeological protection sites, consisting of the National Park Service, the Bureau of Indian Affairs, the Bureau of Land Management, the Forest Service, the Navajo Nation, and the State of New Mexico. They also are in accordance with the 1983 joint management plan for the Chaco culture archeological protection sites.

This bill is similar to the amended version of S. 772 from the 102d Congress, which was approved unanimously in committee and by the Senate in 1991. Unfortunately, it was not acted upon by the House. I am hopeful we will be more fortunate during the 103d Congress. These sites are part of the cultural heritage of all Americans and we must act quickly to preserve them. Cultural resources, once lost, can never be restored or regained.

I ask unanimous consent that the text of the bill be printed in the RECORD immediately following my remarks.

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

S. 310

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 "Chacoan Outliers Protection Act of 1993".

SEC. 2. CONFORMING AMENDMENT.

(a) Section 501 of Public Law 96-550 (16 U.S.C. 410ii) is amended in the title by striking "Congressional findings" and inserting in lieu thereof "Congressional findings and purpose".

(b) Section 501(b) of Public Law 96-550 (16 U.S.C. 410ii(b)) is amended by striking "San Juan Basin;" and inserting in lieu thereof, "San Juan Basin and surrounding areas;".

SEC. 3. ADDITIONS TO CHACO CULTURE ARCHEOLOGICAL PROTECTION SITES.

Subsection 502(b) of Public Law 96-550 (16 U.S.C. 410ii-1(b)) is amended to read as follows:

"(b)(1) Thirty-eight outlying sites as generally depicted on a map entitled "Chaco Culture Archeological Protection Sites", numbered 310/80,033-B and dated September 1991, are hereby designated as 'Chaco Culture Archeological Protection Sites'. The thirty-

eight archeological protection sites totalling approximately 14,287 acres identified as follows:

Name:

	Acres
Allentown	380
Andrews Ranch	950
Bee Burrow	480
Bisa'ani	131
Casa del Rio	40
Casamero	160
Chimney Rock	3,160
Coolidge	450
Dalton Pass	135
Dittert	480
Great Bend	26
Greenlee Ruin	60
Grey Hill Spring	23
Guadalupe	115
Halfway House	40
Haystack	565
Hogback	453
Indian Creek	100
Jacques	66
Kin Nizhoni	726
Lake Valley	30
Manuelito-Atsee Nitsaa	60
Manuelito-Kin Hochoi	116
Muddy Water	1,090
Navajo Springs	260
Newcomb	50
Peach Springs	1,046
Pierre's Site	440
Raton Well	23
Salmon Ruin	5
San Mateo	61
Sanostee	1,565
Section 8	10
Skunk Springs/Crumbled House	533
Standing Rock	348
Toh-la-kai	10
Twin Angeles	40
Upper Kin Klizhin	60.

"(2) The map referred to in paragraph (1) shall be kept on file and available for public inspection in the appropriate offices of the National Park Service, the office of the State Director of the Bureau of Land Management located in Santa Fe, New Mexico, the office of the Area Director of the Bureau of Indian Affairs located in Window Rock, Arizona, and the offices of the Arizona and New Mexico State Historic Preservation Officers.".

SEC. 4. ASSISTANCE TO THE NAVAJO NATION.

Section 506 of Public Law 96-550 (16 U.S.C. 410ii-5) is amended by adding the following new subsection at the end thereof:

"(f) The Secretary is directed, subject to appropriations, to assist the Navajo Nation in the protection and management of those Chaco Culture Archeological Protection Sites located on lands under the jurisdiction of the Navajo Nation through a grant, contract, or cooperative agreement entered into pursuant to the Indian Self-Determination and Education Act (Public Law 93-638), as amended, to assist the Navajo Nation in site planning, resource protection, interpretation, resource management actions, and such other purposes as may be identified in such grant, contract, or cooperative agreement.".

Mr. BINGAMAN. Mr. President, I am pleased to cosponsor this legislation which will insure the protection of an additional seven Chacoan outlier sites. The historical importance of Chaco Canyon is well documented. It is a national monument and has been designated by the United Nations as a world cultural heritage property. Chaco Canyon was the center of the Anasazi culture which flourished in the San Juan Basin of northern New Mexico and southern Colorado from 900 A.D. to 1300 A.D. The Anasazi had an extensive road network that linked the numerous surrounding pueblos and other structures to Chaco Canyon. These sites are known as Chacoan outliers and are integral to the study of Chacoan culture. They often range 100 miles from Chaco Canyon and are in varying states of decay. Immediate action is needed to preserve them from further degradation by erosion and acts of vandalism.

This legislation will protect a further seven sites under the Chaco Culture Archeology Protection Sites Act. Though many of the sites do not have much impact on the untrained eye; they are irreplaceable to the archeologist. If these physical signs of the Anasazi culture are allowed to further deteriorate, scientists will not have sufficient evidence to solve the many riddles that still remain regarding the Anasazi.

The bill will also expand the boundaries of 13 of the existing protection sites by a total of 2,328. Three sites are to be deleted—Las Ventanas, Morris 41, and Squaw Springs. Reductions in acreage will be made to four sites—Jaquez, Muddy Water, section 8, and Skunk Springs/Crumbled House. The net result of the act would be to increase the number of protected sites from 33 to 37 and to increase the acreage of the system from 4,996 to 13,767.

This bill was passed in the Senate last Congress, but action was not taken in the House before adjournment. I hope my colleagues will join with me in supporting the protection of this internationally renowned archeological treasure. I ask that my remarks be printed in the RECORD.

By Mr. BUMPERS:

S. 311. A bill to amend section 2511 of title 18, United States Code, to make lawful the interception of an oral, wire, or electronic communication that is made with the consent of all parties to the communication; to the Committee on the Judiciary.

ELECTRONIC COMMUNICATIONS ACT OF 1993

Mr. BUMPERS. Mr. President, I rise to announce to the Senate that I am today introducing a bill dealing with the interception of telephone conversations. I introduced this bill about 10 years ago but it was not passed.

I daresay that there are very few people in the Senate and across the country who know that a constituent can call you and talk to you as long as he wishes, and he can record the entire conversation without your knowledge and do so quite legally. There is absolutely no prohibition against intercepting and recording a telephone conversation between two people as long as one of the parties to the conversation knows it is being recorded, namely, the party who is doing the recording or has given consent to another person to do the recording.

The thing that piqued my interest in this matter may years ago was a man named Charles Wick, who was head of USIA. It was revealed that he had a real penchant for recording telephone conversations. He freely admitted that he had recorded conversations with President Reagan, who has appointed him, with President Reagan not even knowing the conversation was being recorded. He had recorded former President Jimmy Carter, and when the investigation was finished, he had recorded something like 85 telephone conversations with the President, a former President, Cabinet members, everybody.

Now, I was absolutely appalled, and I quickly introduced a bill to stop that. And for the life of me, Mr. President, to this very moment I do not know why I was not able to get that bill passed.

I want to make this point. It is against the law to record a conversation where you have tapped into somebody's telephone, where neither of the conversants know you are taping them. It is against the law to record the conversation, and it is against the law to distribute a taped conversation, but it is not a crime of any kind, not even a misdemeanor, for one person to tape a telephone conversation with another. It is what I call telecommunications peeping toms, where only one party to the call knows he is peeping.

Now, Mr. President, when I introduced this bill before, people in the Senate came to me and said to me, "Dale, that is a wonderful bill. I had no idea that was the law."

I remember New York Times writer Bill Safire wrote two or three columns about it. He was firmly in my corner. We talked several times on the phone about it.

When I first introduced this bill in 1984, people said, "You have not sufficiently protected law enforcement." I have protected law enforcement in this Bill. I have said that this bill has nothing to do with surveillance by law enforcement officers carrying out their official duties.

So the FBI and the sheriffs and police departments of this country and those involved in foreign intelligence activities should, have no fear, the bill does not apply to them. They can continue to operate precisely as you have in the past. In fact, my bill leaves undisturbed all the existing exceptions to the law.

To people like the airlines or the telephone companies or other employers whose employees carry out their duties by telephone where a supervisor listens in on a conversation with a telephone operator who is making reservations for the airline, or who is an information operator, or selling items from a catalog, and the supervisor

wants to know how well that person is performing his or her duties on the telephone, this bill does not disturb the current situation. Incidentally, that is often a contractual arrangement. If you go to work at the telephone company as an operator, and if you are an information operator, occasionally the supervisor will monitor your conversation to make sure you are not being rude or impolite, indeed, to make sure you are carrying out your duties as you are supposed to. This bill does not disturb that. I wish I could get at all the people that call my house at night trying to sell me bonds and aluminum siding and everything else. I would like to stop that. But this bill does not do that. Their employers would still be permitted to monitor their calls.

This bill is very narrowly drawn to fill what I consider to be one of the most egregious loopholes in the law of this Nation. There are some people who are very circumspect, who know about this gap in the law, and when they are talking on the telephone, they are very circumspect. They do not use profanity, tell dirty jokes, reveal personal information, but sometimes they are being called by somebody that is a good friend, they do not think much about it and they do not know, but the telephone conversation is being intercepted, monitored or even recorded.

Mr. President, this bill has been carefully crafted. We have worked on it in our office for 2 months. We have made sure that this will not be a labor issue. We do not want to get into that. We do not want to change the law regarding caller ID. All I want to do is to stop this practice of interception of an electronic communication between or among two or more parties without the consent of all parties to that communication, which is much more pervasive than the Members of this body would ever dare believe.

Mr. President, I ask unanimous consent that this bill be reported in the RECORD immediately after the conclusion of my remarks.

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

Mr. BUMPERS. I urge my colleagues, when they see this bill in the RECORD tomorrow, to join me as a cosponsor. I have done my very best to eliminate all of the problems I had 10 years ago in trying to get this done. I have drawn it very narrowly just to stop one practice, which as I say is much more pervasive than Members of this body would believe, and a practice which everybody on the face of it would certainly agree should be stopped.

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

S. 311

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 Telephone Privacy Act of 1993".

SEC. 2. CONSENT TO INTERCEPTION OF AN ORAL, WIRE, OR ELECTRONIC COMMUNICATION.

Subsection 2(d) of Section. 2511 of title 18, United States Code, is amended to read as follows:

"2(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where

(i) all parties to the communication have given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States; or

(ii) such person is an employer, or the officer or agent of an employer, engaged in lawful electronic monitoring of its employees' communications made in the course of the employees' duties.

By Mr. DOMENICI.

S. 312. A bill to suspend temporarily the duty on rifabutin (dosage form); to the Committee on Finance.

RIFABUTIN DUTY SUSPENSION ACT

Mr. DOMENICI. Mr. President. I am pleased to reintroduce legislation from the 102d Congress that will provide a temporary duty suspension for the AIDS drug rifabutin in dosage form.

Rifabutin is a product used in the treatment of AIDS patients to prevent or delay the onset of the life-threatening infection mycobacterium avium complex [MAC]. MAC is believed to be a major cause of the wasting syndrome suffered by AIDS patients. Individuals with the MAC infection experience chronic, debilitating symptoms affecting many parts of the body. Fever, weight loss, fatigue, and gastrointestinal problems are common and, frequently, fatal.

Rifabutin is produced by a single Italian company worldwide. Once imported into the United States, the product will be bottled, packaged and distributed by Adria Laboratories, a major United States manufacturer of oncological and immunological products. Actual work will be accomplished in Adria's New Mexico facility, Adria S.P., Inc., located in Albuquerque.

Recently approved for use by the Food and Drug Administration, under current law rifabutin is subject to a 3.7 percent duty. My bill to suspend this tariff temporarily will facilitate the distribution of a potentially important AIDS treatment in the United States by helping to hold down its cost.

I hope that the Senate will consider this measure on an expeditious basis.

I ask unanimous consent that a copy of the bill be printed in the CONGRESSIONAL RECORD along with this floor statement.

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

S. 312

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RIFABUTIN (DOSAGE FORM).

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

9902.31.12 (Rifabutin-dosage form) (CAS No. 72559-06-9) (provided for in subheading 3004.20.00)	Free	No change	No change	On or before 12/31/94

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 313. A bill to amend the San Juan Basin Wilderness Protection Act of 1984 to designate additional lands as wilderness and to establish the Fossil Forest Research Natural Area, and for other purposes; to the Committee on Energy and Natural Resources.

BISTI AND DE-NA-ZIN WILDERNESS EXPANSION AND FOSSIL FOREST PROTECTION ACT

Mr. DOMENICI. Mr. President, I am pleased to rise today, along with the other Senator from New Mexico, Senator BINGAMAN, to introduce legislation that will amend the San Juan Wilderness Protection Act of 1984, to designate the additional lands as wilderness, and to establish the Fossil Forest Research Natural Area.

In December 1991, approximately 10,750 acres between the Basti Wilderness and the De-Na-Zin Wilderness were exchanged to the Bureau of Land Management with the Bureau of Indian Affairs, acting in trust for the Navajo Tribe. These lands are included in the approximately 16,674 acres that will join the Basti and De-Na-Zin wilderness areas into one wilderness area.

These newly acquired lands are immediately adjacent to the existing boundaries of the Basti and De-Na-Zin Wilderness areas and are of high wilderness quality. The area appears to have been affected primarily by the forces of nature with the imprint of human activity substantially unnoticeable.

This bill includes additional lands that will require further exchanges with the State of New Mexico and the Navajo Tribe. Both parties indicate that they are willing to enter into agreements to consummate the exchange of lands.

Together with recently acquired lands and the two wilderness areas pre-

viously designated, this proposal will create one wilderness with official, manageable boundaries that will enhance the wilderness experience for visitors and help insure continued protection of this resource for future generations of Americans.

The scenic eroding badlands that dominate this area, the neighboring Bisti Wilderness and the western portion of the De-Na-Zin Wilderness, provide an outstanding opportunity for solitude as well as primitive and unconfined hiking, backpacking, photography, and geological/palentological sightseeing. The badlands topography of the acquired lands naturally bridges the two wilderness areas into a picturesque expanse with a wide variety of rich colors and landform.

The Fossil Forest Research Natural Area is named for the abundant petrified tree stumps and logs which lie exposed on its surface. Many of these stumps are preserved in place with root systems still intact. A wealth of data and fossil material have been collected in the fossil forest over the past 10 years.

Four major dinosaur bone quarries and several micro-vertebrate and invertebrate localities have been excavated during this period, including a critically important Cretaceous Age, 75 million years ago, mammal quarry. The occurrence of this diverse assemblage of fossil fauna and flora provides a unique opportunity to peek through a small window of time, 70 to 80 million years ago, to examine an important episode of geological and biological change.

Mr. President, I urge the Senate to move rapidly on this important legislation in an effort to improve the National Wilderness Preservation System and to conserve a unique palentological area that represents an important period of time and space in our country's natural history.

Mr. President, I ask unanimous consent that this bill be printed for the RECORD.

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

S. 313

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 "Bisti/De-Na-Zin Wilderness Expansion and Fossil Forest Protection Act".

SEC. 2. BISTI/DE-NA-ZIN WILDERNESS.

(a) WILDERNESS DESIGNATION.—Section 102 of the San Juan Basin Wilderness Protection Act of 1984 (Public Law 98-603) is amended—

(1) in subsection (a)—

(A) by striking "wilderness, and, therefore," and all that follows through "System—" and inserting "wilderness areas, and as one component of the National Wilderness Preservation System, to be known as the 'Bisti/De-Na-Zin Wilderness'—";

(B) in paragraph (1), by striking ", and which shall be known as the Bisti Wilderness; and" and inserting a semicolon;

(C) in paragraph (2), by striking ", and which shall be known as the De-na-zin Wilderness." and inserting "; and"; and

(D) by adding at the end the following new paragraph:

"(3) certain lands in the Farmington District of the Bureau of Land Management, New Mexico, which comprise approximately 16,674 acres, as generally depicted on a map entitled 'Bisti/De-Na-Zin Wilderness Amendment Proposal', dated May 1992.";

(2) in the first sentence of subsection (c), by inserting after "of this Act" the following: "with regard to the areas described in paragraphs (1) and (2) of subsection (a), and as soon as practicable after the date of enactment of subsection (a)(3) with regard to the area described in subsection (a)(3)";

(3) in subsection (d), by inserting after "of this Act" the following: "with regard to the areas described in paragraphs (1) and (2) of subsection (a), and where established prior to the date of enactment of subsection (a)(3) with regard to the area described in subsection (a)(3)"; and

(4) by adding at the end the following new subsection:

"(e)(1) The lands described in subsection (a)(3) are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing, geothermal leasing, and mineral material sales.

"(2) To satisfy valid existing rights, the Secretary of the Interior may follow the lease exchange procedures specified in sections 3430.5 and 3435 of title 43, Code of Federal Regulations, on any coal preference right lease application for lands within the area described in subsection (a)(3) if the applicant demonstrates that coal exists in commercial quantities on the lands that are the subject of the application.

"(3) Operations on oil and gas leases issued prior to the date of enactment of subsection (a)(3) shall be subject to the applicable provisions of Group 3100 of title 43, Code of Federal Regulations (including section 3162.5-1), and such other terms, stipulations, and conditions as the Secretary of the Interior considers necessary to avoid significant disturbance of the land surface or impairment of the ecological, educational, scientific, recreational, scenic, and other wilderness values of the lands described in subsection (a)(3) in existence on the date of enactment of subsection (a)(3).".

(b) EXCHANGES FOR STATE LANDS.—Section 104 of the Act is amended—

(1) in the first sentence of subsection (b), by inserting after "of this Act" the following: "with regard to the areas described in paragraphs (1) and (2) of subsection (a), and not later than 120 days after the date of enactment of subsection (a)(3) with regard to the area described in subsection (a)(3)";

(2) in subsection (c), by inserting before the period the following: "with regard to the areas described in paragraphs (1) and (2) of subsection (a), and as of the date of enactment of subsection (a)(3) with regard to the area described in subsection (a)(3)"; and

(3) in the last sentence of subsection (d), by inserting before the period the following: "with regard to the areas described in paragraphs (1) and (2) of subsection (a), and not later than 2 years after the date of enactment of subsection (a)(3) with regard to the area described in subsection (a)(3)".

(c) EXCHANGES FOR INDIAN LANDS.—Section 105 of the Act is amended by adding at the end the following new subsection:

"(d)(1) The Secretary of the Interior shall exchange any lands held in trust for the Navajo Tribe by the Bureau of Indian Affairs that are within the boundary of the area described in subsection (a)(3).

"(2) The lands shall be exchanged for lands approximately equal in value that are selected by the Navajo Tribe.

"(3) After the exchange, the lands selected by the Navajo Tribe shall be held in trust by the Secretary of the Interior in the same manner as the lands described in paragraph (1).".

SEC. 3. FOSSIL FOREST RESEARCH NATURAL AREA.

Section 103 of the San Juan Basin Wilderness Protection Act of 1984 (Public Law 98-603) is amended to read as follows:

"SEC. 103. FOSSIL FOREST RESEARCH NATURAL AREA.

"(a) ESTABLISHMENT.—To conserve and protect natural values and to provide scientific knowledge, education, and interpretation for the benefit of future generations, there is established the Fossil Forest Research Natural Area (referred to in this section as the 'Area'), consisting of the approximately 2,770 acres in the Farmington District of the Bureau of Land Management, New Mexico, as generally depicted on a map entitled 'Fossil Forest', dated June 1983.

"(b) MAP AND LEGAL DESCRIPTION.—

"(1) IN GENERAL.—As soon as practicable after the date of enactment of this paragraph, the Secretary of the Interior shall file a map and legal description of the Area with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

"(2) FORCE AND EFFECT.—The map and legal description described in paragraph (1) shall have the same force and effect as if included in this Act.

"(3) TECHNICAL CORRECTIONS.—The Secretary of the Interior may correct clerical, typographical, and cartographical errors in the map and legal description subsequent to filing the map pursuant to paragraph (1).

"(4) PUBLIC INSPECTION.—The map and legal description shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior.

"(c) MANAGEMENT.—

"(1) IN GENERAL.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall manage the Area—

"(A) to protect the resources within the Area; and

"(B) in accordance with—

"(i) this Act;

"(ii) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

"(iii) other applicable provisions of law.

"(2) MINING.—

"(A) WITHDRAWAL.—The lands within the Area are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing, geothermal leasing, and mineral material sales.

"(B) COAL PREFERENCE RIGHTS.—To satisfy valid existing rights, the Secretary of the Interior may follow the lease exchange procedures specified in sections 3430.5 and 3435 of title 43, Code of Federal Regulations, on any coal preference right lease application for lands within the Area if the applicant demonstrates that coal exists in commercial quantities on the lands that are the subject of the application.

"(C) OIL AND GAS LEASES.—Operations on oil and gas leases issued prior to the date of enactment of this paragraph shall be subject

to the applicable provisions of Group 3100 of title 43, Code of Federal Regulations (including section 3162.5-1), and such other terms, stipulations, and conditions as the Secretary of the Interior considers necessary to avoid significant disturbance of the land surface or impairment of the natural, educational, and scientific research values of the Area in existence on the date of enactment of this paragraph.

"(3) GRAZING.—Livestock grazing on lands within the Area may not be permitted.

"(d) INVENTORY.—Not later than 3 full fiscal years after the date of enactment of this subsection, the Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall develop a baseline inventory of all categories of fossil resources. After the inventory is developed, the Secretary shall conduct monitoring surveys at intervals specified in the management plan developed for the Area in accordance with subsection (e).

"(e) MANAGEMENT PLAN.—

"(1) IN GENERAL.—Not later than the last day of the 5th fiscal year that begins after the date of enactment of this subsection, the Secretary of the Interior shall develop and submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives a management plan that describes the appropriate uses of the Area consistent with this Act.

"(2) CONTENTS.—The management plan shall include—

"(A) a plan for the implementation of a continuing cooperative program with other agencies and groups for—

"(i) laboratory and field interpretation; and

"(ii) public education about the resources and values of the Area (including vertebrate fossils);

"(B) provisions for vehicle management that are consistent with the purpose of the Area and that provide for the use of vehicles to the minimum extent necessary to accomplish an individual scientific project;

"(C) procedures for the excavation and collection of fossil remains, including botanical fossils, and the use of motorized and mechanical equipment to the minimum extent necessary to accomplish an individual scientific project; and

"(D) mitigation and reclamation standards for activities that disturb the surface to the detriment of scenic and environmental values.".

Mr. BINGAMAN. Mr. President, I am pleased to cosponsor this legislation with Senator DOMENICI to expand the Bisti and De-Na-Zin Wilderness and establish the Fossil Research Natural Area.

This proposal will add great value to the existing Bisti and De-Na-Zin wilderness area by including the stark beauty of the surrounding badlands. These adjacent lands are of high wilderness quality and will permit visitors the rare opportunity for solitary hiking, backpacking, and geological study. The inclusion of these lands under a wilderness designation will create one wilderness area enabling the Bureau of Land Management to manage the lands more effectively. This in turn will enhance the wilderness experience for visitors and ensure the continued protection of this unique area.

The Fossil Forest Natural Area contains a rich display of petrified trees and fossils dating from 70 to 80 million years ago. There are four major dinosaur quarries where several microvertebrates and invertebrates have been identified. In addition, there is a cretaceous, 75 million year old, mammal quarry known to be of critical importance.

I hope my colleagues will join with me in supporting this legislation and I request that this statement appear in the RECORD.

By Mr. SARBANES (for himself, Mr. PELL, and Mr. HARTFIELD):

S. 314. A bill to authorize appropriations for the National Historical Publications and Records Commission for fiscal year 1994 through fiscal year 1999; to the Committee on Governmental Affairs.

NATIONAL HISTORICAL PUBLICATIONS APPROPRIATIONS AUTHORIZATION

• Mr. SARBANES. Mr. President, for the last 5 years, it has been my privilege to serve as the representative of the U.S. Senate on the National Historical Publications and Records Commission. I am introducing legislation today to reauthorize the Commission for another 6 years.

The NHPRC's statutory mandate is to promote the preservation and use of America's historical legacy. Recently, the Commission completed an extensive review of its operations and its future goals and adopted a strategic plan entitled "To Protect a Priceless Legacy." The plan proposed broad goals and specific objectives for the operation of the Commission from now until the end of the century. It is a realistic and challenging document, and I enthusiastically support its adoption. Absent the increased funding sought in this reauthorization bill, the Commission would be hard pressed to undertake work toward more than the top half-dozen objectives in its comprehensive plan.

NHPRC grants are producing valuable results. We recently saw the publication of the first volume of the papers of Martin Luther King, Jr., and the completion of the papers of Woodrow Wilson, Henry Clay, and the congressional series of the papers of James Madison—all assisted by NHPRC grants.

We have seen States and local governments across the country, with advice and assistance from the Commission, begin to establish archival programs. We have seen the Commission launch several projects to deal with the enormous problems facing archivists in controlling and making accessible valuable electronic records.

It is important that the Commission continue its respected work in preserving this Nation's heritage, and I believe this authorization legislation is a practical step in ensuring continuity of the Commission's programs.•

By Mr. GRAMM:

S. 315. A bill to authorize negotiation of free trade agreements with the countries of the Americas, and for other purposes; to the Committee on Finance.

FREE TRADE IN THE AMERICAS ACT

Mr. GRAMM. Mr. President, this is a bill titled "Free Trade in the Americas." It is an effort to build on what I hope will be successful effort for Congress to act approving the North American Free-Trade Agreement, expanding our ability to engage in free trade throughout the Americas.

What this bill does, in essence, is that it empowers the President to begin immediately to negotiate with all the countries in the Americas to form a free trade agreement that would go from the Arctic to the Antarctic and would assure that any person working in any hut or any village in the Americas could produce goods and services and sell those goods and services anywhere else in the Americas.

I think America is the country that should lead this effort. I think it will produce the prosperity and democracy we all seek. I hope my colleagues will look at this bill and decide to support it. I think it is worthy of their support.

Mr. President, the Americas constitute a very large market, and it is our neighborhood market. There are 35 nations in the Western Hemisphere, with a population of 774 million people. The gross domestic product [GDP] of the Western Hemisphere is $6.8 trillion, approaching one-third of world total. While there is a wide variety in living standards in the Americas, the per capita GDP is $9,200, twice world average of $4,600. There is potential for tremendous export growth in this market. While the nations of the Western Hemisphere have exports of $678 billion, but that is only about 10 percent of GDP.

Mr. President, today, democracy in the Western Hemisphere is almost universal. Only Cuba and Haiti are ruled by unelected regimes. But in many cases, the democracies of the Americas are fragile, mostly because their economies are fragile.

Strong economic growth can best be stimulated through trade. Trade rewards the most competitive, and reinforces economic efficiency. Trade expands economic opportunity because it expands markets.

Mr. President, one of the chief causes of social unrest in Latin America is the tremendous disparity in wealth. At the top are those who have been made fabulously wealthy from the crony capitalism that thrives on protectionism and Government favor, while the poor at the bottom are desperately poor. Free trade destroys monopoly and increases economic opportunity. It erodes crony capitalism and reinforces the free enterprise that lies at the heart of true capitalism.

Free trade agreements are not trade blocs. They will not raise a single tariff

nor impose a single quota. In fact, they achieve fair trade, by lowering tariffs, quotas, and other trade barriers for everyone participating in the agreement.

Mr. President, protectionists in this country say we cannot compete with the labor of Latin America. Protectionists in Latin America say that they cannot compete with American capital. This is almost the text book case of where the gains from trade are the greatest, each of us benefiting from one another's strength. Our strength, capital—which means high wage jobs—is rewarded by trade. At the same time, wages and living standards in the Latin American countries, the goal of all of our foreign aid programs, are raised in a major way.

Mr. President, the ratification of the North American Free-Trade Agreement [NAFTA] will be the launching point for extending the benefits of trade throughout the Western Hemisphere.

Mr. President, I am not a new convert to the tremendous benefits that come to American consumers and producers from expanding our trade opportunities. On February 26, 1987, I called for following up our FTA success with Israel with free trade agreements with other countries. On that day I introduced the American Trade, Growth, and Employment Promotion Act, providing authority for the President to negotiate free trade and expanded trade agreements throughout the world.

On June 26, 1987, the Senate adopted an amendment that I offered, cosponsored by Finance Committee Chairman and now Treasury Secretary Lloyd Bentsen, to the omnibus trade bill, directing the President to enter into negotiations to achieve a free trade agreement with all of the countries of North America and the Caribbean. On February 7, 1989, I reintroduced the American Trade, Growth, and Employment Promotion Act. At that time I stated, "I look forward to the day when the United States is part of a free trade area extending from Point Barrow, AL, to Cape Horn."

Mr. President, at that time I also reemphasized my support for a free trade agreement with Mexico, which many at the time scoffed at. Now free trade with Mexico is on the verge of reality.

Mr. President, our fault in this process has not been dreaming too greatly, but rather not dreaming greatly enough.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 315

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 "Free Trade In the Americas Act".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The countries of the Western Hemisphere have enjoyed more success in the peaceful conduct of their relations among themselves during this century than have the countries on the other continents of the world.

(2) The economic prosperity of the United States and its trading partners in the Western Hemisphere is increased by the mutual reduction of trade barriers.

(3) The successful establishment of a North American Free Trade Area will set the pattern for the promotion of the mutual reduction of trade barriers with countries throughout the Western Hemisphere, initiating a process of removing trade barriers and enhancing prosperity instead of the cycle of increasing trade barriers and deepening poverty likely to result from a resort to protectionism and trade retaliation.

(4) Trade protection endangers economic prosperity in the United States and throughout the Western Hemisphere and undermines civil liberty and constitutionally limited government.

(5) The reduction of government interference in the foreign and domestic sectors of a nation's economy and the concomitant promotion of economic opportunity and freedoms promote civil liberty and constitutionally limited government.

(6) Countries that observe a consistent policy of free trade, the promotion of free enterprise and other economic freedoms (including protection of private property), the removal of barriers to foreign direct investment, in the context of constitutionally limited government and minimal interference in the economy, will follow the surest and most effective prescription to alleviate poverty and provide for economic, social, and political development.

SEC. 3. FREE TRADE AREA FOR THE WESTERN HEMISPHERE.

(a) IN GENERAL.—The President shall take action to initiate negotiations to obtain trade agreements with the sovereign countries located in the Western Hemisphere, the terms of which provide for the reduction and ultimate elimination of tariffs and other nontariff barriers to trade, for the purpose of promoting the eventual establishment of a free trade area for the entire Western Hemisphere.

(b) RECIPROCAL BASIS.—An agreement entered into under subsection (a) shall be reciprocal and provide mutual reductions in trade barriers to promote trade, economic growth, and employment.

(c) BILATERAL OR MULTILATERAL BASIS.—Agreements may be entered into under subsection (a) on a bilateral basis with any foreign country described in that subsection or on a multilateral basis with all of such countries or any group of such countries.

SEC. 4. IMPLEMENTATION OF TRADE AGREEMENTS.

The provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) apply to implementing bills submitted with respect to trade agreements entered into pursuant to the provisions of this Act.

By Mr. DECONCINI (for himself and Mr. MCCAIN):

S. 316. A bill to expand the boundaries of the Saguaro National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

SAGUARO NATIONAL MONUMENT PROTECTION ACT OF 1993

• Mr. DECONCINI. Mr. President, today I am reintroducing, along with my colleague Senator MCCAIN, the Saguaro National Monument Protection Act of 1993. This bill will give the Park Service the capabilities and resources to protect the Tucson Mountain unit of the Saguaro National Monument by authorizing the expansion of the boundaries to include an adjacent 160-acre parcel of land administered by the Bureau of Land Management.

Mr. President, the Saguaro National Monument is situated in Pima County, AZ. It is comprised of two management units separated by the city of Tucson—the Tucson Mountain District and the Rincon Mountain District. The Saguaro National Monument offers a unique wilderness experience in an urban setting.

In order to fully appreciate the values that will be protected by this legislation, one can look to President Kennedy's comments when he established the Tucson Mountain unit in 1961:

> It is in the public interest to add to the Saguaro National Monument the Tucson Mountain Park which contains a remarkable display of relatively undisturbed lower Sonoran desert vegetation, including a saguaro stand which equals or surpasses saguaro stands elsewhere in the world.

Those that have seen this area can understand and appreciate what President Kennedy was talking about and can be thankful for his foresight.

However, development pressures on the boundary of the west unit are adversely impacting the natural resource values mentioned by President Kennedy. The Tucson Mountain unit is located in a fragile and biologically sensitive ecosystem which is being threatened by encroaching development pressures from the neighboring Tucson metropolitan area as well as other activities on land immediately adjacent to the park boundaries.

Mr. President, in response to these threats facing the Tucson Mountain unit, I was successful in having $100,000 included in the fiscal year 1992 Interior appropriations bill. This funding will enable the Park Service to undertake a comprehensive boundary study to identify which lands will be appropriate for possible inclusion in the monument. The inclusion of these parcels within the monument boundary will provide a buffer to protect the aforementioned resources of the Tucson Mountain unit. It is estimated that this study is expected to take 18 months to complete. The study has not yet been completed but should be finalized within the month. Any findings in the study that may necessitate a change in this proposed legislation may be examined for incorporation into the bill during the hearing and markup process.

The question may be raised as to why introduce a bill that will expand the

boundaries to include only the 160-acre parcel of land administered by the Bureau of Land Management. Also, what is the reason for introducing it prior to the completion of the boundary expansion study. The answer lies in the fact that a proposal was recently submitted to the BLM to reopen a gold mine on this parcel before the Park Service had an opportunity to consider it as part of the boundary expansion study. If the BLM would have approved this proposal, there would have been an operating mine on the boundary of the Saguaro National Monument. Also, the possibility of this parcel ever being included in the monument could have been precluded. I think that it is safe to say that either of these situations are less than desirable for the protection of the monument.

Responding to the urgency of this situation, Congressman PASTOR and I wrote to the BLM expressing our concerns about the adverse consequences that would result if the BLM would approve the proposal to reopen the Old Yuma mine. Also, I stated my intention to introduce the Saguaro National Monument Protection Act of 1993, which will expand the boundaries of the Monument to include the parcel of BLM land containing the Old Yuma mine site. Fortunately, in a demonstration of real leadership, the BLM denied the proposal to reopen Old Yuma mine.

Notwithstanding the BLM's actions to reject the proposal to open Old Yuma mine, I still feel compelled to move forward with this legislation. The introduction of this legislation combined with the action taken in the fiscal year 1992 Interior appropriations bill, will demonstrate a real commitment on the part of Congress to protect the Tucson Mountain unit of the Saguaro National Monument.

In closing, I want to say that I look forward to working with the Park Service as they proceed with the boundary expansion study so that when it is completed, we can incorporate their results into the Saguaro National Monument Protection Act of 1993. By doing this, we will ensure that future generations will continue to enjoy and appreciate the resources of this truly outstanding Park Service unit.

Mr. President, I ask that the bill be printed in the RECORD at this point.

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

S. 316

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 "Saguaro National Monument Protection Act of 1993".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Tucson Mountain Unit of the Saguaro National Monument continues to be exposed to threats to the integrity of the natural resources, scenic beauty, and natural processes upon which its establishment was based in 1961;

(2) these threats also impede opportunities for public enjoyment, education, and safety within the monument in general, as well as opportunities for natural solitude within the wilderness area of the monument as designated by Congress in 1976;

(3) these threats are, in large part, due to land use and development practices on private, State, local, and other Federal lands immediately adjacent to the monument boundaries; and

(4) the monument boundaries in effect on the day before the date of enactment of this Act are no longer appropriate within the context of the continuing residential and commercial growth of the greater metropolitan area of Tucson, Arizona.

(b) *Purpose.*—The purpose of this Act is to authorize the addition of approximately 160 acres to the Tucson Mountain Unit of the Saguaro National Monument in order to protect, preserve, and interpret the monument's resources, and to provide for the education and benefit of the public.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) EXPANSION AREA.—The term "expansion area" means the approximately 160 acres added to the monument by this Act.

(2) MONUMENT.—The term "monument" means the Saguaro National Monument.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 4. EXPANSION OF MONUMENT BOUNDARIES.

(a) IN GENERAL.—The monument boundaries are revised to include the approximately 160 acres of lands and interests in lands as generally contained within Township 13 South, Range 12 East, Southeast ¼ of Section 9 of the Gila and Salt Rivers Meridian.

(b) ACQUISITION OF LANDS.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may acquire lands and interests in lands within the monument boundaries by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency.

(2) EXCEPTION.—Lands and interests in lands owned by the State of Arizona or any political subdivision of the State may be acquired only by donation or exchange.

(c) ADMINISTRATION.—Lands and interests in lands acquired pursuant to this Act shall be administered as part of the monument and shall be subject to laws applicable to the monument.

(d) WITHDRAWAL.—Subject to valid existing rights, all Federal lands within the expansion area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and all amendments thereto.

(e) AMENDMENT TO THE GENERAL MANAGEMENT PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary shall review, and if necessary amend, the monument's general management plan with respect to the use and management of the expansion area.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.•

By Mr. DECONCINI:

S. 317. A bill to reform Customs Service operations, and for other purposes; to the Committee on Finance.

CUSTOMS INSPECTOR BENEFIT REFORM ACT OF 1993

• Mr. DECONCINI. Mr. President, I rise to introduce the Customs Inspector Benefit Reform Act of 1993.

The uniformed inspectors of the U.S. Customs Service are at the forefront of the Nation's efforts to interdict and prevent the smuggling of drugs and other contraband into this country. On a daily basis they face the multiple challenges of confronting drug criminals, organized crime figures, and a broad array of unpredictable and often dangerous persons. They also are responsible for representing the United States of America to millions of international travelers each year.

I would like to spend a few minutes explaining the conditions and challenges under which these fine public servants perform their jobs. Mr. President, as chairman of the Treasury, Postal and General Government Appropriations Subcommittee, the Customs Service falls within my appropriations responsibilities. As such, I have the opportunity to experience first hand the operations of the Customs Service and its approximate 6,000 uniformed customs inspectors.

The responsibilities which Congress has vested in these people are awesome. They face multiple challenges: They must confront leading criminals and organized crime figures in the drug war, be prepared to thwart terrorist attacks and detect increasingly sophisticated white-collar criminals. During fiscal year 1992, the customs inspector was responsible for making 17,274 criminal arrests, which represent 68 percent of all customs arrests. Inspectors must carry firearms and maintain the highest degree of proficiency with these weapons as a condition of their employment. Whether a customs inspector is searching a suitcase at an airport, inspecting a shipment of liquefied natural gas, or reviewing export documents on missile technology, we expect them to handle all of these responsibilities in an experienced and professional manner.

Over the years, customs inspectors have aided in the interdiction of millions of tons of cocaine, marijuana, and other drugs too numerous to mention. These drugs have been seized and destroyed before the contraband could make its way onto our streets and into our Nation's schools. During 1992, the customs inspectors seized 130,254 pounds of cocaine: 53 percent of the customs total: 1,976 pounds of heroin: 89 percent of the customs total, and 221,494 pounds of marijuana: 48 percent of the customs total. In addition, believe it or not, it is the customs inspector who helps ensure that tyrants such as Mu'ammar Qadhafi and Saddam Hussein do not get their hands on critical weapons technology. The customs inspector forms the core of people who make it very expensive and difficult for

the international criminal element to operate.

There is very little glamour in these positions. Inspectors work long and irregular hours, constantly being exposed to a wide variety of occupational and environmental hazards such as toxic chemicals and exhaust fumes, adverse and extreme weather conditions, and a myriad of other less than desirable working conditions. Duties range from staffing a one-person border crossing at a remote and frozen northern port of entry to inspecting the bilge of a filth-infested foreign freighter along the Miami River.

For the last 210 years, 24 hours a day, 365 days a year there have been hundreds of U.S. customs inspectors vigilantly enforcing the trade and tariff laws of the United States. These men and women are required to enforce not only the U.S. customs laws but the approximately 1,600 laws and regulations of 60 other Government agencies. In addition, Mr. President, these men and women have also been charged with enforcing hundreds of separate State and local trade laws. A significant area of their work is in the enforcement of international trade laws which involves the collection of over $20 billion in duties and fees from foreign entities; protection of domestic industries and the prevention of illegal importations which lead to a loss of jobs in the United States.

The bill I am introducing today will significantly reform the way the Customs inspector is paid. The present overtime system for these valuable employees was instituted back in 1911. There has been no significant change in their pay system since that time. Moreover, the evolution of the Customs inspector's duties and responsibilities has caused the position to become increasingly complex. Inspectors are now confronted with highly sophisticated narcotics smuggling techniques, terrorism threats, automated systems and highly specialized inspection functions, at the same time that this country has experienced a virtual explosion in commercial and passenger traffic. These changes have not been recognized in their pay structure.

It is very difficult to imagine how tangled any pay system would be if it had not changed in any substantive way since 1911. In essence, you would be operating in a 21st century environment using 19th century methods. It would take me days to explain how an inspector is currently being paid—it is just that complicated. I am confident that there are very few people who know all the intricacies of the current inspector pay system. However, it is known that under certain situations inspectors could earn overtime compensation at rates which substantially exceed the actual hours worked. The first goal of the legislation I am sponsoring today is to provide a linear relationship between hours paid for hours worked.

Mr. PICKLE has introduced H.R. 22 which includes title II—Customs Officer Pay Reform. By and large, this bill adopts the House Ways and Means Committee's proposal, from the 102d Congress, to revise the overtime pay system for Customs inspectors. Under this bill, the overtime pay system will be calculated on a double-time system, with premium pay for designated shifts and commuting costs when the Customs inspector is required to return back to work. I understand that the House Ways and Means Committee adopted these changes because the Members believed they would correct the anomalies in the current inspector pay program and provide for a fair overtime system. This bill recognizes the adverse effect on the quality of life of Customs officers who are required to work all hours of the day.

The House bill includes additional provisions relating to the compensation of United States Customs inspectors. The first section authorizes the Secretary of the Treasury to pay up to 5 percent of basic pay to any Customs inspector who possesses and makes substantial use of one or more foreign languages in the performance of his or her official duties. Many individuals whom Customs officials encounter on a daily basis do not speak English and this provision would enable Customs to recruit and retain inspectors who are proficient in a foreign language. The second provision permits a portion of overtime earnings to be included for the purposes of calculating the retirement annuities for Customs officers. This places the Customs inspector on a par with other law enforcement officers who have administratively uncontrollable overtime calculated into their retirement annuities and offsets some of the loss of compensation to the Customs inspector as a result of the changes in their existing overtime pay system.

I would like to commend my colleagues in the House for their valued efforts in attempting to bring some logic and fairness to this pay system. As I understand it, title II of H.R. 22, has been referred jointly to the Committees on Ways and Means, Energy and Commerce, and Post Office and Civil Service.

The bill I am introducing today varies from title II of H.R. 22 in three important ways. Certain Customs inspectors operate in extremely hazardous duty locations. An Inspector who is responsible for a traffic lane along the Southwest border is placing his or her life in great jeopardy each day. I have been told that one of the most hazardous parts of any policeman's daily duties is stopping vehicles for traffic violations. Where a police officer might stop a half dozen cars in any 1 day, the Customs inspector stops, questions, and often searches hundreds of cars a day. In addition, as I noted earlier, Customs inspectors are charged with inspections of all types of chemical, biological, and in all-too-frequent cases, completely unknown cargo shipments. My bill would allow the Commissioner of Customs to designate hazardous duty locations. Hazardous duty pay under current law is permitted to be paid; however, it requires a long and laborious administrative process to be undertaken. The provision in this bill will streamline those regulations and permit hazardous duty pay to be given at the discretion of the Customs Commissioner.

Second, the bill allows the Customs inspector access to the Federal law enforcement pay provisions contained in section 405 of the Federal Employees Comparability Act of 1990, Public Law 101-590. Currently, Customs inspectors are not designated as law enforcement personnel despite the fact that they perform law enforcement duties on a daily basis. This provision would correct that anomaly and permit Customs inspectors working in areas where geographic pay adjustments are in effect to be eligible for locality pay adjustments.

Finally, the bill contains an arduous duty provision which recognizes employees who provide service well beyond that of the typical Federal employee. Some Customs inspectors are assigned to special enforcement teams and perform functions which are not only strenuous and difficult, but also require above average physical standards to perform. To recognize the fact that the Customs Service has some extremely difficult functions, I have included a section in the bill which addresses the needs of these employees. Under the provisions of this bill, the Commissioner of Customs would determine which positions would be designated as arduous duty enforcement positions. Section 9 of this bill would authorize for every year served in an arduous enforcement position, an additional one-half year to be added to the inspector's service computation date for retirement purposes.

Mr. President, I began this speech extolling the virtues of the Customs inspector. It would seem incongruous that I would now recommend sweeping reform of their unusual pay system. I can tell you that I have received nothing but support and assistance for my efforts from the National Treasury Employees Union [NTEU] the exclusive representative of the approximately 6,000 inspectors which this legislation will effect. NTEU has taken the leadership position of acknowledging that it is time to change inspector overtime pay, but recognizes that these changes must be accompanied by other reforms in the inspector's pay system. This legislation presents a rational approach to this problem.

Mr. President, the last section of this bill is not a pay provision. It is an attempt to close a very large and expensive loophole in the 1985 COBRA law with regard to passenger processing fees. Currently, international air and sea travelers are required to pay a $5 passenger processing fee, added to the price of their tickets, to offset the cost associated with the Customs processing of international passengers at air and sea ports. However, under current law, travelers to and from Canada, Mexico, and the Caribbean are not required to pay this fee. This exemption may be costing the Treasury of the United States an estimated $90 million annually. Section 10 of this bill is intended to close this enormous revenue gap. Section 10 authorizes Customs to collect a $5 fee from air and sea passengers who travel between the United States, Canada, Mexico, and Caribbean. Mr. President, this is the same which is now being collected from most other international air and sea travelers. The Customs COBRA account has an established record of returning these resources to the traveling public in the form of an additional 467 Customs inspectors and the critical equipment needs for the expeditious processing of passengers at air and sea ports.

Mr. President, I ask unanimous consent that the text of the Customs Inspector Benefit Reform Act of 1993 be printed in the RECORD immediately following my remarks, and I urge its expeditious consideration by the Senate Finance Committee.

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

S. 317

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 "Customs Inspector Benefit Reform Act of 1993".

SEC. 2. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

(a) IN GENERAL.—Section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267) is amended to read as follows:

"SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

"(a) OVERTIME PAY.—

"(1) IN GENERAL.—Subject to paragraph (2) and subsection (c), a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b).

"(2) SPECIAL PROVISIONS RELATING TO OVERTIME WORK ON CALLBACK BASIS.—

"(A) MINIMUM DURATION.—Any work for which compensation is authorized under paragraph (1) and for which the customs officer is required to return to the officer's place of work shall be treated as being not less than 2 hours in duration; but only if such work begins at least 1 hour after the end of any previous regularly scheduled work assignment.

"(B) COMPENSATION FOR COMMUTING TIME.—

"(i) IN GENERAL.—Except as provided in clause (ii), in addition to the compensation authorized under paragraph (1) for work to which subparagraph (A) applies, the customs officer is entitled to be paid, as compensation for commuting time, an amount equal to 3 times the hourly rate of basic pay of the officer.

"(ii) EXCEPTION.—Compensation for commuting time is not payable under clause (i) if the work for which compensation is authorized under paragraph (1) commences within 2 hours of the next regularly scheduled work assignment of the customs officer.

"(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

"(1) NIGHT WORK DIFFERENTIAL.—

"(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occur during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

"(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occur during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

"(C) 7:30 P.M. TO 3:30 A.M. SHIFTWORK.—If the regularly scheduled work assignment of a customs officer is 7:30 p.m. to 3:30 a.m, the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate for the period from 7:30 p.m. to 11:30 p.m. and at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate for the period from 11:30 p.m. to 3:30 a.m.

"(2) SUNDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a Sunday that is not a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate.

"(3) HOLIDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate.

"(4) TREATMENT OF PREMIUM PAY.—Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose.

"(c) EXCLUSIVITY OF PAY UNDER THIS SECTION.—A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) for time worked may not receive pay or other compensation for that work under any other provision of law.

"(d) REGULATIONS.—The Secretary of the Treasury shall prescribe such regulations as are necessary or appropriate to carry out this section, including regulations—

"(1) to ensure that callback work assignments are commensurate with the overtime pay authorized for such work; and

"(2) to prevent the disproportionate assignment of overtime work to customs officers who are near to retirement.

"(e) DEFINITIONS.—As used in this section:

"(1) The term 'customs officer' means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable standards as may be promulgated by the Office of Personnel Management.

"(2) The term 'holiday' means any day designated as a holiday under a Federal statute or Executive order.".

(b) CONFORMING AMENDMENTS.—

(1) Section 2 of the Act of June 3, 1944 (19 U.S.C. 1451a), is repealed.

(2) Section 450 of the Tariff Act of 1930 (19 U.S.C. 1450) is amended—

(A) by striking out "**AT NIGHT**" in the section heading and inserting "**DURING OVERTIME HOURS**";

(B) by striking out "at night" and inserting "during overtime hours"; and

(C) by inserting "aircraft," immediately before "vessel".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply to customs inspectional services provided on or after the date occurring 90 days after the date of the enactment of this Act.

SEC. 3. FOREIGN LANGUAGE PROFICIENCY AWARDS FOR CUSTOMS OFFICERS.

Cash awards for foreign language proficiency may, under regulations prescribed by the Secretary of the Treasury, be paid to customs officers (as referred to in section 5(e)(1) of the Act of February 13, 1911) to the same extent and in the same manner as would be allowable under subchapter III of chapter 45 of title 5, United States Code, with respect to law enforcement officers (as defined by section 4521 of such title).

SEC. 4. APPROPRIATIONS REIMBURSEMENTS FROM THE CUSTOMS USER FEE ACCOUNT.

Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended by amending clause (i) of subparagraph (A) to read as follows:

"(i) in—

"(I) paying overtime compensation and premium pay under section 5(a) and (b) of the Act of February 13, 1911,

"(II) paying necessary expenses for agency contributions to the Civil Service Retirement and Disability Fund or the Federal Employees Retirement System to match deductions from the overtime compensation paid under subclause (I), and

"(III) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and".

SEC. 5. TREATMENT OF CERTAIN PAY OF CUSTOMS OFFICERS FOR RETIREMENT PURPOSES.

(a) IN GENERAL.—Section 8331(3) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by striking out the semicolon at the end of subparagraph (D) and inserting "; and";

(3) by adding after subparagraph (D) the following:

"(E) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;"; and

(4) by striking out "subparagraphs (B), (C), and (D) of this paragraph," and inserting "subparagraphs (B), (C), (D), and (E) of this paragraph".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date of the enactment of this Act and apply only with respect to service performed on or after such date.

SEC. 6. REPORTS.

(a) CUSTOMS USER FEE ACCOUNT REPORTS.—Subparagraph (D) of section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)(D)) is amended to read as follows:

"(D) At the close of each fiscal year, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives—

"(i) containing a detailed accounting of all expenditures from the Customs User Fee Account during such year, including a summary of the expenditures, on a port-by-port basis, for which reimbursement has been provided under subparagraph (A)(ii); and

"(ii) containing a listing of all callback assignments of customs officers for which overtime compensation was paid under section 5(a) of the Act of February 13, 1911, and that were less than 1 hour in duration.".

(b) OTHER REPORTS.—

(1) GAO REPORT.—The Comptroller General of the United States shall undertake—

(A) an evaluation of the appropriateness and efficiency of the customs user fee laws for financing the provision of customs inspectional services; and

(B) a study to determine whether cost savings in the provision of overtime inspectional services could be realized by the United States Customs Service through the use of additional inspectors as opposed to continuing the current practice of relying on overtime pay.

The Comptroller General shall submit a report on the evaluation and study required under this subsection to the Committees by no later than the 1st anniversary of the date of the enactment of this Act.

(2) TREASURY RECOMMENDATION.—On the day that the President submits the budget for the United States Government for fiscal year 1994 to the Congress under section 1105(a) of title 31, United States Code, the Secretary of the Treasury shall submit to the Committees recommended legislative proposals for improving the operation of customs user fee laws in financing the provision of customs inspectional services.

(3) DEFINITION OF COMMITTEES.—For purposes of this subsection, the term "Committees" means the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 7. HAZARDOUS DUTY DIFFERENTIAL.

(a) IN GENERAL.—Notwithstanding section 5545(d) of title 5, United States Code, in the administration of such section, the Commissioner of Customs of the United States Customs Service may designate hazardous duty functions for the purpose of paying hazardous duty differentials to customs officers.

(b) DEFINITION.—For purposes of this section the term "customs officer" means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable standards as may be promulgated by the Office of Personnel Management.

(c) EFFECTIVE DATE.—This section shall take effect and apply to inspectional services provided on or after October 1, 1993.

SEC. 8. SPECIAL PAY ADJUSTMENT FOR CUSTOMS SERVICE EMPLOYEES.

(a) IN GENERAL.—Section 405 of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note; 104 Stat. 1466) is amended by adding at the end thereof the following new subsection:

"(d)(1) The provisions of subsection (a) shall apply to customs officers.

"(2) For purposes of this section the appropriate agency head for prescribing regulations shall be the Secretary of the Treasury.

"(3) For purposes of this section the term 'customs officer' means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable standards as may be promulgated by the Office of Personnel Management.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2), the amendment made by this section shall be effective on and after the first day of the first applicable pay period beginning on or after October 1, 1993.

(2) REGULATIONS.—The Secretary of the Treasury may prescribe regulations after the date of the enactment of this section to provide for the implementation of the amendment made by this section on or after the effective date under paragraph (1).

SEC. 9. CUSTOMS INSPECTOR AND CANINE ENFORCEMENT OFFICER CREDITABLE SERVICE FOR RETIREMENT.

(a) DESIGNATION OF ARDUOUS ENFORCEMENT POSITIONS.—The Commissioner of Customs (hereafter in this section referred to as the "Commissioner") may designate positions in the Customs Service as arduous enforcement positions. An arduous enforcement position may only be filled by an employee who—

(1) is a customs inspector or canine enforcement officer;

(2) is capable of performing duties which are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Commissioner;

(3) is less than 57 years of age;

(4) qualifies in firearms tests conducted on a quarterly basis under regulations promulgated by the Commissioner; and

(5) qualifies in all physical fitness standards under regulations promulgated by the Commissioner that are generally applicable to all Federal law enforcement officers.

(b) REMOVAL FROM ARDUOUS ENFORCEMENT POSITION.—A customs inspector or canine enforcement officer who fails to qualify on any quarterly firearms test as required under subsection (a)(4) or fails to maintain the physical fitness standards under subsection (a)(5) shall be removed from an arduous enforcement position. Such inspector or officer may not be assigned to an arduous enforcement position for a period of no less than 6 months.

(c) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) DEFINITIONS.—Section 8331 of title 5, United States Code, is amended—

(A) in paragraph (25) by striking out "and" after the semicolon;

(B) in paragraph (26) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new paragraph:

"(27) 'designated customs inspector' means a customs inspector or canine enforcement officer who is serving in an arduous enforcement position as designated by the Commissioner of Customs under section 9 of the Customs Inspector Benefit Reform Act of 1993.".

(2) CREDITABLE SERVICE.—Section 8332 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(o)(1) For purposes of this chapter, and subject to the provisions of this subsection, a designated customs inspector shall receive 1½ years of creditable service for each year of actual service as a designated customs inspector. Such service shall be based on full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

"(2) The provisions of paragraph (1) shall not apply to any customs inspector or canine enforcement officer unless such inspector or officer has no less than 5 years of actual service as an employee (which is otherwise creditable service under this section).

"(3) No customs inspector or canine enforcement officer may be credited with more than 20 years of creditable service under the provisions of paragraph (1).

"(4) This subsection shall not be construed to give any customs inspector or canine enforcement officer credit for both service as such inspector or officer and service as a designated customs inspector during any specified time period.".

(3) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—Section 8334 of title 5, United States Code, is amended—

(A) in the first sentence of subsection (a)(1) by inserting "designated customs inspector," after "law enforcement officer,"; and

(B) in the table under subsection (c) by inserting after the item relating to law enforcement officers and firefighters the following new item:

"Designated customs inspector for designated customs inspector service.	7½	After September 30, 1993.".

(4) COMPUTATION OF ANNUITY.—Section 8339 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(r) The annuity of an employee with creditable service under section 8332(o) retiring under this subchapter is computed under subsection (a) of this section, except the annuity of such employee is computed with respect to the service credited under section 8322(o)(1) as a designated customs inspector by multiplying 2½ percent of his average pay by the years of that service.".

(5) APPLICATION.—The amendments made by this subsection shall be effective on and after October 1, 1993, and shall apply with regard to service performed by a customs inspector or canine enforcement officer in an arduous enforcement position on and after such date.

(d) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—

(1) DEFINITIONS.—Section 8401 of title 5, United States Code, is amended—

(A) in paragraph (31) by striking out "and" after the semicolon;

(B) in paragraph (32) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(C) by adding at the end thereof the following new paragraph:

"(33) 'designated customs inspector' means a customs inspector or canine enforcement officer who is serving in an arduous enforcement position as designated by the Commissioner of Customs under section 9 of the Customs Inspector Benefit Reform Act of 1993.".

(2) CREDITABLE SERVICE.—Section 8411 of title 5, United States Code, is amended by

adding at the end thereof the following new subsection:

"(h)(1) For purposes of this chapter, and subject to the provisions of this subsection, a designated customs inspector shall receive 1½ years of creditable service for each year of actual service as a designated customs inspector. Such service shall be based on full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

"(2) The provisions of paragraph (1) shall not apply to any customs inspector or canine enforcement officer unless such inspector or officer has no less than 5 years of actual service as an employee (which is otherwise creditable service under this section).

"(3) No customs inspector or canine enforcement officer may be credited with more than 20 years of creditable service under the provisions of paragraph (1).

"(4) This subsection shall not be construed to give any customs inspector or canine enforcement officer credit for both service as such inspector or officer and service as a designated customs inspector during any specified time period.".

(3) DEDUCTIONS FROM PAY.—Section 8422(a)(2)(B) of title 5, United States Code, is amended by inserting "designated customs inspector," after "law enforcement officer,".

(4) GOVERNMENT CONTRIBUTIONS.—Section 8423(a) is amended—

(A) in paragraph (1)(B) by inserting "designated customs inspector," after "law enforcement officer,"; and

(B) in paragraph (3)(A) by inserting "designated customs inspector," after "law enforcement officer,".

(5) COMPUTATION OF ANNUITY.—Section 8415 of title 5, United States Code, is amended—

(A) in subsection (g)(2) by inserting "designated customs inspector," after "law enforcement officer,"; and

(B) by adding at the end thereof the following new subsection:

"(h) The annuity of an employee with creditable service under section 8411(h) retiring under this subchapter is computed under subsection (a) of this section, except the annuity of such employee is computed with respect to the service credited under section 8411(h)(1) as a designated customs inspector by multiplying 1⁷⁄₁₀ percent of his average pay by the years of that service.".

(6) APPLICATION.—The amendments made by this subsection shall be effective on and after October 1, 1993, and shall apply with regard to service performed by a customs inspector or canine enforcement officer in an arduous enforcement position on and after such date.

SEC. 10. APPLICATION OF CUSTOMS SERVICE FEES TO PASSENGERS.

(a) IN GENERAL.—Subparagraph (A) of section 13031(b)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(1)(A)) is amended to read as follows:

"(A) the arrival of any passenger whose journey—

"(i) originated in—

"(I) a territory or possession of the United States; or

"(ii) originated in the United States and was limited to—

"(I) territories and possessions of the United States; and

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to customs services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after the date that is 90 days after the date of the enactment of this Act.●

By Mr. JOHNSTON (for himself and Mr. KRUEGER):

S. 318. A bill to provide for the energy security of the Nation through encouraging the production of domestic oil and gas resources in deep water on the Outer Continental Shelf in the Gulf of Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

OUTER CONTINENTAL SHELF DEEP WATER ROYALTY RELIEF ACT

Mr. JOHNSTON. Mr. President, the bill I am introducing is designed to get drilling in the Gulf of Mexico off the coast of Louisiana going again in the deep water. As my colleagues know, oil imports have reached crisis proportions in this country, being almost 50 percent of the oil that the United States uses, while the drilling in the United States and while the production of domestic oil is declining also at an alarming rate. As we have pointed out to our colleagues, more jobs have been lost in the oil and gas business in the United States than in automobiles, than in steel, than in any other sector of the economy; and that, in turn, is directly reflected in the amount of domestic production.

Not only is the present amount of domestic production small and declining, but the long-term outlook for that domestic production in the United States is really terrible. We recently had a lease sale in the Gulf of Mexico, and it got record low bids from oil companies, and the reason that the bids were so low, Mr. President, is the expenses involved in drilling in the Gulf of Mexico are so high, particularly in the deep water.

What this bill does is say, with those rigs that are drilling in water of 200 meters and more, they may first recover their costs before beginning to pay royalty to the United States. It is the same kind of incentive for drilling that the U.K. gives in the North Sea, that other countries give in their drilling offshore. As I say, it is designed to make economically feasible those wells, principally off Louisiana in the central and western gulf, that are not being drilled at the present time.

We believe it will cost the United States nothing. To the contrary, it will make money, because the wells are not being drilled now. You are not getting bonuses or royalties now, because the wells are not being drilled.

Mr. President, if this measure is enough incentive—and that is an open question—it is one of the most important things we can do for the balance of payments and for the ever increasing reliance upon foreign energy which we have in this country today.

Mr. President, I am introducing, on behalf of myself and Senator KRUEGER, the Outer Continental Shelf Deep Water Royalty Relief Act. This legislation is intended to address the serious decline in oil and gas leasing and development activity in the western and central Gulf of Mexico on the Outer Continental Shelf where the program historically has been active. The legislation does not address the controversial issues of OCS leasing moratoria or lease buybacks.

Mr. President, the fact that our domestic oil and gas industry is in serious trouble was made evident to me by the disturbing results of the two most recent lease sales in the Gulf of Mexico. These sales were the worst in the history of the Federal OCS leasing program in the western and central Gulf.

Last May, the Department of the Interior conducted an OCS lease sale in the Central Gulf of Mexico, offshore Louisiana. That sale produced the lowest amount in bids in over 20 years. Out of 5,213 tracts offered for sale, only 151 actually received bids. The sale compared poorly with sales in recent years. The previous year, for example, almost five times the amount of bonus bids was received on a roughly comparable sale.

This past August, the Department conducted a lease sale in the western Gulf of Mexico. There was little industry interest, with the Government receiving only 81 bids on 61 tracts. Some $30.6 million in high bids were received, by far the lowest amount ever bid in a lease sale in the area. There was no interest in any tract in waters over 1,000 feet in depth.

The Outer Continental Shelf is an important source of oil and clean-burning natural gas. Approximately 10 percent of domestic oil and 25 percent of domestic gas is produced from the OCS. The OCS contains approximately one-fourth of all domestic estimated oil and gas reserves. The central and western Gulf of Mexico account for 90 percent of the oil and 99 percent of the gas produced from the OCS.

This alarming decrease in OCS activity coincides with signs that the oil and gas industry in this country is in serious decline. The active rotary rig count has fallen to levels not seen since 1942. Domestic exploration budgets are being slashed. The oil and gas industry has lost over 450,000 jobs over the last 10 years, more than the steel and automobile industries combined.

Mr. President, this legislation is intended to address this grave situation by encouraging development and production of resources in deep waters on the Outer Continental Shelf. The legislation provides that royalty payments will not be required on production from leases in water depths of 200 meters or more until such time as the capital costs related to the production have been recovered by the lessee out of proceeds from such lease. The provision applies to production from leases coming on-line after the date of enactment of the legislation and to production resulting from lease development activities undertaken pursuant to a develop-

ment operations coordination document approved after the date of enactment. The royalty relief does not apply to the production of oil or natural gas, respectively, in any month when the average closing prices for the earliest delivery month for oil exceeds $28 per barrel or when such prices for gas exceed $3.50 per million Btu's. The legislation also clarifies existing law so that under certain circumstances royalty reductions or suspension can be granted on any OCS lease, even if there has not previously been production from the lease.

Mr. President, the deep waters of the OCS, and particularly the Gulf of Mexico, hold promise for having substantial oil and gas reserves that could prove crucial to our domestic energy security. According to Department of the Interior estimates, there are some 11 billion barrels of oil equivalent in the Gulf of Mexico in waters of a depth of 200 meters or more. At hearings conducted on a similar proposal last summer, one witness testified that there were an estimated 50 deepwater discoveries with estimated reserves of 2½ billion barrels of oil equivalent for which there are no plans for immediate development because proceeding is not economic.

The costs of producing these resources are substantial and increase significantly with water depth. One industry estimate places capital investment costs for a conventional fixed leg platform in 800 feet of water at $360 million, compared to costs of nearly $1 billion for a conventional tension leg platform in 3,000 feet of water.

This legislation should help to encourage production of important oil and gas resources in the deep waters such as those of the central and western Gulf of Mexico by allowing lessees to recover their capital costs prior to the imposition of royalty payments. The bill will provide a much-needed jump-start for the domestic industry. It will also yield much-needed oil and gas resources for our Nation at a time when imports continue to increase.

Mr. President, this bill represents one step in addressing this problem. It is a significant step, but we must also look at other initiatives, such as changes in the tax laws, that can be taken to address this serious decline in OCS activity in the Gulf of Mexico. I look forward to considering other initiatives that could complement the royalty relief proposal that I am introducing today.

I urge my colleagues to join me in supporting this important legislation to provide deepwater royalty relief in the western and central Gulf of Mexico. Mr. President, I ask unanimous consent that the text of the bill be printed following my statement.

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

S. 318

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Outer Continental Shelf Deep Water Royalty Relief Act."

SEC. 2. AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

The Outer Continental Shelf Lands Act, as amended, is amended by redesignating section 8(a)(3) (43 U.S.C. 1337(a)(3)) as section 8(a)(3)(A) and by adding at the end thereof the following:

"(B) The Secretary may, in order to promote development and new production on a producing or non-producing lease, through primary, secondary, or tertiary recovery means, or to encourage production of marginal or uneconomic resources on a producing or non-producing lease, reduce or suspend any royalty or net profit share set forth in the lease."

"(C)(i) Notwithstanding the provisions of this Act other than this subparagraph, no royalty payment shall be due on new production, as defined in clause (ii) of this subparagraph, from any lease located in water depths of 200 meters or greater in the Western and Central Planning Areas of the Gulf of Mexico until the capital costs directly related to such new production have been recovered by the lessee out of the proceeds from such new production.

"(ii) For purposes of this subparagraph, the term—

(aa) 'capital costs' shall be defined by the Secretary and shall include exploration costs incurred after the acquisition of the lease and development costs directly related to new production. The terms "exploration" and "development" shall have the same meaning contained in subsections (k) and (l) of section 2 of this Act except the term "development" shall also include any similar additional development activities which take place after production has been initiated from such lease. Such capital costs shall not include any amounts paid as bonus bids but shall be adjusted to reflect changes in the consumer price index, as defined in section (1)(f)(4) of title 26 of the United States Code; and

(bb) 'new production' is—(I) any production from a lease from which no royalties are due on production, other than test production, prior to the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; or (II) any production resulting from lease development activities pursuant to a Development Operations Coordination Document approved by the Secretary after the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; and

"(iii) In any month during which the arithmetic average of the closing prices for the earliest delivery month on the New York Mercantile Exchange for Light Sweet crude oil exceeds $28 per barrel, any production of oil subject to relief from the requirement to pay royalties under clause (i) of this subparagraph shall be subject to royalties at the lease stipulated rule, and the lessee's gross proceeds from such oil production, less Federal royalties, during such month shall be counted toward the recovery of capital costs under clause (i) of this subparagraph.

"(iv) In any month during which the arithmetic average of the closing prices for the earliest delivery month on the New York Mercantile Exchange for natural gas exceeds $3.50 per million British thermal units, any production of natural gas subject to relief from the requirement to pay royalties under clause (i) of this subparagraph shall be subject to royalties at the lease stipulated rate, and the lessee's gross proceeds from such natural gas production, less Federal royalties, during such month shall be counted toward the recovery of capital costs under clause (i) of this subparagraph.

"(v) The prices referred to in clsuses (iii) and (iv) of this subparagraph shall be changed during any calendar year after 1993 by the percentage if any by which the consumer price index changed during the preceding calendar year, as defined in section (1)(f)(4) of title 26 of the United States Code.".

SEC. 3. REGULATIONS

The Secretary shall promulgate such rules and regulations as are necessary to implement the provisions of this Act within 180 days after the date of enactment of this Act.

By Mr. WOFFORD:

S. 319. A bill to require the Secretary of Defense and the Defense Base Closure and Realignment Commission to make recommendations in 1993 and 1995 for the termination and reduction of United States military operations at military installations outside the United States; to the Committee on Armed Services.

FOREIGN BASE CLOSING ACT OF 1993

• Mr. WOFFORD. Mr. President, on March 15 the Base Realignment and Closure commission will announce its next round of recommendations for base closures across the United States. Notably absent from that list will be any of the hundreds of bases the United States maintains overseas.

The legislation I'm introducing today requires that the Base Realignment and Closure Commission include overseas military bases when it makes its next recommendations in 1993 and 1995. It simply says that decisions to close bases should not be made without looking at all our bases—including those in Europe, Asia and elsewhere.

Every year, the United States spends more than $50 billion to subsidize the defense of our most prosperous and economically competitive allies. That's three time more than the Federal Government spends on the education of American children each year.

During the long years of the Cold War—when hundreds of thousands of troops were lined up against us in the East—it made sense to maintain a large system of bases in Western Europe. But the Warsaw Pact has dissolved, the Berlin Wall has fallen, the Soviet Union no longer exists. The threat of a major, surprise ground attack no longer exists. We must adjust our military to meet these new realities.

Our national security needs have changed since the fall of the Soviet Union. The crisis in Bosnia and the relief mission in Somalia reinforce the fact that American forces have new a new mission in the post—cold war world—peacekeeping, humanitarian relief and protection of minorities. To do this, we must maintain a flexible, mobile force that is capable of being integrated with the forces of our allies.

As we close bases in the United States, local economies are bearing the brunt of defense cuts while we continue to spend our defense dollars on overseas bases. Out troops and their families stationed in Europe are contributing to the local economies of Germany and England. It's time to station more of these troops at home—ready to defend their country or aid in other missions—and also contributing to and supporting our domestic economy.

Pennsylvanians know that the impact of base closings on local communities can be devastating. In 1991, the Commission's list of recommendations for base closing and realignment in the United States included the Philadelphia Naval Shipyard and Naval Station, the Naval Air Development Center at Warminster, the Letterkenny Army depot, all in Pennsylvania.

Pennsylvania includes only about one-twentieth of the Nation's population. But one-third of all direct civilian jobs lost from base closings nationally will come from our State.

As a matter of fact, in Philadelphia, at least 34,000 working men and women are facing unemployment and an uncertain future because of the proposed closing of the Philadelphia Naval Shipyard. Whey are they bearing the brunt of defense cuts while we waste our defense dollars on unnecessary troop levels and overseas bases?

It's not fair or sensible. This bill will bring fairness into the base closing process by including all our bases—not just those at home.●

By Mr. WOFFORD:

S. 320. A bill to provide for certain reforms with respect to unemployment programs; to the Committee on Finance.

UNEMPLOYMENT COMPENSATION, REEMPLOYMENT, AND FAIRNESS ACT

● Mr. WOFFORD. Mr. President, today I am reintroducing the Unemployment Compensation Reemployment and Fairness Act.

Before coming to the Senate almost 2 years ago, I served as Pennsylvania's Secretary of Labor and Industry for 4½ years. One of my responsibilities was to administer our State's unemployment compensation program. So I'm well aware of its strengths and weaknesses from the ground up.

It's an important program, and complex program, a program which I believe can be improved and strengthened. That's the purpose of the legislation I'm offering today.

In time of recession economic hardship, the Federal State Unemployment Compensation Program is essential to maintaining the well-being of millions of American families. But it's a system under real stress.

Back in 1935 when Franklin Roosevelt and the Congress together created our present Unemployment Compensation System, he wanted a program that would be flexible—a program that would reflect and adjust to changing employer and worker needs and economic circumstances. That's the idea behind this effort to continue and improve on Roosevelt's experiment in Federal-State cooperation and innovation.

Based on experience, and in close consultation with the Pennsylvania Department of Labor and Industry under my successor Tom Foley and our Governor, Robert Casey, I've developed a series of ideas of strengthening the assistance to workers and providing procedural fairness for employers.

Let me be specific: First, improvements in worker reemployment. The problems of today's continuing high-unemployment challenge American business, workers and governments to strengthen their cooperative efforts.

This bill will expand economic opportunities by allowing States to pay benefits to those who are seeking to start their own business under a State approved self-employment plan. It will also require States to review the reemployment prospects of workers soon after they have lost their jobs so that they can receive necessary services and training before they exhaust their benefits.

Second, improvements in employer fairness: under current law an employer, who has a dispute involving unemployment taxes has no right to a State administrative hearing. That is an unfair denial of due process. This bill will require States to provide for an administrative hearing.

Mr. President, our primary goal in government should be action that builds our Nation's economic vitality and creates jobs for all Americans. We should always keep our eyes on that prize.

But one of the things we must do, when millions of workers have lost their jobs, and families are in danger of losing their homes, their health and their quality of life, is to have an effective unemployment compensation system. A system that gives people the support they need to stay in the economic mainstream, to have effective retraining and to find new jobs as quickly as possible.

I'm committed to that kind of unemployment compensation system. That's why I have offered this bill to improve the reemployment prospects for working Americans and to provide fair treatment to employers.

In June 1934, President Roosevelt told Congress that "Among our objectives, I place the security of men, women, and children of the Nation first." We should still work to achieve that objective. This legislation will help us do it.

Mr. President, I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 320

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 "Unemployment Compensation, Reemployment, and Fairness Act of 1993".

SEC. 2. INDIVIDUALS IN SELF-EMPLOYMENT PROGRAMS.

(a) IN GENERAL.—Section 3304(a)(8) of the Internal Revenue Code of 1986 (relating to requirements) is amended by striking "compensation" and inserting "(A) compensation", by striking the semicolon and inserting "; and", and by adding at the end thereof the following new subparagraph:

"(B) if the State elects to participate, compensation shall not be denied or reduced to any individual for any week because such individual is participating in a qualified self-employment program (as defined in section 3306(t)) with the approval of the State agency (or because of the application, to any such week in such program, of State law provisions relating to availability for work, active search for work, or refusal to accept work);".

(b) DEFINITION.—Section 3306 of such Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(t) QUALIFIED SELF-EMPLOYMENT PROGRAM.—For purposes of this chapter, the term 'qualified self-employment program' means a program which—

"(1) meets the requirements established by the Secretary of Labor, including requirements for State agencies to determine what constitutes a good prospect for successful, permanent self-employment,

"(2) is approved by the State agency, and

"(3) provides training for individuals attempting to become self-employed.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to compensation paid for weeks beginning on or after January 1, 1993.

SEC. 3. EARLY REEMPLOYMENT REVIEW OF UNEMPLOYED WORKERS.

(a) IN GENERAL.—Section 303 of the Social Security Act (42 U.S.C. 503) is amended by adding at the end thereof the following new subsection:

"(j)(1) The State agency charged with the administration of the State law—

"(A) shall, not later than the last day of the 5th week for which compensation is payable in an unemployed individual's benefit year, provide an early review of the individual's reemployment prospects, to the extent the State agency determines effective,

"(B) shall, to the extent the State agency determines effective, provide reemployment review information to other State employment and training program staff, including staff of State job services and service delivery areas (as described in section 101 of the Job Training Partnership Act),

"(C) shall, to the extent the State agency determines effective, provide job search and placement services, counseling, testing, occupational and labor market information, assessment, and referral to employers,

"(D) shall provide technical and training program staff to assist with reemployment services,

"(E) shall provide followup evaluation and assistance to individuals participating in reemployment activities, and

"(F) may provide reemployment reviews and, to the extent the State agency determines effective, reemployment services for workers who have received notice of perma-

nent layoff or impending layoff, or workers in occupations which are experiencing limited demand due to technological change, impact of imports, or plant closures.

"(2) The Secretary of Labor shall prescribe such regulations as are necessary to carry out the provisions of this subsection, including regulations—

"(A) to carry out the provisions of subparagraphs (A) and (B) of paragraph (1),

"(B) to determine whether an individual should be considered temporarily or permanently laid off, and

"(C) to assist States in examining the use of computer technology to achieve the purposes of this subsection.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date that is 90 days after the date of the enactment of this Act.

SEC. 4. HEARINGS FOR EMPLOYERS.

(a) IN GENERAL.—Section 303(a)(3) of the Social Security Act (42 U.S.C. 503(a)(3)) is amended by inserting "and for all taxpayers with respect to liability to make contributions, and to pay amounts, under the unemployment compensation law of the State" before the semicolon.

(b) REGULATIONS.—The Secretary of Labor may prescribe such regulations as the Secretary deems necessary to carry out the amendment made by subsection (a) to section 303(a)(3) of the Social Security Act.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date that is 90 days after the date of the enactment of this Act.•

By Mr. DECONCINI:

S. 321. A bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide onsite day-care facilities for dependents of their employees, and for other purposes; to the Committee on Finance.

ON-SITE DAY-CARE FACILITIES TAX CREDIT ACT OF 1993

• Mr. DECONCINI. Mr. President, there is an urgent need in this country for child care that is safe, affordable, and available. Congress responded to this call in 1990 by passing the first national child care legislation since World War II. Despite Congress' landmark action, there is still more to be done. As the Child Care Action Campaign so forcefully points out, child care today "remains unavailable to some, unaffordable to many, and of uncertain quality for nearly all."

It has been said, and rightly so: This Nation is "in the midst of a child-care explosion." In 1950, 12 percent of America's mothers with children under 6 years of age were part of the work force. Over 40 years later, in 1993, 63 percent of mothers of children ages 3 to 5 work part or full time, according to the Bureau of Labor Statistics.

Although we have no hard data on the number of child care slots available in this country, a 1990 Children's Defense Fund survey found that America's licensed child care centers have room for 3.8 million children. Five times that number of children under 6 years of age have mothers who work. The number of working mothers is projected to increase significantly in this decade—and so are the number of children who need child care.

All of us must work together—parents, child advocates, the business community, and elected representatives—to give America's children a better chance at affordable, reliable, and safe child care. It is going to take many innovative and imaginative solutions. I believe that one of our greatest untapped resources is America's businesses. But for much of the Nation, employer-sponsored child care assistance is now the exception rather than the rule, and the landmark 1990 child care legislation provides no incentives for businesses to offer child care services to their employees.

We are a country that has almost 6 million employers, 136,000 of which have 100 or more employees. Of that number, only about 5,600 employers provide some kind of child care support to their employees, mostly in the form of child care information and referrals. Only about 1,400 corporations fund onsite or near-site child care facilities for their employees.

One of the things we can do as elected officials is to improve the system so that businesses will come on board. Our current tax incentives for employer-assisted child care have just not stimulated the development of increased child care options for working families. This is especially true in the case of employer-provided child care centers at the place of work. For the employer, start-up costs of an onsite facility can be very costly and, in some cases, prohibitively so.

Mr. President, in an effort to provide an incentive for employer onsite centers, I am today reintroducing a bill to provide a one time only tax credit of 50 percent, up to a maximum limit of $150,000, for employers to provide onsite or near-site child care for the children of their employees. The credit could be used for expenses related to the acquisition, construction, rehabilitation, or expansion of an onsite or near-site child care center.

The U.S. Government would recapture the cost, on a reducing scale, if the facility does not operate for a period of at least 10 years as a child care center. For example, if the facility remains open for only 5 years, the employer would be required to pay back 70 percent of the credits taken. Should the child care facility remain open for 6 years, the employer must pay back 55 percent of the tax credits taken.

In order for a child care facility to qualify for the tax credit, at least 30 percent of the children enrolled must be dependents of the company's employees. The center must be opened to children of all employees, regardless of their income bracket. The facility must operate in compliance with the State laws and regulations of a licensed day care center; and in the case of multiple employers, the facility must be located on the premises of one of the employers and within a reasonable distance from the premises of the other employers.

On-site child care is good for families and good for businesses. Parents can visit their children at lunch or during coffee breaks. If they work later than usual or if they work odd hours, as many hospital employees are forced to do, they have the comfort of knowing their children are well taken care of. Businesses that pay attention to the family concerns of their employees are already realizing the rewards. Study after study report that employer-provided child care services have a positive impact on turnover, absenteeism, recruitment, employee morale and productivity.

This translates into a cost savings for companies. In the most exhaustive cost-benefit study ever conducted on a corporate on-site child care center, Union Bank in Monterey Park, CA, reported an estimated savings of more than $4 for every $3 spent in the first year of its child care program (1989 study).

Mr. President, let me say that Union Bank is not the exception. The bottom line is that it is more cost-effective for businesses to provide child care assistance programs for employees than it is NOT to provide them. One 1992 study, which focused on 9,000 employees of seven companies in Arizona, California, Hawaii, and Nevada, concluded that child care problems cost the companies between $46,000 and $500,000 in 1 year due to absenteeism alone. One company reported that its employee turnover costs resulting from child care difficulties totaled $3 million, including the cost of recruiting, replacement training and inefficiency. In contrast, the study found that a company's $100,000 investment in child care assistance would pay for itself in just 1 year if it prevented seven employees with average salaries of $20,000 from leaving.

American Express, one of the most successful corporations in America, is one of the 5,600 businesses in this country which offer child care benefits to its employees. Harry L. Freeman, executive vice president of American Express, has stated the reasons behind his company's involvement in child care: "The child care problems in America have reached crisis proportions. Corporations cannot ignore their responsibility, not if they want to attract and retain productive employees, not if they want to do business in economically healthy communities. The private sector must operate as a partner with the public sector to see to it that the quality and supply of child care meet the growing needs of our nation."

Unfortunately, not all companies have seen the light, as the American Express Company has. I believe a tax credit will turn on that light, open

that door, and invite employers to look at what is good for themselves, for their employees, and most importantly, for the children.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 321

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CERTAIN ON-SITE DAY-CARE FACILITIES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 45A. EMPLOYER ON-SITE DAY-CARE FACILITY CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the employer on-site day-care facility credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified investment in property placed in service during such taxable year as part of a qualified day-care facility.

"(b) LIMITATION.—The credit allowable under subsection (a) with respect to any qualified day-care facility shall not exceed $150,000.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED INVESTMENT.—The term 'qualified investment' means the amount paid or incurred to acquire, construct, rehabilitate, or expand property—

"(A) which is to be used as part of a qualified day-care facility, and

"(B) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable.

Such term includes only amounts properly chargeable to capital account.

"(2) QUALIFIED DAY-CARE FACILITY.—

"(A) IN GENERAL.—The term 'qualified day-care facility' means a facility—

"(i) operated by an employer to provide dependent care assistance for enrollees, at least 30 percent of whom are dependents of employees of employers to which a credit under subsection (a) with respect to the facility is allowable,

"(ii) the principal use of which is to provide dependent care assistance described in clause (i),

"(iii) located on the premises of such employer,

"(iv) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a day-care facility, and

"(v) the use of which (or the eligibility to use) does not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

"(B) MULTIPLE EMPLOYERS.—With respect to a facility jointly operated by more than 1 employer, the term 'qualified day-care facility' shall include any facility located on the premises of 1 employer and within a reasonable distance from the premises of the other employers.

"(d) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified day-care facility, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

"(A) the applicable recapture percentage, and

"(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified on-site day-care expenses of the taxpayer with respect to such facility had been zero.

"(2) APPLICABLE RECAPTURE PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

"(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified day-care facility is placed in service by the taxpayer.

"(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

"(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified day-care facility.

"(B) CHANGE IN OWNERSHIP.—

"(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified day-care facility with respect to which the credit described in subsection (a) was allowable.

"(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

"(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified day-care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

"(e) SPECIAL ALLOCATION RULES.—For purposes of this section—

"(1) ALLOCATION IN CASE OF MULTIPLE EMPLOYERS.—In the case of multiple employers jointly operating a qualified day-care facility, the credit allowable by this section to each such employer shall be its proportionate share of the qualified on-site day-care expenses giving rise to the credit.

"(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(f) NO DOUBLE BENEFIT.—

"(1) REDUCTION IN BASIS.—For purposes of this subtitle—

"(A) IN GENERAL.—If a credit is determined under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

"(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

"(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

"(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1996.".

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (7),

(B) by striking out the period at the end of paragraph (8), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(9) the employer on-site day-care facility credit determined under section 45A.".

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 45A. Employer on-site day-care facility credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.•

By Mr. DECONCINI:

S. 322. A bill to amend the Land and Water Conservation Fund Act of 1965 to ensure sufficient funding for Federal and State projects and for maintenance and security needs, to encourage multipurpose acquisitions, and for other purposes; to the Committee on Energy and Natural Resources.

LAND AND WATER CONSERVATION FUND AMENDMENTS OF 1993

• Mr. DECONCINI. Mr. President, last year I introduced legislation that would reorder national priorities when we spend monies produced from public resources. The need to act to correct the grave financial imbalance which makes it impossible for our State and local governments to work for basic human needs, is even greater now than then. Today, I am reintroducing legislation based upon my earlier bill.

My legislation, the Land and Water Conservation Fund Amendments of 1993, requires that we live up to the 30-year-old commitment Congress made to all of our citizens to provide outdoor recreation opportunities.

In 1958, Congress enacted legislation authorizing the Outdoor Recreation Resources Review Commission. Congress created the Commission to determine the needs of the United States for outdoor recreation through the year 2000. In 1962, the Commission issued its final report. The Commission found, among other things, that there had been a dramatic growth in demand for recreational opportunities after World War II. In analyzing the public recreation needs of the United States, the Commission found outdoor recreation opportunities to be a public health requirement. Outdoor recreation was found to be an essential public service, deserving full consideration in the budget process. The Commission determined that these essential and basic needs were not being met and that there was inadequate funding for the acquisition and development of outdoor recreational facilities.

In its final report, the Commission made recommendations to address the problems it found. One of the recommendations made by the Commission was for establishment of a Federal program of grants-in-aid to provide matching funds to States. This State grants program was intended to stimulate recreation planning and to assist in the development of facilities and land for public outdoor recreation.

In 1965, in response to the Commission's report, Congress enacted the land and Water Conservation Fund. Since 1965, this fund has become the major source of funding both for Federal land acquisitions and for the State and local grants program recommended by the Commission.

When Congress enacted the Land and Water Conservation Fund, we provided sources of funding. Originally, revenue to support the fund came from user fees and surplus property sales. Later, we amended the fund to provide what has proven its most significant and constant source of revenue: proceeds from offshore oil and gas leasing activities. By doing this, Congress intended that the depletion of one nonrenewable public resource—offshore oil and gas deposits—would be earmarked as the means by which our most important and infinitely renewable resource—our people—would receive opportunities for healthy, safe outdoor recreation.

Since 1965, public needs for outdoor recreation have grown tremendously. Public needs for safe and available recreational opportunities exceed anything foreseen by the 1958 Commission. Today, almost 30 years after Congress first passed this legislation, we are a society that spends most of its working life indoors. More and more of us perform tasks for our daily work which emphasize machines and electronics. We drive cars or take mass transit to work or school rather than walking. Today, tragically, our cities are so much more crowded and so violent that children cannot play outdoors alone, and older citizens cannot enjoy the outdoors safely.

Recreation use patterns have changed significantly since passage of the Act in 1965. Gone is the era of the 2-week family vacation. The changing work environment has created families which work more, have less free time and take shorter vacations closer to home. These changing social conditions have placed increased pressure on many of the national, State and local park facilities in close proximity to urban areas. These changing recreation use patterns further justify the provisions contained in this amendment.

Mr. President, safe, accessible public outdoor recreation is not merely desirable, it is a real necessity of life for us and for our society. Public outdoor recreation was a crying public health and social need in 1965. Today, the need is even greater. Yet, Mr. President, the available resources actually dedicated to providing locally available recreation facilities are less.

When Congress established the land and water conservation fund, we did so recognizing an essential partnership between the efforts of the Federal agencies and the State and local governments. We knew that there was a place for our great national parks and recreation areas; but, we also knew there was an equal need to ensure that small towns and big cities also had recreational facilities readily available to all people, all the time.

We have failed to support that partnership equitably over time. Instead, although through a series of amendments to the fund, we raised the authorized appropriations ceiling for the fund until it reached the current level of $900 million per year, we have not actually appropriated anywhere near that ceiling. Most of the money we do appropriate is allocated to Federal agencies for their land acquisition programs. In recent years less than 6 percent went to support the State grants program and local outdoor recreation needs.

The result is that we have not maintained funding for State and local efforts equivalent to that of Federal programs. Outdoor recreation opportunities, which are locally based and readily available to ordinary citizens, have failed to thrive as they should have under the original concept of a Federal, State and local partnership.

I do not say that State and local efforts to provide outdoor recreation alone will prove a salvation to our social dilemma in the face of drugs, depression, despair and economic need. However, we can show that cities which offer meaningful outdoor recreational opportunities for youth also have decreases in gang-related activities and instances of vandalism. Our youth need open space and recreation—and we owe it to them and ourselves to provide it. If building a park or a playground or providing a swimming pool or a basketball court will keep youngsters off street corners and involve them in something better than gangs, it is our obligation to do it.

Mr. President, other things have also changed in our communities to create the need for this amendment. Since the passage of the Act in 1965, there is an ever increasing number and diversity of private groups working creatively to conserve, manage, and interpret parklands and outdoor resources. Numerous local, State and national groups such as the Nature Conservancy or Arizona's Heritage Fund are using very creative methods to provide for recreation activities. These groups have developed new concepts such as greenways and trails, which rely on mixed public and private ownership and the purchase of less than fee interest to protect special places close to where people live. This amendment will encourage and foster the best of these important relationships to provide partnerships for State, local and private entities.

Many communities are working to protect fragile natural areas. This includes wildlife habitat and wetlands which are in close proximity and/or part of an urban environment where conventional definitions of recreation do not apply. These State and local projects to protect fragile niches of wildlife habitat in urban environments will become increasingly important in the future as we work to preserve the biological diversity of natural communities. This amendment would provide the needed resources to expand the very diverse efforts currently under way across this great country.

Almost 30 years ago, we in Congress committed to providing the public with adequate outdoor recreation. We did it then even before we knew, as we do now, how good and how necessary recreation is for human beings and for society. We can provide public recreational opportunities and meet those needs of our citizens even in tough economic times. For the foreseeable future, revenue from public oil and gas resources offshore is going to continue. As of last year, total revenues accredited to the Fund which we did not spend as we had indicated we would amounted to more than $9 billion.

Congress intended that as we produced and consumed resources which belong to the American people, we would spend money produced by that resource to provide permanent public benefits. Mr. President, I firmly believe that money produced from depletion of a resource belonging to all the people

should be reinvested in outdoor recreation areas and developments which are a part of the permanent estate of this Nation. I, for one, consider this expenditure a long term capital investment in the healthy environment of our country and the health of our citizens.

An additional asset of the increased participation by State and local government, is that the Federal dollars will be matched 50–50 with State and local funds. This will, in effect, increase the amount being spent by an additional 25 percent of the total amount appropriated annually from the fund. If the full $900 million authorized was appropriated from the fund and $450 million was properly allocated to State and local interests, then an additional $225 million would be matched from State and local funds. This would provide for $1.125 billion in recreation development annually. Mr. President, I believe this was truly the intent of the original law passed by Congress in 1965.

Today, I reintroduce this legislation, the Land and Water Conservation Fund Amendments of 1993, which is intended to correct the problems I have noted. My legislation is intended to encourage national goals of protecting wildlife habitat and wilderness areas as well as enhancing recreational benefits.

Mr. President, I, for one, think that our State and local governments and the regional or other partnerships they establish can protect natural resource areas, wildlife habitat and provide appropriate public recreational opportunities. Sometimes, I think they may do it better. My legislation is intended to address the areas of recreational opportunities which have been neglected in the recent past.

In summary, the land and water conservation fund was originally created to respond to a clearly identified need to supply present and future outdoor recreational opportunities for our people. The mechanism to meet those needs was intended to be a partnership between Federal, State and local agencies. We have allowed ourselves to be diverted both from the original goals of the fund and from the partnership mechanism. We have focused almost solely on the Federal land acquisition side. That imbalance in the distribution of the funding has left the majority of our citizens with less real access to outdoor recreation than the original land and water conservation fund intended. I think we must correct that imbalance and divide the money equally.

Second, vast revenues are produced every year, primarily from depletion of the public resources in oil and gas on the Outer Continental Shelf. Literally billions of dollars have been collected from the sales or receipts of disposal of public property or resources. That money should have gone to alleviate the human needs for the public health and social benefits supplied from recreational opportunities furnished through the fund. We have not appropriated funds near the annual ceilings set for land and water conservation fund purposes. The result is that, although the Federal acquisition side received many times what the States did, neither Federal nor State agencies received what they could have—and were intended to receive—from depletion of public resources. I suggest we change that result.

Third, although our native American and Alaskan Native citizens are entitled to derive benefits from the fund, it has never been clear how tribal governments could participate in obtaining grant funding for the needs of their people. I propose we clearly set out a process by which our first citizens can receive funds for their programs without infringing on their right to express their inherent tribal sovereignty.

I want to be very clear. I am not proposing that we cease Federal land acquisition. I am not proposing that we cut funding for Federal purposes. I do say, very bluntly, that we can make the overall funding pie bigger without an adverse impact on our economy. We can be sure that all of our citizens and their representative interests have an equitable portion of that pie. My legislation requires that we divide that larger sum equally between Federal land acquisitions and the State-grants-in-aid programs.

I introduce this legislation to correct existing problems and to restore the original purpose of the land and water conservation fund. We can afford to do what we should have done for years: Give all of our citizens chances for safe and healthy lives that include outdoor recreation. The mechanisms are already in place. I hope that my colleagues will join me in passing this legislation.

Mr. President, I ask unanimous consent that letters of support for this legislation be included in the RECORD at this point.

Mr. President, I also ask unanimous consent to include in the RECORD a summary of my legislation and the full text of the bill.

Mr. President, I yield the floor.

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

S. 322

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 "Land and Water Conservation Fund Amendments of 1993".

SEC. 2. FINDINGS, PURPOSES, AND POLICY.

(a) FINDINGS.—Congress finds the following:

(1) The Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–4 et seq.) was enacted to assist in preserving, developing, and assuring accessibility to all citizens of the United States of the present and future generations, such quality and quantity of outdoor recreation resources as are desirable for individual active participation in recreation and to strengthen the health and vitality of the citizens.

(2) In order to accomplish the purposes of such Act, Congress authorized funding to assist variously in the planning, acquisition, and development of necessary land and water areas by government agencies.

(3) The States and local governments occupy a pivotal role in accomplishing the purposes of such Act.

(4) Restoration of the existing recreation infrastructure and expansion of State and local recreation resources to meet population increases and demographic changes require a secure and predictable base of funding.

(5) In order for adequate public recreation uses to continue, Federal, State, and local resources are in need of maintenance, rehabilitation, and construction.

(6) The continuing decay of public structures and systems necessary for recreation uses has now reached emergency proportions across the United States and necessitates immediate corrective action by Congress.

(7) Congress intended that outdoor recreation investments in public lands and waters and selected facilities be funded through the Land and Water Conservation Fund from—

(A) receipts produced from those investments;

(B) revenue produced from Outer Continental Shelf leases and royalties, which reflects the depletion of a nonrenewable natural resource; and

(C) proceeds from sales of surplus Federal property.

(8) Congress intended that the revenue produced from offshore oil and gas leases and royalties and the depletion of the nonrenewable natural resource result in a legacy of public places accessible for public recreation use and benefit from resources belonging to all people, of all generations, and the enhancement of the most precious and most renewable natural resource of any nation—healthy and active citizens.

(9) The Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–4 et seq.) originally provided an equitable proportion of funds guaranteeing the States, and through the States, local governments, 60 percent of available funds in recognition of their pivotal role in providing realistically available public outdoor recreation.

(10) The original intention of such Act has not been carried forward in practice.

(11) Subsequent amendments to such Act have resulted in a significant reduction in the proportion of funds allocated to the States relative to the proportion available for Federal purposes.

(12) The States have not received an equitable proportion of funds sufficient to encourage the public recreational partnership envisioned by Congress or consistent with the State and local pivotal roles in providing public outdoor recreation.

(13) It is necessary to rectify apportionment of available funds in order to carry forward the original intention of such Act, for States to receive their full share, and to avoid a long-term national deficit of recreation investment.

(14) Sufficient revenue is produced annually from the sources identified for the Land and Water Conservation Fund to provide for equitably proportioned funds for the Federal, State, and local outdoor recreation uses

originally intended by Congress without the need to resort to other funding or to impact one use at the expense of the others.

(15) In addition to the benefits of recreation to public health, recreation and the availability of recreation resources are effective in lowering vandalism and juvenile crime, and provide healthy environments for public accommodation, enjoyment, and exercise.

(16) Urban and land use planners urgently recommend the increased use of "green spaces" in urbanized areas in order to mitigate environmental and population impacts and to protect surface and subsurface waters and wetlands that occur in or near large populated areas.

(17) The population of the United States continues to expand while access to open space continues to decrease in many regions of the United States, especially in and near metropolitan areas.

(18) State governments and local communities are increasingly hard-pressed to provide adequate funds for recreation and for environmental protection and resource conservation.

(19) The recreation and open space needs of States and local communities represent a more dynamic and fluid environment that requires greater flexibility in the ways in which Federal funds can be used by States and communities.

(20) Sound environmental practices, urban planning and emergency preparedness, and recreation are compatible and consistent uses of public lands and resources and should be actively encouraged in the planning, development, and acquisition of lands and waters for public access and for recreation.

(b) PURPOSE.—The purposes of this Act are—

(1) to strengthen the dedication of the United States to the goal of providing adequate recreation opportunities to all citizens; and

(2) to ensure that—

(A) adequate facilities are created and maintained on public lands and waters to facilitate recreation opportunities consistent with the purposes for which the lands and waters are acquired;

(B) whenever possible multipurpose planning occurs to coordinate between the Federal Government and the States the expenditures of public funds for both wise acquisition and use of lands and waters for recreation uses and compliance with laws protecting the environment and public health; and

(C) the public lands and waters acquired for recreation are preserved, conserved, and maintained for present and future uses of citizens of the United States.

(c) POLICY.—It is the policy of Congress that—

(1) funds covered into the Land and Water Conservation Fund should to the extent possible be fully appropriated within the authorization for each fiscal year;

(2) all funds appropriated should be disbursed in accordance with the formula established in section 6(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-8(b)) so that the State and local governments receive an equitable portion of funds in recognition of their pivotal role in establishing, maintaining, and preserving meaningful recreation opportunities for all citizens; and

(3) in expending funds for recreation purposes, both the Federal Government and the States should—

(A) to the greatest extent possible recognize that lands and waters appropriate for recreation can simultaneously serve other necessary and desirable environmental or public health or safety purposes; and

(B) accord a priority to the acquisition of lands and waters that serve these multipurpose uses.

SEC. 3. APPROPRIATIONS FROM AND ALLOCATION OF FUND.

Section 5 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-7) is amended—

(1) by designating the first and second sentences as subsection (a);

(2) by designating the third through last sentences as subsection (b); and

(3) by striking subsection (a) (as so designated) and inserting the following new subsection:

"(a)(1) There shall be submitted with the annual budget of the United States a comprehensive statement of the estimated requirements during the ensuing fiscal year for appropriations from the fund for land acquisition by eligible Federal agencies pursuant to section 7 and for land acquisition by States and local governments pursuant to section 6.

"(2) For each fiscal year, there shall be made available from the fund an amount that is not less than twice the amount that was made available to carry out section 7(a)(1) for fiscal year 1992.

"(3)(A) Subject to subparagraph (B), and in each fiscal year, 50 percent of the estimated requirements referred to in paragraph (1) shall be designated for, and 50 percent of the amounts made available from the fund shall be used to carry out, Federal purposes as described in section 7.

"(B) If the requirement of subparagraph (A) with respect to amounts made available from the fund is not met, funds made available for Federal purposes as described in section 7 shall be reduced and funds made available for financial assistance to States pursuant to section 6 shall be increased so that the amounts are equal.".

SEC. 4. FUNDS FOR INDIAN TRIBES.

Section 6(b)(5) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-8(b)(5)) is amended—

(1) by inserting "(A)" after "(5)"; and

(2) by adding at the end the following new subparagraph:

"(B)(i)(I) For the purposes of paragraph (1), all federally recognized Indian tribes and Alaska Native Village Corporations (as defined in section 3(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(j)) (except for those tribes and Village Corporations that enter into agreements pursuant to clause (ii)) shall be treated collectively as one State and shall receive shares of the apportionment under paragraph (1) in accordance with a competitive grant program established by the Secretary by rule in accordance with subclause (II).

"(II) The rule shall ensure that in each fiscal year no single tribe or Village Corporation receives more than 10 percent of the total amount made available to all tribes and Village Corporations pursuant to the apportionment under paragraph (1).

"(III) Funds received by an Indian tribe or Village Corporation under this clause may be expended only for the purposes specified in paragraphs (1) and (3) of subsection (a).

"(ii)(I) In each fiscal year, in lieu of receiving funds under clause (i), a tribe or Village Corporation may establish by written agreement with the State in which the tribe is located the right of the tribe or Village Corporation to compete for a portion of the funds made available to the State pursuant to this section.

"(II) Each State's comprehensive statewide outdoor recreation plan shall describe any agreement entered into pursuant to subclause (I).".

SEC. 5. MULTIPURPOSE ACQUISITIONS BY STATES.

Section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-8) is amended—

(1) in subsection (c)—

(A) in the first sentence, by striking "Payments" and inserting "(1) Except as provided in paragraph (2), payments"; and

(B) by adding at the end the following new paragraph:

"(2)(A) Notwithstanding subsection (f)(3), payments to a State shall cover not more than 80 percent of the cost of each acquisition project undertaken by the State that—

"(i) is a multipurpose project in that the lands or waters to be protected are identified in a State or local recreation resource plan prepared pursuant to subsection (d), or a comparable public document, as appropriate for multiple public purposes in accordance with subparagraph (B); and

"(ii) is granted a high priority in the State's comprehensive statewide outdoor recreation plan prepared pursuant to subsection (d).

"(B) A project is appropriate for multiple public purposes if the project provides public recreation use and—

"(i) provides a natural or landscaped alternative transportation route;

"(ii) provides wildlife habitat;

"(iii) results in the improvement of air and water quality;

"(iv) results in increased flood control;

"(v) results in enhanced social, aesthetic, or environmental conditions in a neighborhood or community;

"(vi) provides other attributes of recreation space important to human health and welfare;

"(vii) enables the State or unit of local government to comply with a Federal, State, or local law that serves an environmental, public health, or public safety purpose; or

"(viii) meets more than one of the conditions described in clauses (i) through (vii).";

and

(2) in subsection (e)(1)—

(A) by designating the first and second sentences as subparagraphs (A) and (C), respectively; and

(B) by inserting after subparagraph (A) (as so designated) the following new subparagraph:

"(B) Notwithstanding subsection (b)(2), in providing financial assistance for acquisitions, the Secretary shall give highest priority to projects described in subsection (c)(2).".

SEC. 6. MAINTENANCE AND SECURITY NEEDS AND SHELTERED FACILITIES FOR STATES.

Section 6 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-8) is amended—

(1) in subsection (a), by striking "or (3) development" and inserting "(3) development, (4) planning, (5) maintenance, or (6) security"; and

(2) in subsection (e)—

(A) in paragraph (2), by striking ": *Provided*," and all that follows through the end of the paragraph and inserting a period; and

(B) by adding at the end the following new paragraphs:

"(3) PLANNING, MAINTENANCE, SECURITY, AND SHELTERED FACILITIES.—(A) Subject to subparagraph (B)—

"(i) for planning and maintenance of facilities acquired and developed with financial assistance provided pursuant to this section;

"(ii) for costs of law enforcement and security personnel and other security measures that are necessary to ensure safe public access to and recreation use of lands and waters acquired with financial assistance provided pursuant to this section, except that not more than 10 percent of the funds used to carry out this clause may be used for personnel costs; and

"(iii) for development of sheltered facilities for public health or safety in connection with projects otherwise eligible for assistance under this section, including facilities for swimming pools and ice skating rinks in areas where the Secretary determines that the severity of climatic conditions and the increased public use made possible by the facilities justifies the construction of the facilities.

"(B) In each fiscal year, the Secretary may allocate not more than 30 percent of the total amount of financial assistance provided to each State for the purposes described in subparagraph (A).".

SEC. 7. PAYMENTS TO PRIVATE NONPROFIT ORGANIZATIONS.

Section 6(f)(2) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-8(f)(2)) is amended—

(1) by designating the first and second sentences as subparagraphs (A) and (B), respectively; and

(2) by adding at the end the following new subparagraph:

"(C)(i) If consistent with an approved project, the State, political subdivision, or other appropriate public agency receiving funds pursuant to this paragraph may transfer funds to be used in accordance with clauses (ii) and (iii) to a private nonprofit organization that meets the requirements of clause (iv).

"(ii) Funds received pursuant to clause (i)—

"(I) may be used for projects approved in writing by the grantor of the funds and only in association with—

"(aa) the acquisition of lands or interests in lands; and

"(bb) the development of recreation facilities; and

"(II) may not be used for administrative expenses.

"(iii) A private nonprofit organization that uses funds for acquisition shall itself hold, or shall convey in perpetuity in a timely manner, for public benefit, such interest as it may acquire to a recipient determined to be appropriate by the grantor of the funds.

"(iv) A private nonprofit organization may receive funds pursuant to clause (i) if the organization—

"(I) is qualified for exemption from income taxes under section 501(c)(3) of the Internal Revenue Code of 1986;

"(II) includes among its purposes the conservation of recreation resources or the providing of, or enhancement or protection of, outdoor recreation opportunities;

"(III) meets and complies with such guidelines for the receipt and use of the funds as are established by the Secretary; and

"(IV) provides full accountability for the use of the funds.

"(v) It is the intent of Congress that funds transferred and utilized by a private nonprofit organization pursuant to this subparagraph will result in a greater public benefit than would the utilization of the funds exclusively by a governmental entity.".

SEC. 8. MAINTENANCE OF EFFORT.

(a) STATES.—Section 6(f) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-8(f)) is amended by adding at the end the following new paragraph:

"(9) The Secretary may not provide financial assistance to a State under this Act unless the State agrees to maintain the expenditures of the State for purposes other than acquisition at a level equal to not less than 80 percent of the average level of the expenditures maintained for the 5 fiscal years preceding the fiscal year for which the financial assistance is provided.".

(b) FEDERAL RECIPIENTS.—Section 7 of such Act (16 U.S.C. 460*l*-9) is amended by adding at the end the following new subsection:

"(d) MAINTENANCE OF EFFORT.—In utilizing funds received under this Act, each Federal recipient shall maintain the expenditures of the Federal recipient for purposes other than acquisition at a level equal to not less than the level of the expenditures maintained for the fiscal year preceding the fiscal year for which the funds are received.".

LEGISLATIVE SUMMARY—LAND AND WATER CONSERVATION FUND AMENDMENTS OF 1993

SECTION-BY-SECTION ANALYSIS

Section 1. Section 1. is the Short Title for the legislation.

Section 2. Section 2. contains the findings which support the legislation, defines it's purpose and states the policy served by the legislation.

Section 3. Section 3. amends the Land and Water Conservation Fund (LWCF) to eliminate the current formula apportioning the funds between Federal and State participants. The legislation requires an annual report to be submitted with the budget request providing a comprehensive statement of the estimated needs and requests for appropriations from the fund. The Section enlarges the total funding available for both Federal and States entities by requiring that at least twice the total funding allocated in FY 1993 be made available annually from the LWCF. A new formula is substituted and gives 50% to the Federal and 50% to the State purposes. A special subsection requires that if the 50% division is not maintained, the amount allocated to the Federal share will be diminished by an equal amount allocated to the State apportionment until equality in the division of the total between the two purposes is achieved.

Section 4. Section 4. amends the existing legislation to clarify participation in the LWCF by Native Americans. The proposed legislation recognizes the principle of tribal sovereignty by providing a defined set of options for the participation of Native American tribal governments and Alaskan native villages and corporations in the grant process.

The legislation provides as one option a process in which Native American tribal governments and Alaskan native villages and corporations are recognized collectively on a basis equivalent to that afforded the States and receive as a collective entity a proportion of all funding allocated to grants funding for State and local purposes. The Secretary of the Interior is required to provide a method by which the National Park Service, which administers State and local grant program, will award grants to the participating Native American tribal governments or Alaskan native village or corporations.

A second option, to be used solely at the discretion of a tribe, village or corporation, allows the Native American entity to enter into an agreement with the State and to participate under State auspices on a footing similar to those of other local organizations which receive funding under the grant process within the allocation to that State. The options are exclusive alternatives and a tribe, village or corporation may not receive grant funding under both processes but must elect one or the other option when it seeks LWCF funding for its outdoor recreation programs.

Both options are subject to the preference priority in LWCF funding grants for multipurpose projects which is established by this amendment. No tribe, village or corporation when competing among themselves for collective grant funding may receive more than 10% of the total allocation for all tribes, villages or corporation in any one fiscal year.

Section 5. Section 5. amends the existing legislation to provide a second formula for apportioning grant funding for State purposes. A preference is given to multipurpose acquisitions of lands and waters and allows 80% of such acquisitions to be funded through LWCF. The proposed legislation defines multipurpose acquisitions and includes greenways, open space preserves, as well as lands and waters which have outdoor recreational potential which will meet needs established by environmental or other conservation laws passed by Federal, State or local government bodies. These areas will be afforded multi-purpose preference funding in applications under the state grant program when identified in the State Outdoor Recreation Plan.

Section 6. Section 6. amends existing law to allow agencies receiving state grant funds to use up to 30% LWCF funding for maintenance and development purposes which were previously prohibited. In addition, the legislation clarifies that the funding from LWCF, which is used for maintenance and development, may also be used for the purpose of ensuring security on the acquired lands and waters. The security may include physical structures such as fencing or lighting, pay for personnel such as policy/guards or monitors. The personnel costs can not exceed 10% of the funding used from LWCF for the maintenance, development and security purposes. Similarly, States are also specifically allowed to use LWCF funds for development of sheltered facilities for outdoor recreation when climate and increased opportunities for public use are warranted.

Section 7. Section 7 amends the existing legislation to allow private non-profit organizations which meet certain conditions to participate in obtaining matching fund grants from States which have received an allocation under the LWCF. Funds may not be used by a private non-profit organization for any administrative expenses. If the organization uses the funds for the purpose of acquiring interests in lands or waters, the interest must be conveyed in perpetuity to the State for public benefit or held by the organization for that purpose.

Section 8. Section 8 provides for implementation of the purpose and policy of the legislation by prohibiting the Secretary from granting a State LWCF financial assistance unless the State agrees as a condition of receiving the funding to maintain program expenditures at 80% of the average of the five fiscal years preceding the year for which the grant is sought. Federal agencies receiving LWCR funding to be used for maintenance, development or security purposes for land or water acquisition are required to maintain the level of expenditures budgeted for program purposes other than acquisition in the preceding fiscal year.

OFFICE OF THE GOVERNOR,
Tallahassee, FL, May 4, 1992.

Hon. DENNIS DECONCINI,
U.S. Senator,
KEN TRAVOUS,
President, National Association of State Outdoor Recreation Liaison Officers, Double Tree Hotel, Washington, DC.

DEAR DENNIS: I am pleased to support your efforts to amend the Land and Water Conservation Fund Act to ensure that a greater portion of the total funds are appropriated for the stateside share. I recommend an amendment to the Act that allows the stateside share to receive 50 per cent of the total appropriation. This could be accomplished over a three-year period through incremental increases.

Over the years the stateside share of the Land and Water Conservation Fund Program has provided nearly $94 million to Florida for the acquisition and development of outdoor recreation areas at the State and local levels. Currently, Florida's entire annual appropriation is distributed to local governments.

Your effort to rebuild the stateside share is greatly appreciated.

With kind regards, I am.

Sincerely,

LAWTON CHILES.

STATE OF ARKANSAS,
OFFICE OF THE GOVERNOR,
Little Rock, AR, May 1, 1992.

Hon. DALE BUMPERS,
U.S. Senator, Dirksen Building, Washington, DC.

DEAR DALE: I am writing to ask you for your help in support of an amendment to the Land and Water Conservation Fund (LWCF) Act. The proposed amendment would reestablish the formula by which annual LWCF appropriations are divided between federal and state governments. Use of this formula will help ensure larger statewide allocations.

Outdoor recreation development grants made possible through this fund have made great improvements to the quality of life enjoyed by many Arkansas communities. A higher level of allocation to the stateside portion of the fund would provide continued development of these valuable resources.

Your assistance in increasing the stateside allocation from the LWCF would be a great service to the State of Arkansas. If we can provide you with additional information or answer any questions, please call Richard W. Davies, Executive Director of the Department of Parks and Tourism at (501) 682-2535.

Sincerely,

BILL CLINTON.

STATE OF ARIZONA,
EXECUTIVE OFFICE,
Phoenix, AZ, May 1, 1992.

Hon. DENNIS DECONCINI,
U.S. Senator, Senate Hart Office Building, Washington, DC.

DEAR SENATOR DECONCINI: Last year the Western Governor's Association passed a resolution calling for Congress to amend the Land and Water Conservation Fund. The amendment would re-establish the partnership between the Federal and State governments in providing outdoor recreation opportunities across this great land.

The state stands ready to match the federal government's allocation to this program at $500 million next year. The matching dollar requirement in the act, however, is but a small part of the value of this program. The legacy of the act is found in the areas that are protected through people at many levels of government working together.

I am pleased to hear that our request is the cornerstone of your proposed legislation. I call on your fellow congressman to join in your effort.

Sincerely,

FIFE SYMINGTON,
Governor.

NATIONAL RECREATION
AND PARK ASSOCIATION,
Arlington, VA, May 4, 1992.

Hon. DENNIS DECONCINI,
U.S. Senate,
Washington, DC.

DEAR SENATOR DECONCINI: We commend you for your initiative to strengthen the Land and Water Conservation Fund public partnership so critical to recreation resource investment and access. We hope that the Congress will quickly consider the imperative for recreation opportunity of the highest quality for all people.

Investment in recreation and park resources, especially in local and state systems, must be an increasing priority for resource conservation, social equity and human well-being. In the context of resource conservation, for example, despite depressed economic conditions the rapid development of land continues without full consideration of long-term recreation resource and access needs. LWCF assistance is needed now to encourage conservation. Most critical are the protection of resources in key locations in terms of recreation access and population density, and sites with specific sought-after features, including water.

In a social context, recreation opportunity is increasingly perceived—and is functioning—to alleviate stress and enhance the quality of life. In Phoenix, Arizona, for example, calls for police assistance dropped up to 17 percent while special recreation opportunities were offered in selected neighborhoods. "At risk" youth in Olympia, Washington recently urged the city council to continue its support for "street counseling" through a recreation outreach initiative. Dallas, Texas' parks and recreation "gang intervention" program is credited with important progress in reducing violence. The Administration's 1990 Health Goals for a Nation recommended improved access and greater investment in community recreation resources, including aquatic facilities and places to safely walk, to prevent disease and promote health.

In a national context, research by our organization and others has indicated that state and local governments anticipate investment needs of about $37.27 billion for park and recreation systems in the 1990-1994 period. Of the total, local systems anticipated the larger needs—about $30.4 billion.

About 25 percent of the total was needed for land conservation; 50 percent for new construction; and 25 percent for rehabilitation. It is highly unlikely that these needs have changed in the context of the present recession. What has changed, however, is local and state governments' capacity to address them.

The fiscal resources to support Land and Water Conservation Fund local, state and federal strategies have been collected and should be committed to the program. The authorized but unappropriated LWCF balance is expected to total $8,944,587,000 at the end of the fiscal year, if the Administration's fiscal year 1993 recommended level is appropriated. Further, total Outer Continental Shelf rent, bonus and royalty receipts will be about $2,370,000,000, an estimated $812,190,000 of which would be credited to LWCF.

Public debate today increasingly uses the term "prevention": In the context of juvenile justice and delinquency prevention; in personal and public health; in substance abuse strategies; and in environmental maintenance. Public recreation agencies, resources, and services are often quiet but integral parts of public and private strategies to address these issues. Your proposal will bring increased recognition to the need for enlightened policy and public investment.

We look forward to contributing to this process.

Sincerely,

R. DEAN TICE,
Executive Director.

NATIONAL ASSOCIATION OF STATE
OUTDOOR RECREATION LIAISON OFFICERS,
Tallahassee, FL, May 1, 1992.

DEAR MEMBERS OF CONGRESS: Twenty five years ago, the federal government embarked on an incredible journey. The destination was the protection of our outdoor heritage. The fuel was the re-investment of the proceeds from the use of our depletable natural resources. The vehicle was the Land and Water Conservation Fund.

The journey was incredible because the front seat passengers included state and local governments. You decided that you wouldn't reach your destination unless these partners "chipped in" with their local resources for more fuel.

Some years ago, we made a wrong turn. State and local governments were put in the back seat. Perhaps, we went there too quietly.

The consequences were predictable. Our destination is further away and we are running out of fuel.

We applaud the DeConcini Amendment to the Land and Water Conservation Fund as the roadmap to put us back on course. We are ready to put hundreds of millions of dollars into the tank. We encourage you to join Senator DeConcini, our organization, and all of the others who seek a future that retains our heritage.

Sincerely,

KENNETH E. TRAVOUS,
President.

STATE OF WYOMING,
OFFICE OF THE GOVERNOR,
Cheyenne, WY, May 3, 1992.

Hon. DENNIS DECONCINI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DECONCINI: I am writing in support of your proposed amended to increase the state side of the Land and Water Conservation Fund. I testified on behalf of the Western Governors' Association regarding the program this past February. Support for the stateside of the program was a major focus of my presentation.

An increase in funding of the stateside of the L&WCF program will provide a direct benefit to many communities in Wyoming. The benefits will be felt in the improved quality of life enjoyed by those residents using recreation and park facilities funded by allocations from the L&WCF program. They will also be felt by he growing number of tourists who visit this state to utilize and enjoy our beautiful natural resources. The latter will serve to enhance our burgeoning tourism industry.

I appreciate your support for the program and feel that the results of positive action on your proposed amendment will serve to directly benefit the citizens of Wyoming.

With best regards, I am
Very Truly Yours,
MIKE SULLIVAN,
Governor.

DEPARTMENT OF GAME,
FISH AND PARKS,
Pierre, SD, May 4, 1992.

Hon. DENNIS DECONCINI,
Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR DECONCINI: We would like to express our enthusiastic support for your amendment seeking an increase in the Land and Water Conservation Fund appropriation for state and local assistance. Your proposal to bring the state and local project funding into balance with federal agency funding by dedicating 50% of the annual LWCF appropriation makes good sense, given that the President's Commission on Americans Outdoors found that the overwhelming majority of outdoor recreation occurs within ten miles of home.

Certainly, this is the most cost effective way to serve the greatest number of people. In many cases, local investment in recreation facilities and resources averts the necessity for federal agency action to address these issues. High quality, national caliber opportunities are often protected or provided by those who live nearby, but only if funds are available.

It is worth noting that recreation opportunities close to home serve to improve public health and fitness, and also serve to create a sense of community for our citizens, strengthening our social fabric and improving the quality of life.

Increasing the Land and Water Conservation Fund appropriation for state and local assistance is clearly a wise investment in America.

Sincerely,
RICHARD BERINGSON,
Secretary.

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
Providence, RI, May 5, 1992.

Senator DENNIS DECONCINI,
U.S. Senate, Washington, DC.

DEAR SENATOR DECONCINI: I would like to express my strong support for an amendment to the Land and Water Conservation Act which will establish by law the proportion of funding for the state side of the program, with the state side share reaching and remaining at fifty percent in 1995. Such an amendment would insure that state and local governments, which provide the preponderance of recreational opportunities for our citizens, would have a reliable and reasonably-funded program.

Rhode Island is no different that any of the forty-nine other States, but a look at the numbers is compelling evidence of the loss of federal support for open space preservation and outdoor recreation. In 1978–1980, Rhode Island received over $2 million annually; when matched equally by state or local dollars, the state had a $4 million dollar annual program. In 1991, Rhode Island received $170,000 in Land and Water Conservation Funds, to be shared between the state and local governments. The state side share in 1991 was less than ten percent of the funds allocated to the National Park Service for the national parks.

I, therefore, urge the Congress to pass legislation to establish a more balanced program to address the outdoor recreation needs of the State and local governments as well as those of the country's national parks.

Best personal wishes.
Sincerely,
BRUCE SUNDIUM,
Governor.

STATE OF NEVADA,
Carson City, NV, May 5, 1992.

Hon. DENNIS DECONCINI,
U.S. Senate, Washington, DC.

DEAR SENATOR DECONCINI: I appreciate your efforts to amend the Land & Water Conservation Fund in order to assure that the state retain a reasonably proportion of the funds appropriated. Accordingly, I fully support your efforts on the floor of the Senate, scheduled for the morning of May 5, to introduce this amendment.

This action will once again enable the L&WCF program to reclaim its status as one of the most successful federal-state partnerships in the history of our nation. As you are probably aware, funding for this important program has decreased almost 95 percent since its peak year in 1979. The substantial increase in federal matching funds your amendment would provide will give a tremendous boost to our efforts to address the increasing need for park and recreation facilities in Nevada, the fastest growing state in the nation.

Earlier this year, a National Recreation & Parks Association survey identified some 70 state and local projects in Nevada alone, totaling an estimated $48.5 million, that could potentially benefit from an expanded L&WCF program.

For the sake of our recreating public, I wish you every success.

Sincerely,
BOB MILLER,
Governor.

STATE OF MONTANA,
OFFICE OF THE GOVERNOR,
Helena, MT, May 4, 1992.

Hon. DENNIS DECONCINI,
Doubletree Hotel, National Airport.

DEAR SENATOR DECONCINI: The State of Montana strongly supports the amendment to the Land and Water Conservation Fund Act which would increase funding for the state side of this valuable outdoor recreation program.

Montana State Parks has identified a $60 million long-range capital improvement need and the local communities, through a statewide survey, have recently identified an even greater need.

Sincerely,
STAN STEPHENS,
Governor.

STATE OF KANSAS,
OFFICE OF THE GOVERNOR,
Topeka, KS, May 4, 1992.

Hon. DENNIS DECONCINI,
U.S. Senator, Washington, DC.

DEAR SENATOR DECONCINI: This will confirm my support of the proposed amendment to the Land and Water Conservation Fund that would increase the state-side funding of the Program.

The State of Kansas and its governmental units have for years relied heavily on the Land and Water Conservation Fund Program to assist, in the development of outdoor recreation facilities as well as the acquisition of land for future park development. The stateside of the Program has decreased significantly over the past ten years, resulting in the necessity for state and local units to finance their outdoor recreation endeavors solely on their own, or forego totally any significant improvements or expansion in sorely needed facilities and the acquisition of future park sites.

We currently have applications totalling in excess of $2 million from local units of government to be considered for funding, while the state's fiscal year apportionments have averaged approximately $261,500 over the past five years. There is a genuine need for an increase in the fund for Kansas cities and counties and I wholeheartedly support your efforts in obtaining passage of the amendment that will increase the annual apportionment to the states for local park and outdoor recreational improvements.

Sincerely yours,
JOAN FINNEY,
Governor.

OFFICE OF THE GOVERNOR,
Boise, ID, June 3, 1992.

Hon. DENNIS DECONCINI,
Hart Senate Office Building, Washington, DC.

DEAR DENNIS: I recently testified before the Subcommittee on Energy and the Environment, and have written numerous letters to key individuals, including Secretary Lujan, to encourage increased funding for the state and local share of the Land and Water Conservation Fund.

The draft amendment being proposed by you would bring several improvements to the Land and Water Conservation Fund program, all of which we support.

We appreciate your effort to increase funding for the Land and Water Conservation Fund and provide for equal proportions to federal and state governments.

With best regards,
Sincerely,
CECIL D. ANDRUS,
Governor.

STATE OF GEORGIA,
OFFICE OF THE GOVERNOR,
Atlanta, GA, May 4, 1992.

Hon. DENNIS DECONCINI,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR DECONCINI: The State of Georgia is pleased to be counted among the states supporting legislation which you will introduce to amend the Land and Water Conservation Fund (L&WCF) Act. It is our understanding that it will adjust the formula over the next several years for allocating L&WCF appropriations for state and federal purposes. One result is an increased proportion of the funding for states.

We appreciate your efforts and offer our support for this long overdue legislation for the benefit of state programs. It recognizes the responsibility of state and local governments as the primary provider of recreation services to the public.

With kindest personal regards, I remain
Sincerely,
ZELL MILLER,
Governor.•

By Mr. DECONCINI:

S. 323. A bill to establish an Office of Hispanic American Affairs in the Executive Office of the President, and in various Federal departments and agencies, and for other purposes; to the Committee on Governmental Affairs.

OFFICE OF HISPANIC AFFAIRS ACT OF 1993

• Mr. DECONCINI. Mr. President, I rise today to reintroduce legislation to establish an Office of Hispanic Affairs in the Executive Office of the President. The intent of this legislation is to cre-

ate an office at the highest level of our government which will ensure that Federal programs are fulfilling their responsibilities to the Hispanic population and where Hispanics, one of the fastest growing constituencies in the United States, know their voices will be heard.

Since I first introduced this legislation in 1985, the number of Hispanic Americans living in the United States has increased dramatically—expanding, since 1980, at nearly five times the rate as the non-Hispanic population. Some project that by the 21st century, Hispanics will be the largest ethnic minority in the United States. In my home State of Arizona, Hispanics account for nearly 20 percent of the population. Yet, Hispanic Americans continue to be underserved in the areas of education, health care, housing and employment services. They continue to battle discrimination in the workplace and face difficulties in qualifying for home and small business loans.

The statistics demonstrating the need to create an office at the executive level to address the needs of this population are overwhelming. A 1990 survey conducted by the National Council for La Raza showed that Hispanics complete fewer years of school than any other ethnic group. More than two in five Hispanic students drop out of school before high school graduation. Economically, the median income of Hispanic households continues to be significantly lower than for non-Hispanics. The 1990 census found not only that the poverty rate was unacceptably high for all Americans—13.5 percent, but that the rate for Hispanics was almost three times as great—28.1 percent. Hispanic families were found to be more than twice as likely to live in poverty—25 percent, than non-Hispanic families—10.7 percent.

Those in the work force are challenged by an increasing incidence of discrimination by employers. A General Accounting Office report showed that Hispanic testers participating in a hiring audit were three times as likely to encounter unfavorable treatment when applying for jobs as were closely matched non-Hispanics. Yet, the Equal Employment Opportunity Commission has investigated a disproportionately small number of complaints filed on behalf of Hispanic workers.

The Federal Government is not meeting the challenge of providing equal access to information and resources to this fast growing segment of the population. The Office of Hispanic Affairs will open a door to hear, solicit and promote the interests of this significant segment of the population. I am heartened by President Clinton's emphasis on the need to have a vision for America; the needs of Hispanic Americans have to be part of that vision. The Office of Hispanic Affairs will serve as a focal point in our continuing effort to provide equal opportunities for all Americans.●

By Mr. BAUCUS:

S. 324. A bill to improve monitoring of the domestic uses made of certain foreign grain after importation, to use the export enhancement program to promote the export of wheat to Mexico, and for other purposes; to the Committee on Finance.

FAIR TRADE IN GRAIN ACT OF 1993

● Mr. BAUCUS. Mr. President, today I introduce the Fair Trade in Grain Act of 1993, in response to trade disparities which continue to batter American grain producers.

We have had a free trade agreement with Canada, the Canadian Free Trade Agreement, since 1989. From this, one might assume that we have free trade with Canada.

Actually, a very important sector—agriculture—was effectively exempted from the CFTA. Unfortunately with regard to Canada, these exemptions were essentially continued in the NAFTA. American farmers are understandably outraged.

Many of my constituents who raise wheat were told by the previous administration that they should support an extension of fast track. In return, they were led to believe that the previous administration would attempt to address their concerns with Canada in the NAFTA negotiations.

Unfortunately in the final days of the negotiations, Canada chose to essentially withdraw the entire topic of agriculture from the NAFTA negotiations. The administration consented; choosing to negotiate bilaterally with Mexico on agriculture and allowing agricultural issues with Canada to be handled by the CFTA.

WHEAT AND CANADA

Anyone who believes we have established true free trade with Canada should take a hard look at the situation faced by American wheat farmers.

First, Canada continues to provide export subsidies on all wheat exports to the United States. The CFTA includes a general prohibition on employing export subsidies on shipments to the other party. But Canada has carved out a special exemption from this provision for certain transportation subsidies. Not surprisingly, Canadian wheat exports to the United States have risen dramatically and are expected to hit 42 million bushels next year. Of course, Canada can still employ wheat export subsidies on exports to Mexico.

Earlier this month, when President Bush announced that he was expanding Export Enhancement Program sales by 1.1 billion bushels, I had hopes that the administration was finally going to counter the subsidies of the EC and Canada. Unfortunately, Mexico is not on the list of countries eligible for EEP. Mexico is still not eligible for this market expanding program.

Second, all sales of Canadian wheat are still handled by a government chartered monopoly known as the Canadian Wheat Board. The price that this board charges for export sales of wheat is generally much lower than the domestic price for the same wheat. This practice is generally known as dumping and is prohibited by U.S. law.

The United States instituted dispute settlement proceedings against Canada related to Durum wheat on the pricing practices of the Canadian Wheat Board. But these proceedings are slow and narrowly targeted. In the meantime, U.S. farmers continue to suffer. In Mexico last year, Canada captured some 76 percent of the market through these cutthroat pricing policies while the Bush administration sat on its hands.

Third, Canada is allowed to require end-use certificates on grain imported into Canada. These certificates are required to ensure that imported grain is not commingled with Canadian grain. American wheat farmers recently pressed for similar end-use certificates on imports of Canadian wheat to ensure that Canadian wheat was not mixed with U.S. wheat and slipped into American farm export program shipments. But they were told by the Bush administration that such end-use certificates would violate the CFTA. Apparently, the United States and Canada are living by a different set of rules.

Canada may be a good trading partner in many sectors, but with regard to wheat Canadian practices puts Japan to shame.

THE FAIR TRADE IN GRAIN ACT

This legislation will address my concerns with 3 provisions.

First, turnabout is fair play. This legislation will require end-use certificates on imported grains. If Canada can employ such certificates, the U.S. can too.

Second, it will direct the Secretary of Agriculture to use the Export Enhancement Program to promote wheat shipments to Mexico. This will counteract the effects of low priced, subsidized grain in the Mexico market.

Third, this legislation will mandate the initiation of unfair trade cases against Canadian wheat imports. This process is necessary if we are to end unfair pricing on United States sales by the Canadian Wheat Board.

CONCLUSION

American wheat farmers got a poor deal under the Canada FTA. Thanks to the tactics of Canada and the cooperation of the Bush administration, they were not able to improve on the deal in the NAFTA.

This is simply unacceptable. Free trade means that everyone plays by the rules, not that the United States plays by the rules and Canada ignores them.

I am determined to level the playing field for American wheat farmers.●

By Mrs. KASSEBAUM (for herself, Mr. DANFORTH, and Mr. BURNS):

S. 325. A bill to provide for comprehensive health care access expansion and cost control through reform and simplification of private health care insurance and other means; to the Committee on Finance.

BASICARE HEALTH ACCESS AND COST CONTROL ACT

Mrs. KASSEBAUM. Mr. President, I am pleased today to reintroduce comprehensive legislation for national health care reform, the BasiCare Health Access and Cost Control Act. I am joined in this effort by my Senate colleagues JACK DANFORTH and CONRAD BURNS, and in the House by Congressmen DAN GLICKMAN and DAVE MCCURDY.

Originally introduced last March, our BasiCare legislation offers a touch but sensible middle ground in the difficult debate over health reform. It is both comprehensive in expansion of access to the uninsured and binding in restraint of rising costs—and yet BasiCare achieves each of these goals without resorting either to Government micromanagement of the health care marketplace or to burdensome employer mandates.

Mr. President, our BasiCare legislation is also fundamentally compatible with the principles of market-based managed competition, as well as with President Clinton's firm intention to combine such managed competition with meaningful and binding restraint of costs. A measure of BasiCare's compromise potential is that, as yet, it is the only comprehensive reform bill to have attracted bipartisan cosponsorship—either in this Congress or in the last.

Over the past year, health care reform has vaulted to the very forefront of national concern—as well it should. This year alone, the United States will spend a staggering $939 billion on health care, up from $817 billion just last year, a rise of over 11 percent. This represents an upsurge I think is astounding. It is three times the rate of overall inflation. Such rising costs are a cause of great concern, not only to each and every American but to the business community as well.

In Kansas alone, health care spending is increasing at a rate of more than $2 million a day.

Already, rising costs have priced affordable health care out of the reach of more than 37 million Americans—and the ranks of the uninsured are now growing at an estimated rate of 100,000 people each month. Meanwhile, the medical cost explosion is also burdening American business, straining State budgets, worsening the Federal deficit, and seriously threatening the long-term good health of the U.S. economy.

That is not to say, Mr. President, that we do not have fine quality health care in this country. It is simply that we have a system that is expanding beyond our expectations as well as our means.

Mr. President, our BasiCare legislation would simplify the private health insurance marketplace around a single, uniform BasiCare benefits package, the content of which would be determined by an independent national commission patterned in part after the military base-closing commission. All private carriers would be required to sell the BasiCare package and all Americans to carry it. BasiCare policies would be subject to strict rules protecting beneficiaries against discriminatory rating and underwriting practices.

Health care costs would be contained by placing a binding overall annual limit on the allowable rate of increase in BasiCare premiums, an approach which is aimed at forcing a more integrated and efficient health care marketplace. Additional cost restraint would come from limits on the employer deduction for health benefit costs and the employee exclusion from taxation of such benefits. Under BasiCare, the current 100-percent deduction and exclusion would remain, but both would be limited to the cost of the BasiCare package.

To expand access to the uninsured, our legislation would offer low-income persons direct income-based subsidies for the purchase of BasiCare policies in the private market. In addition, Medicaid and Medicare would be assimilated into the BasiCare program over time, and coverage for basic long-term care would be included.

I have always believed, Mr. President, that the latter was very important. As our demographics are changing and we are growing more elderly in this country, long-term care needs to be addressed now before it becomes a significant problem.

The bill also includes tough malpractice reforms, a significant expansion of community-based primary care services, and measures to increase the numbers of health professionals in underserved rural and inner-city communities. A more detailed description of the bill's provisions will be included in the RECORD following my remarks.

Mr. President, as President Clinton's self-imposed, 100-day deadline for producing a comprehensive health program draws ever nearer, discussion and debate on reform strategies is escalating with palpable intensity, both inside and outside of Government.

In these evolving discussions, probably the deepest point of division is the issue of trying to marry market-oriented managed competition with some kind of binding cost restraint. Close behind, perhaps, is the thorny question of whether employer mandates will be required in order to achieve universal access.

The BasiCare legislation we are introducing today offers serious compromise alternatives on both of these divisive issues.

First, although BasiCare's premium-based cost-control structure is very firm in its restraint of rising costs, it is carefully structured to avoid Government micromanagement of the health care system through provider rate- or fee-setting.

This point is very important. I do not think we, as a Government, should get into rate and fee setting.

We believe this approach offers a potential bridge between those who insist on binding budgets on the one hand and those who oppose public regulation of the health care marketplace on the other.

Second, BasiCare is comprehensive in expanding access to the uninsured, but it achieves such expansion without resorting either to employer mandates or to government-run public programs—both of which carry significant logistical and political liabilities.

The BasiCare looks to income-based vouchers to achieve expanded access. Unlike President Bush's proposal of last year, such vouchers would not be tax based but rather would be directly redeemable for buy-in to private BasiCare plans.

I have many people out home in Kansas who will say, "Why should I pay for the uninsured if I am carrying my insurance?" The answer to that, Mr. President, is that we are paying anyway. It is far better for us to recognize what those costs are and help address them in an equitable, fair, and manageable way.

Finally, unlike many of the other major health care reform plans, my BasiCare legislation is straightforward about how it will be paid for. Importantly, it also addresses the critical issue of coverage for long-term care, which many of the others do not.

Mr. President, no issue is more important in health care reform than the need to control spiraling health care costs. As I have said in the past, I believe that health care reform without tough and comprehensive restraint of costs is really no reform at all.

Like President Clinton, I firmly believe that some kind of binding cost-containment mechanism will be needed, and that a restructuring of competition in the marketplace will not—in and of itself—be enough.

Just this week, the Congressional Budget Office issued findings backing up this conclusion, noting that managed competition without binding cost containment would have only a modest effect in holding down overall health expenditures.

This said, however, I want to stress that I also believe it is important that our health reform cost-containment strategies be structured to minimize as much as possible regulatory inter-

ference in the private health care marketplace.

Our BasiCare legislation seeks to do just this. Under our bill, rising health care costs will be contained by placing overall limits on the rate of growth in premiums. This approach will create strong motivation for new efficiency in the health care delivery system, primarily by forcing health plans to manage the risk of rising costs by negotiating with providers for the establishment of efficient, integrated networks of care.

Unlike some of the more interventionist cost-containment approaches now under consideration, the BasiCare legislation would not resort to Government micromanagement of the health care system through complicated public rate- or fee-setting mechanisms. Rather, under the BasiCare approach, it will be health care professionals, not Government bureaucracies, who will be making the day-to-day decisions of health care cost management.

Not widely known at the time we introduced this legislation last March, BasiCare's premium-based approach to cost containment has since picked up considerable attention. It is my understanding that the new administration is taking a serious look at this kind of approach, as are others in Congress.

Mr. President, our intention in reintroducing this legislation today is to reaffirm our commitment to the BasiCare approach as a promising, bipartisan compromise. However, all of us remain eager to work with the new administration and with our colleagues of both parties in pursuing what we hope can be a consensus agreement on this issue.

At some point, for example, it may be worthwhile to consider a closer integration of our BasiCare reform model with the so-called Health Insurance Purchasing Cooperatives [HIPC's] contained in the managed-competition legislation introduced by the House Conservative Democratic Forum [CDF] and others. Such purchasing cooperatives could well arise under our bill, but they are not required.

As we proceed with efforts to achieve overall reform, we also need to be very careful that important related issues do not become lost or obscured. Meeting the special health care needs of rural communities, for instance, is an area I intend to continue to work hard on as the reform debate develops. Similarly, the widening imbalance between primary care providers and specialists is a pressing problem that needs to be addressed in concert with our more general reform efforts.

Mr. President, the bill we are introducing today contains a limited number of targeted changes from last year's legislation. These revisions address logistical and technical issues in certain areas, including provider billing, insurance risk adjustment, and quality assurance. None of these revisions alters the overall structure or approach of the legislation.

In closing, Mr. President, I want to stress that successful reform will ultimately demand a bipartisan balance between competing approaches and agendas.

I am pleased to be a part of the health care task force that has been chaired by Senator CHAFEE on the Republican side of the Senate. Certainly, there have been many others, including the Presiding Officer today, Senator KERREY; Senator KENNEDY; Senator ROCKEFELLER; and many others. We all are trying to find a successful bipartisan answer to this issue.

As this process moves forward, I will urge my colleagues to take a close look at the BasiCare approach. I think it offers real opportunities for compromise. I am also encouraged that we are beginning to see a far greater consensus on some of the critical issues. As we work from that and come together, I am confident that in this next year we may achieve a significant health care reform bill.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

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

BASICCARE HEAL ACCESS AND COST CONTROL ACT

KEY COMPONENTS

Simplifies the insurance market around a single uniform benefits package (BasiCare) that every insurer must offer and that every American will carry.

The BasiCare package will be a required offering of all private health insurance carriers and will be carried by all Americans. No insurance company will be permitted to offer any non-BasiCare plans that duplicate BasiCare benefits, although they may sell supplemental policies for persons wishing additional coverage.

The content of the BasiCare benefits package will be determined by an independent expert commission. As under the current military base-closing system, Congress will have the power to vote up or down on the commission's recommendations, but not to amend them.

BasiCare will be subject to strict rules protecting beneficiaries from discriminatory rating and underwriting based on health status.

Health care costs will be controlled by placing binding annual limits on the maximum allowable rate of increase in BasiCare premiums, as well as through administrative standardization of the single BasiCare package.

Firm limits on annual BasiCare cost growth will create strong motivation for new efficiency in the health care delivery system, primarily through expanded development of coordinated systems of care negotiated between providers and insurers.

Health care access for the uninsured will be addressed by offering low-income persons non-transferable vouchers for the purchase of BasiCare coverage. This system will replace and expand upon the current Medicaid program.

Medicare will also be gradually assimilated into BasiCare, and long-term care coverage will be included in the BasiCare package.

Financing will be obtained through (a) appropriation of existing Medicaid expenditures, (b) limiting the current 100 percent tax deduction and exclusion for employer health benefit contributions to the cost of a BasiCare package, and (c) a limited draw from the current Social Security payroll tax, not to exceed 1 percent of the tax.

The plan also includes malpractice reform, a significant expansion of low-income community health care services, and measures to increase the number of health professionals in underserved rural areas.

SUMMARY OF PROVISIONS

A. Creation of BasiCare

1. Congress will determine the broad foundations of the BasiCare package, but it will not be directly responsible for the details of the plan's composition. Among the foundations that Congress will require, however, will be:

a. Basic hospitalization coverage;

b. Basic outpatient services;

c. Protection against catastrophic out-of-pocket costs;

d. Coverage against extraordinary long-term care costs; and

e. Coverage for preventive care services of significant proven and recognized value in averting serious and costly medical conditions.

2. Actual development of the BasiCare package will be conducted by an eight-member independent, expert commission. Half of the members will be appointed by the President and the other half by the congressional leadership. All will serve on a full-time basis for staggered five-year terms.

3. The commission will define a benefit plan which, in its judgment, represents a minimum but fair coverage package. At its discretion, the commission may recommend limited variation in plan structure to accommodate delivery of BasiCare services in a managed care setting, provided that such variation does not compromise the basic uniformity of the national BasiCare package.

4. As under the current system for closing military bases, Congress will have the power to approve or disapprove the commission's recommendations, but only as an un-amendable package. The purpose of this mechanism is to help assure that the process of developing the benefit package is not unduly distorted by political pressure.

5. The BasiCare commission will have authority to make adjustments in the plan's content, as needed, to reflect changes in technology or in the nation's health needs. It will also have significant oversight responsibility for the health care system as a whole.

6. The commission will be charged with ongoing oversight of the quality of health care delivery—particularly as the system reacts to implementation of the new BasiCare structure. The commission will be required to factor findings on quality into any recommendations it makes to Congress on the content or the cost of the BasiCare package. It will also be authorized to contract with local and regional entities for the collection and dissemination of health care quality, cost-effectiveness, and patient-satisfaction data to consumers.

B. BasiCare's role in the insurance market

1. All insurers in the health insurance market will be required to offer BasiCare and to accept its conditions.

2. Insurers will be barred from selling non-BasiCare policies that duplicate BasiCare

benefits in any way. Supplemental policies, however, will be allowed (see Section F. below). Such supplemental policies will be permitted to cover only those benefits not covered by BasiCare .

3. When the program is fully implemented, BasiCare policies will be subject to strict rating and underwriting rules aimed at assuring availability and curbing risk selection. These will include:

a. Guaranteed Issue and Renewal: Insurers will be limited in applying pre-existing condition restrictions on the issuance of policies and will have to guarantee acceptance of all small groups and individuals wishing to purchase coverage. Similar standards will also be applied to policy renewal.

b. Community Rating: Insurers will be required to set rates on the same terms to all BasiCare policyholders, both group members and individuals. Adjustments in community rating will be permitted for the age of enrollee, but will be held within limits, which will narrow over time. Community rating will apply both to group and individual policies.

c. Portability: Persons will no longer have to fear lack of access to coverage due to a change in employment.

4. Insurers failing to comply with the above reforms will be subject to a federal excise tax on gross premium income.

5. All persons will be required to carry a BasiCare policy, either through a group or individually. Low-income persons will receive direct public assistance for the cost of such coverage (see Section C. below).

6. Employers will not be permitted to discriminate against employees based on health status.

7. Self-insured groups will be permitted to continue self-insuring, provided they can demonstrate that: 1) they are offering a BasiCare-equivalent benefit plan that adheres to all of BasiCare's conditions, 2) they can show that their costs do not differ substantially from those of insured BasiCare plans, and 3) they can demonstrate sufficient financial reserves to assure solvency and protection of patient benefits.

8. "Stop/loss" coverage sold to self-insured groups will also have to follow the same rating, issue, and renewal standards specified for BasiCare (see above).

9. BasiCare policies will be exempt from all current or future state benefit mandates. The federal pre-emption for BasiCare will also apply to state legislation restricting the use of managed care.

10. The health insurance tax deduction for self-employed persons will become the same as that for incorporated group plans. Currently, the group deduction is 100 percent while the self-employed receive 25 percent. Under the new program, the deduction for both categories will be the same—100 percent for the cost of the BasiCare package (see Section E.2 below).

11. Insurers will likely find it desirable to coordinate the development of insurance mechanisms (risk pools) to better accommodate the rating and underwriting changes noted above. As under current law, state governments will also be permitted to create or contribute to such pools.

12. The Commission will develop a structure for risk-adjustment among BasiCare plans. Guidelines for this structure will be developed by the commission but will be administered on a state level by state insurance authorities.

13. Timing: The above-described system for national standardization of the new BasiCare package will go into effect following congressional approval of the commission-proposed BasiCare package. This should occur three years after enactment. Preceding this will be a phase-in period, beginning at enactment, in which the small employer market will be subject to a variety of somewhat milder rating and underwriting reforms aimed at increasing fairness and availability of coverage in that market.

C. BasiCare coverage for low-income beneficiaries

1. The new BasiCare package will replace and supplant current Medicaid coverage. This will apply not only to Medicaid's acute care coverage, but to its long-term care coverage as well.

2. The low-income BasiCare assistance program will be administered through non-transferable federal vouchers redeemable directly to BasiCare carriers or employer plans. Such vouchers will indicate the applicable percentage of BasiCare costs a person or family is eligible to receive. Amounts corresponding to that percentage will be credited to the carrier by the BasiCare program.

3. To facilitate "one-stop shopping" for recipients, the process of application and approval for assistance will be coordinated with actual enrollment in a BasiCare plan.

4. This legislation specifies minimum-income levels for which voucher assistance must be provided, but it leaves the commission discretion to propose increases in these levels, as it may deem appropriate to correspond with the new BasiCare benefit package. At a minimum, persons below 100 percent of the federal poverty line will receive full voucher assistance, and persons between 100 and 200 percent of poverty will receive assistance on a sliding scale based on income. Even persons receiving full voucher assistance will be required to pay a small perservice copayment to discourage overutilization.

5. The switch from Medicaid to BasiCare will assure that medical providers are no longer reimbursed at a lower level for treating low-income patients, as they are under the current Medicaid system.

6. To provide for a smooth transition from Medicaid to BasiCare, the Medicaid program will be retained as an administrative unit for a period of five years following standardization of BasiCare. During this transition period, present Medicaid-eligible beneficiaries will continue to receive any current Medicaid benefits that may not be included in the new BasiCare package.

7. Federal matching funds for Medicaid benefits not included in the BasiCare package will be discontinued at the end of the transition period, unless the commission has recommended—and Congress has approved—an alternate plan for disposition of such benefits.

8. Most federal and state funding currently going to Medicaid will be transferred to the BasiCare low-income assistance program (see Section E.1 below).

D. Cost-containment through BasiCare

The BasiCare system will put in place several strong levers for maintaining cost-control in the health care system. These include:

1. Annual limits on the rate of increase in BasiCare premiums: Insurers will be required to limit annual increases in BasiCare premiums to a federally defined maximum percentage. More specifically, the BasiCare commission each year will set a maximum allowable percentage for such premium increases. This percentage will be binding on all insurers.

As it initiates this system of premium increase limits, the BasiCare commission will also have authority to establish an average base premium for the BasiCare package from which future allowable increases will be measured. This is to guard against the possibility of insurers setting initial rates unreasonably high in anticipation of future increase limits. The commission will be permitted to apply limited geographic variation in the base rate to reflect regional differences in the cost of providing the BasiCare package.

By establishing a single, maximum allowable percentage of increase, government will be putting insurers themselves at risk for rising costs, thereby creating a strong incentive for efficiency. The government's role will be to set the overall budget parameters; finding the best way to live within these means will be up to the health care system itself—and not to government bureaucracies. Unlike other cost-control proposals, this approach will avoid the pitfalls of government micro-management of specific insurance rates and provider fees.

It is likely that insurers will react to the new budget controls by forming organized care relationships with providers in order to share the financial risk with those providers. Under such arrangements, both insurers and providers will have a direct financial stake in keeping costs down and delivering care as efficiently as possible.

2. The benefit package itself: The BasiCare commission will be charged with defining the scope of benefits to a reasonable minimum. Recognizing that defining a core is necessarily a subjective and difficult task, the commission will nevertheless be largely insulated from the strong provider and consumer pressure that has led, for example, to expensive state benefit mandates under the current system.

3. Oversight of provider billing: It is anticipated that the BasiCare premium limits described above will create a market situation in which the only way either providers or insurers can survive financially will be to enter into organized networks of care with each other, under which provider payment would likely be limited to negotiated amounts.

However, to guard against the possibility of unreasonable provider overcharges to consumers, this plan also requires that providers shall accept as payment in full the reimbursement level (or capitated payment) they have contracted with BasiCare plans. Providers will remain free to accept or decline participation with particular BasiCare carriers, but payment for BasiCare-covered services may be received only from certified BasiCare carriers.

4. Paperwork standardization: All billing and claims paperwork associated with BasiCare will be standardized across carriers, and steps will be taken to provide for universal electronic billing.

E. Financing of BasiCare

The cost-controls noted above should create sizeable reductions in the proportion of out-of-pocket costs now paid by most Americans for health care. Unavoidably, however, these savings will be at least partially offset by new costs associated with expanding coverage to the currently uninsured (see Section C. above).

Revenue sources included in this bill are:

1. "Capturing" existing Medicaid funding: As Medicaid is replaced by BasiCare, its current funding will be redirected to the BasiCare program. At the federal level, this will be accomplished by posting existing

Medicaid expenditures to BasiCare and indexing the amount upward each year according to inflation. Similarly, the states will be required to contribute to BasiCare an amount proportionate to their current Medicaid match. This, too, will be indexed upward with inflation.

2. Limiting the tax deduction and exclusion for employer contributions to employee benefit plans: Under current law, 100 percent of employer payments to employee health plans are deductible to the employer and tax-exempt to the employee. This will be changed to allow such deduction and exemption only for contributions associated with BasiCare coverage. Additional payments for supplemental coverage will be taxable.

3. A limited draw from the current Social Security payroll tax, not to exceed 1 percent of the tax: The Social Security payroll tax is now set at a level higher than is necessary to assure adequate reserves for present and future retirees. As the consumer group Families U.S.A. and others have argued, it is appropriate that at least a modest portion of these resources be devoted to the very useful purpose of overhauling our declining health care system. Just 1 percent of the current tax would equate to $56 billion a year in 1996, and even more as time goes by.

F. Role of supplemental insurance

1. As mentioned above, BasiCare will act as the primary health insurance source for all citizens, but persons or groups will be able to purchase supplemental policies for services not covered by BasiCare.

Leaving room in the market for a supplemental insurance market will serve a dual purpose. First, it will allow persons or groups the freedom of choice to tailor coverage to their own particular needs. Second, a private supplemental market will provide greater incentives for the development of innovative treatments than might be the case were BasiCare the only available option.

2. To guard against potential abuses of the supplemental market, the BasiCare commission is given strong oversight authority to monitor behavior in the new supplemental market and to intervene with explicit consumer protection or cost controls should market abuses or unreasonable cost growth develop.

G. Assimilation of Medicare

1. The commission will be directed to develop a comprehensive proposal for integration of the current Medicare program into the BasiCare system. Such proposal, in legislative form, will be required no later than the fifth year after the new BasiCare system has been implemented. This proposal will be considered in Congress under the same terms of limited debate as the initial BasiCare package (see Section A, below).

2. CHAMPUS and FEHBP will also be assimilated into the BasiCare system.

H. Expansion of Community Health services

New federal funding will be allocated for Community Health Centers (CHCs) and for other state and local public health clinics. Such centers have a good record of providing inexpensive, cost-effective treatment to indigent and low-income persons. Authorization is $600 million annually in new funding for these programs.

I. Malpractice reform

1. Provides federal preemption for comprehensive medical liability reforms. These include: mandatory periodic payment of future awards, caps on noneconomic and punitive damage awards, mandatory offsets of awards for collateral sources of recovery, and court-determined reasonable attorneys' fees.

2. Establishes a program of grants to states to encourage implementation of alternative dispute resolution (ADR) systems, such as fault-based, no-fault, or binding arbitration. Authorization is $250 million annually for three years.

3. Establishes special demonstration projects to test implementation of no-fault systems of compensation. Authorization is $20 million annually for three years.

J. Joint use of equipment and services

1. Clarifies antitrust law regarding joint service ventures to facilitate collaboration among hospitals for the purpose of sharing expensive high technology equipment or services.

2. Specifically, this provision amends the National Cooperative Research Act to allow joint service ventures by two or more hospitals for the delivery of costly services. It will apply the rule-of-reason standard to joint service ventures that are challenged, allowing the court to consider the competitive benefits of the venture.

K. Expanding the supply of health professionals in rural areas:

1. Significantly expands funding for the National Health Service Corps, a program to place doctors and other health professionals in underserved areas in exchange for scholarship or loan repayment assistance. Authorization is $120 million for each of the next five years.

2. Physicians will be allowed to tax credit equal to $1,000 a month for practice in a rural health professions shortage area. Nurse practitioners and physician assistants will be eligible for a similar credit equal to $500 per month.

3. Provides additional tax incentives for rural practice, including deductibility of National Health Service Corps loan repayments and deductibility for the cost of basic medical equipment.

Mr. DANFORTH. Mr. President, last year Senator KASSEBAUM introduced one of the most innovative comprehensive health reform proposals, known as the BasiCare Health Access and Cost Control Act. I was pleased to cosponsor that legislation last year and again join my colleague, Senator KASSEBAUM, in reintroducing that legislation this year.

This legislation is tough in its commitment to containing health care costs. It establishes a uniform BasiCare benefits package to be determined by an independent expert commission within broad parameters set forth in the bill and it caps the deductibility of health expenditures at the cost of the BasiCare package. In addition, it applies binding annual limits on the maximum allowable rate of increase in BasiCare premiums. It sends the clear message that there are limits to what the Government will subsidize.

Importantly, it allocates responsibility for the content of the BasiCare package to an independent expert commission that will be largely insulated from the strong provider and consumer sway that could lead to an excessive and overly expensive package.

At the same time, it provides for universal access by offering to low-income persons direct, income-based subsidies for the purchase of the BasiCare package, and by mandating community-rating and prohibiting insurers from taking into account preexisting conditions. And further, along these lines, it includes a significant expansion of community health centers and other community-based primary care facilities, and it seeks to increase the numbers of health care professionals in medically underserved areas through an expansion of funding for the National Health Service Corps, and targeted tax incentives to doctors, nurses, and other health care professionals practicing in underserved rural communities.

Among other significant provisions, it seeks to aid quality by calling for the collection and dissemination of quality data. It seeks to reduce administrative costs through standardization and universal electronic billing. It requires substantial Federal reform of malpractice liability laws.

The resulting system would be a streamlined market-oriented system that encourages competition on the basis of efficiency rather than risk-selection or overutilization and that encourages consumers to take a harder look at the way they spend their health care dollars.

I applaud this measure as a significant step forward in the health reform debate and one which offers the promise to be a compromise vehicle between those who seek global caps and rate regulation on the one hand and those who oppose public regulation of the health care marketplace on the other.

Mr. BURNS. Mr. President, as we carry on the debate here on the Family Leave Act, this morning the Senator from Kansas [Mrs. KASSEBAUM] introduced her hospitalization or BasiCare Health Access Control Act for 1993.

Mr. President, I rise today in support of the BasiCare Health Access and Control Act. This proposal is a proposal with which I have been involved since its introduction last session; and which I believe deserves a very, very serious consideration by this body.

It may not have all of the answers, but it is a starting point from which we can work.

Health care is a true concern to all of us. I know I am not alone in the numbers of constituents I have heard from who are begging for some sort of reform. Costs are spiraling out of control, and that in turn leaves more and more people unable to afford the high-quality health care to which we have become accustomed in this country.

In order to address the real cost containment and expand access to health care services, we need to start talking about real solutions. I think this bill is the first practical step in that direction.

We have to start somewhere, and this is the best attempt to make a positive change that I have seen yet.

As you have heard, it establishes a single, uniform benefit package which every insurer must offer and every American must carry.

Those who cannot afford the package will be offered nontransferable vouchers to purchase BasiCare coverage.

Let me tell you, Mr. President, vouchers work. When I was a commissioner in Yellowstone County we gave housing vouchers to low-income residents. They could not use the money for anything other than housing. And we were very, very successful—better than that, they had housing. I think that is important.

You see, one of my soft places has always been kids. When you just give people cash and they spend the cash on the way to pay the rent, we find kids out in the cold. This operates under the same philosophy.

We will have a tough time finding a plan that will cover our vast and diversified Nation. What works for metropolitan areas will not necessarily work for rural America. So I think the best we may do is to find a plan for the majority and be open to special programs to solve the problems of the rest.

I think we get into the same problem when we talk about health care as when we talk about agriculture. We try to write an agriculture bill that covers the whole country. Yet agriculture practice and production is so diversified across the country in some areas it does not work. So I think we have to take a real look at this and start at a place, and then start massaging it so it fits all areas of the country.

I am particularly concerned with how rural areas may be affected. In my home State of Montana we have counties with no physicians, no hospitals, and hospitals that are closing because of the lack of in-patient days, and the next hospital may be up to as far as 50 miles away.

How do we expand access in those kinds of areas? The BasiCare package has a number of components that address the problems of rural health care. Let me tell you about a few of them. It significantly expands community-based primary care services. Specifically, it will allocate $600 million annually to support community health centers, rural health clinics, public health departments, and local hospitals in underserved communities. This is twice the funding we currently get in this area now. And, believe me, I think it will help.

The bill also expands the National Health Service Corps, a program to place doctors and other health professionals in underserved areas in exchange for scholarship or loan repayment assistance. This is crucial to the survival of some of our very rural communities. Many times these rural areas cannot support a physician, either because of low population numbers and therefore lack of business, or because of the remote location. Not many health care providers will set up a practice in an area where there is no hospital near and no support for one. If they do, they are faced with being on call 24 hours a day, 7 days a week, 52 weeks a year. There is no time for continuing their education, conferring with other colleagues, or for that matter even a weekend off.

This is not good for the physician, and it sure is not good for the patients who have to rely on him.

The National Health Service Corps places health care providers in these areas that are so difficult to staff, and they truly are a saving grace.

On top of this, though, the bill also gives tax incentives to providers who practice in rural areas. Not only would physicians be allowed a tax credit equal to $1,000 a month to practice in a rural health professional shortage area, but physician assistants, also nurse practitioners, would be available for the same tax credit. I have to tell you, Mr. President, the possibilities there are plum thrilling.

In addition to the expanded access possibilities, the bill also makes health care costs 100 percent deductible for the self-employed and this, too, will benefit the rural areas because of a large number of self-employed—the farmers, the ranchers, the small businessmen.

So we are making health care more affordable to more people. As valuable as these rural components are, I think it is important to note first that the BasiCare package itself will serve to bring down costs to all areas, rural and urban alike. And in doing so, it automatically expands access to those who cannot afford health care in its present form.

As you know, Mr. President, some plans on the books make a lot of promises and yet they have no way to fund them, or worse, fund them in a way that will be so painful to a lot of people. This bill has a financing mechanism where changes need to be made, I think, and strongly believe the BasiCare Access Cost Control Act is a terrific first step in addressing these problems. We need to keep our country healthy and strong.

We have sent a copy of this plan to President Clinton. I encourage my colleagues to take a good look at this legislation because this does not seem to me to single out any part of our population. It is not long on promises and short on funding.

Mr. President, I know we have the highest quality health care in the world, and I am proud of that. I have a daughter who is trying to enter med school and she goes for an interview at the University of Washington in 2 weeks. I only hope she will come back to Montana and practice medicine in my State and have the opportunities that I think many other people going into the medical profession should have. This kind of legislation lets us move in that direction. I believe it is a vital first step.

I thank the Chair, and I yield the floor.

By Mr. WARNER (for himself and Mr. ROBB):

S. 326. A bill to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT BOUNDARY ACT OF 1993

• Mr. WARNER. Mr. President, I rise today to introduce legislation which would expand the boundaries of the George Washington Birthplace National Monument.

The George Washington Birthplace National Monument was established by Congress in 1932 to commemorate the birthplace of the Father of our Country. George Washington was born on February 22, 1732, on his father's Popes Creek Farm. This site has been maintained by the National Park Service as a working colonial farm complete with a reconstructed homestead, recreating 18th century plantation life.

In the 102d Congress legislation was introduced to expand the birthplace and preserve its historic character by including approximately 125 acres of privately owned land. This land is sandwiched between two units of the existing park and the Potomac River.

The inclusion of the 125 acres within the monument's boundaries would prevent any adverse alteration or development of the land which could degrade the monument's setting. In addition, the land in question is of historic value being directly connected with the plantation owned by George Washington's father.

The 12-acre Horner property is an excellent example of mature loblolly pine woodlands in the area and is within 400 yards of a bald eagle nesting site. The Muse family owns the remaining 113 acres which constitute part of the first land patents issued for the northern neck of Virginia. The Muse family and their ancestors have been farming and working their land for over 200 years.

Because of the location of the Horner and Muse properties relative to the monument's boundaries and the potential for nonagricultural development, local officials, civic organizations, the Horners, the Muses, and Congressman BATEMAN recognized the value of including 125 acres within the boundaries of the birthplace monument. However, after the original legislation passed the House last Congress on September 24, 1992, several members of the Muse family contacted my office and stated their opposition to their 113 acres being included within the monument's boundaries. Because of my deep respect for the rights of private property own-

ers and after much negotiation with the Muse family and National Park Service officials, it was decided that the Muse family's 113 acres should not be added to the monument.

Therefore, at the Senate Energy and Natural Resources Subcommittee on Public Lands, National Parks and Forests hearing on the legislation, I requested that the bill be amended to delete the Muse property. The amended bill went on to pass the full Senate by voice vote on October 7, 1992. Due to the unfortunate circumstances surrounding the adjournment of the 102d Congress, the House failed to consider the amended bill.

I am here today to reintroduce the legislation which would authorize the inclusion of the 12-acre Horner property within the monument's boundary. Due to the Senate's previous approval of this legislation, I respectfully request swift consideration and approval of the bill.

I request that the bill be printed following my statement.

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

S. 326

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT.

The Act of January 23, 1930 (46 Stat. 58, chapter 24; 16 U.S.C. 442) is amended—

(1) in section 2—

(A) by inserting after "structures thereon" the following: "(including lands described in section 3)"; and

(B) by inserting after "Secretary of the Interior" the following: "(referred to in this Act as the 'Secretary')";

(2) by redesignating section 3 as section 6; and

(3) by inserting after section 2 the following new sections:

"SEC. 3. BOUNDARIES OF GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT.

"The boundaries of the George Washington Birthplace National Monument shall include the area comprising approximately 12 acres and generally depicted as the 'National Monument Boundary' on the map entitled 'George Washington Birthplace National Monument Boundary Map', numbered NPS 332/80,011A, and dated September 1992. The map shall be on file and available for public inspection in the Office of the Director of the National Park Service, Department of the Interior.

"SEC. 4. ADMINISTRATION OF NATIONAL MONUMENT.

"In administering the George Washington Birthplace National Monument, the Secretary shall take such action as is necessary to preserve and interpret—

"(1) the history and resources associated with George Washington;

"(2) the generations of the Washington family who lived in the vicinity and their contemporaries; and

"(3) 18th century plantation life and society.

"SEC. 5. ACQUISITION OF LANDS.

"The Secretary may acquire lands or interests in lands within the boundaries of the George Washington Birthplace National Monument by donation, purchase with donated or appropriated funds, or exchange.".●

By Mr. MURKOWSKI (for himself, Mr. BUMPERS, Mr. DURENBERGER, Mr. GLENN, and Mr. HATFIELD):

S. 327. A bill to amend the Internal Revenue Code of 1986 to permit rollovers into individual retirement accounts of separation pay from the Armed Services; to the Committee on Finance.

MILITARY SEPARATION RETIREMENT BENEFITS ACT OF 1993

Mr. MURKOWSKI. Mr. President, on behalf of myself and Senators BUMPERS, DURENBERGER, GLENN, and HATFIELD, I rise to introduce important bipartisan legislation for the men and women of America's Armed Forces. This bill, the Military Separation Retirement Benefits Act of 1993, would give those servicepeople who have separated or who will separate from the Armed Forces under early separation incentive programs the right to roll their departure incentives into eligible retirement plans. I might add that this legislation has the support of 25 of this Nation's service organizations representing over six million currently serving personnel and veterans.

A version of this bill passed the Senate last year as an amendment to the tax bill and I was pleased to have the cosponsorship of the leadership of the Finance Committee, then-Senator Bentsen and Senator PACKWOOD. Ultimately, the vehicle for that amendment, H.R. 11, was vetoed by the President, but the need for this bill remains. This is an important bill for America's servicepeople, and I hope that my colleagues will give it their support.

THE SEPARATION INCENTIVES

Mr. President, the events of the last several years have led to a dramatic restructuring of the United States military. This restructuring has included the downsizing of the Armed Forces. To facilitate the downsizing, the military has offered its personnel certain financial benefits for leaving the military prior to their expected dates of departure. These incentives include the voluntary separation incentive and the special separation benefit. The amount of the incentive is based on the number of years served by and the rank at departure of the serviceperson.

The voluntary separation incentive operates as an annuity paid out to the departing serviceperson by the government over a period of years while the separation benefit is paid out as a lump sum. Mr. President, some 85 percent of those applying for the incentives are applying for the separation benefit. That separation benefit, under current law, is taxed in the year it is received as ordinary income. Many of those taking advantage of the separation benefit are young men and women who had planned to make the military their career and were willing to make extraordinary sacrifices for the United States. Now that their country needs them to leave the service, they are voluntarily doing so, but it should not be forgotten that they are entering a time of some economic difficulty and are sacrificing the security they had in the military.

THE ROLLOVER

The bill which I am introducing today would allow those men and women taking the separation benefit to roll their separation benefit into an eligible retirement account. It is simply not fair that the benefit paid to those in the Armed Forces who are helping this country out is presently taxed as ordinary income. It is not fair because that amount is totally disproportionate to what those men and women have been making or, in all likelihood, will be making in the immediate future. For example, a staff sergeant with 16 years of service currently earns about $24,000 a year; that same sergeant would receive over $50,000 as a separation benefit. To tax that $50,000 as ordinary income is absurd.

Further, by encouraging these men and women to put their money into eligible retirement accounts, we can help them plan for their futures. As I noted above, these men and women are voluntarily leaving careers, careers which would have provided them with excellent retirement benefits. Allowing them the right to invest in eligible retirement accounts simply returns to them something of what they are giving up, a secure future. The program I am proposing would encourage these young Americans to save for their futures and invest in their country. In that way, they can continue to make important contributions to us all.

CONCLUSION

In conclusion, Mr. President, my bill would also retroactively apply to those who have already left the service under the separation benefit plan and, importantly, would apply if the military reached the point where if forced people to leave the service with a separation benefit. Mr. President, this is a bill to help those whose plans have been changed by the greatest victory this nation has ever won. I have received calls in the last week from servicepeople in States as diverse as Alaska and California, Alabama and Washington, calls asking me whether this legislation will become law this year. I certainly hope that it will.

Mr. President, Secretary Bentsen put it best last year on this floor when he said that this bill represents nothing less than equity and fairness for America's servicepeople. I hope that my colleagues share his sentiment, and I invite their support for this legislation.

By Mr. BRADLEY:

S. 328. A bill to provide for the rehabilitation of historic structures within

the Sandy Hook Unit of Gateway National Recreation Area in the State of New Jersey, and for other purposes; to the Committee on Energy and Natural Resources.

SANDY HOOK UNIT ACT OF 1993

• Mr. BRADLEY. Mr. President, I rise today in support of Monmouth County, NJ, School District's efforts to maintain the right to continue to revitalize, rehabilitate and utilize Fort Hancock within the Sandy Hook Unit of Gateway National Recreation Area.

Mr. President, for more than a decade the school district and Sandy Hook have cultivated a mutually beneficial relationship. The park has allowed the school district to use several of its buildings to administer its Marine Academy of Science and Technology, and in return, the school has rejuvenated many of the park's historic, but debilitated buildings. To date, Monmouth County has completed more than $2 million worth of renovations. Clearly, this has been a rewarding arrangement for both sides.

Recently, the school and the park have been informed that legislation is required in order for them to maintain their relationship. The legislation will allow the Secretary of the Interior to enter into an agreement with the school thereby permitting the school to use certain park facilities for the purpose of development and operations, without cost to the National Park Service.

Mr. President, I am in full support of this legislation for several reasons. Over the past 10 years the Marine Academy has grown from a part-time institution into a demanding 4-year diploma granting program for boys and girls in grades 9–12. The academy is truly unique. By emphasizing marine science technology and marine trades, the school has successfully prepared hundreds of its students for work or study in the important field of marine environmental science. And the renovations that have been made to several park buildings cannot be overstated. For years scores of historical buildings at Sandy Hook have been decaying as a result of neglect caused by budgetary limitations. Monmouth County has remedied this problem by instilling life into many buildings that were on the verge of being condemned.

Mr. President, the Sandy Hook-Monmouth County partnership has benefited many people: The students who attend the Marine Academy, the tourists who visit the park and of course the State and Federal governments responsible for the maintenance and operation of the facility. It is evident that we must ensure that this relationship will continue to prosper. I urge my colleagues to join me in support of this legislation.•

By Mr. DANFORTH (for himself, Mr. HOLLINGS, and Mr. INOUYE):

S. 329. A bill to amend section 315 of the Communications Act of 1934 with respect to the purchase and use of broadcasting time by candidates for public office, and for other purposes; to the Committee on Commerce, Science, and Transportation.

CAMPAIGN ADVERTISING AND DISCLOSURE ACT OF 1993

Mr. DANFORTH. Mr. President, today Senators HOLLINGS, INOUYE, and I are introducing a bill to restore the existing lowest unit charge requirement of the Communications Act to its original intent. This bill also requires enhanced disclosure by candidates. The Commerce Committee reported a very similar bill in the last Congress.

LOWEST UNIT CHARGE

Congress enacted the lowest unit charge requirement in 1972. Its provisions require broadcasters and cable operators to sell time to political candidates at rates no higher than those charged to the stations' most favored commercial advertisers. The application of the lowest unit charge requirement, however, is no longer working.

Commerce Committee hearings and audits of political advertising by the Federal Communications Commission [FCC] confirm that the problems with the lowest unit charge statute are significant and widespread. First, the law is unclear. Interpreting lowest unit charge is now so difficult that, during election periods, the FCC has to answer 50 to 75 daily inquiries about it.

Second, the law requires only that the candidates be afforded the lowest unit charge for each class of time. When the law was enacted, broadcast advertising was sold with rate cards. It was fairly simple to determine the lowest rate for the class of time—fixed or preemptible. But the way advertising time is sold now is more like an auction.

Third, it is very difficult for a candidate to know if he is getting the lowest unit charge. He is not entitled to look at the station's commercial records to compare his rate to those of commercial advertisers. Without access to station records, there is no way to determine whether the requirement is being met.

Fourth, the Commerce Committee hearings and the FCC's audits demonstrate that candidates usually pay a much higher rate than commercial advertisers. Witnesses at the Commerce Committee hearings told us that commercial advertisers rarely have to buy fixed time as protection against preemption, even though they sometimes need to avoid being bumped, too. And rates for fixed time can be four or more times the rates of preemptible time.

Finally, there is the potential for abuse. Hearing witnesses testified that it would be possible for a broadcaster to favor one candidate over another. One candidate might be told that, to be sure his ad will run, he must buy expensive fixed time. But the broadcaster could assure his opponent that he can buy cheap preemptible time and not be bumped. So, the first candidate A buys fixed time. His opponent buys preemptible time, but is never preempted. Hearing witnesses discussed a case in which one Senate candidate paid, on average, five times as much per advertising spot as his opponent—for spots on the same shows. The candidate buying the cheaper preemptible time was never preempted.

There is no way of determining whether one candidate should have been bumped. Stations are not required to record whether someone else sought to buy time. There is at least the potential for foul play. If it happened, it would be an illegal corporate contribution. And one candidate's dollar would have purchased four or more times as much speech as his opponent's.

Mr. President, this legislation restores the lowest unit charge provision to its original intent by making a few simple changes. It deletes the word "class" from the lowest unit charge provisions. As a result, candidates will be entitled to the lowest advertising rate, not just the lowest rate for a particular class of time, such as fixed or preemptible time. Also, the bill adds a sentence to clarify that broadcasters and cable operators are prohibited from bumping campaign ads.

This bill also shortens the periods during which the lowest unit charge requirement applies from 45 days before a primary election and 60 days before a general election to 30 and 45, respectively. It also provides that candidates' ads are preemptible until payment is made for them. And the legislation provides that, if the show in which a candidate's ad is to run is unavoidably preempted, the ad can be preempted as well.

The lowest unit charge requirement does not require free time. It merely requires that candidates be dealt with as though they had the market power of large advertisers. The deletion of the word class from the statute and the ban on preemption are not intended to alter the current FCC policy and practice with respect to the treatment of various bonus advertising spots and package plans in calculating the lowest unit charge. The FCC has established ground rules in its publication entitled, "The Law of Political Broadcasting and Cablecasting: A Political Primer," to ensure that bonus spots or package plans are included where appropriate to determine the lowest unit charge, but are excluded where they would distort the charge from being that which is provided to a broadcasting station's most favored commercial customer.

Reform of the lowest unit charge requirement will lower the cost of advertising to political campaigns significantly. By lowering costs, it will help candidates challenge incumbents. Low-

est unit charge reform will treat all candidates fairly and give them the insurance they need against preemption. And this reform will help broadcasters and cable operators avoid mistakes in applying the law.

ENHANCED DISCLOSURE

Mr. President, the bill we are introducing today also amends the existing disclosure requirement for political ads. Under current law, political ads carry a tag line stating that the ad was paid for by a candidate's authorized committee. This legislation would add to that disclosure by requiring the candidate himself to state that he has approved the ad. It will help to inform the electorate and strikes a reasonable balance among the interests of candidates, broadcast licensees and the public.

The goal of this requirement is to keep candidates from hiding behind committees. If candidates want to sling mud, that is their decision. But let the public know whose hands are dirty.

The candidate disclosure requirement does not restrict the content of the political ad itself—it is a regulation of the time, place and manner of the speech. The Supreme Court has upheld similar disclosure requirements. Rather than requiring a tag line identifying the sponsoring candidate, the new provision simply would require personal identification of the candidate.

TWO REFORMS

Two fundamental problems with our political process, the money chase and campaign mudslinging, can be remedied easily. We can attack the biggest cost of campaigns—advertising time—by requiring broadcasters and cable operators to treat candidates like major commercial advertisers. And we can put some sunshine on the mudslinging, 30-second commercials by revealing who has approved the ad. Both of these remedies are incorporated in this legislation.

I want to thank Senators HOLLINGS and INOUYE for their leadership in moving these reforms forward and I urge my colleagues to approve this measure.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 329

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 "Campaign Advertising and Disclosure Act of 1993".

SEC. 2. FINDINGS.

The Congress finds that—

(1) in the 30 days preceding a primary, and in the 45 days preceding a general election, candidates for political office need to be able to buy, at the lowest unit charge, nonpreemptible advertising spots from broadcast stations and community antenna television systems to ensure that their messages reach the intended audience and that the voting public has an opportunity to make informed decisions;

(2) since the Communications Act of 1934 was amended in 1972 to guarantee the lowest unit charge for candidates during these important preelection periods, the method by which advertising spots are sold in the broadcast and community antenna television industries has changed significantly;

(3) changes in the method for selling advertising spots have made the interpretation and enforcement of the lowest unit charge provision difficult and complex;

(4) clarification and simplification of the lowest unit charge provision in the Communications Act of 1934 are necessary to ensure compliance with the original intent of the provision;

(5) in granting discounts and setting charges for advertising time, broadcasters and operators of community antenna television systems shall treat candidates for political office at least as well as the most favored commercial advertisers; and

(6) enhancing the disclosure requirements of the Federal Election Campaign Act of 1971 will increase candidate accountability to the electorate and enhance the ability of the individual citizen to exercise informed judgment by more effectively identifying the source of political advertising and the credibility of each advocate.

SEC. 3. USE OF BROADCASTING STATIONS BY CANDIDATES FOR PUBLIC OFFICE.

Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) in subsection (b)(1)—

(A) by striking "forty-five" and inserting in lieu thereof "thirty";

(B) by striking "sixty" and inserting in lieu thereof "forty-five"; and

(C) by striking "class and";

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting immediately after subsection (b) the following new subsection:

"(c)(1) Except as provided in paragraph (2), a licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for public office who has purchased and paid for such use pursuant to the provisions of subsection (b)(1).

"(2) If a program to be broadcast by a broadcasting station is preempted because of circumstances beyond the control of the broadcasting station, any candidate advertising spot scheduled to be broadcast during that program may also be preempted.".

SEC. 4. POLITICAL ADVERTISING REQUIREMENTS.

(a) Section 318(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d(a)) is amended—

(1) by striking the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(2) by adding at the end the following:

"except that in the case of any communication authorized by a candidate and made through a broadcasting station or a community antenna television system, such communication shall also meet the following requirements:

"(A) During the communication, the following shall be stated aurally in the candidate's voice: 'I, ——, A CANDIDATE FOR ——, HAVE APPROVED OF THIS AD', with the first blank space being filled with the candidate's name and the second blank space being filled with the name of the office sought by the candidate.

"(B) The statement required by subparagraph (A) shall be spoken clearly without rushing, disguising, or deemphasizing particular words.

"(C) In the case of a communication made through a television broadcasting station or community antenna television system, the background photography during the entire time the statement required by subparagraph (A) is made shall consist of an unobscured full face picture of the candidate, occupying no less than 40 percent of the television safe screen area, against a neutral background".

(b) Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) is amended by adding at the end the following new subsection:

"(c) As used in this section, the term 'community antenna television system' has the meaning given that term under section 315 of the Communications Act of 1934 (47 U.S.C. 315).".

Mr. HOLLINGS. Mr. President, I rise today in support of legislation to improve our electoral process and ensure that the voting public is more fully informed. The bill we are introducing today achieves these goals by facilitating reasonable access for political candidates to the media and by increasing accountability. The Campaign Advertising and Disclosure Act of 1993, authored by Senator DANFORTH, Senator INOUYE, and myself, achieves these objectives by ensuring that candidates are charged the lowest unit rate for broadcast advertisements and by requiring candidates to disclose more fully and clearly their responsibility for these advertisements.

The Commerce Committee has long been concerned that political candidates have reasonable access to broadcast stations and that there is no discrimination in the rates charged for campaign advertisements. The lowest unit rate provision of the Communications Act of 1934 was adopted specifically to address that concern.

The lowest unit rate provision, adopted in 1972, requires broadcasters to charge candidates the lowest unit rate available for the time during which the advertisements are aired. Hearings held by the Commerce Committee last Congress demonstrated that the lowest unit rate provision is not being applied properly—candidates are being charged more than the lowest unit rate. These conclusions are buttressed by the Federal Communications Commission's [FCC] 1990 audit of broadcaster compliance with the lowest unit rate statute.

This bill seeks to remedy this problem. It deletes the word "class" from the lowest unit rate statute and explicitly bars broadcasters from preempting—bumping—campaign ads. Thus, there will no longer be any class distinctions for political advertisements, and broadcasters will have to sell time to candidates at the lowest rate available.

The legislation also does the following.

First, it shortens the periods during which the lowest unit rate provision applies. Presently, the lowest unit rate provision applies to the period beginning 45 days before a primary and 60 days before a general election. The bill shortens each of these periods by 15 days.

Second, it clarifies that political ads remain preemptible until they are paid for.

Third, it permits preemption of a political spot if the program in which it is to appear is preempted for reasons outside the broadcaster's control. Thus, the only time a broadcaster can preempt a candidate is if the entire show in which the candidate's ad was to appear is preempted for reasons beyond the broadcaster's control.

Finally, the bill addresses the important issue of responsibility by requiring that candidates who benefit from the lowest unit rate provision clearly state: "I, ——, a candidate for ——, have approved of this ad." If the advertisement is on television, this statement must be accompanied by a picture of the candidate filling at least 40 percent of the screen. Thus, candidates will no longer be able to get away with pictures and print so small as to be unintelligible.

In closing, I commend the broadcast industry for working with the committee on this legislation to ensure that it improves campaigns without unduly burdening broadcasters. The broadcasters recognize that current law is confusing at best and needs clarification. As a result of our joint efforts, the National Association of Broadcasters will not oppose this legislation.

In sum, I believe that this is a very important measure essential to the improvement of our electoral process, and I strongly urge my colleagues to support it.

Mr. INOUYE. Mr. President, I take the floor today to support the Campaign Advertising and Disclosure Act of 1993, legislation to change the provisions of the Communications Act concerning the purchase of broadcast time by political candidates. This bill eliminates the different classes of time for political advertisements and prohibits broadcasters from preempting political advertisements. In addition, it increases candidate accountability for the content of the advertisements.

This legislation is long overdue. In campaigns today, television advertisements are the single greatest expense. It is estimated that the average candidate for the Senate devotes between 40 and 60 percent of his campaign expenditures to television advertisements.

Section 315 of the Communications Act requires broadcasters to sell advertising time to political candidates at the "lowest unit charge * * * for the same class and amount of time". Broadcast stations offer two basic classes of time to advertisers: First, fixed or "non-preemptible" spot time; and second, preemptible spot time. Non-preemptible time is more expensive than preemptible time because the broadcast station commits to air non-preemptible spots; and, if the spot is not aired, the station has to air the spot in a similar time period as soon as possible. The difficulty facing political candidates concerns preemptible time, since there is no guarantee that the preemptible ads will be aired at the desired time. There have been cases where one candidate buys preemptible time and has all of his ads run, while another has to pay the non-preemptible rate to ensure that his ads are run. The issue is further complicated by the fact that the price of all classes of ads, but particularly for preemptible spots, vary depending on the time of day aired and when the ads are purchased

At the hearings held by my subcommittee last Congress, the testimony presented set out three primary reasons that this legislation is needed: First, the price paid by two candidates for advertisements of the same length aired at approximately the same time and day of the week can vary significantly; second, political candidates often pay more for spots than commercial advertisers because candidates are told that they have to purchase non-preemptible time to ensure their spots will be aired, while commercial advertisers purchase preemptible time knowing that their spots are merely preempted; and third, the way time for advertising is sold has changed significantly from the method used when the law was enacted. In 1971, advertising time was sold based on rate cards which set forth the cost of ads in different classes of time. Rate cards are rarely used and the process resembles an auction—with broadcasters receiving as much as they can for each advertisement. Moreover, since advertisements are sold continuously, the rates can change by the hour.

To remedy these problems, this bill deletes the word "class", only permitting broadcasters to have one class of commercial time for candidate advertisements. It also prohibits licensees from preempting political advertisements. The effect of this bill is to require stations to sell spots for candidate ads at the lowest rate charged for any spot during the relevant time period.

This legislation also addresses another concern of the committee—candidate accountability. Although candidates are required to identify themselves in advertisements, the spirit of law is simply not being met. Most statements identifying a candidate are far too brief and unreadable, to hold a candidate accountable. To remedy this problem, under this bill voters know when they are viewing a candidate's advertisement and that the candidate has approved the ad.

This legislation represents the efforts of many Senators. I especially want to thank Senator HOLLINGS, chairman of the Commerce Committee and Senator DANFORTH, the ranking member of the committee and the author of this bill.

I believe it is critical that we address these problems now. I also want to thank the broadcast industry for its assistance on this legislation. This bill represents a compromise with the broadcast industry. While it might not address all of our concerns about the campaign process, it is a significant first step. I strongly urge all of my colleagues to support this bill.

By Mr. KOHL:

S. 330. A bill to amend section 101 of title 11, United States Code, relating to eligibility to serve on chapter 11 committees; to the Committee on the Judiciary.

STATE PENSIONS EQUITY ACT

Mr. KOHL. Mr. President, I rise today to introduce legislation amending chapter 11 of the United States Bankruptcy Code to allow State pension funds and the Pension Benefit Guaranty Corporation [PBGC] to participate as members of §1102 creditors committees in chapter 11 proceedings. I first introduced a version of this bill as S. 1716 in the last Congress. An amended version of S. 1716 was then included in S. 1985—the Omnibus Bankruptcy Act of 1991. This amended version passed both the Senate and the House at the close of the 102d Congress, but was never agreed upon in conference.

Under §1102(a)(1) of the Bankruptcy Code, the U.S. trustee appoints a committee of creditors holding unsecured claims against the debtor and appoints additional committees of creditors or equity security holders as deemed necessary. These committees consult with the trustee or debtor on the administration of a case, investigate the debtor's financial status, and participate in the formulation of a reorganization plan. Since adopting the code, creditors committees have played a vital role in assisting debtor reorganization.

The current code provides that a member of a §1102 creditors committee must be a person as defined in §101(41). However, few governmental units qualify for §1102 committee eligibility, and only under certain limited circumstances. As a result, many governmental units failing to qualify as persons under §101(41) are barred from creditors committee membership.

Public employee retirement systems [PERS], school districts, and public utility districts, are examples of governmental units whose interests are not represented in reorganization proceedings because of code definition of "persons", and are thus put at an unintended fiscal disadvantage. And while some governmental units hold tax claims which provide priority status, somewhat negating the effects of chap-

ter 11 committee exclusion, these governmental units generally do not have tax claim priority. Consequently, committee membership is the only form of equitable representation available to these interests.

A closer look at public employment retirement systems provides valuable insight into the number of people whose interests are not being represented. PERS—existing in all 50 States—are long-term holders of an estimated 25 percent of all corporate debt and equity of publicly traded companies. For example, the California PERS—with over 650,000 members—has assets of over $60 billion, with equity ownership in over 1,400 corporations, totaling over $25 billion in market value. Given their vast fiduciary responsibility to current and future retirees, it is not surprising that PERS seek chapter 11 committee membership. Yet, the code as it is now written prohibits PERS from committee membership, except by court approval. And court decisions favoring committee membership are a rare occurrence.

In one of the few cases favoring committee membership—In re Texaco, Inc.—the court allowed unsecured creditors membership on an existing creditors committee, ruling that it had the power to change §1102 committee membership when the U.S. trustee refused to do so. However, in both Matter of Gates Engineering Co., Inc. and In re Drexel Burnham Lambert Group, Inc.—cases more reflective of the norm—the court held it did not have the authority to change committee membership. Without clarification of the code as provided by this measure, PERS and other interests will continue to spend large sums of money on unjustified litigation for unpredictable court decisions, offering little relief and no resolution of the problem.

Mr. President, this issue may appear at first to be nothing but numbers and statistics. That is one of the drawbacks of the technical nature of bankruptcy law. But let me put a personal perspective on these figures. In my home State, the State of Wisconsin Investment Board [SWIB] acts as fiduciary and investment manager for the $22 billion Wisconsin Retirement System. That $22 billion represents the retirement funds for 360,000 participants—360,000 school teachers, policemen, firefighters, and other State employees—the very fabric of many Wisconsin communities. And although SWIB may be the largest shareholder of a company, if that company files for bankruptcy, SWIB will be denied a position on the chapter 11 creditors committee. As things stand now, there is no guarantee that a creditors committee would effectively represent SWIB's multimillion dollar investment interests. Ultimately, Wisconsin taxpayers could end up being liable for underlying pension payment obligations resulting from SWIB's committee exclusion.

There is no doubt that Congress intended creditors and equity security holders committees to be a vital component in the bankruptcy reorganization process. Excluding State pension plans and others from creditors committees hinders implementation of policy Congress intended. This bill's proposed change to §101(41) of the Bankruptcy Code promotes congressional policy by removing an obstacle many governmental units encounter in bankruptcy reorganizations.

By Mr. KENNEDY:

S. 331. A bill to amend the Federal Food, Drug, and Cosmetic Act to revise the authority under that act to regulate pesticide chemical residues in food; to the Committee on Labor and Human Resources.

PESTICIDE FOOD SAFETY ACT OF 1993

Mr. KENNEDY. Mr. President, today I am introducing the Pesticide Food Safety Act of 1993. While pesticides have significantly improved crop yield and productivity, many chemicals known to pose health risks to humans continue to be commonly used by farmers. This legislation will improve Federal oversight of pesticide use on our Nation's food supply, and institute long overdue reforms in the Federal regulation of pesticide residues.

Two basic principles underlie this bill. The public has a right to know the health risks of any pesticide. If the risk is unacceptable, the product should be taken off the market.

Under the irresponsible state of current Federal law, residues from over 300 pesticides are permissible on the food we eat. Up to 25 percent of these residues may cause cancer in animals. In the vast majority of these cases, we have no idea what this may mean for cancer in humans.

Since 1958, the provision of Federal law known as the Delaney clause has prohibited the use of pesticides that have been shown to induce cancer in animals or humans. But this so-called zero tolerance standard is more loophole than law. In some cases, chemicals in use prior to the 1958 act were permitted to remain on the market that should no longer be permitted to do so in light of current scientific knowledge. In other cases, more sophisticated scientific techniques developed in the past 35 years are able to detect minute traces of cancer-causing residues that could not have been detected when the Delaney clause was enacted in 1958.

This legislation faces up to the many complex issues involving potential carcinogenic pesticide residues on the safety of the food supply.

In addition to cancer risks, there is growing evidence about the possible role of pesticides in birth defects and in disorders of the nervous system. Recently, a National Academy of Sciences report emphasized that the Federal Government must develop more effective models to assess this aspect of the toxic risks of pesticide residues.

Consumers need to be assured that the food supply is safe. Today, however, it takes decades, not just years, to resolve basic questions about food safety. The Environmental Protection Agency has often failed to incorporate the most up-to-date health and safety data in establishing allowable pesticide concentrations in food. One of the most glaring defects of the current system is that it favors older pesticides for which information is often incomplete or unreliable. Without adequate knowledge, the public will continue to play Russian roulette with a broad range of potentially cancer-causing and other toxic pesticides.

In addition, the regulatory regime is plagued by loopholes that permit dangerous chemicals to remain on the market because of vague cost-benefit analyses that undercut the goal of protecting public health.

The Federal Government has not been doing an adequate job of protection in this area—and the American people know it. Families deserve a more definitive response that the food on their tables is safe. We need a credible system to regulate pesticides, and we need it soon.

The legislation I am introducing today strengthens EPA's current authority under the Federal Food, Drug and Cosmetic Act to set tolerances for pesticide residues in food. The bill incorporates many of EPA's current practices, but also establishes certain fundamental reforms.

Central to these reforms is the creation of a single regulatory standard for all foods. Currently, pesticide residues in fresh fruits and vegetables are not regulated as strictly as in processed foods. The legislation remedies this inconsistency by specifying that no pesticide residues may exceed levels that pose more than a negligible risk of causing adverse human health effects.

The bill also establishes a mechanism to assure that infants and children up to the age of 5 are not exposed to more than a negligible risk from pesticides. Because of their food consumption patterns and low bodyweight, children can receive a disproportionate share of lifetime cancer risk from a pesticide at an early age. The legislation also requires the EPA to collect data on the unique risks that neurotoxins pose to children's physical and intellectual development. We cannot consider the food supply to be truly safe unless we are confident that it is safe for infants and children. This legislation takes a major step toward that goal.

In addition, the bill eliminates a dangerous loophole that has been used in

the past. It prohibits EPA from allowing risky pesticides to stay on the market because they provide broadly defined economic benefits. This legislation adopts a health-based standard that cannot be nullified by administrative action.

Another important provision in the bill establishes authority for EPA to obtain adequate health and safety data on pesticides. This provision will fill an especially disturbing data gap by requiring the collection of information about possible neurotoxic as well as carcinogenic effects. Because many tolerances were set on the basis of incomplete or outdated data, authority to require additional details is essential. Even for the few tolerances which are based on current science, EPA also needs the authority to update the data as new concerns or new scientific evidence emerge. This bill ensures that tolerances will not be in place unless they are supported by scientifically sound data.

The bill also requires timely decisions about pesticide tolerances. By simplifying the procedures for removing unsafe pesticides, the legislation ensures that the status quo will no longer favor pesticides for which there is incomplete or unreliable data.

A recent Federal Appeals Court decision overturned the EPA's effort to create an administrative exception to the Delaney clause. It is clear that only Congress can sort out these issues—and it is time for us to do so.

I am pleased by the commitment of EPA's new Administrator, Carol Browner, to improved food safety laws, and I look forward to working with the new EPA and the new administration to meet this vital public health challenge. The restoration of confidence in the food supply will serve the interests of the Nation, and it deserves the high priority it is now receiving.

Congressman HENRY WAXMAN of California is introducing an identical bill in the House of Representatives. Numerous other Members of the House and Senate have advocated reforms in this area for many years. Action is clearly long overdue, and with the leadership of the Clinton administration, it is now about to happen.

I ask unamious consent that the full text of the bill appear in the RECORD after my remarks.

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

S. 331

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE, TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Pesticide Food Safety Act of 1993".

(b) REFERENCE.—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 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title, reference, table of contents.
Sec. 2. Definitions.
Sec. 3. Tolerances and exemptions for pesticide chemical residues.
Sec. 4. Evaluation of existing pesticide chemical residue tolerances and exemptions.
Sec. 5. Review of existing methods of analysis.
Sec. 6. Fees.
Sec. 7. General definitions.

SEC. 2. DEFINITIONS.

(a) PESTICIDE.—

(1) PESTICIDE CHEMICAL.—Section 201(q) (21 U.S.C. 321(q)) is amended to read as follows: "(q)(1) The term 'pesticide chemical' means—

"(A) any substance that is a pesticide, as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)); and

"(B) each active ingredient and inert ingredient, as defined in subsections (a) and (m), respectively, of section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act, of the pesticide.

"(2) The term 'pesticide chemical residue' means a residue in or on food of—

"(A) any pesticide chemical; or

"(B) any other substances that is present in the commodity or food as a result of the metabolism or other degradation of a pesticide chemical,

regardless of whether the residue may be detected.".

(2) PERSON.—Section 201(s) U.S.C. 321(s)) is amended—

(A) by striking paragraphs (1) and (2) and inserting the following:

(1) pesticide chemical residue; or"; and

(B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 201 (21 U.S.C. 321) is amended by adding at the end the following:

"(gg) The term 'processed food' means any food that has been subject to processing from a raw agricultural commodity.

"(hh) The term 'Administrator' means the Administrator of the Environmental Protection Agency.".

(2) Section 402(a)(2) (21 U.S.C. 342(a)(2)) is amended—

(A) in clause (A)(i), to read as follows: "(i) a pesticide chemical residue";

(B) in clause (B), to read as follows: "(B) if it is, or it bears or contains, a pesticide chemical residue unsafe within the meaning of section 408(a);"; and

(C) in clause (C)—

(i) by striking "; *Provided*, That where a pesticide chemical" and inserting ", except that if a pesticide chemical"; and

(ii) by striking "section 406 and 409" and inserting "section 406".

"SEC. 3. TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES.

(a) TOLERANCES AND EXEMPTIONS.—Section 408 (21 U.S.C. 346a) is amended to read as follows:

"SEC. 408. TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES.

"(a) REQUIREMENT FOR TOLERANCE OF EXEMPTION.—

"(1) GENERAL RULE.—Any pesticide chemical residue shall be deemed unsafe for the purpose of section 402(a)(2)(B) unless—

"(A) a tolerance for such residue is in effect under this section and the quantity of such residue is within the limits of such tolerance; or

"(B) an exemption for such residue is in effect under this section and such residue complies with such exemption.

"(2) EFFECT OF A TOLERANCE OR EXEMPTION.—While a tolerance or exemption from the requirement for a tolerance is in effect under this section for a pesticide chemical residue with respect to any food, such food shall not by reason of bearing or containing any amount of such residue be considered to be adulterated within the meaning of section 402(a)(1).

"(b) TOLERANCES.—

"(1) AUTHORITY.—

"(A) IN GENERAL.—The Administrator may promulgate regulations establishing, modifying, or revoking a tolerance for a pesticide chemical residue—

"(i) in response to a petition filed under subsection (d)(1); or

"(ii) on the initiative of the Administrator under subsection (d)(4).

"(B) EXPIRATION DATE.—A regulation under this paragraph may provide for an expiration date for the tolerance.

"(C) SEPARATE TOLERANCES.—The Administrator may establish a separate tolerance under subparagraph (A) for a pesticide chemical residue with respect to food at each of the following times:

"(i) At the time the food is harvested.

"(ii) At the time the food is purchased at retail.

"(iii) After the food is processed.

"(2) STANDARD.—

"(A) GENERAL RULE.—Except as provided in subparagraph (F)—

"(i) a tolerance may be established for a pesticide chemical residue only if the risk to human health from dietary exposure to the pesticide chemical residue is negligible; and

"(ii) the tolerance for a pesticide chemical residue shall be revoked or modified unless the risk to human health from dietary exposure to the pesticide chemical residue is negligible.

"(B) NEGLIGIBLE RISK.—

"(i) GENERAL RULE.—For purposes of this paragraph, a risk to human health from dietary exposure to a pesticide chemical residue is negligible only if dietary exposure to the residue is reasonably certain to cause no harm to human health and the tolerance for such residue meets the requirements of clause (ii) or (iii).

"(ii) THRESHOLD PESTICIDES.—

"(I) IN GENERAL.—If the Administrator is able to identify a level at which a pesticide chemical residue will not cause or contribute to any known or anticipated harm to human health, the Administrator may establish or leave in effect a level for a tolerance for such residue only if the Administrator finds that such tolerance will provide an ample margin of safety, for each population group set out in subparagraph (E).

"(II) CONSIDERATIONS.—The level described in subclause (I) shall be based on consideration of—

"(aa) the nature of the toxic effects caused by such residue and data regarding the prevalence of the same effects caused by other chemicals;

"(bb) the validity, completeness, and the reliability of the data about the pesticide chemical residue;

"(cc) the variability of individual sensitivities and the sensitivities of population subgroups to the adverse effects from such residue; and

"(dd) the possibility that human susceptibility to such adverse effects is significantly greater than that of test animals.

"(III) MARGIN OF SAFETY.—For purposes of this clause, a margin of safety for a level of a pesticide chemical residue is not ample unless human exposure per unit of body measurement, to the pesticide chemical residue and other chemicals that cause the same effect, is at least 100 times less than the no observable effect level in animals on which the pesticide chemical residue was tested, and, if human data are available, at least 10 times less than the no observable effect level in humans exposed to such residue. The no observable effect level is the level of exposure to a pesticide chemical that reliable data, derived from exposure of humans or animals to the pesticide chemical, demonstrate will cause no adverse effect.

"(iii) NONTHRESHOLD PESTICIDES.—If the Administrator is not able to identify a level at which a pesticide chemical residue will not cause or contribute to any known or anticipated harm to human health or if the Administrator finds that a pesticide chemical residue causes cancer in animals or humans, the Administrator may establish a level for a tolerance for such residue or leave a level in effect for such residue only if the Administrator finds that such level—

"(I) will not cause or contribute to, in individuals exposed to such pesticide chemical residue, a lifetime risk of an adverse human health effect that occurs at a rate of one in a million or a risk of an adverse human health effect that occurs at a rate of one in a million, divided by 70, for any single year of exposure during the first 5 years of the life of an exposed person, using conservative risk assessment models;

"(II) is the lowest level reasonably required to allow the accomplishment of the physical or other technical effect for which the use of the pesticide chemical involved is intended; and

"(III) in the case of processed food, is the lowest level that occurs if such pesticide chemical residue is removed to the extent possible in accordance with good manufacturing practice.

"(C) EXPOSURE.—Except as provided in subparagraph (D), in determining dietary exposure to a pesticide chemical residue for purposes of this paragraph, the Administrator shall—

"(i)(I) use only reliable, statistically significant data regarding the dietary exposure to persons who have consumed the food for which the tolerance for the residue is proposed or is in effect;

"(II) take into account all other tolerances in effect for the same pesticide chemical residue; and

"(III) take into account all other sources (including drinking water if data demonstrating widespread or significant regional contamination in drinking water are available) of dietary exposure to the same pesticide chemical residue; and

"(ii) consider the exposure to be the level of exposure that would occur if—

"(I) all the food, for which the tolerance for the pesticide chemical residue is proposed or in effect, has amounts of the pesticide chemical residue equal to the tolerance proposed or in effect;

"(II) all other sources of dietary exposure to such residue described in clause (i)(III) occur; and

"(III) human exposure to the pesticide chemical residue at the tolerance level occurs for a period equal to a lifetime.

"(D) SPECIAL EXPOSURE RULE.—

"(i) DATE.—The Administrator may calculate dietary exposure to a food based on reliable data that provide the Administrator with a valid statistical basis to identify the percentage of the food in which the pesticide chemical residue actually occurs.

"(ii) PERCENTAGE.—Such percentage shall be not less than the percentage of the food consumed in an appropriate locality, identified by the Administrator, which percentage represents the highest level of exposure to such residue in the United States.

"(iii) REEVALUATION.—The Administrator shall reevaluate the determination under this subparagraph every 2 years after the date of the determination. If, under such a reevaluation, the Administrator finds that the determination is not justified, the Administrator shall promptly issue a regulation requiring that the tolerance involved be set on the basis of the new determination.

"(E) POPULATION COVERED.—In determining if the dietary exposure to a pesticide chemical residue is negligible, the Administrator shall evaluate the risk to—

"(i) infants of the age 0 to 1;

"(ii) children of the age 1 to 2;

"(iii) children of the age 2 to 3;

"(iv) children of the age 3 to 4;

"(v) children of the age 4 to 5;

"(vi) children of the age 6 to 10;

"(vii) adolescents of the age 11 to 18;

"(viii) other population groups that have been identified by the Administrator to have special food consumption patterns or for which data are sufficient to demonstrate special food consumption patterns; and

"(ix) the entire population, who consume food with such pesticide chemical residue.

"(F) UNAVOIDABLE PERSISTENCE.—If a tolerance or an exemption from the requirement for a tolerance for a pesticide chemical residue is revoked and the Administrator finds the pesticide chemical residue will unavoidably persist in the environment and contaminate food, the Administrator shall establish a new tolerance under subsection (d)(4) for the pesticide chemical residue. The level permitted by the tolerance shall not be greater than the lowest level that permits only such unavoidable levels to remain in food. The Administrator shall evaluate any such tolerance at least once a year to determine whether modification of such tolerance is necessary so that the tolerance provides only for the level of the pesticide chemical residue that is unavoidable.

"(G) PRACTICAL METHODS OF ANALYSIS.—

"(i) GENERAL RULE.—A tolerance for a pesticide chemical residue shall not be established or allowed to remain in effect unless the Administrator determines, after consultation with the Secretary, that—

"(I) there is a method for detecting and measuring the levels of such pesticide chemical residue in or on a food that will detect the residue at the level established by the tolerance; and

"(II) except as provided in clause (ii), such method is the best available, practical method.

"(ii) SPECIAL RULE.—If the Administrator determines that a practical method of analysis for a pesticide chemical residue is not available, the Administrator shall identify the best available method that is designed to identify the lowest detectable amount of the pesticide chemical residue. The Administrator shall, every 2 years after the date of the determination under this clause, reevaluate the determination.

"(iii) PRACTICAL METHOD.—A method shall be considered practical for purposes of this subparagraph only if it is a multiresidue method that can be performed by the Secretary on a routine basis as part of surveillance and compliance sampling of foods for pesticide chemical residues with the personnel, equipment, and other resources available to the Secretary, or, if no multiresidue method is available, only if it can be so performed by the Secretary.

"(3) CONSISTENT APPLICATION.—The Administrator shall issue guidelines providing for the consistent application of the requirements of paragraphs (1) and (2).

"(c) EXEMPTIONS.—

"(1) AUTHORITY.—

"(A) IN GENERAL.—The Administrator may promulgate regulations establishing or revoking an exemption from the requirement for a tolerance for a pesticide chemical residue—

"(i) in response to a petition filed under subsection (d)(1); or

"(ii) on the initiative of the Administrator under subsection (d)(4).

"(B) EXPIRATION DATE.—Such a regulation may provide for an expiration date for the exemption.

"(2) STANDARD.—

"(A) AUTHORITY AND RISK STANDARD.—

"(i) ESTABLISHMENT.—An exemption may be established for a pesticide chemical residue if such residue is not a human or animal carcinogen and otherwise presents no risk to human health, including the health of individuals in the population groups set out in subsection (b)(2)(E), from dietary exposure to such residue.

"(ii) REVOCATION.—An exemption shall be revoked unless the residue is not a human or animal carcinogen and the residue does not present any risk to human health, including the health of individuals in the population groups set out in subsection (b)(2)(E), from dietary exposure to such residue.

"(iii) TOLERANCE.—No exemption may be established or allowed to remain in effect for a pesticide chemical residue for which there is in effect a tolerance.

"(B) EXPOSURE.—For purposes of subparagraph (A), in determining dietary exposure to a pesticide chemical residue, the Administrator shall—

"(i) use only reliable, statistically significant data regarding the dietary exposure resulting from the consumption of the food for which the exemption for such residue is proposed or is in effect:

"(ii) take into account all other exemptions in effect for such residue and all other sources (including drinking water if data demonstrating widespread or significant regional contamination in drinking water are available) of dietary exposure to such residue; and

"(iii) consider the exposure to be the level of exposure that would occur if—

"(I) all the food, for which the tolerance for such residue is proposed or in effect, has amounts of such residue equal to the tolerance proposed or in effect, respectively;

"(II) all other sources of dietary exposure to such residue described in clause (ii) occur; and

"(iii) human exposure to the pesticide chemical residue at the tolerance level occurs for a period equal to a lifetime.

"(C) PRACTICAL METHODS OF ANALYSIS.—An exemption for a pesticide chemical residue shall not be established or allowed to remain in effect unless the Administrator determines, after consultation with the Secretary, that there is a method for detecting and measuring the levels of such pesticide chemical residue on a food and that such method is the best available, practical method, a defined in subsection (b)(2)(G).

"(3) CONSISTENT APPLICATION.—The Administrator shall issue guidelines providing for the consistent application of the requirements of paragraphs (1) and (2).

"(d) PETITIONS AND ACTION ON THE INITIATIVE OF THE ADMINISTRATOR.—

"(1) GENERAL RULE FOR PETITIONS.—Any person may file with the Administrator a petition proposing the issuance of a regulation establishing, modifying, or revoking a tolerance or exemption for a pesticide chemical residue.

"(2) REQUIREMENTS FOR PETITIONS TO ESTABLISH TOLERANCE OR EXEMPTION.—

"(A) CONTENTS.—A petition under paragraph (1) to establish a tolerance or exemption for a pesticide chemical residue shall contain—

"(i) an informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition, including—

"(I) a summary of the reports required under clause (iv) respecting the safety of the pesticide chemical residue; and

"(II) a characterization of—

"(aa) the exposure to the pesticide chemical residue due to any tolerance or exemption already granted for such residue; and

"(bb) the additional exposure to such residue that would result if the requested tolerance or exemption were granted;

"(ii) a proposed tolerance for such residue, if a tolerance is proposed;

"(iii) the name, chemical identity, and composition of the pesticide chemical that produces such residue;

"(iv) reports of tests and investigations made with respect to the safety of such pesticide chemical, including complete information as to the methods and controls used in conducting such tests and investigations;

"(v) data showing the amount, frequency, method, and time of application of such pesticide chemical;

"(vi) reports of tests and investigations made with respect to the nature and amount of the pesticide chemical residue that is likely to remain in or on food when ready for sale to consumers, including a description of the analytical methods used;

"(vii) a description of methods for detecting and measuring the levels of such pesticide chemical residue in or on the food, which methods meet the requirements of subsection (b)(2)(G) or (c)(2)(C);

"(viii) reports of investigations conducted on the effects of processing methods used to produce food on the level and identity of such pesticide chemical residue;

"(ix) if the petition is for a pesticide chemical residue that is described in subsection (b)(2)(B)(iii), all relevant data bearing on the physical or other technical effect the pesticide chemical involved is intended to have and the quantity of the pesticide chemical residue required to accomplish such effect; and

"(x) such other data and information (including a sample of the pesticide chemical from which the pesticide chemical residue is derived) as the Administrator may require to support the petition.

"(B) INFORMATION AVAILABLE TO ADMINISTRATOR.—If information or data required by this paragraph are available to the Administrator, the person submitting the petition, may, in lieu of submitting the information or data, cite the availability of the information or data.

"(3) ACTIONS ON PETITIONS.—

"(A) NOTICE.—

"(i) IN GENERAL.—Within 45 days of the filing of a petition under paragraph (1) for the establishment of a tolerance or an exemption, the Administrator shall determine if the petition complies with the requirements of paragraph (2). If the Administrator determines that the petition complies with such requirements, the Administrator shall publish a notice of the filing of the petition. If the Administrator determines that the petition does not comply with such requirements, the Administrator shall notify the petitioner of such determination.

"(ii) CONTENTS.—A notice published under this subparagraph shall—

"(I) announce the availability of a complete description of the analytical methods available to the Administrator for the detection and measurement of the pesticide chemical residue with respect to which the petition is filed;

"(II) include the summary required by paragraph (2)(A)(i); and

"(III) provide at least 30 days for comments on the petition.

"(B) ACTION.—The Administrator shall, within 270 days of the application of a notice under subparagraph (A) with respect to a petition, and after giving due consideration to the petition, any comments on the petition, and any other information available to the Administrator—

"(i) issue a final regulation in accordance with the petition establishing a tolerance or exemption for the pesticide chemical residue;

"(ii) issue a proposed regulation establishing a tolerance or exemption for the pesticide chemical residue, which tolerance or exemption is different from the tolerance or exemption requested in the petition; or

"(iii) issue an order denying the petition.

"(C) MODIFICATION OR REVOCATION.—

"(i) NOTICE.—Within 45 days of the filing of a petition under paragraph (1) for the modification or revocation of a tolerance or exemption, the Administrator shall publish a notice of the filing of the petition. Such notice shall contain the full petition or a summary of the petition and shall provide at least 30 days for comments on the petition.

"(ii) ACTION.—The Administrator shall, within 270 days of the publication of the notice under subparagraph (A) and after giving due consideration to the petition, any comments on the petition, and any other information available to the Administrator—

"(I) issue a final regulation in accordance with the petition modifying or revoking a tolerance or exemption for the pesticide chemical residue;

"(II) issue a proposed regulation modifying or revoking a tolerance or exemption for the pesticide chemical residue, which tolerance or exemption is different from the modification or revocation requested in the petition; or

"(III) issue an order denying the petition.

"(D) COMMENTS AND FINAL REGULATIONS.—If the Administrator issues a proposed regulation under subparagraph (B)(ii) or (C)(ii)(II), the Administrator shall allow at least 30 days for comments on such proposed regulations. The Administrator shall issue a final decision within 180 days of the date of the publication of the proposed regulations.

"(E) PRIORITIES.—The Administrator shall give priority to petitions for the establishment of a tolerance for a pesticide chemical residue that appears to pose a significantly lower risk to human health from dietary exposure than pesticide chemical residues that have tolerances in effect for the same or similar uses.

"(4) ACTION ON THE INITIATIVE BY THE ADMINISTRATOR.—

"(A) GENERAL RULE.—The Administrator may, on the initiative of the Administrator, issue a final regulation establishing, modifying, or revoking a tolerance or exemption for a pesticide chemical residue.

"(B) NOTICE.—Before issuing a final regulation under subparagraph (A), the Administrator shall issue a notice of proposed rulemaking and provide a period of not less than 30 days for public comment on the proposed regulation unless the Administrator finds that is would be contrary to the public interest to issue the notice and provide the period and states the reasons for the finding in the notice of the final regulation.

"(5) EFFECTIVE DATE.—

"(A) GENERAL RULE.—Except as provided in subparagraph (B), a final regulation issued under paragraph (3) or (4) shall take effect upon publication.

"(B) DELAY.—

"(i) GENERAL RULE.—If a regulation issued under paragraph (3) or (4) revokes or modifies a tolerance for a pesticide chemical residue or revokes an exemption for a pesticide chemical residue, the Administrator may, in accordance with clause (ii), delay the effective date of the regulation to permit the tolerance or exemption to remain in effect at the level in effect immediately before such regulation is issued only—

"(I) for foods that, on the date of the publication of the regulation, contain such pesticide chemical residue in an amount that is not more than the amount that could legally be applied on the date the Administrator acted under paragraph (3) or (4); and

"(II) if dietary exposure to the pesticide chemical residue in or on the foods described in subclause (I) meets the negligible risk standard prescribed by subsection (b)(2) during the period of delay of the effective date.

"(ii) PERIOD OF DELAY.—If the Administrator finds that delay of the effective date of such a revocation or modification is consistent with the public health, the Administrator may delay such date under clause (i), for each type of food that contains such pesticide chemical residue, for the period that is required for such food to be sold to consumers in the course of the usual practice for persons engaged in the production, processing, transportation, storage, and distribution of the type of food.

"(e) SPECIAL DATA REQUIREMENTS.—

"(1) DETERMINATION OF INADEQUATE DATA.—The Administrator shall take the action described in paragraph (2) if a tolerance or exemption is in effect for a pesticide chemical residue and the Administrator determines that data contained in the petition, which had been submitted, under subsection (d)(1) for establishment of the tolerance or exemption, or under this section, before the date of the enactment of the Pesticide Food Safety Act of 1993, are not adequate to support the continuation of such tolerance or exemption because—

"(A) based on the data contained in the petition and other data available to the Administrator, the Administrator determines that dietary exposure to such pesticide chemical residue may present a risk to human health that is greater than the standard prescribed by subsection (b)(2) or (c)(2); or

"(B) the data contained in the petition are insufficient to determine if the tolerance or exemption meets the requirements of subsection (b)(2) or (c)(2) or the requirements of subsection (d)(2).

"(2) ACTION BY ADMINISTRATOR.—When the Administrator makes the determination described in paragraph (1) with respect to a tol-

erance or exemption for a pesticide chemical residue, the Administrator shall—

"(A) within 30 days of a determination under paragraph (1)(A), initiate an action under subsection (d)(4) to modify or revoke the tolerance or exemption so that the tolerance or exemption meets the standard prescribed by subsection (b)(2) or (c)(2), and within 1 year of such determination issue a final regulation to complete such action; and

"(B) within 30 days of the date of a determination under paragraph (1)(B), require the submission of data to support—

"(i) the existing tolerance or exemption; or

"(ii) a new tolerance or exemption for such residue,

that meets the standard prescribed by subsection (b)(2) or (c)(2).

"(3) SUBMISSION OF REQUIRED DATA.—When the Administrator requires the submission of data under paragraph (2)(B), the Administrator shall publish an order—

"(A) requiring one or more interested persons to notify the Administrator that such person will submit the required data;

"(B) describing the type of data required to be submitted;

"(C) describing the reports required to be made during and after the collection of the data; and

"(D) establishing deadlines for the actions described in subparagraphs (A) and (C).

"(4) DEADLINES.—

"(A) GENERAL RULE.—Except as provided in subparagraphs (B) and (C), if an order is issued under paragraph (3) with respect to a tolerance or exemption and a deadline in the order is not met, the tolerance or exemption is revoked, effective 45 days after the date the deadline is not met. Immediately after such deadline is not met, the Administrator shall publish a notice of the revocation.

"(B) EXTENSION REQUEST.—

"(i) REQUEST.—Any person may request the Administrator to issue an order to extend the deadline established under paragraph (3)(D) before expiration of the deadline.

"(ii) GRANT OF REQUEST.—The Administrator may grant such a request only if—

"(I) the person submitting the request notified the Administrator pursuant to paragraph (3)(A) in compliance with the deadline established under paragraph (3)(C); and

"(II) the Administrator finds that extraordinary circumstances beyond the control of such person prevented such person from submitting the required data.

"(iii) EXTENSION.—If the Administrator issues an order extending a deadline—

"(I) the Administrator may extend the deadline for a period no longer than such time as is necessary for such person to submit the data; and

"(II) the Administrator shall establish a new deadline in accordance with paragraph (3)(D).

"(C) DELAY.—If a tolerance or exemption is revoked under subparagraph (A), the Administrator may delay the effective date of the revocation in accordance with subsection (d)(5)(B).

"(5) EVALUATION OF DATA.—Within 90 days of the date of the receipt of data under paragraph (3), the Administrator shall evaluate such data and determine whether action is required under subsection (d)(4) with respect to the tolerance or exemption for the pesticide chemical residue for which the data were submitted so that such tolerance meets the negligible risk standard prescribed under subsection (b)(2) or (c)(2). If the Administrator determines that action under subsection (d)(4) is required, the Administrator shall complete such action within 1 year of the date of such determination.

"(f) CONFIDENTIALITY OF DATA.—

"(1) GENERAL RULE.—Data submitted to the Administrator in support of a petition under subsection (d)(1), which data have not previously been made available to the public without restriction, shall, upon request of the petitioner, be considered as entitled to confidential treatment by the Administrator until publication of a regulation or order under subsection (d)(3) in response to the petition unless disclosure of such data is required by subsection (d)(3)(A)(ii)(II) or (g) or is allowed by paragraph (2).

"(2) DISCLOSURE.—Data that are entitled to confidential treatment under paragraph (1) until publication of a regulation or order under subsection (d)(3) may be revealed to—

"(A) either House of Congress or any committee or subcommittee of such House to the extent of matter within the jurisdiction of the committee or subcommittee;

"(B) any officer or employee of the United States in connection with the official duties of such officer or employee under any law for the protection of health or the environment or for specific law enforcement purposes;

"(C) any officer or employee of a State in connection with the official duties of such officer or employee under any law of the State for the protection of health or the environment or for specific law enforcement purposes; or

"(D) contractors with the United States authorized by the Administrator to examine such data in the carrying out of contracts under such statutes under such security requirements as the Administrator may provide.

"(g) ACCESS TO DATA IN SUPPORT OF PETITION.—

"(1) GENERAL RULE.—

"(A) PUBLIC ACCESS.—If data in support of a petition are submitted to the Administrator, the Administrator, before acting on such petition, shall provide, in accordance with this subsection, public access to health and safety data that are submitted or cited in support of such petition.

"(B) REQUEST.—To obtain access to such data, a person shall, not later than 30 days after the publication under subsection (d)(3)(A) of a notice of the filing of a petition, send by certified mail to the Administrator and to the petitioner a request for such access and the affirmation required by paragraph (2).

"(C) GRANT OF REQUEST.—The Administrator shall grant such request unless, within 15 days after the receipt by the Administrator of such request and affirmation, the petitioner submits to the Administrator an objection to the request asserting that the affirmation is inaccurate and other reasons for the objection.

"(D) OBJECTION.—If an objection to a request is submitted to the Administrator within such 15-day period, the Administrator shall determine whether to grant the request within 5 days after the receipt of the objection. If the Administrator determines to grant the request, access shall not be permitted until 5 days after the petitioner making the objection has been notified that access has been granted.

"(E) DENIAL OF REQUEST.—If access to data is denied, comments on the petition for which such data were submitted or cited shall be filed within 30 days after the decision of the Administrator denying access.

"(2) RESTRICTION.—

"(A) AFFIRMATION.—Data referred to in paragraph (1) may be made available only to a person who provides an affirmation (and such supporting evidence as the Administrator may require) that—

"(i) states that the person is not engaged in, and is neither employed by, nor acting (directly or indirectly) on behalf of, any other person, or affiliate of a person, engaged in, the production, sale, or distribution of a pesticide chemical;

"(ii) identifies any business, employer, or other person, if any, on whose behalf the person is requesting access to the data; and

"(iii) states that the person will not intentionally or recklessly violate this subsection.

"(B) AFFILIATE.—For purposes of this paragraph, an affiliate of a person is a person who directly or indirectly, through one or more intermediates, controls or is controlled by or is under common control with the other person.

"(C) FRAUD.—Section 1001 of title 18, United States Code, shall apply to an affirmation made under this paragraph.

"(3) COMMENTS.—

"(A) GENERAL RULE.—Data supporting a petition may be made available under paragraph (1) to a person only for the purpose of permitting the person to comment to the Administrator on such petition. Such comments may reasonably quote data submitted to the Administrator. No person, including the Administrator, may make such comments public before the decision of the Administrator on the petition for which such data were submitted or after such decision if the petition is denied.

"(B) RESTRICTIONS.—A person who obtains data (directly or indirectly) under paragraph (1) may not publish, copy, or transfer the data to any other person to obtain approval to sell, manufacture, or distribute a pesticide chemical anywhere in the world.

"(4) PROCEDURE.—

"(A) IN GENERAL.—Data made available under paragraph (1) may be examined at an office of the Environmental Protection Agency or an appropriate State agency under the conditions prescribed by this subsection and may not be removed from such office.

"(B) RECORD.—The Administrator shall maintain a record of the persons who inspect data. A copy of such record shall be sent on request to the person who submitted the data.

"(C) BASIS FOR COMMENTS.—Once access to data supporting a petition is granted, the data may be examined and notes may be taken for use in developing comments on the petition. Such comments on the petition shall be filed within 60 days after the decision of the Administrator granting access, unless the comment period is extended by the Administrator for an additional 30 days for good cause.

"(h) ACCESS TO DATA AFTER DECISION.—When the administrator takes final action on a petition submitted under subsection (d)(1) or on the initiative of the Administrator under subsection (d)(4), the Administrator shall make available to the public the administrative record of the decision, including the data relied upon for the decision.

"(i) EXISTING PESTICIDE CHEMICAL RESIDUES.—

"(1) PESTICIDE CHEMICAL RESIDUES UNDER REGULATIONS UNDER SECTION 406.—Regulations affecting pesticide chemical residues promulgated, in accordance with sections 701(e) and 406, upon the basis of public hearings instituted before January 1, 1953, shall be deemed to be tolerances issued under this section and shall be subject to modification or revocation under subsection (d) or (e).

"(2) PESTICIDE CHEMICAL RESIDUES UNDER REGULATIONS.—Regulations establishing tol-

erances for pesticide chemical residues under this section and section 409 or exemptions for pesticide chemical residues under this section on or before the date of the enactment of this section shall be deemed to be tolerances or exemptions issued under this section and shall be subject to modification or revocation under subsection (d) or (e).

"(3) GENERALLY RECOGNIZED AS SAFE PESTICIDE CHEMICAL RESIDUES.—

"(A) GENERAL RULE.—Pesticide chemical residues that, on the day before the date of the enactment of the Pesticide Food Safety Act of 1993, do not have tolerances or exemptions from tolerances under this section because the residues are generally recognized as safe under this section or section 409 shall, until the expiration of the period prescribed by subparagraph (C), not be considered unsafe under section 402(a)(2)(B) solely because the chemicals do not have such a tolerance or exemption.

"(B) LIST.—Not later than 90 days after the date of the enactment of such Act, the Administrator shall—

"(i) publish a list of all pesticide chemical residues that the Administrator has determined are generally recognized, on the day before the date of the enactment of such Act, as safe under this section or section 409; and

"(ii) require, by regulation, that any person who, before the date of the enactment of such Act, distributed in commerce as a pesticide chemical, a pesticide chemical that is not on the list described in clause (i), and that such person determined is generally recognized as safe under this section or section 409, shall—

"(I) report to the Administrator the identity of such pesticide chemical; and

"(II) report to the Administrator the data that supports the claim that the pesticide chemical is so safe.

"(C) DETERMINATION OF THE ADMINISTRATOR.—Not later than 270 days after such date, the Administrator shall determine if each pesticide chemical reported to the Administrator in accordance with subparagraph (B)(ii) is generally recognized as safe. If the Administrator determines, by order, that such pesticide chemical is generally recognized as safe, the residue of such pesticide chemical shall be considered a pesticide chemical residue subject to an exemption under this section, which exemption shall be subject to modification or revocation under subsection (d) or (e).

"(j) FOOD AND DRUG ADMINISTRATION MONITORING OF PESTICIDE CHEMICAL RESIDUES.—

"(1) SAMPLING.—The Secretary shall conduct surveillance and compliance sampling of food for pesticide chemical residues to determine if the pesticide chemical residues are in compliance with this section. In carrying out this paragraph, the Secretary shall give priority to foods that contain pesticide chemical residues included in a notice under paragraph (2).

"(2) NOTIFICATION.—The Administrator shall notify the Secretary of the pesticide chemical residues that the Administrator determines, in the administration of this section—

"(A) are above the standard prescribed by subsection (b)(2); or

"(B) are not above such standard but that may under certain circumstances reach or exceed such standard.

"(k) FEES.—The Administrator shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Administrator, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the functions of the Administrator under this section. Under such regulations, the performance of the services or other functions of the Administrator under this section may be conditioned upon the payment of such fees. Such regulations may further provide that the continuation in effect of a tolerance or exemption shall be conditioned upon the payment of an annual fee and for waiver or refund of fees in whole or in part when, in the judgment of the Administrator, such waiver or refund is equitable and not contrary to the purposes of this subsection.

"(l) JUDICIAL REVIEW.—

"(1) REVIEW.—Any person (including a person without an economic interest) who may be adversely affected by a final regulation or order issued under subsection (d)(3), (d)(4), (e)(4), or (i)(3) may obtain judicial review of such regulation or order by filing a petition requesting that the regulation or order be set aside in whole or in part in the United States Court of Appeals for the circuit in which such person resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within 60 days after publication of the regulation or order under such subsection.

"(2) REVIEW OF DATA.—

"(A) IN GENERAL.—Any person (including a person without an economic interest) may obtain judicial review, of the adequacy of the data made available by the Administrator under subsection (h) to support the issuance of a tolerance or exemption for a pesticide chemical residue, by filing a petition for the review of the data in the United States Court of Appeals for the circuit in which such person resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit.

"(B) SCOPE OF REVIEW.—Review in a proceeding initiated under this paragraph shall be limited to whether the data under review are adequate to demonstrate that the tolerance or exemption supported by such data meets the standards required by subsection (b)(2) or (c)(2) and interpreted by the guidelines issued under subsection (b)(3) or (c)(3). Unless the court determines that such data are adequate, the court shall revoke the tolerance or exemption supported by such data.

"(C) BURDEN OF PROOF.—In any such proceeding the Administrator shall have the burden of proof on all issues.

"(3) COURT RESPONSIBILITY.—In any action seeking judicial review of actions under this section, the court shall have the principal responsibility for deciding issues of law.

"(4) ATTORNEY FEES.—Any petitioner who prevails in a proceeding brought under this section shall be entitled to recover reasonable attorney fees and expenses (including expert witness fees).

"(m) DEFINITIONS.—For purposes of this section, the terms 'modify' and 'modification' mean the lowering of a tolerance for a pesticide chemical residue.".

(b) CONFORMING AMENDMENT.—Section 303 (21 U.S.C. 333) is amended by adding at the end the following:

"(g) A person who violates a tolerance established under section 408(b)(2) for a food at the time the food is purchased at retail shall not be subject to any penalty under this section.".

SEC. 4. EVALUATION OF EXISTING PESTICIDE CHEMICAL RESIDUE TOLERANCES AND EXEMPTIONS.

(a) EVALUATION.—Within 1 year of the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall, for each pesticide chemical residue that has a tolerance or exemption in effect under the Federal Food, Drug, and Cosmetic Act, evaluate all available data with respect to the safety of such pesticide chemical residue and the nature and amount of such residue remaining in or on foods and determine if—

(1) the tolerance or exemption meets the requirements of subsection (b)(2) or (c)(2) of section 408 of such Act;

(2) the tolerance or exemption does not meet such requirements; or

(3) the data are insufficient to determine if the tolerance or exemption meets such requirements.

(b) SUFFICIENT DATA.—

(1) ACCEPTABLE RISK DATA.—If, with respect to any pesticide chemical residue that is evaluated under subsection (a), the Administrator finds that data for the pesticide chemical residue are sufficient to determine that the tolerance or exemption for the pesticide chemical residue meets the standard under section 408(b)(2) or 408(c)(2) of such Act, the Administrator shall publish such finding.

(2) UNACCEPTABLE RISK DATA.—If, with respect to any pesticide chemical residue that is evaluated under subsection (a), the Administrator finds that data for the pesticide chemical residue are sufficient to determine that the tolerance or exemption for the pesticide chemical residue does not meet the standard under section 408(b)(2) or 408(c)(2) of such Act, the Administrator shall, within 1 year of the date of such finding, modify or revoke the tolerance.

(3) INSUFFICIENT DATA.—

(A) GENERAL RULE.—

(i) SUBMISSION OF DATA.—If, with respect to any pesticide chemical residue that is evaluated under subsection (a), the Administrator determines that the data are insufficient to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or 408(c)(2) of such Act, the Administrator shall establish a schedule for the submission of data in accordance with the requirements of sections 408(e)(2)(B) and 408(e)(3) of such Act, which data shall be the basis for a determination by the Administrator as to whether the tolerance or exemption meets the standard prescribed by section 408(b)(2) or 408(c)(2) of such Act.

(ii) DETERMINATIONS.—The Administrator shall—

(I) within 2 years of the date of the enactment of this Act, make such a determination respecting a tolerance or exemption meeting a standard under section 408 of such Act for at least 30 percent of the tolerances or exemptions in effect for pesticide chemical residues in existence on such date;

(II) within 4 years of the date of the enactment of this Act, make such a determination for at least 60 percent of the tolerances or exemptions in effect for pesticide chemical residues in existence on such date;

(III) within 6 years of the date of the enactment of this Act, make such a determination for at least 90 percent of the tolerances or exemptions in effect for pesticide chemical residues in existence on such date; and

(IV) within 7 years of the date of the enactment of this Act, make such a determination for 100 percent of the tolerances or exemptions in effect for pesticide chemical residues in existence on such date.

(iii) DEADLINES.—Section 408(e)(4) of such Act shall apply to the deadlines established by such schedule.

(B) PRIORITIES.—In establishing such schedule, the Administrator shall give priority to the consideration of any pesticide chemical residue for which there is reason to

believe that the tolerance or exemption in effect for such residue may present a risk greater than the negligible risk standard prescribed by section 408(b)(2) or 408(c)(2) of such Act.

(C) ACTION BY THE ADMINISTRATOR.—If the Administrator determines under subparagraph (A) that a tolerance or exemption does not meet the standard under section 408(b)(2) or 408(c)(2) of such Act after the submission of data in accordance with the schedule prescribed by such subparagraph, the Administrator shall take the action described in section 408(e)(2)(A) of such Act with respect to such tolerance or exemption.

SEC. 5. REVIEW OF EXISTING METHODS OF ANALYSIS.

(a) DETERMINATION.—Within 180 days of the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall determine, for each method of detecting and measuring levels of pesticide chemical residues, whether the requirements of section 408(b)(2)(G) of the Federal Food, Drug, and Cosmetic Act have been met.

(b) NOTICE.—The Administrator shall issue a notice identifying each pesticide chemical for which there is such a method that does not meet such requirements. Any such method that does not meet such requirements shall be revised so that the method meets such requirements within 3 years of the date of the issuance of the notice.

(c) REVOCATION.—If upon the expiration of such 3-year period, a method does not meet such requirements, then any tolerance or exemption in effect for the pesticide chemical residue subject to such method shall be considered revoked.

SEC. 6. FEES.

The Administrator of the Environmental Protection Agency shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Administrator, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the functions of the Administrator under this section and sections 4 and 5 of this Act.

SEC. 7. GENERAL DEFINITIONS.

As used in sections 4 and 5 of this Act:

(1) IN GENERAL.—The terms that are also used in section 408 of the Federal Food, Drug, and Cosmetic Act shall have the meanings given the terms by sections 201 and 408 of such Act.

(2) DIETARY EXPOSURE.—The term "dietary exposure" means dietary exposure as determined under section 408(b)(2)(C) of the Federal Food, Drug, and Cosmetic Act.

(3) EXEMPTION.—The term "exemption" means an exemption from the requirement for a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act.

By Mr. SPECTER:

S. 332. A bill to amend the Unfair Competition Act and Clayton Act to provide for private enforcement of the Unfair Competition Act in the event of unfair foreign competition, and to amend title 28, United States Code, to provide for the enforcement of the customs fraud provisions; to the Committee on the Judiciary.

FOREIGN COMPETITION ACT OF 1993

Mr. SPECTER. Mr. President, I am today introducing legislation to provide for a private right of action for injured parties to sue in the Federal court to stop goods from coming into this country which are subsidized or dumped or in violation of our trade laws. We have a very serious problem in many industries—steel, coal, glass, and many others—affecting the country as a whole, and particularly my home State of Pennsylvania.

We have too long sacrificed American industry and American jobs in the name of foreign policy, defense policy, without having the proper enforcement of the laws because the executive branch, whether it is a Republican administration or a Democratic administration, has made concessions for foreign policy and defense interests.

The problem is illustrated by the timetable which has been established on complaints filed by the steel industry, where finally, last month, the Commerce Department issued its initial determination that imports of certain steel products from 19 countries are being sold in the United States for less than fair value.

The details are set forth in my statement which I shall have included at the close of my extemporaneous comments.

But the fact is it will take about a year and a half for any kind of a determination, and then the determination is totally inadequate because the losses sustained by the American steel industry are not compensated.

What is necessary is that a private injured party—a company, a union, any one who is injured—have an opportunity to go into Federal court, very much as private prosecutors do in treble damage actions under the antitrust laws, and seek enforcement of America's trade laws, which are currently not being adequately enforced by the executive branch.

I believe in free trade. But free trade means the cost of production plus a reasonable profit. It does not mean that a foreign government ought to be able to subsidize a ton of steel, for example, up to $250 a ton. Free trade does not mean that foreign importers ought to be able to dump goods in the United States where that happens so frequently. Steel producers in Brazil, Japan, or Taiwan will sell steel in the United States at a price lower than the price which it is being sold in their home market.

Mr. President, this is a matter of fundamental fairness. Too often, thousands, tens of thousands, hundreds of thousands of American jobs have been lost through unfair foreign competition.

Mr. President, today I am again introducing legislation to provide a private right of action for injured parties to sue in Federal court to stop imports from coming into the United States which are subsidized or dumped. This is an issue that I have strenuously pursued throughout my career here in the Senate. Because I do not believe that foreign policy or defense policy concerns should supersede basic fairness in trade policy, I am continuing my efforts today.

I have long been concerned about the importation of subsidized or dumped goods on the U.S. market and its impact on U.S. jobs and industries. While it is encouraging to note the announcement on January 27, 1993, by the Commerce Department of their preliminary determination in favor of the U.S. steel industry, this announcement nonetheless highlights the primary problem confronted by U.S. industries seeking relief from unfair competition under U.S. trade laws—namely, that they are completely dependent on the U.S. Government, which may place other concerns, such as foreign relations, ahead of trade issues.

Even when the Government does act aggressively to enforce U.S. trade laws, the process is extremely time consuming. The U.S. steel industry is a perfect example. In April, 1992, the voluntary restraint agreements were allowed to lapse and the industry filed its dumping actions with the Commerce Department. Nearly 10 months later, on January 27, 1993, the Commerce Department issued its initial determination—a preliminary determination—that imports of certain steel products from 19 countries are being sold in the United States at less than fair value. I am advised that the Department expects to make its final determination by April 12, 1993, 1 year later, regarding six countries and by mid-June, 14 months later, for all other countries. If the final determination affirms the preliminary determination, the International Trade Commission [ITC] will then have 45 days to determine whether the imports materially injure, or threaten to injure, the U.S. steel industry. If the ITC finds injury or threat of injury, the Commerce Department will instruct the Customs Service to collect antidumping duties.

Assuming that all decisions are favorable, this means that the steel industry will have waited for more than a year before any action was taken to remedy the injury done to U.S. steel companies and their workers. And even then, the remedy will be prospective, and it in no real way will compensate them for the actual damages of lost jobs and lost revenues. Therefore, it is my strong belief that a private right of action is necessary to enable our domestic industries to counter foreign subsidies, dumping, and customs fraud in a timely manner. My bill accomplishes this by authorizing immediate injunctive relief against the offending foreign exporter to prevent the illegal import from causing further damage, and it allows for the recovery of damages incurred as a result of the illegal import.

The essence of free trade is selling goods at a price equal to the cost of production and a reasonable profit. Where you have subsidies by foreign

governments, it is the antithesis of free trade. Where you have dumping—the sale in the United States of goods at prices lower than the price at which such goods are being sold by the producing companies in their own country or in some other country—that also is exactly the opposite of free trade.

We have seen a long history where American industries have been prejudiced, and American jobs have been lost, due to subsidized and dumped goods coming into this country. There is no adequate remedy at the present time to provide domestic industries with timely relief from the damage caused by such imports.

We have also seen a long history in this country where foreign policy and defense policy have superseded basic fairness on trade policy. I received a comprehensive education on this subject back in 1984 when there was a favorable ruling by the International Trade Commission for the American steel industry, but it was subject to review by the President. At that time my colleague, Senator Heinz and I visited every one of the Cabinet officers in an effort to get support to see to it that International Trade Commission ruling in favor of the American steel industry was upheld. Then-Secretary of Commerce Malcolm Baldrige was favorable, and International Trade Representative Bill Brock was favorable. We received a favorable hearing in all quarters until we spoke with then-Secretary of State Shultz and then-Secretary of Defense Weinberger who were absolutely opposed to the ITC ruling. President Reagan decided to overrule the ITC, and U.S. trade policy and workers again took second place to foreign policy concerns.

I believe the only way to handle these important issues is to see to it that there is a private right of action. This is a time-honored approach for private prosecution, illustrated by the antitrust laws where there are treble damage actions. I believe this is absolutely necessary if the specialty steel and other U.S. industries subject to foreign import competition are to have fairness and to be able to stop foreign subsidized and dumped products from coming into this country.

On March 4, 1982, I introduced S. 2167 to provide a private right of action in Federal court to enforce existing laws prohibiting illegal dumping or subsidizing of foreign imports. Hearings were held on this bill before the Judiciary Committee on May 24 and June 24, 1982. On December 15, 1982, I offered the text of this bill on the Senate floors as an amendment, which was tabled by a slim margin of 51 to 47.

During the 96th Congress, I reintroduced this legislation as S. 416 on February 3, 1983. The Judiciary Committee held a hearing on this bill on March 21, 1983. I offered the text of S. 418 as an amendment to the Omnibus Tariff and Trade Act of 1984 on September 19, 1984; the amendment was tabled.

During the 99th Congress, I reintroduced this legislation as S. 236; I expanded the scope of this bill to include customs fraud violations and introduced S. 1655 on September 18, 1985, and favorably reported the bill by unanimous voice vote on March 20, 1986. The Finance Subcommittee on International Trade also held a hearing on S. 1655 pursuant to a sequential referral agreement. Significant progress was made toward reaching a unanimous-consent agreement for full Senate consideration of S. 1655 prior to adjournment of the 99th Congress, but the press of other business prevented its coming for the floor action.

In the 100th Congress, I reintroduced comprehensive legislation, S. 361, to provide a private right of action in Federal court to enforce existing laws prohibiting illegal dumping or customs fraud.

I expanded the scope of this bill in S. 1396, which I introduced on June 19, 1987, to revise the subsidy provision to include a private right of action to allow injured American parties to sue in Federal court for injunction relief against, and monetary damages from, foreign manufacturers and exporters who receive subsidies and any importer related to the manufacturer or exporter.

This bill would have provided a comprehensive approach to address three of the most pernicious, unfair export strategies used by foreign companies against American companies: dumping, subsidies, and customs fraud.

During full Senate consideration of the Omnibus Trade and Competitiveness Act (S. 490), I filed the text of S. 1396 as Amendment No. 315 on June 19, 1987, and offered it as an amendment to the trade bill on June 25, 1987. This amendment, however, was tabled.

I again filed the text of this bill as an amendment to the Textile and Apparel Trade Act, S. 2662, on September 9, 1988, and to the Technical Corrections Act, S. 2238, on September 29, 1988.

On July 15, 1987, I joined Senator Heinz as an original cosponsor of an amendment to S. 490 to provide a private right of action in the U.S. Court of International Trade for damages from customs fraud. Although the amendment was accepted by the Senate, it unfortunately was dropped in conference.

Last year, I introduced S. 2508 because the Voluntary Restraint Agreements program was allowed to lapse in spite of the fact that no multilateral steel agreement was in place. In fact, as announced by the USTR, talks on the steel accord had broken down. I might add that this was somewhat strange, Mr. President, if not incomprehensible. There the steel industry—and this goes beyond specialty steel—had been awaiting an agreement on a multilateral steel accord which would have prevented subsidized and dumped goods from coming into the United States, and then there was a specific recognition by the Trade Representative, that that effort failed. Not to extend the voluntary restraint program at that time was, and remains today, just a bit mystifying.

In any event, the Judiciary Committee favorably reported S. 2508 by unanimous voice vote on August 12, 1992. Again, the press of other business prevented the Senate from taking up this legislation on the floor.

The bill I am introducing today provides a private right of action for injunctive and monetary relief in Federal court to individuals or corporations who have been injured by dumping, subsides, or customs fraud violations. The bill will enable industries to seek immediate relief through the Federal courts to halt the illegal importation of products.

There is nothing like the vigor of private plaintiffs when it comes to the enforcement of our trade laws. We desperately need the vigorous private enforcement this bill would spur if we are to successfully chart a course between the grave dangers of increased protectionism and the certain peril which would result from unabated illegal foreign imports.

Industry suffers the dual dilemma of completing against foreign protectionist legislation and having no forum to pursue their grievances other than the executive branch. Hank Barnette, president of Bethlehem Steel, who testified at a Judiciary Committee field hearing I conducted last year, provides a level of support for this legislation, which, I might add was typical throughout the several committee field hearings held in my State. Mr. Barnette is very familiar with the broad range of our trade issues and was appointed by President Bush to serve on his Advisory Committee on Trade Policy and Negotiations. He appeared before the Judiciary Committee to echo the support he voiced for private right of action legislation when appearing first in 1985:

> I said then, and am equally convinced today, the current prospective anti-dumping remedies provide an inadequate deterrent to dumping. We know that to be a fact. In our industry the practice of dumping has continued unabated for nearly 20 years and it is rampant today. The establishment of an effective private right of action against dumping in the United States Federal Courts would provide a much-needed remedy.

I believe the bill I am introducing would have an important deterrent effect on the practices of our foreign trading partners. Under this bill, an injured domestic business could file suit in the U.S. district court for the District of Columbia or the Court of International Trade for an injunction against the import and sales of the goods which it could preliminarily

demonstrate were violating customs laws. The court's order could be modified to provide a more permanent remedy based on a more detailed finding. If dumping, subsidies, or customs fraud and injury are found, the plaintiff would be entitled to compensatory damages.

A reason to support this bill lies in its simplicity. We can enact this legislation immediately without interfering with or precluding a more complex set of initiatives. The essence of this bill is to promote enforcement of existing trade laws and agreements, and, therefore, use our existing trade laws as our best defense against unfair foreign practices. My bill will free private enterprise to pursue remedies without delay and put an immediate halt to many discriminatory trade practices.

I ask my colleagues to join me now in supporting this legislation to provide immediate relief to the unfair trade practices which constrain our Nation's industry. We are all familiar with the $1 trillion trade deficit we have incurred over the past decade and the additional impact of our currently stalled economy. We should also, however, be proud of the many improvements made by our industrial base over the past decade. Our corporations invested capital and the quality of our products has risen dramatically; but our Nation's workers have suffered significant job losses while our corporations have tried to become more lean and competitive. Clearly our business sector and each and every American has participated in and borne the burden of improving our competitive position.

Even these significant advances, however, are insufficient to truly compete in the face of illegal trade practices such as dumping, subsidies, and customs fraud. Clearly, the best way to handle these trade issues is to provide a private right of action which will allow U.S. industries the ability to stop foreign subsidies and dumping on the U.S. market in a timely fashion.

Mr. President, I ask unanimous consent at this time that my proposed legislation be included in the RECORD as if read in full.

Mr. President, I ask unanimous consent that the testimony of Mr. Robert E. Heaton, who is president and chief operating officer of Washington Steel Corp., which was introduced in hearings before the steel caucus on February 20, 1992, be introduced because it is a very important statement in support of the voluntary restraint program for specialty steel, and in the absence of that voluntary restraint program it would logically follow through to a private right of action.

Mr. President, I further ask unanimous consent that the testimony of Richard P. Simmons, chairman of the board of Allegheny Ludlum Corp., which was presented during field hearings by the Judiciary Committee which I presided over in Pittsburgh on January 13, 1992, be included in the RECORD because this statement has a comprehensive review of the surge in imports of subsidized goods where the voluntary restraint programs are not present.

Mr. President, I further ask unanimous consent that there be included in the RECORD a memorandum dated March 26, from Mr. Skip Hartquist, attorney with Collier, Shannon & Scott, to Morrie Ruffin, my staff assistant, which encloses a memorandum from the Georgetown Economic Services to Mr. Skip Hartquist of Collier, Shannon & Scott, a law firm which has been retained by Specialty Steel, together with the report by the Georgetown Economic Services which contains an expansive list of subsidies and other government-aid intervention in the specialty steel industry. This material sets forth their representations on a factual basis what other governments are doing by way of subsidy and by way of dumping.

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

S. 332

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PRIVATE ACTIONS FOR RELIEF FROM UNFAIR FOREIGN COMPETITION.

(a) CLAYTON ACT.—Section 1(a) of the Clayton Act (15 U.S.C. 12) is amended by inserting "section 801 of the Act of September 8, 1916, entitled 'An Act to raise revenue, and for other purposes' (39 Stat. 798; 15 U.S.C. 72);" after "nineteen hundred and thirteen;".

(b) ACTION FOR DUMPING VIOLATIONS.—Section 801 of the Act of September 8, 1916 (39 Stat. 798; 15 U.S.C. 72) is amended to read as follows:

"SEC. 801. (a) PROHIBITION.—No person shall import or sell within the United States an article manufactured or produced in a foreign country if—

"(1) the article is imported or sold within the United States at a United States price that is less than the foreign market value or constructed value of the article; and

"(2) the importation or sale—

"(A) causes or threatens material injury to industry or labor in the United States; or

"(B) prevents, in whole or in part, the establishment or modernization of any industry in the United States.

"(b) CIVIL ACTION.—An interested party whose business or property is injured by reason of an importation or sale in violation of this section may bring a civil action in the United States District Court for the District of Columbia or in the Court of International Trade against—

"(1) a manufacturer or exporter of the article; or

"(2) an importer of the article into the United States that is related to the manufacturer or exporter of the article.

"(c) RELIEF.—In an action brought under subsection (b), upon a finding of liability on the part of the defendant, the plaintiff shall—

"(1)(A) be granted such equitable relief as may be appropriate, which may include an injunction against further importation into or sale or distribution within, the United States by the defendant of the article in question; or

"(B) if injunctive relief cannot be timely provided or is otherwise inadequate, recover damages for the injuries sustained; and

"(2) recover the costs of the action, including reasonable attorney's fees.

"(d) STANDARD OF PROOF.—(1) The standard of proof in an action brought under subsection (b) is a preponderance of the evidence.

"(2) Upon—

"(A) a prima facie showing of the elements set forth in subsection (a); or

"(B) affirmative final determinations adverse to the defendant that are made by the administering authority and the United States International Trade Commission under section 735 of the Tariff Act of 1930 (19 U.S.C. 1673d) relating to imports of the article in question for the country in which the manufacturer of the article is located,

the burden of proof in an action brought under subsection (b) shall be upon the defendant.

"(e) OTHER PARTIES.—(1) Whenever, in an action brought under subsection (b), it appears to the court that justice requires that other parties be brought before the court, the court may cause them to be summoned, without regard to where they reside, and the subpoenas to that end may be served and enforced in any judicial district of the United States.

"(2) A foreign manufacturer, producer, or exporter which sells products, or for which products are sold by another party in the United States, shall be treated as having appointed the District Director of the United States Customs Service of the Department of the Treasury for the port through which the product is commonly imported as the true and lawful agent of the manufacturer, producer, or exporter, upon whom may be served all lawful process in any action brought under subsection (b) against the manufacturer, producer, or exporter.

"(f) LIMITATION.—(1) An action under subsection (b) shall be commended not later than 4 years after the date on which the cause of action accrued.

"(2) The running of the 4-year period provided in paragraph (1) shall be suspended while there is pending an administrative proceeding under subtitle B of title VII of the Tariff Act of 1930 (19 U.S.C. 1673 et seq.) relating to the product that is the subject of the action or an appeal of a final determination in such a proceeding, and for 1 year thereafter.

"(g) NONCOMPLIANCE WITH COURT ORDER.—If a defendant in an action brought under subsection (b) fails to comply with any discovery order or other order or decree of the court, the court may—

"(1) enjoin the further importation into, or the sale or distribution within, the United States by the defendant of articles that are the same as, or similar to, the articles that are alleged in the action to have been sold or imported under the conditions described in subsection (a) until such time as the defendant complies with the order or decree; or

"(2) take any other action authorized by law or by the Federal Rules of Civil Procedure, including entering judgment for the plaintiff.

"(h) CONFIDENTIALITY AND PRIVILEGED STATUS.—(1) Except as provided in paragraph (2), the confidential or privileged status accorded by law to any documents, evidence, comments, or information shall be preserved in any action brought under subsection (b).

"(2) In an action brought under subsection (b) the court may—

"(A) examine, in camera, any confidential or privileged material;

"(B) accept depositions, documents, affidavits, or other evidence under seal; and

"(C) disclose such material under such terms and conditions as the court may order.

"(i) EXPEDITION OF ACTION.—An action brought under subsection (b) shall be advanced on the docket and expedited in every way possible.

"(j) DEFINITIONS.—For purposes of this section, the terms 'United States price', 'foreign market value', 'constructed value', 'subsidy', and 'material injury', have the respective meanings given those terms under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.).

"(k) SUBSIDY.—If—

"(1) a subsidy is provided to the manufacturer, producer, or exporter of an article; and

"(2) the subsidy is not included in the foreign market value or constructed value of the article (but for this paragraph),

the foreign market value of the article or the constructed value of the article shall be increased by the amount of the subsidy.

"(l) INTERVENTION BY THE UNITED STATES.—The court shall permit the United States to intervene in any action brought under subsection (b) as a matter of right. The United States shall have all the rights of a party to such action.

"(m) NULLIFICATION OF ORDER.—An order by a court under this section is subject to nullification by the President under authority of section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702).".

(c) ACTION FOR SUBSIDIES VIOLATIONS.—Title VIII of the Act of September 8, 1916 (39 Stat. 798; 15 U.S.C. 71 et seq.) is amended by adding at the end the following new section:

"SEC. 807. (a) PROHIBITION.—No person shall import or sell within the United States an article manufactured or produced in a foreign country if—

"(1) the foreign country, any person who is a citizen or national of the foreign country, or a corporation, association, or other organization organized in the foreign country, is providing (directly or indirectly) a subsidy with respect to the manufacture, production, or exportation of the article; and

"(2) the importation or sale—

"(A) causes or threatens material injury to industry or labor in the United States; or

"(B) prevents, in whole or in part, the establishment or modernization of any industry in the United States.

"(b) CIVIL ACTION.—An interested party whose business or property is injured by reason of an importation or sale in violation of this section may bring a civil action in the United States District Court for the District of Columbia or in the Court of International Trade against–

"(1) a manufacturer or exporter of the article; or

"(2) an importer of the article into the United States that is related to the manufacturer or exporter of the article.

"(c) RELIEF.—In an action brought under subsection (b), upon a finding of liability on the part of the defendant, the plaintiff shall—

"(1)(A) be granted such equitable relief as may be appropriate, which may include an injunction against further importation into, or sale or distribution within, the United States by the defendant of the article in question; or

"(B) if injunctive relief cannot be timely provided or is otherwise inadequate, recover damages for the injuries sustained; and

"(C) recover the costs of the action, including reasonable attorney's fees.

"(d) STANDARD OF PROOF.—(1) The standard of proof in an action filed under subsection (b) is a preponderance of the evidence.

"(2) Upon—

"(A) a prima facie showing of the elements set forth in subsection (a); or

"(B) affirmative final determinations adverse to the defendant that are made by the administering authority and the United States International Trade Commission under section 705 of the Tariff Act of 1930 (19 U.S.C. 1671d) relating to imports of the article in question for the country in which the manufacturer of the article is located,

the burden of proof in an action brought under subsection (b) shall be upon the defendant.

"(e) OTHER PARTIES.—(1) Whenever, in an action brought under subsection (b), it appears to the court that justice requires that other parties be brought before the court, the court may cause them to be summoned, without regard to where they reside, and the subpoenas to that end may be served and enforced in any judicial district of the United States.

"(2) A foreign manufacturer, producer, or exporter which sells products, or for which products are sold by another party in the United States, shall be treated as having appointed the District Director of the United States Customs Service of the Department of the Treasury for the port through which the product is commonly imported as the true and lawful agent of the manufacturer, producer, or exporter, upon whom may be served all lawful process in any action brought under subsection (b) against the manufacturer, producer, or exporter.

"(f) LIMITATION.—(1) An action under subsection (b) shall be commenced not later than 4 years after the date on which the cause of action accured.

"(2) The running of the 4-year period provided in paragraph (1) shall be suspended while there is pending an administrative proceeding under subtitle A of title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.) relating to the product that is the subject of the action or an appeal of a final determination in such a proceeding, and for 1 year thereafter.

"(g) NONCOMPLIANCE WITH COURT ORDER.—If a defendant in an action brought under subsection (b) fails to comply with any discovery order or other order or decree of the court, the court may—

"(1) enjoin the further importation into, or the sale or distribution within, the United States by the defendant of articles that are the same as, or similar to, the articles that are alleged in the action to have been sold or imported under the conditions described in subsection (a) until such time as the defendant complies with the order or decree; or

"(2) take any other action authorized by law or by the Federal Rules of Civil Procedure, including entering judgment for the plaintiff.

"(h) CONFIDENTIALITY AND PRIVILEGED STATUS.—(1) Except as provided in paragraph (2), the confidential or privileged status accorded by law to any documents, evidence, comments, or information shall be preserved in any action brought under subsection (b).

"(2) In an action brought under subsection (b) the court may—

"(A) examine, in camera, any confidential or privileged material;

"(B) accept depositions, documents, affidavits, or other evidence under seal; and

"(C) disclose such material under such terms and conditions as the court may order.

"(i) EXPEDITION OF ACTION.—An action brought under subsection (b) shall be advanced on the docket and expedited in every way possible.

"(j) DEFINITIONS.—For purposes of this section, the terms 'subsidy' and 'material injury' have the respective meanings given those terms under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.).

"(k) INTERVENTION BY THE UNITED STATES.—The court shall permit the United States to intervene in any action brought under subsection (b) as a matter of right. The United States shall have all the rights of a party to such action.

"(l) NULLIFICATION OF ORDER.—An order by a court under this section is subject to nullification by the President under authority of section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702).".

(d) ACTION FOR CUSTOMS FRAUD.—

(1) AMENDMENT OF TITLE 28, UNITED STATES CODE.—Chapter 95 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1586. Private enforcement action for customs fraud

"(a) CIVIL ACTION.—An interested party whose business or property is injured by a fraudulent, grossly negligent, or negligent violation of section 592(a) of the Tariff Act of 1930 (19 U.S.C. 1592(a)) may bring a civil action in the United States District Court for the District of Columbia or in the Court of International Trade, without respect to the amount in controversy.

"(b) RELIEF.—Upon proof by an interested party that the business or property of such interested party has been injured by a fraudulent, grossly negligent, or negligent violation of section 592(a) of the Tariff Act of 1930, the interested party shall—

"(1)(A) be granted such equitable relief as may be appropriate, which may include an injunction against further importation into the United States of the merchandise in question; or

"(B) if injunctive relief cannot be timely provided or is otherwise inadequate, recover damages for the injuries sustained; and

"(2) recover the costs of suit, including reasonable attorney's fees.

"(c) DEFINITIONS.—For purposes of this section:

"(1) The term 'interested party' means—

"(A) a manufacturer, producer, or wholesaler in the United States of like or competing merchandise; or

"(B) a trade or business association a majority of whose members manufacture, produce, or wholesale like merchandise or competing merchandise in the United States.

"(2) The term 'like merchandise' means merchandise that is like, or in the absence of like, most similar in characteristics and users with, merchandise being imported into the United States in violation of section 592(a) of the Tariff Act of 1930 (19 U.S.C. 1592(A)).

"(3) The term 'competing merchandise' means merchandise that competes with or is a substitute for merchandise being imported into the United States in violation of section 592(a) of the Tariff Act of 1930 (19 U.S.C. 1592(A)).

"(d) INTERVENTION BY THE UNITED STATES.—The court shall permit the United States to intervene in an action brought under this section, as a matter of right. The United States shall have all the rights of a party.

"(e) NULLIFICATION OF ORDER.—An order by a court under this section is subject to nul-

lification by the President under authority of section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702).".

(2) TECHNICAL AMENDMENT.—The chapter analysis for chapter 95 of title 28, United States Code, is amended by adding at the end the following new item:

"1586. Private enforcement action for customs fraud."

SEC. 2. ACCORDANCE WITH GATT.

It is the sense of the Congress that this Act is consistent with, and in accord with, the General Agreement on Tariffs and Trade (GATT).

TESTIMONY OF ROBERT E. HEATON, PRESIDENT AND CHIEF OPERATING OFFICER, WASHINGTON STEEL CORP.

Senator Rockefeller, Senator Specter, Members of the Senate Steel Caucus. My name is Bob Heaton. I am President & Chief Operating Officer of Washington Steel Corporation in Washington, Pennsylvania. I am also the Chairman of the Executive Committee of the Specialty Steel Industry of the United States.

On behalf of the Specialty Steel Industry of the United States, and in cooperation with the United Steelworkers of America, I am pleased to appear before this distinguished Senate body to solicit your support for the specialty steel industry's and the Union's request for a three-year extension of the voluntary restraint arrangements (VRAs) with respect to specialty steel products.

For those of you who are unfamiliar with our segment of the industry, the Specialty Steel Industry of the United States represents virtually all U.S. producers of stainless and alloy tool steels, heat-resisting steels, electrical steels, super alloys, and other high technology metals. Our industry employs approximately 35,000 people, with annual shipments of over $6 billion, although on a tonnage basis we represent less than 2 percent of annual steel production in the U.S. I would remind you that the record shows that prices of specialty steels during the VRA period have been maintained well below the growth rate in the CPI and indices for other industrial product. Consumers have not been hurt.

Specialty steels represent the high value, high technology segment of the steel industry. Because of their high alloy content, technical properties and special processing techniques, our products are used in extreme environments demanding exceptional hardness, toughness, strength, resistance to heat, corrosion or abrasion—or any combination of these characteristics. A healthy specialty steel industry is vital to the economic and industrial well-being of the United States. Indeed our society could not function without them. Specialty steels are essential for many critical applications in both the capital goods and consumer durable sectors of our economy, automotive, power generation, chemical processing, health care, marine and aerospace, to name a few areas. Moreover, the unique characteristics of specialty steels make these products essential to the production of all major weapon systems, as well as aircraft and other defense-related equipment. Our products were crucial to the success of Desert Storm, and we responded to urgent requests by the Department of Defense to supply materials on extremely short notice—as little as twenty-four hours—often halting normal commercial production schedules to meet the demands of the war effort.

The gains achieved by the specialty steel industry as a result of the VRAs are threatened by their scheduled expiration on March 31, 1992. So too, are the many thousands of jobs we directly provide for support indirectly. Worldwide capacity to produce specialty steel products has expanded dramatically during the VRA period to a level that exceeds the demands of today's global marketplace. Foreign government subsidization of specialty steel production continues unabated and dumping of specialty steel products persists, notwithstanding the disciplines of the current VRA program. Efforts to address these problems in the framework of a multilateral consensus arrangement have not borne fruit. Most compelling, however, is the fact that most specialty steel import restraint levels have been fully utilized and in many instances exceeded. Elimination of the VRAs will result in an immediate import assault that could have severe consequences for U.S. producers, their workers, and the American economy.

The VRAs have served the specialty steel industry well, and have helped control the import surges that devastated the industry during the early 1980s. The VRAs have also provided the opportunity for the industry to maintain its worldwide technological advantage through investment in research and development; construction of modern facilities; and improved productivity. Economic conditions, unique to specialty steel, are such that termination of the VRA program at this time will undermine those gains and have dire consequences for U.S. specialty steel producers, their employees and families, a number of communities, as well as the customers served by the industry. Let me briefly address these conditions. They provide compelling testimony as to why the specialty steel industry must seek an extension of the VRA program at this time, and why we are seeking your support for this effort.

First, overcapacity problems in the industry have worsened. The long-standing problem of structural overcapacity in the world's specialty steel market has not been addressed: indeed, by all accounts the excess capacity problems have worsened during the VRA period. Total worldwide capacity additions by foreign specialty steel producers, including all of the major VRA signatories, are expected to exceed 3.0 million tons by March 31, 1992—an amount far exceeding the U.S. annual consumption of specialty steel. Much of the new foreign capacity has been targeted to come on stream as the VRAs terminate—for obvious reasons.

Second, dumping and foreign subsidization continue to be a major factor in the U.S. market. And, let us be reminded that 'subsidies are fungible' so damage is pervasive. The VRAs have not prevented subsidized and dumped imports from entering the U.S. market; they have only helped control the volume of such unfair imports. The fundamental conditions of subsidization and dumping were to be addressed in the framework of the multilateral steel arrangement (MSA), a structure which, as announced by the Administration, was to in be place by the time the VRAs were being phased out.

"Let me quote the President's July 25, 1989 order:

I am also directing Ambassador Hills to seek to negotiate, through the Uruguay Round of Multilateral Trade Negotiations and complementary bilateral agreements, an international consensus to provide effective disciplines over government aid and intervention in the steel sector and to lower barriers to global trade in steel. The international consensus will contain three elements:

Strong disciplines over trade-distorting government subsidies;

Lowering of trade barriers so as to ensure market access; and

Enforcement measures to deal with violations of consensus obligations."

Unfortunately, the MSA negotiations have been characterized primarily by the efforts of other producing nations to exempt themselves from the reach of U.S. trade laws; to undermine the effectiveness of those laws; to "grandfather" past subsidy programs; and to broaden the scope of permissible subsidy programs. Furthermore, foreign producing nations have utilized the MSA effort to establish an alternative dumping regime for steel that would virtually eliminate any possibility for U.S. steel producers to obtain relief for injurious dumping. Significantly, these efforts are being mirrored in the GATT where many of our principal trading partners are insisting on a substantial weakening of U.S. trade laws as a precondition of any multilateral trade agreement. These efforts, if successful, will remove the industry's most effective weapon in its battle against unfair imports.

Third, the U.S. specialty steel market has weakened. As a result of a combination of factors—the economic downturn, structural overcapacity and continued dumping/subsidy practices—the U.S. specialty steel industry is experiencing uncertainties in its markets. Imports are up, prices are soft, and profitability has sharply deteriorated. These conditions, though typical of a cyclical industry in the recessionary phase of the business cycle, deeply concern U.S. specialty steel producers because they come at a time when the benefits of the VRA structure are about to be removed. It is precisely these depressed conditions that led to the dislocations of the early 1980s, the filing of unfair trade cases by the steel industry, and the government-initiated VRA program.

Perhaps most significantly, the VRA quotas for specialty steel products have been fully utilized. An analysis of recent import statistics reveals that VRA quota levels for most specialty steel products have been filled. Indeed, in many instances, those limits have been exceeded. For example, in 1991, the VRA ceilings on specialty steel will experience utilization rates ranging from 96 to 113 percent, which has been typical for most years during the duration of the program. For certain products and signatories, utilization rates have been even higher, which has led the Department of Commerce to require special release authorization on the entry of certain specialty steel imports from Austria and Brazil, as well as from the European Community, where authorization is required on four of the seven specialty steel categories.

These trends support the long-standing position of the industry that even where import restraints are in place, foreign producers will focus their export activities on higher value products, which are largely comprised of specialty steel products. The trends also confirm the industry's belief that imports, which have been increased steadily during the recent VRA period, will surge to unprecedented levels if the VRAs are allowed to expire.

The proposed phasing out of the VRA program was premised on a number of conditions, which, notwithstanding the sincere intentions of the Administration, have not come to pass. Global capacity still exceeds global demand for specialty steel by substan-

tially larger margins than before the VRAs were initiated. Subsidization continues worldwide, and, despite the strong efforts by the Administration, there is no MSA in place to impose discipline on foreign governments that have been willing to support their specialty steel sectors through periods of substantial losses. Finally, dumping remains the market development tactic of choice among foreign producers who seek to inject themselves in the U.S. marketplace at any cost.

Overlying these fundamental structural problems is a recession which has shrunk worldwide demand for specialty steel products, thereby increasing the incentive for foreign producers to ship even more high valued specialty steels to the U.S. market. Sound policy in today's international steel market dictates a continuation of the VRAs for specialty steel. The VRAs have enabled the specialty steel industry to maintain its technological superiority and thereby meet the changing demands of the U.S. industrial and defense base and the demands of the global marketplace and assure jobs, both directly and indirectly, for American workers. Until fundamental international trading conditions change, or are placed under adequate control, the VRAs must be extended. We must ensure that the essential American specialty steel industry remains strong to serve the critical needs of an imperfect marketplace.

The specialty steel industry and its workers must not be held hostages to external international factors over which it cannot exert control.

TESTIMONY OF RICHARD P. SIMMONS

Senator Specter, I am pleased to be here today to discuss the U.S. speciality steel industry's longstanding struggle against unfair trade practices, and the crucial role U.S. trade legislation has played in that struggle. For more than two decades, the U.S. speciality steel industry has waged a continuous legal and political battle against injurious and unfairly traded imports. A multifaceted patchwork of trade remedies has resulted from these efforts, including VRAs, quotas, increased tariffs, antidumping and countervailing duties. These remedies have helped the industry maintain its technological superiority in the intensely competitive international market for specialty steel by providing a viable financial environment for research and development in new products and new product applications, investment in new facilities, and the development of more efficient production methods.

I want to emphasize, however, that no combination of legal remedies can eliminate the fundamental conditions of overcapacity and subsidization that have been the cause of the industry's import problems. Until these conditions are removed, the U.S. speciality steel industry, like other high-technology segments of the U.S. economy, will be vulnerable to the unfair import practices of foreign producers. The industry must, therefore, continue to rely on the effectiveness of our trade laws to mitigate the adverse impact of these practices, and the conditions that give rise to them.

I. HISTORY OF THE INDUSTRY'S STRUGGLE AGAINST UNFAIR TRADE PRACTICES

It is instructive, at the outset, to focus on the long history of the speciality steel industry's two decade long battle against unfair trade practices. The speciality steel industry's experience combatting these practices provides a compelling case history of how an industry can adapt the trade laws to its individual commercial circumstances. The history also provides a unique perspective on the strengths, as well as the limitations, of those laws.

A. 1969–1974: Voluntary Quota Programs

As a people of Western Pennsylvania are no doubt aware, steel imports into the United States increased more than tenfold over the period 1958–1968, with the great bulk of imports coming from Japan and the European Community. The surge was attributable to the same conditions we in specialty steel face today—excess foreign capacity, foreign government subsidies, and lower labor costs.

The Johnson Administration's solution to the domestic steel industry's problems was to seek voluntary quota programs with foreign producer associations. Both Japanese and European steel producers agreed to limit steel shipments to the United States to specified maximum tonnages for each of the years 1969–1971. These "voluntary quotas" were subsequently extended from 1972–1974 in response to pressure from the domestic industry and Congress.

The first voluntary quotas did not distinguish between ordinary carbon steel and specialty steel. This encouraged foreign producers to change their products mix from mostly carbon steel to an increasing proportion of specialty steel. At that time, carbon steels, were selling in the $120–200 range. In comparison, stainless was selling for over $1,000 per ton and certain tool steels were selling for more than $7,000 per ton. By increasing their exports of specialty and alloy steel products, Japanese and European producers increased their dollar value of export sales during the restraint period, even though they reduced or maintained their overall export volumes.

The sharp and sudden increases in specialty steel imports under the 1969–1974 voluntary quotas provide a compelling lesson that is relevant even to this day. Foreign producers have the willingness and capability to shift production to specialty steels, if such products are excluded from a VRA program or any other comprehensive program of import relief. Accordingly, any comprehensive initiative undertaken on behalf of the steel industry generally must take into account this shifting phenomenon and not exclude high value specialty steel products.

B. 1975–1984: Import Quotas, Tariffs, and Antidumping and Countervailing Duties

In 1975, the year after the first steel voluntary quota program expired, imports of specialty steel increased 20 percent while American consumption decreased by 40 percent. The specialty steel industry laid off 25 percent of its work force and was utilizing only one-half of its productive capacity. Given these conditions, the U.S. specialty steel producers and the United Steel Workers of America filed a Section 201 petition seeking relief from the flood of steel imports which threatened the future of the American specialty steel industry and the security of American jobs. This was one of the first such cases ever filed.

The ITC determined the specialty steel imports were a "substantial cause of serious injury" to the domestic industry. In response to this finding, President Ford set three-year quotas for imports of certain specialty steel from Sweden, Canada, France, Great Britain, Austria, and West Germany. The United States simultaneously negotiated an orderly marketing agreement with Japan. The import quotas were scheduled to expire in July 1979, but President Carter extended the quotas through February 13, 1980.

In the first five months of 1980, following removal of the quotas, specialty steel imports increased 29 percent. The pattern continued—no restraints, surges of imports. The industry again turned to the trade laws, unleashing an aggressive attack on unfair imports of specialty steel. During the period 1982–1984, the Specialty Steel Industry of the United States and the United Steel Workers of America filed and won numerous antidumping and countervailing duty petitions against specialty steel producers from around the world.

In addition to filing antidumping and countervailing duty petitions, the industry filed a Section 301 petition with the United States Trade Representative in January 1982. The 301 petition alleged that several EC countries, including Austria, France, Italy, Sweden, the U.K., and Belgium, were subsidizing specialty steel products in violation of the GATT. In November 1982, President Reagan, after confirming the industry's allegations of subsidization, directed the ITC to initiate a Section 201 investigation—like the one we filed in 1975—with respect to stainless plate, rod, bar, sheet and strip, and alloy tool steel. The ITC completed the requested investigation in May 1983, finding once again that the specialty steel industry has suffered serious injury, and that the most important factor in causing that injury was the dramatic growth in imports during the 1980–1983 period. President Reagan, accordingly, instituted in July 1983 an import relief program for specialty steel, which included a four-year series of gradually lowering tariffs on stainless steel flat-rolled products and four-year import quotas on stainless steel bar and wire rod, and alloy tool steel.

C. 1984–1989: Voluntary Restraint Agreements

Of course, there were other developments. In 1983, Bethlehem Steel and the U.S. Steelworkers filed a Section 201 case on carbon steel products. While the case resulted in an affirmative injury determination, President Reagan chose not to provide—as he had in the case of specialty steel—specific import relief. Instead, on September 18, 1984, President Reagan established a national policy for the steel industry that included the negotiation of voluntary restraint agreements with 19 countries and the European Community. The VRA program was initially designed to limit imports of carbon steel into the United States. It eventually incorporated a number of specialty steel products, which were previously covered by the 1983 section 201 import relief program.

D. 1989–1992: Renewal of the Voluntary Restraint Agreements

As it has in past restraint periods, the specialty steel industry benefited greatly from the VRAs. During the first five-years of the VRA program, the industry made tremendous increases in productivity, shipments, employment levels, exports, net sales, net operating profitability, and capacity utilization. These improvements were accompanied by increases in investment, including research and development.

The industry, however, recognized that the VRA's had not cured the endemic overcapacity and persistent unfair trade practices that led to the imposition of the import restraints in the mid-1980s. If the VRAs were dismantled prematurely, the same problems that had distorted the market in the early 80s would recur. To prevent this recurrence, domestic producers argued that the VRAs should be extended for five years.

On July 25, 1989, President Bush announced the "Steel Trade Liberalization Program,"

under which the VRAs were extended for 2½ years—a concession to steel consumer groups. All specialty steel products were included within the framework of the extended VRA program, despite efforts on the part of many consumer groups to exclude them altogether. Thankfully, the specialty steel industry's proven vulnerability to shifting convinced the President that the effectiveness of the VRA extension would be undermined if any specialty steel products were excluded.

II. PRESENT AND FUTURE INITIATIVES TO ADDRESS UNFAIR TRADE PRACTICES IN STEEL

I am pleased to say that we have survived this challenge. We are a modern technologically advanced industry capable of competing worldwide. The aggressive application of our trade laws has been an important factor in our survival. Still, history is not without its lessons, and I would like to point out a number of troubling aspects of this history. First, the specialty steel industry has always had to act defensively in defending its markets. Most foreign specialty steel markets have been closed to U.S. exports, either as a result of overt tariff barriers or through more subtle non-tariff measures similar to those the President addressed in his recent trip to Japan. The industry, therefore, has been unable to take the battle to foreign shores. Another troubling aspect of this history is the fact that the import relief measures granted pursuant to U.S. trade laws were always prospective in nature—that is to say, they were available only after substantial damage had been caused. There were no compensatory remedies available for the harm caused over two decades by unfair import competition. For this reason, the specialty steel industry sought passage of legislation, sponsored by Senator Specter in the 99th and 100th Congresses, which have provided a private right of actions for companies injured as a result of dumping and subsidization. The legislation made sense in 1988 when the industry urged its passage, and it continues to make sense today.

Private right of action legislation would give private parties access to the courts to seek redress from injurious unfair trade practices. The specialty steel industry is appreciative of Senator Specter's introduction of legislation not once but several times to provide a private right of action to U.S. industries facing these unfair trade problems. We support this initiative and, in particular, the pending bill (S. 986) that would provide a private right of action against customs fraud.

Perhaps most troubling in our present struggle against unfair trade practices is the fact that some interest groups believe our trade laws are too effective and have attacked those laws in a number of settings. The most recent example of this concerted effort on the part of our trading partners to undermine these important trade laws is the ongoing negotiations on the international Antidumping and Subsidies Codes that are taking place in the Uruguay Round of GATT negotiations. Unfortunately, despite valiant efforts by U.S. negotiators to achieve stricter controls on unfair trade practices in these negotiations, the "final draft" texts issued by GATT Director General Arthur Dunkel in the areas of dumping and subsidies would achieve just the opposite. Rather than strengthening U.S. trade laws as Congress had urged in 1988 by setting out issues to be achieved, the proposed text significantly weakens U.S. antidumping and subsidy laws.

The Dunkel text undermines current U.S. trade laws in virtually all areas. The proposed dumping and subsidies texts would make it more difficult to file cases initially by raising the "standing" requirements and eliminating unions as petitioners. New substantive changes in the dumping and subsidy texts would make it more difficult to impose duties offsetting the unfair trade practices, allowing greater dumping of goods sold at below the cost of production, "green-lighting" certain subsidies that are prohibited by current law, and increasing the levels of dumping and subsidies needed to obtain an order. The injury standard would also be more difficult to meet under the current draft which does not authorize cumulation of unfairly traded imports from a variety of countries in dumping cases. Finally, if a domestic industry could obtain an order, the "sunset" provision would eliminate that order after five years in most cases.

Perhaps even more important than any of these substantive issues is the change in the dispute settlement process conducted by the GATT. All U.S. dumping and subsidy orders will be subject to review by a GATT Dispute Settlement Panel, whose conclusions the United States will be required to accept. Given that there is no limitation on the standard of review to be applied by these panels, and given the predilection of past panels to interpret these laws against the country applying them, this process will effectively remove from Congress the ability to make law in this area. Instead, we will be forced to accept and abide by decisions of panels comprised of representatives of our various trading partners whose views are directly at odds with our views on these matters. I cannot stress strongly enough the concern that we have, and that the Congress should have, over this proposed relinquishment of U.S. control over our unfair trade laws.

Today is an important day because negotiators from around the world are reconvening in Geneva today to begin what may be the final negotiations in these trade talks. It is vital that the members of Congress convey to our negotiators that the United States simply cannot accept an agreement that will seriously weaken our unfair trade laws and that will vest in an international panel power to overrule the United States' interpretation and application of these laws.

I would like to conclude with some thoughts about the future. As you know, the VRAs are scheduled to expire in approximately 2½ months. The multilateral steel consensus structure, the foundation upon which the post-VRA period was to be built, has not come about—President Bush's assurances notwithstanding.

Given the softness of world demand for specialty steel at the moment, I am concerned that when the VRAs end, foreign producers will take advantage of the situation and we will experience a new flood of specialty steel imports. It is no coincidence that the VRA levels for specialty steel products have already been reached, and in many instances, exceeded. It is not blind speculation to suggest that the scenario of weak demand, excess global capacity and unfair foreign pricing will recur.

The specialty steel industry will therefore have no choice but to defend its markets through reliance on our trade laws. The Congress, in turn, must ensure that those laws are not weakened in the GATT or anywhere else. We must not abdicate the United States' ability to develop effective laws against unfairly traded imports to an international panel. Further, the serious diminishment in the effectiveness of the subsidy and dumping laws currently proposed in the GATT text will lead to an increase in unfairly traded imports and a consequent decrease in U.S. manufacturing capability and employment.

I would also recommend that every effort be made to strengthen those laws so that U.S. manufacturers are not forced to seek protection only after markets have been lost. Private right of action, both as a disincentive to unfair trade, and as a remedy for past harm, is an idea whose time has come.

Finally, I would ask the Congress, as well as the Administration, to consider how best to deal with the fundamental problems of subsidization and overcapacity. The VRAs are a good interim solution, and their continuation should be considered if we have not made progress in eliminating these problems. We must, however, be creative and seek permanent solutions to these problems.

I remain excited about the commercial opportunities available to our industry, and the contributions that our industry can make to our industrial economy. Those opportunities, however, will only be available if we can solve the fundamental problems that have plagued our industry for more than two decades. Alternatively, we must have a legal regime in place that will enable high technology industries like specialty steel to insulate themselves from the endemic practices, like dumping, that are the by-product of these problems.

COLLIER, SHANNON & SCOTT,
ATTORNEYS-AT-LAW,
Washington, DC, March 26, 1992.

To: Morrie Ruffin.
From: Skip Hartquist.
Re: Foreign government subsidies to specialty steel producers.

Per your request, enclosed is a comprehensive report prepared by Georgetown Economic Services, our economic consulting firm subsidiary, identifying subsidies provided to specialty steel producers by foreign governments. I hope this will be helpful to you in pursuing the VRA legislation and for other purposes.

GEORGETOWN ECONOMIC SERVICES,
Washington, DC, March 26, 1992.

To: Skip Hartquist.
From: Patrick J. Magrath, Director.
Re: Background Factors For Analysis of Subsidy List.

Attached please find a listing of subsidies, state aids, and government aided investments and acquisitions benefiting specialty steel producers in some 20 foreign countries. For the most part, the programs and activities listed are only those interventions from 1988 to March, 1992, and do not include benefits to foreign specialty steel makers still flowing from government aided investments of the mid and early 1980's.

Several factors are necessary to keep in mind while perusing the attached list:

COMMON OWNERSHIP OF CARBON AND SPECIALTY STEEL PRODUCTION FACILITIES

With only one or two exceptions, U.S.-specialty steel producers are distinct and independent from the larger tonnage companies producing carbon steel. The United States, however, is almost unique in this arrangement. By far the more common situation abroad is one in which the bulk of specialty steel production is carried out by a division or subsidiary of the country's dominant carbon steel producer. For example, the U.K.'s largest stainless steel producer, BSC Stainless, is a division of the country's dominant integrated carbon steel producer, British

Steel. So too, France's largest stainless producer, Ugine SA, is 95 percent owned by the integrated carbon steel giant Usinor Sacilor. Similar ownership ties between specialty and larger carbon steel concerns are also the rule in Italy, Japan, Germany and almost all other foreign specialty steel producing countries.

These ownership ties are important to the subsidy story because it is the giant integrated carbon steel firms that are state-owned and receive direct subsidies from their governments. British Steel, before it was privatized in 1986, was the recipient of massive subsidies—part of which was used to benefit BSC Stainless.

THE INHERENT FUNGIBILITY OF SUBSIDIES

Subsidies and other state aids can be directly linked to specialty steel production, even though the original recipient was the carbon steel parent, because of the inherent fungibility of subsidies. In most instances, subsidies are granted to the carbon steel parent to cover operating losses, or to forgive debt, with no stipulations as to where or in what manner the state-generated funds are to be applies. Obviously, the specialty steel making division or subsidiary benefits from the aid provided the parent, even if the specialty steel affiliate is profitable. Even if state aid comes with "strings attached"—for instance, as is the case with aid earmarked for a specific region or environmental expenditure—the monies provided for these projects frees up general corporate funds to finance capital improvements, modernization, and wages increases for all affiliated companies of the steel group, including specialty steel.

It is because a conferred subsidy is fungible that we have included in our list a variety of programs, which may or may not technically constitute a red-light subsidy under GATT, or the proposed MSA. All programs listed confer a real monetary benefit, which are used to aid the specialty steel maker director, or to free up funds generated by the specialty steel affiliate which would otherwise be earmarked for other purposes.

PAST SUBSIDIES AND GOVERNMENT SUPPORT CONFER CURRENT AND FUTURE BENEFITS

Included in this list, in appropriate cases, is a partial record of investments and acquisitions of state-owned or subsidized foreign specialty steel producers. A particularly pernicious effect of subsidies/state ownership is the luxury of being able to make ongoing investments or acquisitions regardless of the firm's financial track record, poor credit rating, or, in some cases, technical insolvency. With knowledge that subsidies and the state stand behind the firm, foreign specialty steel producers and their carbon steel parents are able to expand capacity, invest in plant and equipment, and make key acquisitions regardless of suffering financial losses year after year. U.S. specialty steel makers, on the other hand, are subject to the profit discipline and must prove their credit worthiness without recourse to government bailouts. The simple fact is that many of the U.S. industry's chief foreign competitors, including the U.K.'s BSC Stainless and ILVA of Italy, would not be in existence if it were not for the massive subsidies provided on a continued basis by their governments in the 1970's and 1980's. The universal knowledge held by international leaders—that, in the end, the host governments are committed to maintaining the viability of certain privileged steel companies—is perhaps the most valuable state "aid" of all.

LIST OF SUBSIDIES AND OTHER GOVERNMENT AIDS/INTERVENTION IN THE SPECIALTY STEEL INDUSTRY

Japan

MITI provided $5 million to a consortium of mills in 1988 to pursue an experimental smelting-reduction furnace built at Kawasaki's Chiba works. MITI is expected to pick-up the tab on roughly 70 percent of total expenditures on the project, which would amount to $60–100 million over four years. The experimental furnace would replace conventional blast furnaces for carbon steelmaking; however, most members of the consortium also produce stainless (Nippon Steel, NKK Corp., Kawasaki Steel, Sumitomo Metal Industries, Nisshin Steel and Nakayama Steel). MITT's contribution in this endeavor is more than 3 times the corresponding investment by the mills *combined.*

Korea

1992: The Trade & Industry Ministry (MTI) plans to provide $6.6 million in financial support of R&D expenditures to the iron & steel industry in 1992. In addition, the ministry will also provide "tax favors" for R&D projects to help improve the international competitiveness of Korean steel.

1991: Market research reports done for the U.S. specialty steel industry indicate that the government continues to provide favorable export financing to Sammi Steel (Korea's major specialty steel producer) for its shipments to the U.S. (Source can be provided in confidence.)

1990: MTI encouraged a consortium of mills to form the Korea New Steel Technical Research Cooperative, which is undertaking a five-year, $38 million joint R&D program. About $1 million was explicitly earmarked for developing new special steel making technology. It is uncertain how much the government is injecting into the cooperative.

In the midst of Posco's (Korea's major carbon steel producer, which also produces specialty steel) financial difficulties, it was revealed that the government is still very much involved in the timing and structure of the company's financing activities.

1989: The government was still restricting imports through licensing procedures, citing Korea's balance of payments position as justification. Since that time, Korea has continued to amass large foreign currency reserves and has become a net creditor nation.

The government has had a history of manipulating exchange rates as a policy tool for export promotion. The manipulation was achieved through currency market intervention, capital controls and other administrative mechanisms.

The American Iron and Steel Institute (AISI) has identified other state aids including preferential access to credit at preferential rates, equity infusions, infrastructure subsidies, preferential prices and terms on imported raw materials and capital goods, relatively high tariffs, export subsidies, special depreciation rates and other tax breaks.

Brazil

1991: The head of BNDES noted that prior to the privatization of Acos Finos Piratini (a stainless steel producer) the government reduced the company's debt from $92 million to $21 million. In the case of the larger privatized carbon steel mills, debt reduction was accomplished through "debt matching operations." These operations would be deemed subsidies if applied to companies which were incurring operating losses, which might be the case with Piratini. In August 1991, U.S. and Brazilian officials met to discuss apparent transfers of steel company debts to the government, as well as steel price controls and government equity infusions prior to privatization. The Brazilian officials asserted that such transactions occurred but were within the limits established when the VRAs were renewed in 1989 (i.e., the government was allowed to assume all but $6 billion in debt, which would remain the responsibility of the operating companies).

With the start of the privatization program, stainless flat-rolled producer Acesita is the only state-owned mill in which the government is still investing money. Acesita is controlled by the state bank Banco do Brasil.

1990: Unlike the flat-rolled producers, Brazilian long product producers negotiated controlled prices which were higher than prevailing international prices. As a result, exports declined, as is indicated in U.S. import statistics. Obviously, domestic prices could not have been maintained at this level without restrictions in imports.

The World Bank is providing a $400 million line of credit to BNDES, of which $300 million is targeted for modernization and technological improvements at companies following their privatization.

A private Brazilian consultant estimated that environmental clean-up costs for the Brazilian steel industry was $86 billion, as of November 1990, due to lax enforcement in the past. Given the tenuous financial condition of the country's steelmakers, these expenditures seem to be prime targets for direct or indirect subsidization.

Argentina

The Argentina National Bank is renegotiating $800 million in debt from Somisa, prior to its privatization.

Ongoing: Although the government does not control prices directly, it was reported that it attempts to keep prices low, by offering companies incentives to do so.

India

1992: Quote from a Metal Bulletin article: "Taken as a whole the public sector iron and steel industry in India is a heavily loss making enterprise." (Emphasis added). (Metal Bulletin Monthly, (MBM) January 1992).

1991: Government sanctioned the addition of a Steckel mill at Salem (a stainless steel producer) at a cost of 6 billion rupees. A second Z-mill costing 700 million rupees commissioned, doubling Salem's cold-rolled capacity.

The Steel Development Fund, was retained, and is funded via a levy on consumers. This fund accumulates resources for expansion and modernization and is charged with allocating funds to individual companies.

1990: Mukand was reportedly interested in establishing a ferro-nickel plant in Orissa. Costs are estimated at 1.5 billion rupees and scheduled for completion in 1993. Financing possibilities include joint ventures, foreign loans and money from the Orissa state government.

Steel Authority of Indian (SAIL) loses 700 rupees/tonne on pig iron it sells domestically. Since among its customers are the specialty steel industry, this would seem to constitute an upstream subsidy.

Bohler and Powmex are planning to build a powder metal plant with a capacity of 3,750 tpy of high speed steel. Cost estimated at 700 million rupees. Promoters providing 900 million rupees and Orissa (State) Industrial Promotion & Investment Corp also to provide funds.

Ongoing: Salem and Durgapur, two of India's largest stainless producers, are owned by the government through SAIL. Durgapur is reportedly the least efficient and poorest performing state-owned plant. (Jan. 1992 MBM).

The government exercised wide control over the steel industry through import licensing and price controls. Low controlled prices, as in Brazil, produced staggering losses by the Indian industry. Free market prices were often double or triple those set by the Joint Plant Committee. Largely as a result of government intervention, the Indian steel industry moved from being the cheapest world producer to one of the costliest in the 1980s.

Over the last five years, administered prices have increased rapidly to levels far higher than international prices, enabling SAIL to turn profitable (most recent reported increase=5% in 9/90). Without the performance of SAIL's Bokaro plant, however, it would not be profitable overall. The higher level of administered prices was reported to more than offset the end of government funding for investment.

South Africa

1990: South African steel exporters claim that the government cut export subsidies substantially in mid-1989 and they are currently negligible.

1991: In an apparent move to provide protection to Iscor (the largest carbon steel producer), import duties on certain "import sensitive" products were increased by 100%. The government monitors the price of imports and monitors tariffs according to whether they are above or below determined reference prices, which are based on prices prevailing in 1983 and which have not been adjusted for inflation or currency fluctuations. Critics say this reference price system is not recognized by GATT. The duty paid prices of imports are far higher than Iscor list prices, which it undersells by substantial margins in its export markets. The system effectively limits import competition to the point where it is expected to engender differential pricing by which larger domestic producers undercut the reference prices in order to pressure their smaller domestic competitors. The reference price system may also be in effect for specialty producers.

EC COUNTRIES

U.K.

Ongoing: Since its privatization, British Steel (BS) has been aggressively pursuing acquisitions:

Purchased U.S. stainless stockist TS Alloys;

Purchased U.K. stainless stockist Simpson Stainless;

Purchased Walker & Sons, U.K.'s largest independent stockist, for 330 million pounds;

Made unsuccessful bid to take over German mill Klockner.

As a result of its domestic stockholding acquisitions, British Steel controls more than 35% of the domestic market, compared to 15% prior to the acquisition.

1988: British Steel privatized, with government retaining "golden share" in order to prevent takeovers. Past subsidies noted by German mills, as well as BS' substantial cash holdings. Prior to privatization, BS added a new billet caster at Panteg works for stainless bar and rod production and ladle furnace installations at Teeside and Scunthorpe. The latter (a carbon facility) also received a new continuous caster. In addition, BS spent 30 million pounds to modernize and upgrade its stainless finishing facilities in Sheffield.

Italy

1992: British officials asked EC commission to investigate direct and indirect subsidies to Ilva, the state-owned carbon and specialty steel producer.

Government planning 650 billion lire capital injection to Ilva as final payment of its aid package. Ilva lost 400 billion lire in 1991. Includes 350 billion lire integration of financial firm Soffin into Ilva, along with a 300 billion direct injection. Ilva initially requested 1.2 trillion lire final payment and plans to raise 1 trillion through private sector and from sales of assets. The total subsidy package since Finsider's (former state-owned steel holding company) dissolution amounted to 5.2 trillion lire (2/3 paid), notwithstanding the status of the final payment. Germany initially vetoed the final payment on the grounds that it would be used to finance acquisitions rather than increase capital.

Specialty producer Falck restructuring and cutting costs, which will help fund new continuous caster at its Bolzano special steel facility. Falck is private but has a 22 percent stake in Ilva's Cogne subsidiary, which produces stainless long products.

1991: Ilva buys 30% Stake in Zanoletti Metalli, an Italian distributor of stainless and other products—60,000 tpy.

Ilva interested in privatization of Argentina's Altos Hornos Zapla mill.

1990: Ilva has earmarked $600 million through 1993 for acquisitions, joint ventures and other partnerships. Looking to expand activities in the high-value added sector of specialty steel. Government support to date reported to be $4 billion.

Finisder injected 143 billion lire into Dalmine (stainless tubing producer) in 1990 and 117 billion in 1988. The latter was determined to constitute illegal state aid by the EC Commission.

Ilva makes takeover bid for Spanish producer Acenor. Proposing to integrate w/ Bolzano-Cogne link, which would yield largest EC long products (bar, wire rod, wire) producer of stainless steel.

Ongoing: Since Finsider's dissolution, Ilva has made it a habit to delay closures to which the payment of state aid was initially linked. Moreover, Ilva continues to pursue new investments and acquisitions despite its continued reliance on government funding. Examples include interest in AHZ's privatization in Argentina, installation of new CR stainless mill at Turin, 45% stake in Falck's Bolzano plant, joint venture with Hungary Salgotarjan to establish stainless service center in Hungary and modernize Salgotarjan's CR mills.

Spain

1992: Acenor's (a stainless bar and rod producer) main shareholder, Banco Exterior de Espana, reported no longer willing to fund Acenor losses without government guarantee of firm's solvency.

EC warns Spain over subsidies to non-viable companies (carbon steel producers Ensidesa, AHV and special steel group Sidenor—holding company for Acenor and Foarsa[1]). Restructuring of Sidenor envisions closing Llodio and Hernani plants (in which 3 billion ptas have already been spent for modernization) and investing 3.2 billion ptas in Larrondo (60,00 tpy stainless long products; accounts for 30% of Acenor's overall losses), Reinosa and Vitoria. An additional 2 billion ptas are slated for "maintenance investments" in Basauri, Vitoria and Reinosa plants.

Both Larrondo and Foarsa facilities are reported to have dubious long term prospects.

1991: Costs of rehabilitating Acenor estimated at $740 million to "refloat" the company and make needed acquisitions, plus $460 million for refinancing and redundancy payments. A state-owned bank—Banco de Credito International (BCI)—is already owed 50 billion ptas and is unwilling to finance further. A regional government is expected to contribute 6 billion ptas for assistance.

1988: Acenor received 29.5 billion ptas ($254 million) to close three blooming mills. EC Commission stated that Acenor must achieve 11% operating margins in order to be deemed competitive and viable (it lost 7 billion ptas in 1988, which was higher than in both 1987 and 1988). The Spanish steel industry also received an additional 40 billion ptas ($347 million) to cover other capacity closures. These closures were in relation to Spain's entrance into the EC.

The EC Commission blocked further state aid until the Acenor companies were completely merged, citing doubts about its viability. Acenor claims to need an additional 20 billion ptas, of which the commission has approved 15 billion pending completion of the merger. The merger would give Acenor monopoly control of some specialty steel products in Spain.

France

August 1991: Eramet-SLN, a state-owned company also controlling Commentryenne, bought 85% of Sweden's Kloster Speedsteel for 800 million Skr. Kloster was the largest high-speed producer in the world. When combined with Commentryenne, it will become more than twice as large as its nearest global competitor. Speedsteel also owned Aciers de Champagnole.

July 1991: EC competition commission investigating direct or indirect transfers of public funds to Ugine, France's state-owned specialty steel producer.

Ugine suffered net loss in 1991, which the company attributed to extraordinary items, mainly closure costs. UK & German producers protesting 2.5 billion FFr ($463 million) capital injection from Credit Lyonnais (for 20% stake), alleging that it was not a reasonable and viable investment given Ugine's performance (debt = 50% of total capitalization and net loss in year). Ugine claimed that its stainless operations were profitable.

Credit Lyonnais to receive 9–10% stake directly, and additional 10% stake in exchange for giving government 3–4% additional stake in the bank. The bank is already 51% owned by the state.

State-owned carbon and specialty producer Usinor Sacilor (Ugine's parent company) has injected capital into Italian alloy steel producer Falck, becoming a significant shareholder, supplying slabs on favorable terms and discussing further joint ventures.

Ugine entered into long term nickel supply contract with state-owned SLN of France.

Ugine taking 49% stake in 6000tpy CR stainless venture Thainox in Thailand, which is expected to cost 3.1–5.0 billion baht. Ugine will supply majority of needed hot band.

SUMMARY OF UGINE ACQUISITIONS

Despite the fact that Ugine was consistently unprofitable between 1973 and 1987, it bought more than 10 companies in France, Italy, Spain and USA between 1988 and 1990. It spent more than $1 billion (7.1 billion FFr) in 1990 alone for acquisitions. It spent 2.3 billion FFr in 1989.

1991: Increased stake in Italy's Lutrix to 49% at cost of 545 million FFr. Previously gained 25% stake in 1988.

[1] Sidenor was expected to post losses of 14 billion Ptas in 1991, requiring injection of new capital.

September: Took 100% control Aceros Inoxidables, Spain's third largest special steel distributor; had gained 42% stake in 1988.

August: increased stake in Vallourec, a stainless seamless tube maker.

November: Raised Acerinox stake from 3.1 to 5.4% for 2.2 billion Ptas and given permission to raise stake as high as 10%. Also controls special steel stockholder Coafisa in Spain.

Purchased 60% of UK's second largest stockholder (10% market share) ASD. Initially took 20% in 1990. (Already owns specialty strip stockists Hammer Steel, Altone Stainless, special steel firm James Fairley[2] and 30% stake in Howard Perry). Total UK share raised from 2.5% to 9.5%.

Aug 1991: Increased stake in Allevard subsidiary, a producer of alloy steel rounds and flats, from 72 to 78%

1991: completed takeover of Ancofer Feinstahl, a German stockholder.

Sept 1991: plans to take stake in new galvanizing line in Spain built by Sidmed.

1990: January: purchased Interstate Steel Co, a U.S. service center, for $130 million.

February: bought Techalloy, a U.S. producer of special steel bar, wire and strip (13,200 tpy).

March: bought J&L, a U.S. stainless flat-rolled producer, for 3 billion FFr.

March: short term contract to take over Cockerill's 140,00 tpy electrical sheet plant in Belgium.

April: completed takeover of U.S. stainless bar stockholder Alloy & Stainless.

Fall: set up International Specialty Tube in Chicago as US subsidiary of Le Meusienne, in association with J&L.

Bought Altone Stainless, a U.K. stainless long product stockholder.

Bought 36% stake in Paturle Aciers, a French special sheet producer.

Bought Acinoxsa, a Spanish stainless stockholder.

Purchased 20% of UK's second largest stockholder (10% market share) ASD.

1989: January: bought 30% stake in Howard Perry, a UK flat-rolled stockholder.

1st qtr: bought Nuova Sait and CP Inox, both stainless trading and distribution companies in Italy.

1st qtr: took 70% stake in Germany's Saarstahl Volklingen, now named Dillenger Hutte Saarstahl.

March: signed agreement to take 50% stake in Georgetown Steel Corp, a U.S. wire rod producer.

June: bought Tacke & Lindemann, a German steel stockholder.

Fall: took 49% stake in Alessio Tubi, an Italian producer of welded tubes.

November: bought Castelli Acciai Inossidabili, an Italian producer of tubes and part of stainless division of Castek (Castelli Inox Service), a large Italian distributor.

1988: January: 146m Ffr takeover of Le Meusienne (17,000 tpy welded stainless pipe & tube)

November: bought 42% stake in Aceros Inoxidables, Spain's third largest special steel distributor (10,000 tpy of stainless products) for 24m FFr.

November 1988: purchased 25% stake in Lutrix, a majority shareholder of Italian steel coater La Magona d'Italia (Italy's largest tinplate and galvanized sheet producer). Increased stake to 49% in 1991 at cost of 545 million FFr.

[2]In July 1990, Fairley expanded its operations to include stainless round and hollow bar, after opening a new 60,000 square foot warehouse.

Sweden

1991: Despite stainless producer Avesta's loss the company proceeded with plans to install a new 270,000 tpy hot stainless strip facility and acknowledges that mill will run far below capacity for time being. Cost of new mill = 600 million SKr.

Finland

Outokumpu Oy is 81 percent owned by the government. It suffered net losses in 1990 and 1991, leading to further restructuring plans and further delaying any solid plans to privatize the company. It has made the following investments recently:

150m Fmk for new cut-to-length and slitting lines in the Netherlands 400m Fmk for new A/P line at its Tornio works to increase CR capacity by 100,000 tpy.

Philippines

Government offering incentives for steel-related and infrastructure projects, including financial assistance, tax concessions and tariff barriers. More specifically, companies can avail themselves of financing from the Official Development Assistance program, tax and duty exemption for capital equipment, tax credits for domestically-sourced capital equipment, tariff protection, and additional incentives available under the Omnibus Investment Code.

Taiwan

Stainless producer Tang Eng is state owned. Will double capacity by 1993 to 260,000 tpy to produce bar and rod. Included: new furnace, degassing unit, continuous billet caster and related components. Tang Eng has struggled in the mid-1980's, losing nearly NT $1 bilion between its founding in 1983 and 1985, due to strong import competition from Japan.

Government investing Krupp/Tuntex stainless project (150,000 mt/yr). First phase to cost $255 million for CR sheet facilities. Second phase involves adding additional melt capacity and continuous caster. Taiwan's quasi-governmental Investment & Development Co will invest 10% of the company's $113 million initial capital.

Evergreen Superior Alloy Corp (ESAC) spending $115 million on new melt shop and rolling facilities. The government owns a small stake in the company.

In early 1980s, government established a 50,000 tpy special steel plant to produce components for military via Taiwan Machinery and Manufacturing Corp (TMMC). TMMC lost NT $2 billion through March 1988, depleting its NT $1.5 billion initial capital.

Turkey

State producer Asil Celik to be privatized. Government-owned since 1982, due to debt insolvency, the producer's debt will have been completely repaid by the end of 1991. Most existing liabilities held by Is Bankasi and state agricultural bank. In June 1990, Asil Celik was accused of dumping special steel in the EC.

Iran

August 1990: government to allocate $200 million over next two years to build new 140,000 tpy alloy steel plant. Additional $400-500 million expected to come from export credits. Plant could be further expanded to 200,000 tpy.

Czechoslovakia

Stainless producer Poldi scheduled for privatization in 1992. Planned restructuring likely to lead to capacity cuts, although planning to install new 100-ton EF, new ladle furnace, new special steel mill and revamping continuous caster. The estimated cost of these projects is 174 million DM. Poldi has a virtual monopoly over special steels.

Hungary alleges that Czechoslovakia's steel industry receives direct export subsidies and low cost subsidized energy supplies which enable its firms to undercut domestic prices by one-third.

Poland

1992: Huta Baildon, a special steel producer, is reportedly having difficulty completing its modernization program without government guarantees of foreign credits.

East Germany

Sachsische Edelstahlwerke Freital has filed restructuring plan with the government—wants to build two new furnaces, continuous caster and revamp bar and blooming mills. Outsiders belief survival of mill may be in jeopardy if it must compete in open market. Freital produces 300,000 tpy of stainless, bearing, spring, tool and high speed steel.

Belgium

Cockerill Sambre, a state-owned producer of electrical steel as well as carbon steel, is in a dispute with the government over 500 million BFr of unpaid tax contributions from a 3% tax levy imposed beginning in 1987. The company was exempted from the levy in 1987 due to its financial difficulties. In 1988, Cockerill returned to profitability, leading the government to claim that the company must pay the levy. Cockerill is protesting the government's claim saying that although the company was profitable in 1988, its financial difficulties continued. Thus, the company claims it should be exempted for that year. Cockerill has paid the levy since 1989.

Portugal

Seeking exemption from EC ban on state aid in order to restructure its Siderurgia Nacional, as well as special bar producer Acos Tome Feteira. The former has received state aid since Portugal joined the EC in 1986, while the latter has not.

By Mr. HOLLINGS (for himself, Mr. DANFORTH, and Mr. INOUYE):

S. 333. A bill to clarify the congressional intent concerning, and to codify, certain requirements of the Communications Act of 1934 that ensure that broadcasters afford reasonable opportunity for the discussion of conflicting views on issues of public importance; to the Committee on Commerce, Science, and Transportation.

FAIRNESS IN BROADCASTING ACT OF 1993

Mr. HOLLINGS. Mr. President, I rise today to introduce the Fairness in Broadcasting Act of 1993. This legislation will reinstate the fairness doctrine as repealed by the Federal Communications Commission [FCC] in 1987. The fairness doctrine requires broadcasters to cover issues of public importance and present these issues fairly. It also requires broadcasters to provide an opportunity for opposing viewpoints when issues of public concern are presented over the public's airwaves.

I introduced similar legislation last Congress, which passed both Houses but did not become law. Since that time, the FCC has taken two actions that heighten the need for reinstatement of the fairness doctrine. First, in

KARK-TV versus Arkansas, the FCC eliminated the final applicability of the fairness doctrine as it related to coverage of ballot issues. The FCC ruled that the fairness doctrine as applied to ballot issues no longer served the public interest. This ruling is without merit or foundation. Making the airwaves available for opposing viewpoints is inherent in the public interest, especially when it comes to informing the public about issues on which they will vote.

Second, the FCC loosened the radio ownership restrictions, increasing the limits from 12 AM and 12 FM stations to 30 AM and 30 FM stations. I view this policy change with caution because our policies always have been aimed at encouraging diversity in ownership of broadcast outlets. Reinstatement of the fairness doctrine would help to minimize any impact of an increased concentration in the marketplace by ensuring an opportunity for contrasting opinions on issues of public importance.

In repealing the fairness doctrine, the FCC asserted that: First, the electromagnetic spectrum is no longer scarce; second, the increase in the number of broadcast stations and other media outlets has significantly changed the media marketplace; and third, the fairness doctrine has a chilling effect on broadcasters.

The evidence does not support the FCC's conclusions. The contention that the spectrum is no longer scarce is utterly baseless. The greatest battles at the FCC take place over spectrum, because it is in such short supply. Technology has created new demands for spectrum, and the competition for future allocations has become fierce. New technologies such as high definition television will require large allocations of spectrum while nontraditional spectrum technologies, such as cellular telephones and personal communications services, are forcing difficult choices in spectrum allocation. Without a doubt, there are far more people who desire to use the spectrum than there is spectrum available. We, therefore, must take the necessary steps to guarantee that spectrum assigned to broadcasters remains accessible for the purpose of fully informing the public.

The FCC's claims about increased competition are also not well-founded. Even though there has been a large increase in the gross number of broadcast stations, this does not necessarily indicate that competition exists, especially with an increasing concentration of ownership in radio. In fact, many communities still are served by only a single radio licensee—or AM/FM combination.

The FCC also argues that new video services create competition to broadcast entities and provide the alternative outlets for open discussion of public issues. New video services do not create sufficient competition to negate the need for the fairness doctrine. The vast majority of new video services merely retransmits other broadcast stations or, in the case of cable, provides minimal local programming on a regular basis. Of course, some cable systems have a local access channel; however, those channels, where they exist, represent only one new voice on local issues. Under the FCC's interpretation of the fairness doctrine and under this bill, the fairness doctrine would apply to locally originated programming on cable systems as well as broadcast stations. However, since the new video services do not originate any local programming, they cannot be considered new voices on local issues. The fairness doctrine was designed to give members of the local community a greater opportunity to present opposing viewpoints on issues of concern to that community.

Finally, the FCC's contention that the fairness doctrine has a chilling effect on broadcasters' speech is equally meritless. Many overlook the fact that the fairness doctrine imposes an obligation on broadcast licensees to air matters of public importance in addition to requiring broadcasters to air an opposing viewpoint when only one side of an issue is presented. The repeal of the fairness doctrine has not resulted in more coverage of controversial issues—in fact, there has been more emphasis on entertainment programming to increase profitability.

Furthermore, the FCC's argument that the fairness doctrine has a chilling effect ignores the role the fairness doctrine can play in protecting the public's first amendment right to present opposing viewpoints on controversial issues. The fairness doctrine permitted those who do not own broadcast stations to participate in important public debates. For the American people, the fairness doctrine was crucial in protecting their right to free speech, a position taken by the Supreme Court in Red Lion Broadcasting Co. versus FCC. It was the only vehicle through which members of the public could respond effectively to one-sided presentations of controversial issues by station owners. Of course, now, without the fairness doctrine, they can still get air-time but only if they can afford to purchase it and the station is willing to sell it to them, or if they can get on alternative media—if any exists—that genuinely reaches a significant audience. Clearly, the fairness doctrine enhanced speech and furthered first amendment rights.

The laws governing broadcasters and their obligations in using the public airwaves are rooted in a standard of public interest, convenience and necessity. As a public trustee of the airwaves, broadcasters have an obligation to recognize the substantial governmental interest in having an informed public. I continue to believe these policies must be based on a public trustee model to protect the public's right to use and have access to the public airwaves. We must restore our commitment to these principles. Simply put, without the fairness doctrine, broadcasters are not as accountable to their obligations as public trustees.

In conclusion, I urge my colleagues to support this important legislation to reinstate the fairness doctrine. This legislation is critical if the principle that broadcasters are licensed to serve the public is to have any meaning.

I ask unanimous consent that the entire text of the bill be included in the RECORD at the end of my statement.

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

S. 333

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fairness in Broadcasting Act of 1993".

SEC. 2. FINDINGS.

The Congress finds that—

(1) despite technological advances, the electromagnetic spectrum remains a scarce and valuable public resource;

(2) there are still substantially more people who want to broadcast than there are frequencies to allocate;

(3) a broadcast license confers the right to use a valuable public resource and a broadcaster is therefore required to utilize that resource as a trustee for the American people;

(4) there is a substantial governmental interest in conditioning the award or renewal of a broadcast license on the requirement that the licensee ensure the widest possible dissemination of information from diverse and antagonistic sources by presenting a reasonable opportunity for the discussion of conflicting views on issues of public importance;

(5) while new video and audio services have been proposed and introduced, many have not succeeded, and even those that are operating reach a far smaller audience than broadcast stations;

(6) even when and where new video and audio services are available, they do not provide meaningful alternatives to broadcast stations for the dissemination of news and public affairs;

(7) for more than 30 years, the Fairness Doctrine and its corollaries, as developed by the Federal Communications Commission on the basis of the provisions of the Communications Act of 1934, have enhanced free speech by securing the paramount right of the broadcast audience to robust debate on issues of public importance;

(8) because the Fairness Doctrine only requires more speech, it has no chilling effect on broadcasters; and

(9) the Fairness Doctrine (A) fairly reflects the statutory obligations of broadcasters under that Act to operate in the public interest, (B) was given statutory approval by the Congress in making certain amendments to that Act in 1959, and (C) strikes a reasonable balance among the First Amendment rights of the public, broadcast licensees, and speakers other than owners of broadcast facilities.

SEC. 3. AMENDMENT TO THE COMMUNICATIONS ACT OF 1934.

Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) by redesignating subsections (a) through (d) as subsections (b) through (e), respectively; and

(2) by inserting before subsection (b) the following new subsection:

"(a)(1) A broadcast licensee shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

"(2) The enforcement and application of the requirement imposed by this subsection shall be consistent with the rules and policies of the Commission in effect on January 1, 1987. Such rules and policies shall not be construed to authorize the application of any criminal sanction pursuant to section 501 of this Act.".

Mr. DANFORTH. Mr. President, I am pleased to cosponsor the Fairness in Broadcasting Act of 1993 with Senators HOLLINGS and INOUYE. This bill codifies the fairness doctrine, a policy that requires broadcasters to cover controversial issues of public importance, and present differing viewpoints.

In my view, the fairness doctrine strikes a careful balance between protecting the first amendment rights of broadcasters and the first amendment rights of the public. The Supreme Court has already upheld the fairness doctrine in the face of a constitutional challenge. In the Red Lion case, the Supreme Court held that the broadcasters' rights are outweighed by the public's first amendment right to know.

Broadcast is a medium unlike any other form of communication. It reaches nearly the entire population of this country. The power of broadcasters and cable operators to influence, educate, and inform the public is unrivaled. Broadcasters have, in the words of the Supreme Court in the Pacifica case, "established a uniquely pervasive presence in the lives of all Americans."

When broadcasters are given a license to use a portion of the spectrum, a scarce and valuable resource, they are also granted a public trusteeship. That trusteeship should include a requirement that broadcasters act fairly and present both sides. That is a reasonable obligation because there are more voices—more who wish to speak—than broadcast outlets.

In 1987, the FCC repealed the fairness doctrine, a policy that it had enforced since at least 1949. In my opinion, there is little question about the need to enact the Fairness in Broadcasting Act quickly.

Mr. INOUYE. Mr. President, I rise today as a cosponsor of the Fairness in Broadcasting Act of 1993. This legislation will reinstate the fairness doctrine, a principle that served as the public interest cornerstone in broadcasting for over 40 years. It represents a specific application of the public trustee concept that enhances speech and furthers the goals of the first amendment. The fairness doctrine is a reasonable condition placed on broadcast licensees for the use of a valuable public resource, the electromagnetic spectrum.

As my distinguished colleagues are aware, the fairness doctrine requires broadcasters to afford citizens reasonable opportunities to hear and discuss issues of public importance. It requires broadcasters to, first, cover issues of public importance and, second, fairly reflect differing viewpoints on those issues. The fairness doctrine does not require that broadcasters provide every side of an issue with exactly the same amount of time in the same time period. Instead, broadcasters simply have to ensure that their programming taken as a whole presents issues of public importance and does so in a balanced fashion. Thus, in the real world, if a licensee aired only one side of a controversial issue, he has to permit, if requested, members of the public a reasonable opportunity to present an opposing viewpoint.

Mr. President, we are here today because the U.S. Court of Appeals ruled in 1986 in the Trac case that Congress had never actually codified the fairness doctrine and because the FCC subsequently repealed the doctrine. The time has thus come to make the fairness doctrine an explicit part of our Nation's communications law.

Some have suggested that the fairness doctrine violates the first amendment and chills free speech. Nothing could be further from the truth. Seventeen years ago, the Supreme Court unanimously upheld the fairness doctrine against first amendment challenge in Red Lion Broadcasting Co. versus FCC. The Court held that in the context of broadcasting, the rights of the viewing public to hear contrasting viewpoints on issues of public importance, not the rights of broadcasters, are paramount, and that the fairness doctrine is both a permissible and effective means of vindicating those rights. The continuing problem is that far more people are willing and able to engage in broadcasting than can possibly be accommodated by the limited spectrum available. Therefore, with no genuine alternatives to broadcasting for the discussion of issues of public importance justifies a regulatory scheme that requires licensees to serve as trustees and obligates them to present the views of those who are excluded from the airways. Since Red Lion, the Supreme Court has consistently reaffirmed the scarcity and public trustee rationale, while upholding regulation of broadcasters against first amendment attack.

The argument that the spectrum is no longer scarce is without any merit and is flatly contradicted by the widespread support for legislation I introduced last Congress and am introducing again today to free up more spectrum for commercial use. The spectrum scarcity problem has become so intense that there is simply no more room to accommodate new technologies, for common carrier or broadcast purposes. Even the FCC has recognized the problem of spectrum scarcity. In testifying in support of the need to find more spectrum for new technologies, then FCC Chairman Alfred Sikes stated that "radio-based innovations * * * are being slowed by an absence of available spectrum."

Supporters of the fairness doctrine accept that it may impose a mild burden on licensees. However, we believe that the burden is both necessary and minimal. While the Communications Act limits the rights of the viewers and listeners by excluding speakers from the airwaves, it mitigates this damage by enhancing speech through the fairness doctrine.

Past decisions of the Commission and the courts have carefully circumscribed the scope of the doctrine in order to minimize intrusion into the editorial discretion of broadcasters. For example, in determining whether there had been a violation of the fairness doctrine, the FCC did not monitor broadcasts. The Commission only acted if it, first, received a complaint and second, determined that the complaint presented prima facie evidence of a violation. Only a tiny portion of complaints result in any FCC action.

Thus, the doctrine can only chill broadcasters' speech when they are unwilling to air both sides of an issue. In fact, broadcasters need only fear the consequences of presenting a single side of an issue in their overall programming. A broadcaster who acts according to the standards of his or her profession, on the other hand, has nothing to fear from the fairness doctrine, since it is only applied in most egregious cases of imbalance. The chill argument is thus an attempt to clothe the first amendment language in an economically motivated refusal to fulfill the commitments they gave in return for the free grant of a valuable public resource.

Mr. President, the public interest standard ordained by Congress for broadcasting means that licensees are public trustees with unique public responsibilities. As Judge Burger stated in the 1966 United Church of Christ decision: "The Fairness Doctrine plays a very large role in assuring the public resource granted to licensees at no cost will be used in the public interest." The point is fundamental: without the fairness doctrine, there is nothing to prevent a broadcaster from grossly abusing the public trust embodied in a broadcast license. If the legal requirement that the Commission grant licensees in the public interest cannot prevent such use of a broadcast facility, the public interest concept means nothing at all.

Mr. President, the fairness doctrine is sound public policy. The time is long overdue for Congress to codify the fairness doctrine. I urge my colleagues to support this bipartisan effort.

By Mr. HOLLINGS (for himself, Mr. DANFORTH, and Mr. INOUYE):

S. 334, A bill to amend the Communications Act of 1934 regarding the broadcasting of certain material regarding candidates for Federal elective office, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE CLEAN CAMPAIGN ACT OF 1993

Mr. HOLLINGS. Mr. President, today I am introducing legislation that furthers the intent and improves the effectiveness of the political broadcasting laws. The Clean Campaign Act of 1993 seeks to ensure greater balance and accountability in political campaigns. This legislation is identical to S. 522, which I introduced last Congress and which was approved without objection by the Commerce Committee. I believe that in light of the problems that have arisen in recent political campaigns, this legislation is essential.

The Clean Campaign Act addresses two specific problems that arise in the use of broadcast stations for political campaigns. The first problem involves the use of broadcast time to attack opponents. While such attacks are not new, with the advent of sophisticated uses of electronic media, such attacks are becoming more and more insidious and are contributing less and less to the debate about candidates' qualifications for office. We all have seen and heard on the broadcast media just about every form of animal and every type of hired performer make incorrect or misleading remarks about a candidate's opponent. What's more, the very nature of the broadcast media makes these attacks difficult, if not impossible, to rebut, especially if they occur late in a campaign. Everyone who has run for office knows that rebuttals take plenty of time and are very expensive.

I know full well that we cannot limit—nor would be want to limit—a candidate's discussion of an opponent's character, record, and other qualifications to hold office. This is a fundamental part of political campaigns. On the other hand, the objective of this activity is to inform the voter so that an educated choice can be made. The voter deserves a clear and direct discussion. This discussion should not occur through surrogates who have no real responsibility. It is for these reasons that I am proposing that if a candidate wants to discuss an opponent in a broadcast advertisement, that candidate should do so in person. In this way, candidates can discuss whatever they wish about their opponents while being more responsible for what they say.

The second problem involves the use of PAC money to air advertisements on broadcast stations. We all have seen how PAC's can damage seriously the balance in a campaign through the expenditure of enormous amounts of money. In effect, a candidate budgets to fight one well-financed opponent but then ends up fighting many.

While the existing political broadcasting laws give a candidate equal opportunities vis-a-vis an opposing candidate, the laws offer far fewer protections when it comes to PAC's—and even these protections will evaporate if the FCC has its way. The current requirements for lowest unit advertising rates, or free response time, or just the ability to respond promptly do not apply with PAC's. In addition, when a candidate responds to a PAC, the candidate then triggers the equal opportunities provision of the law. In the end, the candidate finds he keeps making one statement for two or more on the other side. How can the candidate hope to compete fairly? To cure this problem, my legislation again takes a straightforward approach, which in no way limits the ability of PAC's to advertise: If a broadcaster airs PAC advertisements, the broadcaster then must give the candidate who is opposed or otherwise not supported in those ads free response time within a reasonable period.

In conclusion, the approach taken in this legislation is reasonable and infringes on no person's free speech rights. It will improve the accountability of candidates and the balance in campaigns. In the end, the public will benefit by having the best information possible on which to make an intelligent choice. I urge my colleagues to support this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the CONGRESSIONAL RECORD.

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

S. 334

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Clean Campaign Act of 1993".

SEC. 2.(a) Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) by redesignating subsection (b), (c), and (d) as subsections (d), (e), and (f), respectively; and

(2) by inserting immediately after subsection (a) the following new subsections:

"(b)(1) if any legally qualified candidate for any Federal elective office (or an authorized committee of any such candidate) who utilizes rights of access and conditions of access under the provisions of this Act uses a broadcasting station to refer, directly or indirectly, to another legally qualified candidate for that office, such reference shall be made in person by such legally qualified candidate.

"(2) If any licensee permits a broadcasting station to be used in a manner not in accordance with the requirements of paragraph (1) of this subsection, such licensee shall provide, within a reasonable period of time, to the candidate to whom reference was made the opportunity to use, without charge, the same amount of time on such broadcasting station, during the same period of the day, as was used by the legally qualified candidate (or by an authorized committee of such legally qualified candidate).

"(c)(1) If any licensee permits a person to use a broadcasting station to broadcast political advertising material which either endorses a legally qualified candidate for any Federal elective office or opposes a legally qualified candidate for that office, such licensee, shall, within a reasonable period of time, provide to any legally qualified candidate opposing the candidate endorsed (or to an authorized committee of such legally qualified candidate), or to any legally qualified candidate who was so opposed (or to an authorized committee of such legally qualified candidate), the opportunity to use, without charge, the same amount of time on such broadcasting station, during the same period of the day, as was used by such person.

"(2) For purposes of this subsection, the term 'person' includes an individual, partnership, committee, association, corporation, or any other organization or group of persons, but such term does not include a legally qualified candidate for any Federal elective office or an authorized committee of any such candidate.".

(b) Section 315(a) of the Communications Act of 1934 (47 U.S.C. 315(a)) is amended by striking "section" and inserting in lieu thereof "subsection".

(c) Section 315(e) of the Communications Act of 1934, as so redesignated by subsection (a) of this section, is amended—

(1) by redesignating paragraphs (1) and (2) a paragraphs (2) and (3), respectively; and

(2) by inserting immediately after "section—" the following new paragraph:

"(1) the term 'authorized committee' means, with respect to any candidate for nomination for election, or election, to any Federal elective office, any committee, club, association, or other group of persons which receives contributions or make expenditures during a calendar year in an aggregate amount exceeding $1,000 and which is authorized by such candidate to accept contributions or make expenditures on behalf of such candidate to further the nomination or election of such candidate;".

SEC. 3. If any provision of this Act or the application of it to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected by such invalidation.

Mr. INOUYE. Mr. President, I rise today to support the Clean Campaign Act of 1993. I know that many people, both in the Congress and around the country, have been concerned about the tone of campaigns for political office. There is a strongly held view that campaign commercials are slick, superficial, and often misleading. As a result, the voter does not obtain the information necessary to reach an intelligent decision and cares little for the outcome. The low voter turnout of the past few elections lends credence to this belief.

In addition to the problem of uninformative, negative campaign commercials, a problem exists when in-

dividuals and groups unaffiliated with a candidate intervene in campaigns. These groups are often unidentifiable and well-funded. These groups have become very effective by intervening in close races late in the campaign, spending virtually all of their money airing, again and again, one or two negative broadcast advertisements.

Candidates typically raise enough money to fight one opponent, and often, toward the end of a campaign, money is short. In addition, it is very difficult to respond to advertisements made in the last week of a campaign. Thus, independent players take advantage of all of these factors and throw a campaign out of balance: A candidate now has not one, but two, potent forces to battle.

Congress has been trying for some time to deal with concerns about political campaigns. While the omnibus campaign legislation is dealt with in other committees, the Commerce Committee has jurisdiction over a vital element: the use of broadcasting stations and certain other commercial media. As we all well know, the largest percentage of campaign funds are spent on media.

The Clean Campaign Act seeks to increase accountability and balance in campaigns for Federal office by first, requiring a candidate, when discussing an opponent, to appear personally in broadcast advertisements, and second, providing a candidate with free broadcast time to respond to an advertisement opposing him sponsored by an independent party.

I believe that this legislation represents an important step in addressing the issues facing campaigns today. I urge my colleagues to support this legislation.

Mr. DANFORTH. Mr. President, today I join my colleagues, Senators HOLLINGS and INOUYE, in introducing the Clean Campaign Act of 1993. This bill does two things to improve political campaign advertising and debate in this country.

First, the bill amends the Communications Act of 1934 to require Federal candidates who refer to their opponents in broadcast or cable ads to make those references in person. If an ad is broadcast in which a candidate refers to his opponent, but does not do so in person, his opponent receives free response time. This provision does not prevent negative advertising, but its intent is to discourage negative ads. It is designed to increase accountability. If a candidate wishes to cast aspersions on his opponent's character, the public should be able to see the candidate do so personally.

Second, this legislation addresses independent political ads placed by political action committees or other third parties. The bill provides that, if a third party runs an ad opposing a Federal candidate, that candidate will get free response time. If a third party airs an ad endorsing a Federal candidate, the opponents of that candidate get free response time. This bill does not eliminate or restrict ads by third parties. It does attempt to restore balance to a campaign in which independent ads are aired. This provision will give candidates some ability to respond to messages that otherwise might be unanswerable.

The goal of this bill is to address perhaps the most troubling aspect of current American politics: the negativism of political campaigns. The use of the electronic media and the development of the independent political ad have exacerbated the problem of negative campaigns. This bill does not prohibit negative campaigns. But it does allow the public to hold accountable the candidate who runs such a campaign. Senator HOLLINGS and I have introduced this bill three times before. I think the time is right to move this legislation.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. DANFORTH, Mr. KERRY, and Mr. BURNS):

S. 335. A bill to require the Secretary of Commerce to make additional frequencies available for commercial assignment in order to promote the development and use of new telecommunications technologies, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE EMERGING TELECOMMUNICATIONS TECHNOLOGIES ACT OF 1993

Mr. INOUYE. Mr. President, I rise today to join with Senator STEVENS in introducing the Emerging Telecommunications Technologies Act of 1993. This legislation is essential to the promotion of the U.S. telecommunications infrastructure. It is my hope that this legislation can be passed quickly this year.

This bill will transfer 200 megahertz of spectrum from the control of the Federal Government to the Federal Communications Commission [FCC] to make available for new technologies. The bill requires the National Telecommunications and Information Administration [NTIA] to consult with the Department of Defense, other Government users, and the private sector to determine which frequencies are most suitable to be transferred.

This bill is a slightly revised version of the bill I introduced last year, S. 218. Senator STEVENS and I have incorporated some changes to accommodate concerns of the amateur radio industry. I am happy to include these changes in order to protect the rights of amateur radio users to their spectrum.

The other major difference with last year's bill is the addition of language that would permit FCC to conduct a test of spectrum auctions. I have worked closely with Senator STEVENS to draft this provision in a way that will protect the public's interest in and ownership of the spectrum. Although spectrum auctions have been controversial in the past, I believe it is time to consider using auctions to speed up the process of issuing communications licenses. Let me also say, however, that I will continue to work with interested parties on this bill to work out any remaining problems they may have.

REALLOCATION OF 200 MEGAHERTZ

This legislation is enormously important to the future of U.S. economic development. The Chairman of the Federal Communications Commission has testified that, "the availability of spectrum also has a direct bearing on the performance and global competitiveness of one of our major, and fastest growing, manufacturing industries, industrial and commercial electronics."

Wireless communications are becoming essential to a fast-paced, on-the-move society. Businessmen and women often need to have a fax, phone, and computer available to them wherever they may be in order to respond to marketplace developments. Wireless communications also benefit residential customers, the elderly, rural citizens, and others for whom a stationary, wired link to the telephone network is either costly or unworkable. For instance, some handicapped persons find it difficult to get to a telephone and instead prefer to carry a portable telephone with them. In rural areas, wireless communications links may be the cheapest way to provide service.

The problem is that today there is not enough spectrum to make available for these new technologies. Three years ago, Businessweek magazine ran a cover story entitled, "Airwave Wars: The Communications Spectrum Is Too Crowded. So How Do We Make Room For All Those New Technologies?". According to the FCC, various applicants have already placed requests for 600 megahertz of spectrum to be allocated for new technologies.

Almost all observers agree that the Federal Government does not make full use of a substantial number of frequencies. Of course, some of these frequencies must remain clear for defense, emergency and public safety purposes. This bill in no way seeks to downgrade the importance of these essential services. Other frequencies, however, are not used for emergency services and could be used more efficiently by the commercial sector.

By transferring 200 MHZ to the FCC for new technologies, this bill attempts to address some of this demand for spectrum. The bill leaves to the Commission the important question of deciding how these new frequencies will be allocated and assigned. This bill expresses no opinion on which particular members of the public should be awarded the right to operate over these new

frequencies or which particular uses should be made of new frequencies. We have deliberately avoided making any decisions concerning these matters. These decisions are precisely the kind of decisions that the FCC was created to make. I would only like to remind the Commission of the importance of recognizing the need to promote the participation of minorities and women in awarding the rights to operate over these new frequencies.

Finally, the bill recognizes that these new technologies can be made available for public safety services as well as new technologies. Any spectrum uses currently administered by the FCC will be eligible for these frequencies.

SPECTRUM AUCTIONS

The spectrum action provisions of this bill are nearly identical to the provisions that were contained in a staff draft released last summer. A few changes have been made based on comments submitted by the public. In particular, changes have been made to accommodate some of the concerns of the small telephone companies.

The Communications Act originally authorized the FCC to choose among competing applicants by means of a comparative hearing. This process requires the FCC staff to review the qualifications of each candidate for a license to determine who will best serve the public interest.

The comparative hearing process, however, often takes years to complete and has brought about undue delay in the provision of service. As a result, the Congress in 1981 authorized the Commission to employ a process of random selection, or lotteries, as an alternate method of choosing among competing applicants. The FCC used the lottery process to award about one-half of the cellular telephone licenses and has used lotteries for other services as well.

The lottery process has had its own problems, however. The FCC has been unable to distinguish between those applicants who sincerely intended to offer service and those who simply wished to speculate in the license for profit. Many of the winners of the cellular lottery, for instance, quickly sold their licenses soon after winning them.

Some analysts believe that the only solution to these problems is to auction licenses to the highest bidder. They believe that this will promote economic efficiency, reduce the administrative burden of issuing licenses, and allow the Government to receive significant revenues from the use of this public asset.

Others believe that auctions would violate the notion that the airwaves are owned by the public and should be regulated for its benefit. They believe that the FCC should repair the comparative hearing and lottery processes instead of selling spectrum rights to the rich.

I believe that it is time to give the concept of spectrum auctions a trial. Senator STEVENS and I have thus crafted a compromise auction amendment that attempts to employ auctions as a way of distributing licenses without weakening any of the public interest obligations of radio licensees. This proposal does not, however, allow auctions to be used to allocate frequencies among different service categories. Frequency allocation decisions must continue to be made by the FCC, not by the private marketplace. But this amendment would allow the FCC to use auctions to assign licenses to particular users.

I believe that the changes that have been made in this bill over the past two Congresses have ameliorated the concerns of both the U.S. Government users and the private sector. I am particularly pleased that the Department of Defense decided not to oppose this legislation as a result of the changes made in this bill. I am also pleased to be able to work together with chairmen DINGELL and MARKEY of the House of Representatives, who have also taken an active interest in making spectrum available for new technologies.

I would like to express my appreciation to all the representatives of the Department of Defense, the administration and the private sector. These parties have demonstrated a great deal of cooperation and have made honest efforts to work together in shaping this bill. The opening of additional radio frequency spectrum for new, emerging technologies will benefit all Americans and is fast becoming a necessary priority if this Nation is to remain competitive with its economic competitors.

I ask unanimous consent that the full text of the bill be printed in the RECORD as introduced.

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

S. 335

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 "Emerging Telecommunications Technologies Act of 1993".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Federal Government currently reserves for its own use, or has priority of access to, approximately 40 percent of the electromagnetic spectrum that is assigned for use pursuant to the Communications Act of 1934;

(2) Many of such frequencies are underutilized by Federal Government licensees;

(3) the public interest requires that many of such frequencies by utilized more efficiently by Federal Government and non-Federal licensees;

(4) additional frequencies are assigned for services that could be obtained more efficiently from commercial carriers or other vendors;

(5) scarcity of assignable frequencies for licensing by the Commission can and will—

(A) impede the development and commercialization of new telecommunications products and services;

(B) limit the capacity and efficiency of the telecommunications systems in the United States;

(C) prevent some State and local police, fire, and emergency services from obtaining urgently needed radio channels; and

(D) adversely affect the productive capacity and international competitiveness of the United States economy;

(6) a reassignment of these frequencies can produce significant economic returns;

(7) a reassignment of Federal Government frequencies can be accomplished without adverse impact on amateur radio incenses that currently share allocations with Federal Government stations;

(8) current spectrum assignment procedures—comparative hearings and lotteries—can be expensive and time consuming, can strain the limited resources of the Federal Communications Commission, and can result in an inefficient distribution of spectrum and an unjustified windfall to speculators;

(9) competitive bidding could reduce the cost in time and money—and increase the efficiency—of the spectrum assignment process for certain radio services, discourage speculative applications, encourage the efficient use of spectrum by licensees, and fairly compensate United States taxpayers for use of a scarce public natural resource;

(10) competitive bidding should be structured to—

(A) facilitate introduction of new spectrum based technologies and services and entry of new companies into the telecommunications market;

(B) recognize the legitimate needs of rural telephone companies in providing spectrum-based, common carrier services in rural markets in which they provide telephone exchange service by wire;

(C) give appropriate consideration to small businesses that want to participate in the competitive bidding process;

(D) recognize the need to make reasonably priced mobile communications services available to businesses in rural areas; and

(E) otherwise further the public interest;

(11) competitive bidding should apply only to the granting of new spectrum licenses and should not—

(A) disrupt the operations of existing spectrum licensees;

(B) alter existing spectrum allocation procedures;

(C) apply to certain services governed by public interest regulation;

(D) diminish the existing authority of the Federal Communications Commission to regulate or reclaim spectrum licenses; or

(E) grant any right to a spectrum licensee different from the rights awarded to licensees who obtain their license through assignment methods other than competitive bidding;

(12) in appropriating revenues received from competitive bidding, priority should be given to—

(A) funding spectrum management, planning, monitoring, and enforcement and other activities of the Federal Communications Commission, the National Telecommunications and Information Administration, and other Federal agencies aimed at increasing the efficiency and effectiveness of spectrum use, facilitating the introduction of new spectrum-based technologies and services, and enhancing the international competi-

tiveness of the United States and the ability of American companies to enter new markets; and

(B) extending the reach of public radio and television to underserved areas of the United States and underserved groups of Americans; and

(13) the Secretary of Commerce, the President, and the Federal Communications Commission should be directed to take appropriate steps to correct these deficiencies.

SEC. 3. NATIONAL SPECTRUM PLANNING.

(a) PLANNING ACTIVITIES.—The Assistant Secretary of Commerce for Communications and Information and the Chairman of the Commission shall meet, at least biannually, to conduct joint spectrum planning with respect to the following issues:

(1) the future spectrum requirements for public and private uses, including State and local government public safety agencies;

(2) the spectrum allocation actions necessary to accommodate those uses; and

(3) actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference, as a means of increasing commercial access.

(b) REPORTS.—The Assistant Secretary of Commerce for Communications and Information and the Chairman of the Commission shall submit a joint annual report to the Committee on Energy and Commerce of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Secretary, and the Commission on the joint spectrum planning activities conducted under subsection (a) and recommendations for action developed pursuant to such activities. The first annual report submitted after the date of the report by the advisory committee under section 4(d)(4) shall include an analysis of and response to that committee report.

SEC. 4. RECOMMENDATIONS FOR REALLOCATION OF CERTAIN FREQUENCIES.

(a) IDENTIFICATION REQUIRED.—For purposes of reallocation, the Secretary shall identify frequencies that—

(1) are allocated on a primary basis for Federal Government use;

(2) are not required for the present or identifiable future needs of the Federal Government;

(3) can feasibly be made available, as of the date of such identification or at any time during the next 15 years, for use under the Act (other than for Federal Government stations under section 305 thereof) without resulting in costs to the Federal Government, or loss of services or benefits to the public, that are excessive in relation to the benefits that may be obtained by non-Federal licensees; and

(4) are most likely to have the greatest potential for productive uses and public benefits under the Act if allocated for commercial uses.

(b) MINIMUM AMOUNT OF SPECTRUM RECOMMENDED.—

(1) OVERALL RECOMMENDATION.—In accordance with the provisions of this section, the Secretary shall recommend for reallocation, for use other than by Federal Government stations under section 305 of the Act (47 U.S.C. 305), at least 200 megahertz of frequencies identified under subsection (a) that are located below 5 gigahertz. At least one-half of such frequencies shall be located below 3 gigahertz.

(2) MIXED USES PERMITTED TO BE COUNTED.—Among the frequencies recommended under this section for allocation, the Secretary may include frequencies and frequency bands that are to be partially retained for use by Federal Government stations but that are also recommended to be reallocated under the Act for use by non-Federal stations, except that—

(A) such mixed-use frequencies and frequency bands may not count toward more than one-half of the 200 megahertz minimum required by paragraph (1);

(B) such mixed-use frequencies and frequency bands may not be so counted unless the assignments of the frequencies to Federal Government stations under section 305 of the Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by such Federal Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential use to be made by non-Federal stations; and

(C) such operational sharing shall be subject to coordination procedures that the Commission shall establish and implement to ensure against harmful interference.

(c) CONSIDERATION OF CRITERIA FOR IDENTIFICATION.—

(1) NEEDS OF THE FEDERAL GOVERNMENT.—In determining whether a frequency meets the criteria specified in subsection (a)(2), the Secretary shall—

(A) consider whether the frequency is used to provide a communications service that is or could be available from a commercial carrier or other vendor;

(B) seek to promote—

(i) the maximum practicable reliance on commercially available substitutes;

(ii) the sharing of frequencies (as permitted under subsection (b)(2));

(iii) the development and use of new communications technologies; and

(iv) the use of nonradiating communications systems where practicable; and

(C) seek to avoid—

(i) serious degradation of Federal Government services and operations;

(ii) excessive costs to the Federal Government and users of Federal Government services; and

(iii) excessive disruption of existing use of Federal Government frequencies by amateur radio licensees.

(2) FEASIBILITY OF USE.—In determining whether a frequency meets the criteria specified in subsection (a)(3), the Secretary shall—

(A) assume that the frequency will be assigned by the Commission under section 303 of the Act (47 U.S.C. 303) over the course of not less than 15 years;

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

(C) determine the extent to which the reallocation or reassignment will relieve actual or potential scarcity of frequencies available for licensing by the Commission for non-Federal use;

(D) seek to include frequencies which can be used to stimulate the development of new technologies; and

(E) consider the immediate and recurring costs to reestablish services displaced by the reallocation of spectrum.

(3) COMMERCIAL USE.—In determining whether a frequency meets the criteria specified in subsection (a)(4), the Secretary shall consider—

(A) the extent to which equipment is available that is capable of utilizing the band;

(B) the proximity of frequencies that are already assigned for commercial or other non-Federal use;

(C) the extent to which commercial users can share the frequency with amateur radio licensees; and

(D) the activities of foreign governments in making frequencies available for experimentation or commercial assignments in order to support their domestic manufacturers of equipment.

(4) OTHER USES.—

(A) APPLICABILITY OF CRITERIA.—The criteria specified by subsection (a) shall be deemed not to be met for any purpose under this Act with regard to any frequency assignment to, or any frequency assignment used by, a Federal power agency for the purpose of withdrawing that assignment.

(B) MIXED USE ELIGIBILITY.—The frequencies assigned to any Federal power agency may only be eligible for mixed use under subsection (b)(2) in geographically separate areas, but in those cases where a frequency is to be shared by an affected Federal power agency and a non-Federal user, such use by the non-Federal user shall not cause harmful interference to the affected Federal power agency or adversely affect the reliability of its power system.

(C) DEFINITION.—As used in this paragraph, the term "Federal power agency" means the Tennessee Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, or the Southwestern Power Administration.

(d) PROCEDURE FOR IDENTIFICATION OF REALLOCABLE BANDS OF FREQUENCIES.—

(1) SUBMISSION OF REPORTS TO THE PRESIDENT AND CONGRESS.—

(A) REPORT IDENTIFYING 30 MEGAHERTZ FOR IMMEDIATE REALLOCATION.—Within 6 months after the date of enactment of this Act, the Secretary shall prepare and submit to the President and the Congress a report that recommends for immediate reallocation 30 megahertz of frequencies identified under subsection (a). None of the frequencies covered by such report may be allocated for mixed use as described in subsection (b)(2). Not less than one-half of such frequencies shall be located below 3 gigahertz.

(B) PRELIMINARY REPORT ON OTHER REALLOCABLE FREQUENCIES.—Within 12 months after the date of enactment of this Act, the Secretary shall prepare and submit to the President and the Congress a preliminary report that recommends for reallocation at least 170 megahertz of frequencies identified under subsection (a), other than those recommended for immediate reallocation under subparagraph (A).

(C) FINAL REPORT ON OTHER REALLOCABLE FREQUENCIES.—Within 24 months after the date of enactment of this Act, the Secretary shall prepare and submit to the President and the Congress a final report that recommends the reallocation of at least 170 megahertz of frequencies as described in subparagraph (B). Not less than one-half of such frequencies shall be located below 3 gigahertz.

(D) LIMITATION ON REALLOCATION.—None of the frequencies recommended for reallocation in the reports required by this paragraph shall have been recommended, prior to the date of enactment of this Act, for reallocation to non-Federal use by international agreement.

(2) CONVENING OF ADVISORY COMMITTEE.—Not later than the date the Secretary submits the report required by paragraph (1)(B), the Secretary shall convene an advisory committee to—

(A) review the frequencies identified in such report;

(B) advise the Secretary with respect to (i) the frequencies which should be included in

the final report required by paragraph (1)(C), and (ii) the effective dates which should be established under subsection (e) with respect to such frequencies;

(C) receive public comment on the Secretary's report and on the final report; and

(D) prepare and submit the report required by paragraph (4).

The advisory committee shall meet at least monthly until each of the actions required by section 5(a) have taken place.

(3) COMPOSITION OF COMMITTEE; CHAIRMAN—The advisory committee shall include—

(A) The Chairman of the Commission and the Assistant Secretary of Commerce for Communications and Information, and one other representative of the Federal Government as designated by the Secretary; and

(B) representatives of—

(i) United States manufacturers of spectrum-dependent telecommunications equipment;

(ii) commercial carriers;

(iii) others users of the electromagnetic spectrum, including radio and television broadcast licensees, State and local public safety agencies, amateur radio licensees, and the aviation industry; and

(iv) other interested members of the public who are knowledgeable about the uses of the electromagnetic spectrum.

A majority of the members of the committee shall be members described in subparagraph (b), and one of such members shall be designated as chairman by the Secretary.

(4) RECOMMENDATIONS ON SPECTRUM ALLOCATION PROCEDURES.—The advisory committee shall, not later than 36 months after the date of enactment of this Act, submit to the Secretary, the Commission, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science and Transportation of the Senate a report containing such recommendations as the advisory committee considers appropriate for the reform of the process of allocating the electromagnetic spectrum between Federal and non-Federal use, and any dissenting views thereon.

(e) TIMETABLE FOR REALLOCATION AND LIMITATION.—The Secretary shall, as part of the reports required by subparagraphs (B) and (C) of subsection (d)(1), include a timetable that recommends dates by which the President shall withdraw or limit assignments of the frequencies specified in the reports. The recommended effective dates shall—

(1) permit the earliest possible reallocation of frequencies, taking into account the requirements of section 6;

(2) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

(3) be based on the need to coordinate frequency use with other nations; and

(4) take into account the relationship between the costs to the Federal Government of changing to different frequencies and the benefits that may be obtained from commercial and other non-Federal uses of the reassigned frequencies.

SEC. 5. WITHDRAWAL OF ASSIGNMENT TO FEDERAL GOVERNMENT STATIONS.

(a) IN GENERAL.—The President shall—

(1) within 3 months after receipt of the report required by section 4(d)(1)(A), withdraw or limit the assignment to a Federal Government station of any frequency in the 30 megahertz of frequencies recommended by that report for immediate reallocation;

(2) by the effective date recommended by the Secretary under section 4(e) (except as provided in subsection (b)(4) of this section), withdraw or limit the assignment to a Federal Government station of any frequency which the report required by section 4(d)(1)(C) recommends be reallocated or made available for mixed use on such delayed effective date;

(3) assign or reassign other frequencies to Federal Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

(4) transit a notice and description to the Commission and each House of Congress of the actions taken under this subsection.

(b) EXCEPTIONS.—

(1) AUTHORITY TO SUBSTITUTE.—If the President determines that a circumstance described in paragraph

(2) exists, the President—

(A) may substitute an alternative frequency for the frequency that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency in the manner required by subsection (a); and

(B) shall submit a statement of the reasons for taking the action described in subparagraph (A) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) GROUNDS FOR SUBSTITUTION.—Each of the following subparagraphs describes a circumstance referred to in paragraph (1):

(A) The reassignment would seriously jeopardize the national defense interests of the United States.

(B) The frequency proposed for reassignment is uniquely suited to meeting important governmental needs.

(C) The reassignment would seriously jeopardize public health or safety.

(D) The reassignment will result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from commercial or other non-Federal uses of the reassigned frequency.

(E) The reassignment will disrupt the existing use of a Federal Government band of frequencies by amateur radio licensees.

(3) CRITERIA FOR SUBSTITUTED FREQUENCIES.—For purposes of paragraph (1), a frequency may not be substituted for a frequency identified and recommended under section 4 for reallocation, unless the substituted frequency also meets each of the criteria specified by section 4(a).

(4) DELAYS IN IMPLEMENTATION.—If the President determines that any action cannot be completed by the effective date recommended by the Secretary pursuant to section 4(e), or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 6(b), the President may—

(A) withdraw or limit the assignment to Federal Government stations on a later date that is consistent with such plan, except that the President shall notify each Committee specified in paragraph (1)(B) and the Commission of the reason that withdrawal or limitation at a later date is required; or

(B) substitute alternative frequencies pursuant to this subsection.

(c) LIMITATION ON DELEGATION.—Notwithstanding any other provision of law, the authorities and duties established by this section may not be delegated.

(d) COSTS OF WITHDRAWING FREQUENCIES ASSIGNED TO THE FEDERAL GOVERNMENT.—

(1) REIMBURSEMENT AUTHORIZED.—Any Federal agency, or non-Federal entity operating on behalf of a Federal agency, whose operation is displaced from a frequency pursuant to this section may be reimbursed, from revenues received pursuant to section 8, not more than the incremental costs such agency or entity incurs (in such amounts as provided in advance in an appropriations Act) that are directly attributable to the displacement from the frequency. The estimates of these costs shall be prepared by the affected agency, in consultation with the Department of Commerce.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the affected Federal agencies such sums as may be necessary to carry out the purposes of this subsection.

SEC. 6. ALLOCATION AND ASSIGNMENT OF FREQUENCIES BY THE COMMISSION.

(a) ALLOCATION AND ASSIGNMENT OF IMMEDIATELY AVAILABLE FREQUENCIES.—With respect to the 30 megahertz of frequencies made available for immediate reallocation pursuant to section 5(a)(1), the Commission, not later than 18 months after the date of enactment of this Act, shall issue rules to allocate such frequencies and shall propose rules to assign such frequencies.

(b) ALLOCATION AND ASSIGNMENT OF FREQUENCIES AVAILABLE ON DELAYED EFFECTIVE DATES.—With respect to the frequencies made available for reallocation pursuant to section 5(a)(2), the Commission shall, not later than one year after receiving notice from the President pursuant to section 5(a)(4), prepare, in consultation with the Assistant Secretary of Commerce for Communications and Information, and submit to the President and Congress a plan for the allocation and assignment under the Act of such frequencies. Such plan shall—

(1) not propose the immediate allocation and assignment of all such frequencies but, taking into account the timetable recommended by the Secretary pursuant to section 4(e), shall propose—

(A) gradually to allocate and assign the frequencies remaining, after making the reservation required by subparagraph (B), over the course of a period of not less than 10 years nor more than 15 years beginning on the date of submission of such plan; and

(B) to reserve a significant portion of such frequencies for distribution beginning after the end of such 10-year period;

(2) contain appropriate provisions to ensure the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the Act (47 U.S.C. 157);

(3) address (A) the feasibility of reallocating portions of the spectrum from current commercial and other non-Federal uses to provide for more efficient use of the spectrum, and (B) innovation and marketplace developments that may affect the relative efficiencies of different spectrum allocations; and

(4) not prevent the Commission from allocating frequencies for specific uses in future rulemaking proceedings.

(c) AMENDMENTS TO THE ACT.—Section 303 of the Act (47 U.S.C. 303) is amended by adding at the end the following new subsection:

"(v) Have authority to assign the frequencies reallocated from United States Government use to non-United States Government use pursuant to the Emerging Telecommunications Technologies Act of 1993; except that any such assignment shall be made expressly subject to the right of the President to reclaim such frequencies under section 7 of such Act.".

SEC. 7. AUTHORITY TO RECLAIM REASSIGNED FREQUENCIES.

(a) AUTHORITY OF PRESIDENT.—Subsequent to the withdrawal of assignment to Federal

Government stations pursuant to section 5, the President may reclaim reassigned frequencies for reassignment to Federal Government stations in accordance with this section.

(b) PROCEDURE FOR RECLAIMING FREQUENCIES.—

(1) UNALLOCATED FREQUENCIES.—If the frequencies to be reclaimed have not been allocated or assigned by the Commission pursuant to the Act, the President shall follow the procedures for substitution of frequencies established by section 5(b) of this Act.

(2) ALLOCATED FREQUENCIES.—If the frequencies to be reclaimed have been allocated or assigned by the Commission, the President shall follow the procedures for substitution of frequencies established by section 5(b) of this Act, except that the notification required by section 5(b)(1)(B) shall include—

(A) a timetable to accommodate an orderly transition for displaced licensees to obtain new frequencies and equipment necessary for its utilization; and

(B) an estimate of the cost of displacing spectrum uses licensed by the Commission.

(c) COSTS OF RECLAIMING FREQUENCIES; APPROPRIATIONS AUTHORIZED.—The Federal Government shall bear all costs of reclaiming frequencies pursuant to this section, including the cost of equipment which is rendered unusable, the cost of relocating operations to a different frequency, and any other costs that are directly attributable to the reclaiming of the frequency pursuant to this section. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(d) EFFECTIVE DATE OF RECLAIMED FREQUENCIES.—The Commission shall not withdraw licenses for any reclaimed frequencies until the end of the fiscal year following the fiscal year in which the President's notification is received.

(e) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the Act (47 U.S.C. 606).

SEC. 8. COMPETITIVE BIDDING.

(a) COMPETITIVE BIDDING TEST.—

(1) IN GENERAL.—

(A) THREE-YEAR AUTHORIZATION.—Subject to further authorization in an Act making appropriations for the Commission, the Commission shall, during fiscal years 1994 through 1996, use the competitive bidding process authorized under the amendment made by subsection (b) to grant radio spectrum licenses encompassing not more than 30 megahertz of frequencies in up to three different services.

(B) WAIVER OF REQUIREMENT.—The Commission may waive the competitive bidding requirement set forth in subparagraph (A) on a case by case basis if it determines that a waiver is necessary to further a fundamental policy objective of the Act.

(C) REPORT TO PRESIDENT AND CONGRESS.—The Commission shall prepare, in consultation with the Assistant Secretary of Commerce for Communications and Information, and submit, not later than March 31, 1997, to the President and the Congress a report on the use of competitive bidding under subparagraph (A). Such report shall examine, in addition to any other matters deemed appropriate by the Commission, whether and to what extent—

(i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio spectrum licenses;

(ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;

(iii) the needs of rural spectrum users were adequately addressed in the competitive bidding process;

(iv) small businesses were able to participate in the competitive bidding process; and

(v) statutory changes are needed to improve the competitive bidding process.

(2) LIMITATION.—Notwithstanding any other provision of this Act or other law, the Commission shall not use competitive bidding, prior to September 30, 1997, to grant radio spectrum licenses except as required in paragraph (1)(A).

(b) COMPETITIVE BIDDING AUTHORIZATION.—Section 309 of the Act (47 U.S.C. 309) is amended by adding at the end the following new subsection:

"(j)(1) Subject to the exemptions and conditions set forth in the other provisions of this subsection and to a further authorization in an Act making appropriations for the Commission, the Commission shall have authority to use competitive bidding in the granting of new construction permits or initial licenses.

"(2)(A) The Commission shall, within 18 months after the date of enactment of the Emerging Telecommunications Technologies Act of 1993 and following public notice and comment proceedings, issue rules establishing competitive bidding procedures under this subsection.

"(B)(i) In the rules issued pursuant to subparagraph (A), the Commission shall require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission shall require the winning bidder to file a second-stage application. After determining that such application is acceptable for filing and that the winning bidder is qualified as described in clause (ii), the Commission shall grant the permit or license to the winning bidder.

"(ii) No permit or license shall be granted to a winning bidder pursuant to clause (i) unless the Commission determines that such winning bidder is qualified pursuant to section 308(b) and subsection (a) of this section, on the basis of the information contained in the first-stage and second-stage applications submitted pursuant to clause (i).

"(iii) Each participant in the competitive bidding process shall be subject to the schedule of charges contained in section 8.

"(C) In the rules issued pursuant to subparagraph (A), the Commission shall, in addition to other actions it finds necessary to implement competitive bidding fairly and effectively—

"(i) establish minimum acceptable competitive bids;

"(ii) establish the method of bidding (including but not limited to sealed bids) and the basis for payment (such as lump-sum or installment payments, a combination thereof, or other reasonable forms of payment); and

"(iii) establish other appropriate conditions on such permits and licenses that serve the public interest.

"(3)(A) If the Commission decides to use competitive bidding to grant two or more national, regional, or local licenses in a terrestrial service that will compete with telephone exchange service provided by wire by a common carrier in a rural area, the Commission shall designate one license in such rural area as a rural program license.

"(B)(i) Except as provided in subparagraph (D), the Commissioner may only grant a rural program license to the qualified common carrier or carriers providing telephone exchange service in the rural area covered by such license.

"(ii) If the geographic service area of a license awarded by competitive bidding overlaps the service area of more than one qualified common carrier, the Commission shall grant a rural program license to each qualified common carrier or a consortium of such carriers for that portion of the geographic area served by a license awarded by competitive bidding that is congruent to the geographic area served by such qualified common carrier or carriers.

"(iii) No qualified common carrier that receives a rural program license in a rural area shall be eligible to—

"(I) receive any other license to provide the same service in such area; or

"(II) own any equity interest in, become a creditor of, or otherwise become affiliated with any entity that holds a license to provide the same service in such area.

"(iv) Any qualified common carrier that receives a rural program license in a rural area shall provide to all other licensees providing the same service in such area the same quality of access to its wire network that it provides itself.

"(v) The Commission may establish other rules or conditions for the award of a rural program license.

"(C) Upon the grant of a rural program license to a qualified common carrier in a rural area, such carrier shall pay a fee (in lump-sum or installment payments or a combination thereof or on any other reasonable basis specified by the Commission) equal to the value of such license. The value of such license shall be the average of the amounts paid by persons granted licenses through competitive bidding to provide the same service in such area, except that the Commission shall determine the value of such license by any reasonable means when the geographic area served by the rural license is not congruent with the geographic area served by the other license or licenses.

"(D) If no qualified common carrier applies for a rural program license, the Commission shall grant such license to any other qualified applicant by any other means authorized under this Act.

"(E) For purposes of this paragraph—

"(i) the term 'rural area' means a geographic area that does not include either—

"(I) any incorporated place of 2,500 inhabitants or more, or any part thereof; or

"(II) any territory, incorporated or unincorporated, included in an urbanized area (as defined by the Bureau of the Census as of the date of enactment of the Emerging Telecommunications Technologies Act of 1993); and

"(ii) the term 'qualified common carrier' means a common carrier that—

"(I) provides telephone exchange service by wire in a rural area; and

"(II) submits an application for a rural program license in such area that meets the standards established by the Commission to determine ability to provide the service covered by the license.

"(4) The competitive bidding authority provided to the Commission in paragraph (1) shall not extend to—

"(A) license renewals and modifications;

"(B) the United States Government and State or local government entities;

"(C) amateur operator services, over-the-air terrestrial radio and television broadcast services, public safety services, and radio astronomy services;

"(D) private radio end-user licenses, such as Specialized Mobile Radio Service (SMRS),

maritime, and aeronautical end-user licenses;

"(E) any license grant to a non-Federal licensee being moved from its current frequency assignment to a different one by the Commission in order to implement the goals and objectives underlying the Emerging Telecommunications Technologies Act of 1993; and

"(F) any other service, class of services, or assignments that the Commission determines, after conducting public notice and comment proceedings, should be exempt from competitive bidding because of public interest factors warranting an exemption to the extent the Commission determines the use of competitive bidding would jeorpadize appropriate treatment of those factors.

"(5) No provision of this subsection or of the Emerging Telecommunications Technologies Act of 1993 shall be construed, in any way, to—

"(A) alter spectrum allocation criteria and procedures established by the other provisions of this Act;

"(B) diminish the authority of the Commission under the other provisions of this Act to regulate or reclaim spectrum licenses; or

"(C) grant any right to a spectrum licensee different from the rights awarded to licensees who obtained their license through assignment methods other than competitive bidding.

"(6) Moneys received from competitive bidding pursuant to this subsection shall be deposited in the general fund of the Treasury.".

(c) FURTHER AUTHORIZATION DEFINED.—For purposes of this section and section 309(j) of the Act, as amended by this Act, the inclusion of the following language in an Act making appropriations for the Commission shall be sufficient to meet any requirement that action by the Commission be further authorized: "The authority of the Federal Communications Commission to use competitive bidding in the granting of radio spectrum licenses in conformance with the procedures set forth in the Emerging Telecommunications Technologies Act of 1993 is hereby reconfirmed.".

SEC. 9. DEFINITIONS.

As used in this Act:

(1) The term "allocation" means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

(2) The term "assignment" means an authorization given to a station licensee to use specific frequencies or channels.

(3) The term "commercial carrier" means any entity that uses a facility licensed by the Federal Communications Commission pursuant to the Communications Act of 1934 for hire or for its own use, but does not include Federal Government stations licensed pursuant to section 305 of the Act (47 U.S.C. 305).

(4) The term "Commission" means the Federal Communications Commission.

(5) The term "Secretary" means the Secretary of Commerce.

(6) The term "the Act" means the Communications Act of 1934 (47 U.S.C. 151 et seq.).

Mr. DANFORTH. Mr. President, I am pleased to be a cosponsor of the Emerging Telecommunications Technologies Act of 1993, introduced today by Senators INOUYE and STEVENS.

The bill establishes detailed guidelines under which the Secretary of Commerce must identify 200 megahertz of spectrum currently used by the Federal Government, to be transferred to commercial and public safety users. The Federal Government has exclusive use of a significant portion of the spectrum. At the same time, the demand for spectrum in the United States far exceeds the supply. The short supply of spectrum in the United States may delay the introduction of new technologies and reduce our international competitiveness. The transfer of Government spectrum to the commercial sector authorized by this bill will allow new wireless technologies to be introduced more rapidly into the market, spurring economic development.

This bill differs from the bill introduced by Senator INOUYE last Congress by authorizing the FCC to award licenses by means of competitive bidding. I support the use of competitive bidding by the FCC and applaud the diligent efforts to Senators INOUYE and STEVENS to arrive at this important agreement.

The competitive bidding authority granted to the FCC by this bill will not jeopardize the existing public interest regulation of the spectrum and will not bestow ownership of the spectrum on the successful bidders. Winners will have the right to use the spectrum as long as they abide by all the FCC's obligations. No one will be forced off their spectrum and no one will be required to pay for the spectrum they already use. The competitive bidding authority will only apply for assignments of new spectrum and the FCC may exercise its authority at its own discretion; competitive bidding is not required.

There are important public interest reasons for allowing the FCC to use competitive bidding in assigning licenses. Competitive bidding avoids the administrative delays associated with comparative hearings, thereby speeding service to the public. It will also eliminate the unqualified speculators who have previously applied in the FCC's lotteries, for example, in the cellular license lotteries. Finally, as we have seen in the cellular industry, there is already an auction taking place in the marketplace today; most speculators who win licenses are turning around and selling them for enormous profits. The Government may as well hold the auction and reap the benefits.

As introduced, this bill will only allow the FCC to use its competitive bidding authority on a trial basis in fiscal years 1994 through 1996 to assign radio spectrum licenses encompassing not more than 30 megahertz of frequency bands in up to three different services. At that time, the FCC will report to Congress and the President on the results of its competitive bidding test. The FCC's authority to use competitive bidding would be suspended while Congress reviewed the FCC's report. Unless Congress took further action, the FCC would automatically receive general authority to use competitive bidding on October 1, 1997.

I believe that Congress would be better able to assess the effectiveness of competitive bidding if a greater amount of spectrum was authorized to be assigned by competitive bidding. Thirty megahertz of spectrum may be inadequate to show us if competitive bidding does, in fact, speed the delivery of service to the market and what effect, if any, it has on potential market entrants and various users of the spectrum. For this reason, I intend to work with Senators INOUYE and STEVENS and the other members of the Commerce Committee over the coming months to seek an increase in the amount of spectrum designated in this bill for FCC assignment by competitive bidding.

I want to thank Senators INOUYE and STEVENS for their outstanding efforts to advance this legislation and I look forward to working with them in the Commerce Committee on this important measure.

Mr. STEVENS. Mr. President, radio spectrum is one of the most important natural resources controlled by the Federal Government. Spectrum is not tangible—our senses can't perceive it—but it affects our daily lives in a profound way. The morning television news programs we watch before coming into work, the nationwide telephone system we access in our offices, the mobile communications used by the police and other public safety agencies, any many other important services are all spectrum based.

The demand for radio spectrum—both for expansion of existing services and for introduction of new services—has risen dramatically over the past decade. We now face a potential spectrum shortage that could sap the creativity and vitality of the American telecommunications industry, which currently leads the world. We can't create more spectrum. To deal with a potential shortage, we must make our current spectrum use more efficient and develop underutilized portions of the spectrum.

I am pleased to be joining my good friend, the senior Senator from Hawaii, who chairs the Commerce Committee's Communications Subcommittee, in introducing this spectrum bill. This bill builds on the legislation Senator INOUYE introduced in the last Congress (S. 218), and the amendment that I proposed to allow the use of competitive bidding. The bill we are introducing today would establish a national spectrum planning process to ensure that we are anticipating future spectrum needs and taking the steps necessary to provide for them. This bill would also take the unprecedented step of directing the Federal Government, one of the largest spectrum users, to identify at

least 200 megahertz of frequencies assigned to the Federal Government that are in excess to Federal needs. These frequencies would then be reallocated to non-federal uses by the Federal Communications Commission [FCC].

At the same time, this bill addresses another serious problem—the deterioration of the spectrum assignment process. The bill does this by granting the FCC the authority to conduct a test of competitive bidding for the assignment of up to 30 megahertz of reallocated spectrum prior to March of 1996. At that time the FCC would submit a report to Congress on the results of that test. In addition, the bill grants the FCC the authority to use competitive bidding for the assignment of certain spectrum uses after September 30, 1997, subject to the proviso that Congress must reaffirm that authority on an annual basis in an Act making appropriations for the FCC.

Mr. President, the time has come for Congress to enact competitive bidding as a spectrum assignment procedure. Competitive bidding will reduce the cost—in time and money—of spectrum assignment by discouraging frivolous or speculative applications. It will increase the efficiency and effectiveness of the assignment process by granting the spectrum license in the first instance to the applicant with the greatest desire to provide the service. In addition, competitive bidding will encourage the efficient use of spectrum by licensees and fairly compensate Federal taxpayers for use of a scarce public resource.

I agree with Senator INOUYE that competitive bidding is not appropriate for every spectrum assignment. For that reason the bill would exempt license renewals and modifications and several categories of telecommunications services where competitive bidding would not be appropriate. The bill also requires the FCC to ensure that the needs of rural America are not slighted in a competitive bidding system. Most importantly, this bill would give the FCC the flexibility to devise competitive bidding procedures that would encourage the development of new telecommunications services and ensure that all bona fide parties are able to participate in the competitive bidding process.

Mr. President, I would like to note two things that this bill would not do. First, it would not change the FCC's existing spectrum allocation procedures. The FCC would continue to consider a broad range of public interest and technical factors in determining to what use a particular block of spectrum would be allocated. Second, it would not expand, in any way, the rights granted to a licensee. Licenses would still be issued for a limited term subject to the jurisdiction of the FCC. No one would be buying a property right when assigned frequencies through the competitive bidding process.

Mr. President, in a sense, competitive bidding for spectrum licenses already exists. In the post-lottery market, licenses change hands for money every day. The only problems is that the beneficiaries are lottery speculators—not the consumers who depend on spectrum-based services or the general public that ultimately owns the spectrum. With this bill, congress will put in place the mechanism to change this sorry state of affairs.

I ask unanimous consent, Mr. President, that a summary of the competitive bidding portion of this bill be printed in the RECORD after my statement.

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

SUMMARY OF COMPETITIVE BIDDING PROVISIONS

(1) *Competitive Bidding Test:* The Federal Communications Commission would use competitive bidding in fiscal years 1994 through 1996 to assign spectrum licenses encompassing not more than 30 megahertz of frequency bands in up to three different services. The FCC would be free to choose frequencies for the test.

(2) *Report to Congress:* After conducting the competitive bidding test, the FCC would report to Congress and the President on the results. The report, which would have to be submitted no later than March 31, 1997, would examine, among other things, the impact of competitive bidding on the efficiency and effectiveness of the spectrum license assignment process, the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market, and rural and small business spectrum users.

(3) *General Competitive Bidding Authority:* After conducting the competitive bidding test, the FCC's authority to use competitive bidding would be suspended while Congress reviewed the FCC's report on the test. The FCC would automatically receive general authority to use competitive bidding on October 1, 1997, subject to the requirement that the Congress reaffirm the FCC's authority to use competitive bidding on an annual basis in an appropriations act.

(4) *Parameters of General Competitive Bidding Authority:* The Communications Act would be amended to authorize, but *not* require, the FCC to use competitive bidding to assign spectrum licenses. The FCC would have the authority to specify any reasonable form of payment, including an installment payment schedule.

The following would be exempt from the FCC's competitive bidding authority: (a) license renewals and modifications; (b) federal, state, and local government entities; (c) amateur operator, over-the-air television and radio, public safety, and radio astronomy services; (d) private radio end-user licenses, and (e) any other service or assignments that the FCC determines should be exempt.

(5) *Rural Program:* If the FCC decides to use competitive bidding to issue two or more licenses for a service that competes with wireline telephone service in a rural area of less than 2500 persons, it shall reserve one license for the rural telephone company in that area. The rural telephone company will automatically receive that license if it pays a fee (on any reasonable basis specified by the FCC) equal to the average of the amounts paid for the licenses assigned by competitive bidding.

(6) *Continuing Congressional Oversight:* Each fiscal year, the FCC's competitive bidding authority would have to be reconfirmed in the Appropriations Act making appropriations for the FCC. This requirement provides for regular Congressional review of the FCC's competitive bidding efforts and ensures that any revenues from competitive bidding would be available in the appropriations process for spectrum management and other telecommunications purposes.

By Mr. BINGAMAN:

S. 336. A bill to amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes; to the Committee on Energy and Natural Resources.

STOCK RAISING HOMESTEAD ACT AMENDMENTS OF 1993

• Mr. BINGAMAN. Mr. President. Today I am introducing legislation to ensure that the rights of surface owners and miners are appropriately balanced on lands patented under the Stock Raising Homestead Act.

We have been working on this legislation for two Congresses now. It is a sensitive issue that deals with conflicts arising where the mineral estate is federally owned and the surface estate was patented under the Stock Raising Homestead Act for ranching and grazing purposes.

Last year, we came very close to enacting legislation on this issue, but unfortunately did not due to procedural problems at the end of the last Congress.

In 1916, Congress passed legislation popularly known as the Stock Raising Homestead Act [SRHA]. This Act made available unappropriated public lands for stock raising homestead entries. Patents issued pursuant to SRHA reserved to the United States the mineral estate, thus creating split estates where ownership of the surface and the mineral estate differs. Conflicts arise between those interested in exploring for, and developing, the Federal mineral estate, and surface owners engaged in raising livestock.

Approximately 70 million acres of land were patented under SRHA prior to repeal of the entry provision in 1976. The Bureau of Land Management [BLM] estimates that there are approximately 17,000 unpatented mining claims recorded on SRHA lands. BLM estimates that roughly 50 prospecting or mining operations are being conducted on these 17,000 claims.

Current law regulates mineral activity on SRHA lands in two stages. During the prospecting phase, compensation is required for damage to crops from mining, and provides that permanent improvements on the lands may not be damaged. For mining operations, if a miner does not have the

surface owners' consent to mine, a bond to the United States may be executed to secure payment of any damages.

The bill I am introducing today would provide additional procedures for gaining access to, and undertaking mining activities on, stock raising homestead lands. The bill would require notice to both the surface owner and the Secretary of the Interior prior to entry for exploration purposes. Such notification triggers an exploration period, whereby the person filing the notice has exclusive exploration rights for the authorization period.

Any person interested in going forward with development and production must obtain consent from the surface owner. Absent such consent, the miner must submit a plan for operations to the Secretary for approval, pay a surface use fee to the surface owner, and post a bond prior to conducting mineral activities to guarantee reclamation of the surface.

The bill also provides for inspections by the Secretary if a surface owner believes that he or she will, or may be, adversely affected from any violation of the plan of operations, and establishes a cause of action for damages under certain circumstances. In addition, the Secretary of the Interior is directed to take such actions as may be necessary to simplify the procedures to be complied with by surface owners who apply to obtain title to the mineral estate.

It is my hope that the bill will be considered and enacted early in this Congress and I urge Members' support of the legislation.•

By Mr. BINGAMAN (for himself and Mr. METZENBAUM):

S. 337. A bill to amend the Public Health Service Act to prohibit physicians from referring patients to health entities in which they have a financial relationship and for other purposes; to the Committee on Labor and Human Resources.

ETHICS IN REFERRALS AND BILLING ACT

Mr. BINGAMAN. Mr. President, one of the most important tasks facing the 103d Congress and the Nation is gaining control of health care costs. If we are ever to achieve comprehensive health care reform, cost containment needs to be our highest priority. I am therefore pleased to join with my distinguished colleague, Senator METZENBAUM, in reintroducing the Ethics in Referrals and Billing Act.

This important initiative will help us begin to slow rapidly escalating health care costs by putting manageable, commonsense controls on a significant source of health cost inflation: physician self-referral.

The trends in U.S. health care spending are well known: Since 1980, we have increased spending an average of 10 to 12 percent every year. If that rate continues, we will double our spending every 7 years. This year, we will spend an estimated $800 billion—a figure that exceeds the entire budgets of most of the world's economies. Little imagination is needed to envision the day when only the richest among us will be able to afford health care if we do not begin taking action today.

Gaining control of health care spending is not easy. A number of complex, interrelated factors are involved. Inflation in the general economy is amplified in the health sector. A growing population and an aging population increase overall costs. The Health Care Financing Administration estimates that nearly one-third of the increases in cost in recent years are attributable to the intensity and volume of health services due to population growth and demand for upgraded, higher intensity services. This includes clinical tests and procedures that do not increase the specificity or sensitivity of diagnosis or the efficacy of treatment.

A particularly onerous example of increased intensity and volume occurs when a physician enters into a health services joint venture arrangement, thereby gaining a financial interest in an independent health care facility. Joint venture arrangements come in a variety of forms, the most common occurring when a physician makes an investment in a facility that provides physical therapy or rehabilitation programs, diagnostic imaging, radiation therapy, or another type of service to which he or she may refer patients. The benefit to the physician, in terms of income and tax advantages, ranges from small sums to thousands of dollars per year. But one thing remains constant: The success or failure of the joint venture depends on the physician's ability to make patient referrals.

A number of studies have documented the relationship between physician joint ventures and increased health facility use rates. Most recently, the Journal of the American Medical Association reported on a 1991 survey commissioned by the Florida Health Care Cost Containment Board. The Florida study found that 40 percent of Florida physicians involved in direct patient care had an investment interest in some type of health care business to which they referred patients. More than 90 percent of the physician owners were concentrated in specialties likely to require special services, such as internal medicine, surgery, or general practice. Based on their findings, the researchers concluded that the percentage of physicians participating in joint ventures is much higher than the 12 percent of physicians billing Medicare estimated by the inspector general of Health and Human Services in 1989.

In his 1989 study, the inspector general reported that patients of physicians who own or invest in clinical laboratories receive 45 percent more clinical laboratory services than all Medicare patients, regardless of place of service. The Florida Health Care Cost Containment Board found that physician ownership led to 27 percent more home health visits per patient and between 35 and 43 percent more physical therapy visits per patient, depending on the extent of the facility's services.

The Florida study evaluated the use of magnetic resonance imaging and computed tomographic scanning services by contrasting three metropolitan statistical areas in Florida—Jacksonville, Miami, and Orlando—with Baltimore, MD. Residents of the Florida cities received 14, 65, and 35 percent more scans, respectively, than residents of Baltimore. Using this methodology, the Florida Board determined that residents of that State used computed tomographic scans 5.4, 27.9, and 14.3 percent more, respectively, than residents in Baltimore.

These findings lead to an obvious conclusion: when a physician has a financial interest in a referral service, the physician is more likely to refer to that service. This fundamental principle has been recognized by many physicians, including members of the American Medical Association. In March 1992, the AMA's Council on Ethical and Judicial Affairs issued a statement concluding:

> * * * in general, physicians should not refer patients to a health care facility outside their office practice at which they do not directly provide care or services when they have an investment interest in the facility. Physicians may invest in and refer to an outside facility if there is a demonstrated need in the community for the facility and alternative financing is not available.

Unfortunately, the advice of the Council on Ethical and Judicial Affairs was initially rejected by the general membership of the American Medical Association. Last June, delegates to the AMA's annual meeting voted to significantly weaken a previously approved ethical behavior standard for self-referral. By December 1992, the AMA had reversed its stand, supporting the Ethics Committee recommendation that self-referral constituted unethical medical practice. In the absence of sustained commitment, the need for this legislation is clear.

Fundamentally, this is a consumer protection measure. In my view, visits to the doctor should not require detailed questioning of his or her financial interests. Our health care system should reward innovation, hard work, and diligence. Care should be delivered because it serves the needs of the patient, not because it provides additional income to the physician. To achieve these goals, it is imperative that physicians cease to invest in joint ventures created solely to increase health care use. The Ethics in Referrals and Billing Act protects consum-

ers and serves as a reminder to health providers that they have a sacred trust to serve their patients above and beyond personal financial interests.

Self-referral is a complex issue. In some situations, and in rural areas particularly, self-referral may benefit communities and patients. Our bill permits self-referral that benefit consumers, but it prohibits monopolistic acts of self-referral that inhibit competition.

Mr. President, we need to control health care costs. We need to make health care affordable for all Americans. We need to balance the ability of markets to create competitive prices with effective regulation. We need to stop health care profiteering. Through legislation such as the Ethics in Referrals and Billing Act we can achieve these critical objectives.

Mr. METZENBAUM. Mr. President, I rise today to join my distinguished colleague Senator BINGAMAN in reintroducing a bill to prohibit doctors from referring patients to a medical facility solely because they have a financial interest in that facility. Passage of this bill will make an important contribution to health care reform because it will reduce health care costs and improve the quality of care for patients.

The Congress has already taken the first step to address the problem of doctor self-referral by limiting doctors' ability to refer their Medicare and Medicaid patients to clinics in which they have a financial interest. However, we need to go even further to eliminate these costly and abusive practices by making it unlawful for a doctor to refer any patient to a health care facility in which he or she has a financial interest, unless there is a good reason to do so. The ban should apply regardless of whether the doctor's financial interest is in the form of a limited partnership, joint venture, general partnership, or stock ownership interest, and whether the Government, a private insurer or a patient pays the bill.

I am deeply concerned that self-referral invites doctors to profiteer at the expense of their patients. In November 1992, the respected "New England Journal of Medicine" reported that in Florida, doctor-owned radiation therapy joint ventures "appear to have adverse effects on patients' access to care. They also appear to increase the use of services and costs substantially." Moreover, the quality of care provided by these joint ventures was reported to be lower than that provided by their independent competitors.

A similar study in California found that doctor joint ventures increased the cost of physical therapy services, psychiatric care and MRI scans for patients covered under workers' compensation.

Doctor-owned joint ventures have also created problems for our federal antitrust agencies because they foster unfair competition and high prices for medical care. Currently, the Federal Trade Commission [FTC] has about a dozen investigations underway into doctor joint ventures that may be unfairly eliminating competition and charging high prices.

The FTC's concern is that independently owned facilities can be driven out of business and competition eliminated when a group of specialists agree to send all their patients to their jointly owned medical facility. Without competition from independents, the specialist's medical facility can easily become a monopoly that has little or no incentive to offer patients high quality health care at reasonable rates.

Self-referral has also spawned a disturbing partnership between doctors and the business community that is turning doctors into deal-makers at the expense of their patients. T2—T-squared—is a perfect example of a company that has made millions of dollars by promoting self-referral through joint ventures with doctors.

Specifically, T2 uses low-priced stock as a sales tool to establish joint ventures with doctors who have patients to refer to T2 centers. To date, more than 1,700 doctors have invested in over 100 T2 infusion-therapy centers that provide intravenous medication and nutrition to patients in their homes.

Because they are part owners of the medical centers, T2's doctor-investors have strong financial incentives to refer all their patients to T2 and to charge them high prices. For example, a T2 infusion therapy center in Atlanta charges almost four times more for a 2-week treatment with the AIDS drug cytovene than its independent cross town rival—$4,000 versus $1,100.

An offshoot of T2, radiation care, is using the same low-priced stock strategy to corner the market on outpatient radiation centers to treat cancer patients. This company also selects doctor-investors based solely on their ability to refer patients to its clinics. Not surprisingly, almost all the company's revenues come from referrals by physicians who own their stock.

Our bill would stop doctors from getting the kind of sweetheart deals that T2 and radiation care are cashing in on. Under our bill, self-referrals would be banned if doctor-investors could buy stock in a medical facility on terms not similarly available to the public.

The health care offered by doctor joint ventures can also be dangerously slipshod. Last year, Newsweek reported that a young mother of two was misdiagnosed having a breast tumor at a diagnostic imaging clinic in which, unbeknownst to her, the treating doctor had a financial stake. Not surprisingly, this young woman "believed that she was sent to an inferior clinic and put through a terrifying ordeal just to line her physician's pockets." Likewise, The New England Journal of Medicine reported that radiation therapists at doctor-owned joint ventures in Florida "spent 18 percent less time with each patient over the course of treatment than did their counterparts at free-standing facilities that were not joint ventures."

I believe that legislation is needed to protect vulnerable and unsuspecting patients from costly and inappropriate doctor self-referral. Voluntary guidelines are simply not sufficient to deal with this problem. In my view, nothing illustrates this better than the fact that over the past 2 years the American Medical Association [AMA] has adopted several different and conflicting positions on banning self-referral. Although the AMA now appears to be opposed to self-referral, it could easily change its position, just as it did last June when it reversed the ban on self-referral that it had adopted 6 months earlier.

I expect critics to argue that our bill is unfair because we are treating doctors differently than other professional entrepreneurs. The fact is that medicine is not like the services delivered by other professionals, and therefore should be treated differently. In medicine, doctors make virtually all the decisions that dictate how much demand there is for a particular kind of health care service, and, ultimately, its cost. By allowing the same professionals who create the demand for a service to profit from its delivery we invite overuse and abuse. By banning self-referral, our bill will assure that a patient's well-being is a doctor's only consideration in prescribing a course of treatment.

The bill also contains provisions requiring that a patient be billed directly by a health care facility for the services delivered there. This proposal will also save precious health care dollars.

I urge all Senators to join us in sponsoring this bill. We cannot afford to let the cost of health care escalate and patient care suffer because of inappropriate doctor self-referral. This bill will bring a halt to these costly and abusive practices.

By Mr. FORD (for himself and Mr. KRUEGER):

S. 338. A bill to amend the Petroleum Marketing Practices Act to clarify the Federal standards governing the termination and nonrenewal of franchises and franchise relationships for the sale of motor fuel, and for other purposes; to the Committee on Energy and Natural Resources.

PETROLEUM MARKETING PRACTICES ACT AMENDMENTS OF 1993

Mr. FORD. Mr. President, I am pleased to introduce today the Petroleum Marketing Practices Act amendments of 1993.

It is my hope that this bill will provide a small but important example of

the loosening of gridlock, and the reduction of the special interest stranglehold on our legislative process. This compromise legislation was overwhelmingly supported by all interested parties during the last Congress. It passed the House and Senate Energy Committees unanimously. It was strongly supported by all elements of the petroleum marketing industry. And it should have become law last year. Only a lack of time and the concerted efforts of a single, large oil company to strangle the normal legislative process prevented this legislation from passing last year. I am determined, along with many of my Senate colleagues and Chairman DINGELL and others in the House, to prevent this narrow interest from standing in the way this year.

The Petroleum Marketing Practices Act was enacted in 1978 as a dealer's day in court bill, to provide fairness and balance in negotiations between franchisors and franchisees involved in gasoline marketing. I have had an interest in this issue for several years now. It took nearly a decade to negotiate the original 1978 legislation. Since that time, a complex series of judicial decisions have led many to believe that the original statute is in need of fine tuning. In each of the last three Congresses, bills were introduced and hearings were held to reform the PMPA.

Last year, a series of negotiations took place between all interested parties on this issue, including service station dealers, jobbers, and oil companies. A new compromise was negotiated, and that is reflected in the bill which I am introducing today.

The Petroleum Marketing Practices Act Amendments of 1993 essentially has four components. First, the legislation clarifies the grounds for nonrenewal of a franchise relationship. Current law sets forth the only permissible grounds for termination or nonrenewal of a gasoline marketing franchise agreement. Nonrenewal may occur if there is a failure to agree to changes or additions to the franchise, so long as the new conditions are negotiated in good faith and not for the purpose of preventing the franchise renewal. The interpretation of this section of current law has been somewhat subjective and confusing. The legislation which I introduced today clarifies one major area of uncertainty. It makes explicit that preventing renewal includes situations where new conditions are proposed for the purpose of converting a franchisee operation into one operated by a francisor's employees. In other words, a gasoline marketer cannot force conditions upon an independently operated service station for the purpose of converting it into a company-owned station. This is an important clarification to existing law.

Second, the legislation tightens the current definition of preemption to make clear that Federal law is limited in scope. The grounds for nonrenewal or termination of a franchise specified in the PMPA are exclusive, and current law preempts States from imposing additional grounds or modifying those set forth in the Act. However, States are still free to pass laws regulating the underlying contract provisions. State law may still have a direct bearing on which contract terms are reasonable or negotiated in good faith under the PMPA.

Third, the bill clarifies current law in situations where a franchisor leases the underlying premises from a third party, and the terms of the underlying lease may prevent the continuation of the franchise arrangement. The legislation makes clear that where a franchisor has an option to continue to lease or to buy the marketing premises but does not wish to do so, the franchisor must offer to assign the option to the franchisee. In other words, failure to exercise a lease option with a third party cannot be used to terminate a gasoline dealer. The dealer will receive the same option and may choose to continue the franchise relationship.

Fourth, the legislation clarifies that a franchisor cannot demand that any rights granted by a Federal or State law be waived as a condition for entering into or terminating a franchise relationship.

While many of these changes are technical in nature, I believe that they will serve to bring a balance to the operation of the PMPA which will assure fairness in bargaining in the future. I am pleased by the support this legislation enjoys from all affected parties in the gasoline marketing industry, and look forward to working with my colleagues on the House side in enacting this measure during the current Congress. The efforts to achieve meaningful PMPA reform have been in motion for several years, and I believe we now have a compromise which will serve in the best interests of the entire industry.

Mr. President, I ask unanimous consent that the text of the bill be printed in the CONGRESSIONAL RECORD.

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

S. 338

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 "Petroleum Marketing Practices Act Amendments of 1993".

SEC. 2. CONVERSION TO COMPANY OPERATION.

Section 102(b)(3)(A)(ii) of the Petroleum Marketing Practices Act (15 U.S.C. 2802(b)(3)(A)(ii)) is amended by inserting after "purpose of" the following: "converting the leased marketing premises to operation by employees or agents of the franchisor for the benefit of the franchisor or otherwise".

SEC. 3. UNDERLYING LEASES.

Section 102(c)(4) of the Petroleum Marketing Practices Act (15 U.S.C. 2802(c)(4)) is amended—

(1) by striking "lease, if" and all that follows through "(B) of" and inserting the following: "lease, if—

"(A) the franchisee was notified in writing, prior to the commencement of the term of the then existing franchise—

"(i) of the duration of the underlying lease; and

"(ii) of"; and

(2) by adding at the end the following new subparagraphs:

"(B) during the 90-day period after notification was given pursuant to section 104, the franchisor offers to assign to the franchisee any option to extend the underlying lease or option to purchase the marketing premises that is held by the franchisor, except that the franchisor may condition the assignment upon receipt by the franchisor of—

"(i) an unconditional release executed by both the landowner and the franchisee releasing the franchisor from any and all liability accruing after the date of the assignment for—

"(I) financial obligations under the option (or the resulting extended lease or purchase agreement);

"(II) environmental contamination to (or originating from) the marketing premises; or

"(III) the operation or condition of the marketing premises; and

"(ii) an instrument executed by both the landowner and the franchisee that ensures the franchisor and the contractors of the franchisor reasonable access to the marketing premises for the purpose of testing for and remediating any environmental contamination that may be present at the premises; and

"(C) in a situation in which the franchisee acquires possession of the leased marketing premises effective immediately after the loss of the right of the franchisor to grant possession (through an assignment pursuant to subparagraph (B) or by obtaining a new lease or purchasing the marketing premises from the landowner), the franchisor (if requested in writing by the franchisee not later than 30 days after notification was given pursuant to section 104), during the 90-day period after notification was given pursuant to section 104—

"(i) made a bona fide offer to sell, transfer, or assign to the franchisee the interest of the franchisor in any improvements or equipment located on the premises; or

"(ii) if applicable, offered the franchisee a right of first refusal (for at least 45 days) of an offer, made by another person, to purchase the interest of the franchisor in the improvements and equipment.".

SEC. 4. WAIVER OF RIGHTS.

Section 105 of the Petroleum Marketing Practices Act (15 U.S.C. 2805) is amended by adding at the end the following new subsection:

"(f)(1) No franchisor shall require, as a condition of entering into or renewing the franchise relationship, a franchisee to release or waive—

"(A) any right that the franchisee has under this title or other Federal law; or

"(B) any right that the franchisee may have under any valid and applicable State law.

"(2) No provision of any franchise shall be valid or enforceable if the provision specifies that the interpretation or enforcement of the franchise shall be governed by the law of any State other than the State in which the

franchisee has the principal place of business of the franchisee.".

SEC. 5. PREEMPTION.

Section 106 of the Petroleum Marketing Practices Act (15 U.S.C. 2806) is amended—

(1) in subsection (a)—

(A) by inserting "(1)" after "(a)"; and

(B) by adding at the end the following new paragraphs:

"(2) Nothing in this title shall limit the ability of a State or any political subdivision of a State to regulate any specific provision of a franchise.

"(3) No State or political subdivision of a State may adopt, enforce, or continue in effect any provision of law (including a regulation) that requires a payment for the goodwill of a franchisee on the termination of a franchise or nonrenewal of a franchise relationship authorized by this title."; and

(2) in subsection (b)—

(A) by inserting "(1)" after "(b)"; and

(B) by adding at the end the following new paragraph:

"(2) Nothing in this title shall prohibit any State from specifying the terms and conditions under which any franchise or franchise relationship may be transferred to the designated successor of a franchisee upon the death of the franchisee.".

Mr. KRUEGER. Mr. President, I am delighted to add my name as a cosponsor to Senator FORD'S bill amending the Petroleum Marketing Practices Act [PMPA]. This well-balanced bill incorporates an agreement reached by the Service Station Dealers of America, the Petroleum Marketers Association of America, the Society of Independent Gasoline Marketers, and the American Petroleum Institute. These industry groups met together at the invitation of House Energy and Commerce Committee Chairman DINGELL, and with the assistance of his staff, they worked for 16 months to reach compromise.

The proposal addresses questions which have arisen since the passage of the Petroleum Marketing Practices Act in 1978. It attempts to resolve issues regarding the legality of termination and nonrenewal of service station dealers pursuant to that act. Essentially, it states that dealers may not be terminated or nonrenewed for the purpose of conversion of the premises to company operation; it clarifies the lessor's responsibilities to the lessee in third-part lease situations; it says that dealers cannot be required to waive legal rights under State and Federal law as a condition for receiving a new or renewed lease; and it attempts to address questions which have arisen regarding the breadth of the preemption clause of the current PMPA.

I think we should act quickly to pass this proposal. Although it may not be everything which each part of the industry would have wished, it represents a compromise for which all segments of the industry were able to muster support. I salute Senator FORD, Chairman DINGELL, and the supporting organizations for their efforts to reach and enact this compromise. It is never easy to agree upon solutions to problems on which disagreement exists within an industry. Still, we must settle such questions about the interpretation of commercial statutes which govern common business situations.

The approach agreed upon by the negotiators recognizes and balances the concerns of small and larger businesses. It also strikes a balance between the need for Federal uniformity and the concerns of individual States. I am pleased to cosponsor the proposal and hope for its speedy enactment by the Senate.

By Mr. BAUCUS:

S. 339. A bill to amend the Internal Revenue Code of 1986 to extend for 6 months the deduction for health insurance costs of self-employed individuals; to the Committee on Finance.

EXTENSION OF THE 25 PERCENT TAX DEDUCTION OF HEALTH INSURANCE FOR THE SELF-EMPLOYED

• Mr. BAUCUS. Mr. President, I rise today to introduce a bill that will insure that the self-employed individuals of this country will receive a tax deduction for the health insurance premiums they paid through the end of 1992.

Under current law, the 25-percent deduction of health insurance premiums for self-employed individuals expired for taxable years beginning after June 30, 1992. H.R. 11, which passed the Congress last year, would have extended the deduction through June 30, 1993. Unfortunately, this bill was vetoed by President Bush.

The legislation I introduce today would allow the self-employed to continue to deduct 25 percent of their health insurance through 1992. Without this retroactive extension, many taxpayers will face an unexpected rise in their taxes when they file their 1992 tax returns. This could mean that 8.5 million self-employed individuals would owe Uncle Sam up to $200 more in 1992 than they anticipated.

Since President Clinton has promised to make health reform one of his top priorities, I believe that the future of this provision will be decided once and for all this Congress. I strongly believe that it's unfair that large businesses are allowed to deduct 100 percent of their employees' health insurance costs, while the self-employed can only deduct 25 percent. Health insurance is treated as an ordinary and necessary cost of doing business for large businesses. Well, it is no less a cost of doing business for self-employed farmers and other entrepreneurs that are the key to our Nation's growth.

I plan to work closely with President Clinton on health reform issues and will strongly urge that he increase the deduction to 100 percent and make this 100 percent deduction permanent. In the meantime, this is a necessary extension that should be acted on immediately.•

By Mr. HEFLIN (for himself, Mr. PRESSLER, Mr. SHELBY, Mr. DASCHLE, Mr. CONRAD, Mr. CAMPBELL, Mr. BROWN, Mr. DECONCINI, Mrs. KASSEBAUM, Mr. DANFORTH, Mr. MACK, Mr. COATS, Mr. DORGAN, Mr. ROTH, Mr. HOLLINGS, Mr. WARNER, Mr. WOFFORD, Mr. FEINGOLD, Mr. INOUYE, Mr. CHAFEE, Mr. MCCONNELL, Mr. BOREN, Mr. PRYOR, Mr. KEMPTHORNE, Mr. CRAIG, Mr. EXON, Mr. REID, Mr. NICKLES, Mr. COCHRAN, Mr. JOHNSTON, Mr. BOND, Mr. DODD, and Mr. GRASSLEY):

S. 340. A bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the act with respect to alternate uses of new animal drugs and new drugs intended for human use, and for other purposes; to the Committee on Labor and Human Resources.

ALTERNATE USES OF NEW ANIMAL DRUGS

Mr. HEFLIN. Mr. President, I rise today to introduce a bill that will rectify a serious problem facing America's veterinarians and the animals they treat. If the FDA were to strictly enforce the Federal Food, Drug, and Cosmetic Act as it is written today, the act would prevent the relief of pain and the prevention of suffering in a host of animal species from cattle to pet birds for which there are no FDA approved drugs for these purposes. The legislation I am introducing today would correct this problem by codifying current veterinary practices.

Unique to the practice of veterinary medicine is the abundance of species that the veterinarian encounters in the clinical setting. New animal drugs have been approved for only the most common of domestic species. Few, if any, new animal drugs are approved for species of animals which are used extensively in most of the Nation's research facilities such as mice, rats, hamsters, gerbils, guinea pigs, and rabbits. No other profession is forced to practice under a law which is contrary to and defeats the purpose of the professional's oath.

Current veterinary practices permit extra-label drug use because insufficient therapies are approved to treat the conditions that veterinarians routinely face in practice. Examples for companion animals include insulin to treat diabetes, cardiac and chemotherapeutic drugs that bear a human drug label; anesthetic, analgesic and sedative agents for food animals; and effective antibiotics for food and companion animals to name just a few.

Veterinarians use drugs in an extra-label manner to save animal lives, prevent suffering, and to protect human health. Treatment of sick food-producing animals results in increased levels of food safety because sick animals will not be shipped to market. If legal

therapies are not available to veterinarians, producers may feel compelled to ship sick animals to market, rather than watch them suffer and perhaps die, or take a chance that they may infect the remainder of the herd.

This legislation which would permit extra-label drug use will transform this section of the FD&C Act from a nonenforceable, confusing law into a clear and easily enforceable statute. Violators who cause the presence of illegal residues in food can then be prosecuted appropriately.

This bill codifies current FDA policy and authorizes extra-label drug use by veterinarians only, under carefully controlled supervision and will not result in increased violative residues in food products. It will not increase or alter overall patterns of drug usage by veterinarians.

The law as it exists today is contrary to its own basic purpose of protecting the public health. For example, chlamydiosis—a disease which is transmitted from birds to man—is most effectively treated in birds with an antibiotic known as doxycycline. This drug presently is only approved for use in humans. The only FDA approved animal drug for the treatment of chlamydiosis in birds is no longer marketed. Without the ability of the veterinarian to use a human label drug on a nonfood producing animal, there will be an increased risk of transmission of this disease between bird and man.

Mr. President, I urge my colleagues to move expeditiously on this urgently needed legislation. Mr. President, I would also ask unanimous consent that the following Senators be added as original cosponsors: Senators PRESSLER, SHELBY, DASCHLE, CONRAD, CAMPBELL, BROWN, DECONCINI, KASSEBAUM, DANFORTH, COATS, DORGAN, ROTH, HOLLINGS, MACK, WARNER, WOFFORD, FEINGOLD, INOUYE, CHAFEE, MCCONNELL, BOREN, PRYOR, KEMPTHORNE, CRAIG, EXON, REID, NICKLES, COCHRAN, JOHNSTON, BOND, DODD, and GRASSLEY.

Mr. PRESSLER. Mr. President, today, I join with Senator HEFLIN and others in reintroducing legislation clarifying Food and Drug Administration [FDA] procedures regarding extra-label use of animal drugs. The bill is a simple, straightforward approach to resolving the current conflict between modern veterinary medicine and the law.

During the 102d Congress, an identical bill was cosponsored by 50 of my colleagues. I will do all I can to see that today's legislation becomes law during the 103d Congress.

The issue is extra-label drug use of animal drugs. This is an important subject for South Dakota's 35,000 farmers and ranchers and my home State's veterinarians and consumers as well. After visiting with several veterinarians and discussing their daily routines and practices, I became convinced that extra-label drug use is necessary. This is because currently approved therapies are insufficient to treat the conditions veterinarians routinely face in the real world. All too often, veterinarians face situations in which an animal's health is immediately threatened and suffering or death would result from failure to provide prompt and effective treatment.

The problem with existing law is that it prohibits the use of an animal drug for purposes other than those listed on the drug's label. The reality is that it is not economically feasible under the present animal drug approval process to seek an approved label for all species and uses for which a drug is beneficial and safe. If a veterinarian is working to save the life of a cow or calf and the only effective treatment is a drug labeled only for horses, the letter of the law states that a veterinarian cannot use the drug to save the cow or calf. This bill rectifies this dilemma and allows the veterinarian to save the life of the animal without violating the law.

Mr. President, the FDA recognizes the fact that a veterinarian, on occasion, will find it necessary to use an approved drug in a manner that does not appear on the label. In fact, the FDA has gone so far as to state it will not institute regulatory action against licensed veterinarians for using or prescribing any drugs legally obtained. Thus, this bill simply codifies existing FDA practice.

Our Nation's veterinarians use drugs in an extra-label manner to save animals' lives, prevent suffering, and protect human health. This bill would provide the FDA a clear, easily enforceable statute, enhancing its ability to define violations of the Food, Drug, and Cosmetic Act. Finally, it would resolve existing conflicts between modern veterinary medicine and Federal law.

Mr. President, I urge my colleagues who cosponsored identical legislation in the last Congress to join with us once again in support of this bill. I urge all others to take a close look at this bill and support its passage. The bill has the support of veterinarians in South Dakota and the American Veterinary Medical Association [AVMA].

Mr. SHELBY. Mr. President, so often the smallest and simplest measures have tremendous results. Such is the case with the extra-label animal drug use bill that Senator HEFLIN has introduced today. The aim of this legislation is simple: To codify existing FDA practices regarding the extra-label use of animal drugs. The result of its passage will be tremendous: the decriminalization of a common and humane procedure in the practice of veterinary medicine. Current Federal law prohibits the use of any animal drug in a species for which that drug has not been approved. As a result, the drug manufacturer's incentive for developing and bringing to market separate drugs for each species of animal is nonexistent. Therefore, there are very few species specific animal drugs on the market.

Because of this situation, veterinarians must violate the law on a daily basis in order to uphold their oath. The knowledge of this situation walks daily with every veterinarian in the Nation. The extra-label drug problem is simply an absurd fact of life that every veterinarian learns to live with. From the moment a young man or woman first treats a family farm animal or from his or her first classes in veterinary medical school, he or she learns the practice of extra-label drug use. They learn that certain drugs are useful for numerous animal species. They also learn the safe and effective use of these nonbreed specific drugs. The extra-label use of animal drugs has been practiced for decades with no ill effects upon the animal population or the general public. The FDA recognizes this situation and does not currently enforce the statute as it is written. To do so would effectively shut down the practice of veterinary medicine.

Simple codification of current policy is absolutely necessary to decriminalize extra-label drug use and to facilitate new animal drug research. Without such a codification, we will perpetuate a silly and unnecessary situation within the practice of animal medicine. I am proud to be an original cosponsor of this legislation and to have been a part of the creation and introduction of last year's legislation. This measure garnered excellent support last year despite its being introduced late in the Congress. I hope that we can pass this measure early in this Congress. I would like to thank the American Veterinary Medical Association, the veterinary medical colleges, and the animal producer groups who have vigorously supported this legislation. and I would like to thank my colleagues Senator HEFLIN and Senator PRESSLER for again bringing this measure before the Senate. I urge my colleagues to join us in support of this measure.

By Mr. CAMPBELL (for himself and Mr. BROWN):

S. 341. A bill to provide for a land exchange between the Secretary of Agriculture and Eagle and Pitkin Counties in Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

MOUNT SOPRIS TREE NURSERY LAND EXCHANGE

• Mr. CAMPBELL. Mr. President, I rise today to ask unanimous consent to send to the desk legislation to facilitate a land transfer between two Colorado counties and the U.S. Forest Service.

As a Member of the House, I worked tirelessly along with my colleagues in the Colorado congressional delegation,

to pass legislation to allow Pitkin and Eagle Counties to acquire 132 acres of the Mount Sopris Tree Nursery in exchange for 1,307 acres of patented mining claims which are owned by the counties.

The Forest Service several years ago decided the entire Mount Sopris Tree Nursery property was no longer needed and reached agreement with the counties that would allow the counties to accommodate local public needs.

In exchange, the Forest Service would receive nearly 10 times as much land in the White River National Forest. Over half of the lands the Forest Service would acquire lie within designated wilderness areas. If these lands are not acquired by the Forest Service they have the potential of becoming a severe management problem. In fact, the Forest Service could be potentially responsible for the enormous expense of building roads and supplying utility corridors into many of Colorado's most sensitive areas.

The Forest Service and the counties attempted to complete this exchange administratively for many years. Unfortunately, the cost of clearing the title on every acre of the counties offered land on a timely basis makes an administrative exchange impossible. Therefore, the bill establishes a process for dealing with claims that might be filed to prevent the United States from gaining quiet title to the patented mining claims it will receive from the counties pursuant to the provisions of the bill. The counties will share in the burden of paying to defeat challenges, if there are any.

Last year, my bill, H.R. 1182, was reported from the Agriculture Committee, reported from the Interior Committee, passed both the House and the Senate with bipartisan support, but could not be passed on the last day of the 102d Congress because of the failure to get a quorum. The bill Senator BROWN and I are introducing today is the same bill that passed last year with several minor improvements, changes suggested by the Forest Service.

The bill has widespread support, ranging from the Colorado Association of Commerce and Industry to the Sierra Club. It is also supported by both Colorado Senators. This bill deserves the subcommittee's approval and needs to be enacted to save both the Federal Government and the local communities enormous amounts of money. I look forward to its speedy passage.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 341

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Eagle and Pitkin Counties in the State of Colorado (hereinafter in this Act referred to as the "Counties") are offering to convey to the United States approximately one thousand three hundred and seven acres of patented mining claim properties owned by the Counties within or adjacent to the White River National Forest (hereinafter in this Act referred to as the "National Forest inholdings"), including approximately six hundred and sixty nine acres of inholdings within the Holy Cross, Hunter-Fryingpan, Collegiate Peaks, and Maroon Bells-Snowmass Wilderness Areas:

(2) the properties identified in paragraph (1) are National Forest inholdings whose acquisition by the United States, would facilitate better management of the White River National Forest and its wilderness resources; and

(3) certain lands owned by the United States within Eagle County comprising approximately two hundred and seventeen acres and known as the Mt. Sopris Tree Nursery (herinafter in this Act referred to as the "nursery lands") are available for exchange and the Counties desire to acquire portions of the nursery lands for public purposes.

(b) PURPOSES.—The purposes of this Act are—

(1) to provide the opportunity for an exchange whereby the Counties would transfer to the United States the National Forest inholdings in exchange for portions of the nursery lands;

(2) to provide an expedited mechanism under Federal Law for resolving any private title claims to the National Forest inholdings if the exchange is consummated; and

(3) after the period of limitations has run for adjudication of all private title claims to the National Forest inholdings, to quiet title in the inholdings in the United States subject to valid existing rights adjudicated pursuant to this Act.

SEC. 2. OFFER OF EXCHANGE

(a) OFFER BY THE COUNTIES.—The exchange directed by this Act shall be consummated if within ninety days after enactment of this Act, the Counties offer to transfer to the United States, pursuant to the provisions of this Act, all right, title, and interest of the Counties in and to approximately—

(1) one thousand two hundred fifty eight acres of lands owned by Pitkin County within and adjacent to the boundaries of the White River National Forest, Colorado, and generally depicted as parcels 1–53 on maps entitled "Pitkin County Lands to Forest Service", numbered 1–11, and dated April 1990, except for parcels 20 (Twilight), 21 (Little Alma), the Highland Chief and Alaska portions of parcel 25 depicted on map 7, and parcel 52 (Iron King) on map 11, which shall remain in their current ownership; and

(2) forty-nine acres of land owned by Eagle County within and adjacent to the boundaries of the White River National Forest, Colorado, and generally depicted as parcels 54–58 on maps entitled "Eagle County Lands to Forest Service", numbered 12–14, and dated April 1990, except for parcel 56 (Manitou) on map 14 which is already in National Forest ownership.

(b) EXCHANGE BY THE SECRETARY.—Subject to the provisions of section 3, within ninety days after receipt by the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") of a quitclaim deed from the Counties to the United States of the lands identified in subsection (a) of this section, the Secretary, on behalf of the United States, shall convey by quitclaim deed to the Counties, as tenants in common, all right, title, and interest of the United States in and to approximately one hundred and thirty-two acres of land (and water rights as specified in section 7 and the improvements located thereon), as generally depicted as tract A on the map entitled "Mt. Sopris Tree Nursery", dated October 5, 1990.

SEC. 3. RESERVATIONS AND CONDITIONS OF CONVEYANCE

(a) RESERVATIONS.—In any conveyance to the Counties pursuant to section 2, the Secretary shall reserve—

(1) all right, title, and interest of the United States in and to approximately eighty-five acres of land (and improvements located thereon), which are generally depicted as tracts B (approximately twenty-nine acres) and C (approximately fifty-six acres) on the map referred to in section 2(b);

(2) water rights as specified in section 7(a); and

(3) any easements, existing utility lines, or other existing access in or across tract A currently serving buildings and facilities on tract B.

(b) REVERSION.—It is the intention of Congress that any lands and water rights conveyed to the Counties pursuant to this Act shall be retained by the Counties and used solely for public recreation and recreational facilities, open space, fairgrounds, and such other public purposes as do not significantly reduce the portion of such lands in open space. In the deed of conveyance to the Counties, the Secretary shall provide that all right, title and interest in and to any lands and water rights conveyed to the Counties pursuant to this Act shall revert back to the United States in the event that such lands or water rights or any portion thereof are sold or otherwise conveyed by the Counties or are used for other than such public purposes.

(c) EQUALIZATION OF VALUES.—(1) Within one hundred and twenty days after the date of enactment of this Act, the Secretary of Agriculture shall complete appraisals of the lands to be exchanged pursuant to subsections (a) and (b) of section 2 of this Act, taking into account any effects on the value of such lands resulting from the use restrictions and reversionary interest imposed by subsection (b) of this section and any other factors that may affect value. The sum of $120,000 shall be deducted from the value of the Counties' offered lands to reflect any adverse claims against such lands which may be adjudicated pursuant to section 5 of this Act.

(2) The appraisals shall utilize nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition.

(3) On the basis of such appraisals, the Secretary shall make a finding as to whether the values (after the deduction described in paragraph (1)) of the lands to be exchanged are equal and shall immediately notify the Counties as to such finding. If the values are not equal, any cash equalization which would otherwise be owed to the Counties by the United States shall be waived. Any equalization amount which may be owed to the United States by the Counties shall be satisfied through conveyance to the United States, within five years of the date of transfer of the nursery lands to the Counties pursuant to section 2(b) of this Act, of additional lands or interests in lands, acceptable to the Secretary, which the Counties own on the date of enactment of this Act or may ac-

quire after such date. Such additional lands shall have a value as approved by the Secretary at least equal to the amount owed plus annual interest on such amount or unconveyed portion thereof, as applicable, at the standard rate determined by the Secretary of the Treasury to be applicable to marketable securities of the United States having a comparable maturity. Interest shall accrue beginning on the date the nursery lands are transferred to the Counties pursuant to section 2(b) of this Act.

(d) RIGHT OF FIRST REFUSAL.—The Secretary may convey any or all of the nursery lands reserved pursuant to subsection (a) of this section for fair market value under existing authorities, except that the Secretary shall first offer the Counties the opportunity to acquire the lands. This right of first refusal shall commence upon receipt by the Counties of written notice of the intent of the Secretary to convey such property, and the Counties shall have sixty days from the date of such receipt to offer to acquire such properties at fair market value as tenants in common. The Secretary shall have sole discretion as to whether to accept or reject any such offer of the Counties.

SEC. 4 STATUS OF LANDS ACQUIRED BY THE UNITED STATES.

(a) NATIONAL FOREST SYSTEM LANDS.—The National Forest inholdings acquired by the United States pursuant to this Act shall become a part of the White River National Forest (or in the case of portions of parcels 39, 40, and 41 depicted on map 9, and a portion of parcel 54 of map 12, part of the Gunnison and Arapahoe National Forests, respectively) for administration and management by the Secretary in accordance with the laws, rules, and regulations applicable to the National Forest System.

(b) WILDERNESS.—The National Forest inholdings that are within the boundaries of the Holy Cross, Hunter-Fryingpan, Collegiate Peaks and Maroon Bells-Snowmass Wilderness Areas shall be incorporated in and deemed to be part of their respective wilderness areas and shall be administered in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness.

SEC. 5. RESOLVING TITLE DISPUTES TO NATIONAL FOREST INHOLDINGS.

(a) QUIET TITLE ACT.—Notwithstanding any other provisions of law and subject to the provisions of subsection (c) of this section, section 2409a of title 28, United States Code (commonly referred to as the "Quiet Title Act") shall be the sole legal remedy of any party claiming any right, title, or interest in or to any National Forest inholdings conveyed by the Counties to the United States pursuant to this Act.

(b) LISTING.—Upon conveyance of the National Forest inholdings to the United States, the Secretary shall cause to be published in a newspaper or newspapers of general circulation in Pitkin and Eagle Counties, Colorado, a listing of all National Forest inholdings acquired pursuant to this Act together with a statement that any party desiring to assert a claim of any right, title, or interest in or to such lands must bring an action against the United States pursuant to such section 2409a within the same period described by subsection (c) of this section.

(c) LIMITATION.—Notwithstanding section 2409a(g) of title 28, United States Code, any civil action against the United States to quiet title to National Forest inholdings conveyed to the United States pursuant to this Act must be filed in the United States District Court for the District of Colorado no later than the date that is six years after the date of publication of the listing required by subsection (b) of this section.

(d) VESTING BY OPERATION OF LAW.—Subject to any easements or other rights of record that may be accepted and expressly disclaimed by the Secretary, and without limiting title to National Forest inholdings, conveyed by the Counties pursuant to this Act, all other rights, title, and interest in or to such National Forest inholdings if not otherwise vested by quitclaim deed to the United States, shall vest in the United States on the date that is six years after the date of publication of the listing required by subsection (b) of this section, except for such title as is conveyed by the Counties, no other rights, title, or interest in or to any parcel of the lands conveyed to the United States pursuant to this Act shall vest in the United States under this subsection if title to such parcel—

(1) has been or hereafter is adjudicated as being in a party other than the United States or the Counties; or

(2) is the subject of any section or suit against the United States to vest such title in a party other than the United States or the Counties that is pending on the date six years after the date of publication of a listing required by subsection (b) of this section.

(e) COSTS AND ATTORNEY'S FEES.—(1) At the discretion of the court, any party claiming right, title, or interest in or to any of the National Forest inholdings who files an action against the United States to quiet title and fails to prevail in such action may be required to pay to the Secretary on behalf of the United States, an amount equal to the costs and attorney's fees incurred by the United States in the defense of such action.

(2) As a condition of any transfer of lands to the Counties under this Act, the Counties shall be obligated to reimburse the United States for 50 percent of all costs in excess of $240,000 not reimbursed pursuant to paragraph (1) of this subsection associated with the defense by the United States of any claim or legal action brought against the United States with respect to any rights, title, and interest in or to the National Forest inholdings. Payment shall be made in the same manner as provided in section 6 of this Act.

SEC. 6. REIMBURSEMENT TO THE UNITED STATES.

(A) IN GENERAL.—As a condition of any transfer of lands to the Counties under this Act, in addition to any amounts required to be paid to the United States pursuant to section 5(e), in the event of a final determination adverse to the United States in any action relating to the title to the National Forest inholdings, the United States shall be entitled to receive from the Counties reimbursement equal to the fair market value (appraised as if they had marketable title) of the lands that are the subject of such final determination.

(b) AVAILABILITY OF FUNDS.—Any money received by the United States from the Counties under section 5(e) or subsection (a) of this section shall be considered money received and deposited pursuant to the Act of December 4, 1967, as amended (and commonly known as the Sisk Act, 16 U.S.C. 484a).

(c) IN-KIND PAYMENT OF LANDS.—In lieu of monetary payments, any obligation for reimbursement by the Counties to the United States under this Act can be fulfilled by the conveyance to the United States of lands having a current fair market value equal to or greater than the amount of the obligation. Such lands shall be mutually acceptable to the Secretary and the Counties.

SEC. 7. WATER RIGHTS.

(a) ALLOCATION AND MANAGEMENT.—The water rights in existence on the date of enactment of this Act in the Mt. Sopris Tree Nursery, which comprise well water and irrigation ditch rights adjudicated under the laws of the State of Colorado, together with the right to administer, maintain, access, and further develop such rights, shall be allocated and managed as follows:

(1) The United States shall convey to the Counties as undivided tenants in common all rights associated with the five existing wells on the properties.

(2) If the Secretary determines that water from the five existing wells is necessary to meet culinary, sanitary, or domestic uses of the existing buildings retained by the United States pursuant to section 3(a), the Counties shall make available to the United States, without charge, enough water to reasonably serve such needs and shall additionally, if requested by the United States, make every future effort to cooperatively provide to the United States, without charge, commensurate with the Counties own needs on Tract A, water to serve reasonable culinary, sanitary and domestic uses of any new buildings which the United States may construct on its retained lands in the future.

(3) All federally owned irrigation ditch water rights shall be reserved by the United States.

(b) MODIFICATION OF ALLOCATION.—If the Secretary and the Counties determine the public interest will be better served thereby, they may agree to modify the precise water allocation made pursuant to this section or to enter into cooperative agreements (with or without reimbursement) to use, share, or otherwise administer such water rights and associated facilities as they determine appropriate.

SEC. 8. MISCELLANEOUS PROVISIONS

(a) TIME REQUIREMENT FOR COMPLETING TRANSFER.—If the Counties make a timely offer, pursuant to section 2(a), the transfers of lands authorized and directed by this Act shall be completed no later than one year after the date of enactment of this Act.

(b) BOUNDARY MODIFICATIONS.—The Secretary and the Counties may mutually agree to make modifications of the final boundary between tracts A and B prior to completion of the exchange authorized by this Act if such modifications are determined to better serve mutual objectives than the precise boundaries as set forth in the maps referenced in this Act.

(c) TRACT A EASEMENT.—The transfer of tract A to the Counties shall be subject to the existing highway easement to the State of Colorado and to any other right, title, or interest of record.

(d) VALIDITY.—If any provision of this Act or the application thereof is held invalid, the remainder of the Act and application thereof, except for the precise provision held invalid, shall not be affected thereby.

(e) FOREST HEADQUARTERS AND ADMINISTRATIVE OFFICES.—The White River National Forest Headquarters and administrative office in Glenwood Springs, Colorado, are hereby transferred from the jurisdiction of the United States General Services Administration to the jurisdiction of the Secretary, who shall retain such facilities unless and until otherwise provided by subsequent Act of Congress.•

By Mr. BOREN (for himself, Mr. PACKWOOD, Mr. DANFORTH, Mr. BRYAN, and Mr. HARKIN):

S. 342. A bill to amend the Internal Revenue Code of 1986 to encourage in-

vestment in real estate and for other purposes; to the Committee on Finance.

REAL ESTATE STABILITY AND RECOVERY AMENDMENTS OF 1993

• Mr. BOREN. Mr. President, I am pleased today to join with two of my colleagues, Mr. PACKWOOD and Mr. DANFORTH, in introducing legislation designed to enhance economic growth in this country by increasing real property values. Real estate is a major section of the U.S. economy and is a principal asset of banks, insurance companies, and pension funds. When the asset base is in trouble, so are these financial institutions. Therefore, it is clearly in the best interest of our Nation's economy to have a fundamentally sound real estate market.

The three provisions contained in the Real Estate Stability and Recovery Amendments of 1993 were included in H.R. 11, the comprehensive tax and economic growth bill that we passed last session. Unfortunately, this legislation was vetoed by President Bush, so the Congress must act again to revitalize the real estate market. The provisions that we introduce today are: First, a modification of the passive loss rules for real estate investments; second, a provision relating to the tax treatment of the discharge of indebtedness; and third, provisions facilitating prudent pension investment strategies in real estate.

PASSIVE LOSS RELIEF

The passive loss rules enacted by the so-called Tax Reform Act of 1986 treat people in the rental real estate business differently than professionals in all other businesses. Generally, taxpayers may offset losses incurred in activities in which they materially participate against active income. An exception to this rule is made for all taxpayers engaged in rental activities, including rental real estate. Such taxpayers are treated as passive investors regardless of the extent of their involvement in a rental real estate activity. Accordingly, they are taxed on their overall gross income, rather than their net income.

This inequitable situation has had dramatic negative economic effects. It has exacerbated the crisis in our financial industry by discouraging real estate professionals from holding on to troubled properties, thereby discouraging workouts of distressed properties. In addition, the unfavorable treatment of losses from rental real estate has decreased the willingness of entrepreneurs to purchase property held by the Resolution Trust Corporation,thus increasing the long-term exposure to all taxpayers. Finally, the downward pressure on real property values has seriously eroded local property tax bases.

The legislation that we introduced today would remedy these problems without allowing a return to tax sheltering through real estate investments. The Mortgage Bankers Association has estimated that adoption of this legislation could increase real property values by three to seven percent. Under our proposal, once an individual meets a threshold test that establishes that she be "engaged in the real property business, then the taxpayer would be allowed to prove that she materially participated in the rental activity under the same test that all other taxpayers use to prove material participation in a business. An individual would be engaged in the real property business if she spends at least 50 percent of her annual working time in real property trades or businesses.

Mr. President, let me make very clear that tax shelter investors in real estate and others whose principal occupation is not the real property business would receive no benefit from this provision.

DISCHARGE OF INDEBTEDNESS

Last year, Senator PRYOR, along with others, introduced the Discharge of Indebtedness Reform Act. His proposal was included in H.R. 11 and is a crucial part of our legislation to rejuvenate the real estate sector of the economy. passage is vital if our financial institutions are to continue on the long and difficult path to economic recovery.

One of the biggest obstacles to economic recovery in the Southwest is the number of properties that cannot support their debt load. Financially-strapped owners usually have three options: declare bankruptcy, dump the property on the financial institution, or renegotiate the loan with the financial institution. Since 1986, taxpayers who chose the latter option are immediately subject to taxation on the amount of debt reduced under the restructuring agreement. Many times this tax would be significantly lower if the owner simply deeded the property back to the lender. Moreover, the owner may completely avoid tax under the bankruptcy or insolvency rules, although recourse to this protection removes property from the market, results in costly legal fees, and generally inhibits overall economic activity.

The provision we include today would reinstate the pre-Tax Reform Act tax treatment for individuals who own real property. Because the discharge of indebtedness results in only phantom income for solvent taxpayers, this legislation would allow owners to defer the payment of taxes until the sale of the property, when they are more likely to have cash in hand to pay the additional taxes.

By requiring the property owner to lower the basis in the property by the amount of the discharge of indebtedness, we would not allow the taxpayer to avoid taxation. The taxes would be paid to the government over time through lower depreciation deductions and ultimately would be fully paid when a sale occurs.

The benefits of the provision are obvious. By encouraging loan workouts, the proposal would help ease pressure on financial institutions and moderate the credit crunch. Indeed, the rationale in 1986 for maintaining such a discharge rule for farm debt was the recognition of a credit and land rules crisis in the agricultural sector of the economy. Moreover, properties taken back by a financial institution require bank capital reserves of 10 to 20 percent, unlike restructured loans that require de mimimas capital reserving. High capital reserves, such as those required for foreclosed real estate, reduce the capital available for business investment and may ultimately increase the chance of more bank and thrift closures.

PENSION INVESTMENT

H.R. 11 included a variety of provisions designed to facilitate prudent investment in real estate by pension funds. Pension funds, with their long-term liabilities, are a logical source of capital and credit for long-term real estate. Indeed, many pension fund managers recommend a 5 to 15 percent allocation of the investment portfolio to real estate. Unfortunately, several current tax policies create undesirable and unnecessary obstacles to the expansion of such investment.

We have included in the Real Estate Stability and Recovery Amendments several of these provisions that enlarge the role of pension funds in real estate investment, while maintaining the significant protections against undue risk. These provisions include:

Application of a look-through rule, similar to that applied to foreign pension funds, to domestic pension funds investing in real estate assets through REIT's.

Revision of rules that unduly restrict pension fund investments in debt-financed real estate.

Mofification of the treatment of cash-flow or participating loans, of sale-leasebacks, and of nonabusive seller-financing arrangements.

CONCLUSION

Mr. President, after long consideration, we passed all of these measures last year. We were committed to their enactment as a vital part of any economic growth package. President Clinton has made the revitalization of our economy a priority for the first months of his term. I therefore urge my colleagues and the administration to study this legislation and join us in enacting it into law. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 342

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Real Estate Stability and Recovery Amendments of 1993".

(b) REFERENCE.—Except as otherwise expressly provided, 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 Internal Revenue Code of 1986.

TITLE I—MODIFICATION OF PASSIVE LOSS RULES

SEC. 101. APPLICATION OF PASSIVE LOSS RULES TO RENTAL REAL ESTATE ACTIVITIES.

(a) RENTAL REAL ESTATE ACTIVITIES OF PERSONS IN REAL PROPERTY BUSINESS NOT AUTOMATICALLY TREATED AS PASSIVE ACTIVITIES.—Subsection (c) of section 469 (defining passive activity) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR TAXPAYERS IN REAL PROPERTY BUSINESS.—

"(A) IN GENERAL.—If this paragraph applies to any taxpayer for a taxable year—

"(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

"(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity. Nothing in the preceding provisions of this subparagraph shall be construed as affecting the determination of whether the taxpayer materially participates with respect to any interest in a limited partnership as a limited partner.

"(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to a taxpayer for a taxable year if more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates.

"(C) REAL PROPERTY TRADE OR BUSINESS.—For purposes of this paragraph, the term 'real property trade or business' means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

"(D) SPECIAL RULES FOR SUBPARAGRAPH (B).—

"(i) CLOSELY HELD C CORPORATIONS.—In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

"(ii) PERSONAL SERVICES AS AN EMPLOYEE.—For purposes of subparagraph (B), personal services performed as an employee shall not be treated as performed in real property trades or businesses. The preceding sentence shall not apply if such employee is a 5-percent owner (as defined in section 416(i)(1)(B)) in the employer."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 469(c) is amended by striking "The" and inserting "Except as provided in paragraph (7), the".

(2) Clause (iv) of section 469(i)(3)(E) is amended by inserting "or any loss allowable by reason of subsection (c)(7)" after "loss".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

TITLE II—PROVISIONS RELATING TO REAL ESTATE INVESTMENTS BY PENSION FUNDS

SEC. 201. REAL ESTATE PROPERTY ACQUIRED BY A QUALIFIED ORGANIZATION.

(a) MODIFICATIONS OF EXCEPTIONS.—Paragraph (9) of section 514(c) (relating to real property acquired by a qualified organization) is amended by adding at the end thereof the following new subparagraphs:

"(G) SPECIAL RULES FOR PURPOSES OF THE EXCEPTIONS.—Except as otherwise provided by regulations—

"(i) SMALL LEASES DISREGARDED.—For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 25 percent of the leasable floor space in a building is covered by the lease and if the lease is on commercially reasonable terms.

"(ii) COMMERCIALLY REASONABLE FINANCING.—Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms.

"(H) QUALIFYING SALES BY FINANCIAL INSTITUTIONS.—

"(i) IN GENERAL.—In the case of a qualifying sale by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

"(ii) QUALIFYING SALE.—For purposes of this clause, there is a qualifying sale by a financial institution where—

"(I) a qualified organization acquires property described in clause (iii) from a financial institution and any gain recognized by the financial institution with respect to the property is ordinary income,

"(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the property described in clause (iii) immediately before the acquisition referred to in clause (iii) or (v), whichever is applicable, and

"(III) the value (determined as of the time of the sale) of the amount pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property does not exceed 30 percent of the value of the property (determined as of such time).

"(iii) PROPERTY TO WHICH SUBPARAGRAPH APPLIES.—Property is described in this clause if such property is foreclosure property, or is real property which—

"(I) was acquired by the qualified organization from a financial institution which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

"(II) was held by the financial institution at the time it entered into conservatorship or receivership.

"(iv) FINANCIAL INSTITUTION.—For purposes of this subparagraph, the term 'financial institution' means—

"(I) any financial institution described in section 581 or 591(a),

"(II) any other corporation which is a direct or indirect subsidiary of an institution referred to in subclause (I) but only if, by virtue of being affiliated with such institution, such other corporation is subject to supervision and examination by a Federal or State agency which regulates institutions referred to in subclause (I), and

"(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II) (or any government agency or corporation succeeding to the rights or interest of such person).

"(v) FORECLOSURE PROPERTY.—For purposes of this subparagraph, the term 'foreclosure property' means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was imminent) on indebtedness which such property secured.".

(b) CONFORMING AMENDMENT.—Paragraph (9) of section 514(c) is amended—

(1) by adding the following new sentence at the end of subparagraph (A): "For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.", and

(2) by striking the last sentence of subparagraph (B).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to acquisitions on or after January 1, 1993.

(2) SMALL LEASES.—The provisions of section 514(c)(9)(G)(i) of the Internal Revenue Code of 1986 shall, in addition to any leases to which the provisions apply by reason of paragraph (1), apply to leases entered into on or after January 1, 1993.

SEC. 202. SPECIAL RULES FOR INVESTMENTS IN PARTNERSHIPS.

(a) MODIFICATION TO ANTI-ABUSE RULES.—Paragraph (9) of section 514(c) (as amended by section 201) is amended by adding at the end thereof the following new subparagraph:

"(J) PARTNERSHIPS NOT INVOLVING TAX AVOIDANCE.—

"(i) DE MINIMIS RULE FOR CERTAIN LARGE PARTNERSHIPS.—The provisions of subparagraph (B) shall not apply to an investment in a partnership having at least 250 partners if—

"(I) interests in such partnership were offered for sale in an offering registered with the Securities and Exchange Commission,

"(II) at least 50 percent of each class of interests in such partnership is owned by individuals who are not disqualified persons, and

"(III) the principal purpose of partnership allocations is not tax avoidance.

The Secretary may disregard inadvertent failures to meet the requirements of subclause (II). For purposes of subclause (II), interests owned by individual retirement plans (as defined in section 7701(a)(37)) shall not be taken into account.

"(ii) DISQUALIFIED PERSONS.—For purposes of this subparagraph, the term 'disqualified person' means any person described in clause (iii) or (iv) of subparagraph (B) and any person who is not a United States person.".

(b) REPEAL OF SPECIAL TREATMENT OF PUBLICLY TRADED PARTNERSHIPS.—Subsection (c) of section 512 is amended—

(1) by striking paragraph (2),

(2) by redesignating paragraph (3) as paragraph (2), and

(3) by striking "paragraph (1) or (2)" in paragraph (2) (as so redesignated) and inserting "paragraph (1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership years ending after December 31, 1992.

SEC. 203. TITLE-HOLDING COMPANIES PERMITTED TO RECEIVE SMALL AMOUNTS OF UNRELATED BUSINESS TAXABLE INCOME.

(a) GENERAL RULE.—Paragraph (25) of section 501(c) is amended by adding at the end thereof the following new subparagraph:

"(G)(i) An organization shall not be treated as failing to be described in this para-

graph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

"(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income."

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 501(c) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 204. EXCLUSION FROM UNRELATED BUSINESS TAX OF GAINS FROM CERTAIN PROPERTY.

(a) GENERAL RULE.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end thereof the following new paragraph:

"(16)(A) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property described in subparagraph (B) if—

"(i) such property was acquired by the organization from—

"(I) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or

"(II) the conservator or receiver of such an institution (or any government agency or corporation succeeding to the rights or interests of the conservator or receiver),

"(ii) such property is designated by the organization within the 9-month period beginning on the date of its acquisition as property held for sale, except that not more than one-half (by value determined as of such date) of property acquired in a single transaction may be so designated,

"(iii) such sale, exchange, or disposition occurs before the later of—

"(I) the date which is 30 months after the date of the acquisition of such property, or

"(II) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

"(iv) while such property was held by the organization, the aggregate expenditures on improvements and development activities included in the basis of the property are (or were not) in excess of 20 percent of the net selling price of the property with respect to such property.

"(B) Property is described in this subparagraph if it is real property which—

"(i) was held by the financial institution at the time it entered into conservatorship or receivership, or

"(ii) was foreclosure property (as defined in section 514(c)(9)(H)(v)) which secured indebtedness held by the financial institution at such time.

For purposes of this subparagraph, real property includes an interest in a mortgage."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property acquired on or after January 1, 1993.

SEC. 205. EXCLUSION FROM UNRELATED BUSINESS TAX OF CERTAIN FEES AND OPTION PREMIUMS.

(a) LOAN COMMITMENT FEES.—Paragraph (1) of section 512(b) (relating to modifications) is amended by inserting "amounts received or accrued as consideration for entering into agreements to make loans," before "and annuities".

(b) OPTION PREMIUMS.—The second sentence of section 512(b)(5) is amended by inserting "or real property" before the period.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received on or after January 1, 1993.

SEC. 206. TREATMENT OF PENSION FUND INVESTMENTS IN REAL ESTATE INVESTMENT TRUSTS.

(a) GENERAL RULE.—Subsection (h) of section 856 (relating to closely held determinations) is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF TRUSTS DESCRIBED IN SECTION 401(a).—

"(A) LOOK-THRU TREATMENT.—

"(i) IN GENERAL.—Except as provided in clause (ii), in determining whether the stock ownership requirement of section 542(a)(2) is met for purposes of paragraph (1)(A), any stock held by a qualified trust shall be treated as held directly by its beneficiaries in proportion to their actuarial interests in such trust and shall not be treated as held by such trust.

"(ii) CERTAIN RELATED TRUSTS NOT ELIGIBLE.—Clause (i) shall not apply to any qualified trust if one or more disqualified persons (as defined in section 4975(e)(2), without regard to subparagraphs (B) and (I) thereof) with respect to such qualified trust hold in the aggregate 5 percent or more in value of the interests in the real estate investment trust and such real estate investment trust has accumulated earnings and profits attributable to any period for which it did not qualify as a real estate investment trust.

"(B) COORDINATION WITH PERSONAL HOLDING COMPANY RULES.—If any entity qualifies as a real estate investment trust for any taxable year by reason of subparagraph (A), such entity shall not be treated as a personal holding company for such taxable year for purposes of part II of subchapter G of this chapter.

"(C) TREATMENT FOR PURPOSES OF UNRELATED BUSINESS TAX.—If any qualified trust holds more than 10 percent (by value) of the interests in any pension-held REIT at any time during a taxable year, the trust shall be treated as having for such taxable year gross income from an unrelated trade or business in an amount which bears the same ratio to the aggregate dividends paid (or treated as paid) by the REIT to the trust for the taxable year of the REIT with or within which the taxable year of the trust ends (the 'REIT year') as—

"(i) the gross income (less direct expenses related thereto) of the REIT for the REIT year from unrelated trades or businesses (determined as if the REIT were a qualified trust), bears to

"(ii) the gross income (less direct expenses related thereto) of the REIT for the REIT year.

This subparagraph shall apply only if the ratio determined under the preceding sentence is at least 5 percent.

"(D) PENSION-HELD REIT.—For purposes of subparagraph (C)—

"(i) IN GENERAL.—A real estate investment trust is a pension-held REIT if such trust would not have qualified as a real estate investment trust but for the provisions of this paragraph and if such trust is predominantly held by qualified trusts.

"(ii) PREDOMINANTLY HELD.—For purposes of clause (i), a real estate investment trust is predominantly held by qualified trusts if—

"(I) at least 1 qualified trust holds more than 25 percent (by value) of the interests in such real estate investment trust, or

"(II) 1 or more qualified trusts (each of whom own more than 10 percent by value of the interests in such real estate investment trust) hold in the aggregate more than 50 percent (by value) of the interests in such real estate investment trust.

"(E) QUALIFIED TRUST.—For purposes of this paragraph, the term 'qualified trust' means any trust described in section 401(a) and exempt from tax under section 501(a)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1992.

TITLE III—DISCHARGE OF INDEBTEDNESS

SEC. 301. EXCLUSION FROM GROSS INCOME FOR INCOME FROM DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.

(a) IN GENERAL.—Paragraph (1) of section 108(a) (relating to income from discharge of indebtedness) is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by adding at the end the following new subparagraph:

"(D) in the case of an individual, the indebtedness discharged is qualified real property business indebtedness."

(b) QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—Section 108 is amended by inserting after subsection (b) the following new subsection:

"(c) TREATMENT OF DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—

"(1) BASIS REDUCTION.—

"(A) IN GENERAL.—The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

"(B) CROSS REFERENCE.—For provisions making the reduction described in subparagraph (A), see section 1017.

"(2) LIMITATIONS.—

"(A) INDEBTEDNESS IN EXCESS OF VALUE.—The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

"(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

"(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

"(B) OVERALL LIMITATION.—The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

"(3) QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—The term 'qualified real property business indebtedness' means indebtedness which—

"(A) was incurred or assumed by an individual in connection with real property used in a trade or business and is secured by such real property,

"(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

"(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

"(4) QUALIFIED ACQUISITION INDEBTEDNESS.—For purposes of paragraph (3)(B), the term 'qualified acquisition indebtedness' means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

"(5) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means."

(c) TECHNICAL AMENDMENTS.—

(1) Subparagraph (A) of section 108(a)(2) is amended by striking "and (C)" and inserting ", (C), and (D)".

(2) Subparagraph (B) of section 108(a)(2) is amended to read as follows:

"(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION AND QUALIFIED REAL PROPERTY BUSINESS EXCLUSION.—Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent."

(3) Subsection (d) of section 108 is amended by striking "Subsections (a), (b), and (g)" each place it appears in the heading thereof and in the text and headings of paragraphs (6) and (7)(A) and inserting "Subsections (a), (b), (c), and (g)".

(4) Subparagraph (B) of section 108(d)(7) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge."

(5) Subparagraph (A) of section 108(d)(9) is amended by inserting "or under paragraph (3)(B) of subsection (c)" after "subsection (b)".

(6) Paragraph (2) of section 1017(a) is amended by striking "or (b)(5)" and inserting ", (b)(5), or (c)(1)".

(7) Subparagraph (A) of section 1017(b)(3) is amended by inserting "or (c)(1)" after "subsection (b)(5)".

(8) Section 1017(b)(3) is amended by adding at the end the following new subparagraph:

"(F) SPECIAL RULES FOR QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—In the case of any amount which under section 108(c)(1) is to be applied to reduce basis—

"(i) depreciable property shall only include depreciable real property for purposes of subparagraphs (A) and (C),

"(ii) subparagraph (E) shall not apply, and

"(iii) in the case of property taken into account under section 108(c)(2)(B), the reduction with respect to such property shall be made as of the time immediately before disposition if earlier than the time under subsection (a)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges after December 31, 1992, in taxable years ending after such date.●

● Mr. PACKWOOD. Mr. President, today I am pleased to join my colleagues in introducing the Real Estate Stability and Recovery Amendments of 1993. It is a particular pleasure to join forces with Senators BOREN and DANFORTH, who have long championed policies to ensure a healthy, vigorous real estate industry.

While there are signs that our economy is now on the rebound, commercial real estate remains weak and unstable. The legislation we are introducing today will go a long way to helping this important industry get back on firm ground.

Our bill reintroduces three proposals from the last year's second vetoed tax bill (H.R. 11):

First, my proposal to change to the passive loss rules to make them more equitable for real estate.

Second, a change to the debt forgiveness tax rules to make it easier to restructure troubled real estate loans.

Third, various changes to make it easier for pension funds to invest in real estate.

Let me spend a moment on the passive loss proposal in this bill. When we drafted the passive loss rules in 1986, we were trying to eliminate tax shelters and, I might add, for the most part we succeeded. However, we did not intend to hit bona fide losses of someone actively running a business. Unfortunately, that was the effect of the passive loss rules on certain owners of rental real estate.

Back in November 1991, I introduced a bill to correct this inequity by allowing those whose primary business is real estate to prove they materially participate in rental real estate activities and therefore deduct losses generated by such activities. My proposal was adopted by Congress last year, but regretfully did not get signed into law. I hope we can act quickly to get this much-needed change enacted.

Finally, I would like to thank Senator PRYOR for his leadership on the debt forgiveness proposal in the bill. This proposal will pave the way for much-needed restructuring of commercial real estate loans, thereby avoiding unnecessary bankruptcies and financial problems for banks.

I urge my colleagues to cosponsor this important legislation.●

● Mr. DANFORTH. Mr. President, I join today with Senators BOREN and PACKWOOD to introduce the Real Estate Stability and Recovery Amendments Act of 1993.

This bill comprises three provisions that follow the real estate investment section of H.R. 11, which passed the Senate last year but was vetoed for other reasons. I believe these provisions will help the real estate industry fulfill its historic role of leading the Nation's economy to more jobs and solid prosperity.

The story of the real estate industry in recent years is by now familiar. In the early 1980's, structural changes in the banking system and the Tax Code joined to direct substantial amounts of capital to the commercial real estate sector. Problems began when restrictions on bank real estate lending were removed by the Garn-St. Germain Act in 1982, and the 1981 Tax Act's incentives to invest in real estate took effect. These measures caused heavy investment in real estate based on tax benefits and sheltering, as opposed to economic fundamentals.

In 1986, Congress attempted to respond to these problems. In doing so, Congress passed legislation that swung the pendulum too far in the other direction, stifling real estate markets and suddenly reducing the values of existing real estate. Legislation we introduce today will mitigate some of the harsh effects of those 1986 changes.

We have no illusion that our bill will be a panacea for all of the difficulties in the commercial and investment sector of real estate. To ensure a continued healthy real estate market, Congress must look to reduce long-term interest rates by demonstrating fiscal responsibility. Nonetheless, the changes are critical and are fair. They include passive loss relief, relief for certain debt restructuring involving troubled real estate, and the removal of barriers that currently keep pension funds from investing in real estate and real estate investment trusts.

When property values decline, as they have, it affects every part of the economy. Real estate holdings represent approximately two-thirds of the Nation's wealth and a quarter of our GNP. Moreover, real estate assets account for a third of household net worth. According to the National Realty Committee, real estate contributes to up one-fourth of all governments' tax revenues and 70 percent of local tax revenues for schools, roads, public safety, and other essential services.

Since 1986, some locations around the country have experienced as much as a 30-percent decline in the value of real estate in their markets. Imagine the effect on the tax base of that decline. Local governments are forced to cut back on schools, safety, and services. Imagine, too, the effect on the owners of those properties. Many of these owners are regular folks: retirees, working people, owners of small commercial and residential units who are affected in dramatic ways by the fall in property values. Federal Reserve data shows that fairly significant amounts of commercial real estate are held by households in income groups below $50,000. These individuals are adversely affected when real estate values fall. Retirement incomes are reduced, improvements are delayed, and family savings plans are eroded. The decline in property values reaches well beyond the glass see-through towers built in the 1980's.

To stop the continuing decline in real estate values, we must revise some Federal tax policies that have a negative impact on real estate markets. The provisions in our bill will do that.

The passive loss provisions are designed to restore fairness to owners and operators of real estate businesses. Our bill would modify the passive loss rules to ensure that those who materially participate in rental real estate businesses are treated in the same manner as individuals who materially participate in other businesses. This provision should be the centerpiece of any real estate package we might undertake.

The debt restructuring provisions address an anomalous timing problem created by current law. Today, if existing commercial real estate debt is restructured as part of an agreement between the lender and the borrower, the borrower must pay tax immediately on any forgiven debt, even though no cash income is generated. Our proposal would permit the borrower to reduce the basis of depreciable real estate property by the amount of the discharged debt. Thus, any tax liability from the discharged debt would ultimately be satisfied through lower depreciation deduction and by a greater capital gain at the time the property was sold. The provision is identical to current law treatment for farmers, and is the same as pre-1986 act law.

The pension investment provisions modify a number of technical provisions related to pension investment to real estate and real estate trusts. The provisions are carefully crafted to enhance investment options for fund managers while retaining all the current safeguards that protect fund beneficiaries.

There are many other proposals I favor to strengthen the real estate industry. I believe that a reduction in the tax on the sale of capital assets, including real estate, would significantly boost the value of real estate holdings. Moreover, I continue to work for a permanent and expanded low-income housing tax credit. I also believe that we should make permanent the mortgage revenue bond provision which expired last year will the other expiring provisions. I will separately continue to work on these efforts.

Mr. President, it is most important that we act on this package quickly. I urge Secretary Bentsen and the Clinton administration to include these provisions in any economic package submitted to Congress.•

By Mr. LAUTENBERG (for himself, Mrs. BOXER, Mr. DODD, Mr. FEINGOLD, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LIEBERMAN, Mr. SARBANES, and Mr. SIMON);

S. 343. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide relief to local taxpayers, municipalities, and small business regarding the cleanup of hazardous substance, and for other purposes; to the Committee on Environment and Public Works.

RELIEF FOR LOCAL TAXPAYERS AND SMALL BUSINESS IN CLEANUP OF TOXIC WASTE SITES

• Mr. LAUTENBERG. Mr. President, today I am introducing the Toxic Cleanup Equity and Acceleration Act of 1993. This legislation addresses an issue that is of critical importance not only to my home State of New Jersey but to literally thousands of towns and small businesses across the country.

Under the Federal Superfund law, polluters are held responsible for cleaning up the toxic waste sites that they created. But we are now seeing a perversion of that law. Some industrial polluters, seeking to avoid full liability, have turned around and sued towns and small businesses. These companies and their insurers have sought to shift to local taxpayers, nonprofits, and small businesses—including the Girl Scouts, churches, pizza parlors, and nursing homes—the burden of cleaning up industrial waste.

Over 450 municipalities and a thousand small businesses and nonprofits across the country have become the innocent victims of this litigation. In my own home State of New Jersey, dozens of towns and small businesses have been caught in the web of threatened liability. Two-table pizza parlors, flower shops, and churches are being asked to pay millions of dollars of potential liability. Yet these nonprofit groups, towns, and small businesses sent no more than ordinary household garbage and trash to a landfill. These people were never meant to bear the brunt of Superfund cleanups.

But why is this really happening? It is not just that industrial polluters are trying to dump their costs onto other parties. Some of them also hope, by bringing suits which EPA would never have brought, to undermine the Superfund Program and permanently shift cleanup costs to the taxpayers when the Superfund law comes up for renewal during this Congress.

We shall not let this happen. Eighteen months ago, I introduced a bill to clarify that towns and small businesses were never intended to bear these cleanup costs. I chaired hearings on this issue, at which public officials and businessmen from around the country testified.

Last June, Mr. President, the Senate on two separate occasions approved my legislation. These provisions had the support of numerous major national environmental and municipal groups. Unfortunately, companion legislation introduced in the House of Representatives was never brought out of committee or considered by the House.

Therefore, as we begin a new Congress, I am reintroducing legislation to provide relief to local taxpayers and businesses that have sent ordinary household trash to Superfund sites. This bill will stop all lawsuits against parties who sent only ordinary household trash or its equivalent to a site and relieve them of the burden of litigation costs, consistent with EPA's policies in this area.

This legislation applies to big business, small business, nonprofits, and towns that may have sent municipal solid waste or sewage sludge or its equivalent to a Superfund site. However, this bill does not let polluters off the hook, no matter who they are. It does not apply in cases where toxic wastes were involved. It is fair to all parties involved, and consistent with Congress's original intent to have polluters pay for cleanup but not to hold generators and transporters of ordinary household garbage liable.

I am joined in introducing this bill by Senators BOXER, DODD, FEINGOLD, LIEBERMAN, KENNEDY, KERRY, KOHL, SARBANES, and SIMON. This bill also has the strong support of major environmental and municipal groups, including the Sierra Club, Clean Water Action, Natural Resources Defense Council, U.S. Public Interest Research Group, Environmental Defense Fund, U.S. Conference of Mayors, National Association of Counties, National School Boards Association, National Association of Towns and Townships, American Communities for Cleanup Equity, and State organizations such as the New Jersey School Boards Association.

As chairman of the Subcommittee on Superfund, Recycling, and Solid Waste Management, I will be scrutinizing the overall Superfund Program during this session of Congress. I will continue to place a very high priority on getting relief to the local taxpayers and small businesses who are threatened by the burden of inappropriate lawsuits.

Mr. President, I ask unanimous consent to print in the RECORD a brief section-by-section analysis of the legislation and a copy of the bill itself.

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

S. 343

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 "Toxic Cleanup Equity and Acceleration Act of 1993".

SEC. 2. MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601) is amended by adding the following new paragraphs at the end thereof:

"(39) The term 'municipal solid waste' means all waste materials generated by households, including single and multiple residences, and hotels and motels. The term also includes trash generated by commercial, institutional, and industrial sources (a) when such materials are essentially the same as waste normally generated by households, or (b) when such waste materials were collected and disposed of with other municipal solid

waste or sewage sludge and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under section 3001(d) of the Solid Waste Disposal Act. Examples of municipal solid waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, school science laboratory waste, and household hazardous waste (such as painting, cleaning, gardening, and automotive supplies). The term 'municipal solid waste' does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

"(40) The term 'sewage sludge' refers to any solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste waters at or by a publicly-owned treatment works.

"(41) The term 'municipality' means any political subdivision of a State and may include cities, counties, villages, towns, townships, boroughs, parishes, schools, school districts, sanitation districts, water districts, and other local governmental entities. The term also includes any natural person acting in his or her official capacity as an official, employee, or agent of a municipality.".

(b) Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsections at the end thereof:

"(m) CONTRIBUTION ACTIONS FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—No municipality or other person shall be liable to any person other than the President for claims of contribution under this section or for other response costs, penalties, or damages under this Act for the generation, transportation, or arrangement for the transportation, treatment, or disposal of municipal solid waste or sewage sludge.

"(n) PUBLIC RIGHT-OF-WAY.—In no event shall a municipality incur liability under this Act for the acts of owning or maintaining a public right-of-way over which hazardous substances are transported, or of granting a business license to a private party for the transportation, treatment, or disposal of municipal solid waste or sewage sludge. For the purposes of this subsection, 'public right-of-way' includes, but is not limited to, roads, streets, flood control channels, or other public transportation routes, and pipelines used as a conduit for sewage or other liquid or semiliquid discharges.".

(c) Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by adding the following new subsection at the end thereof:

"(n) SETTLEMENTS FOR GENERATORS AND TRANSPORTERS OF MUNICIPAL SOLID WASTE OR SEWAGE SLUDGE.—

"(1) ELIGIBLE PERSONS.—The term 'eligible person' under this subsection means any person against whom an administrative or judicial action is brought, or to whom notice is given of potential liability under this Act, for the generation, transportation, or arrangement for the transportation, treatment, or disposal of municipal solid waste or sewage sludge. An eligible person who may be liable under section 107(a)(1) or 107(a)(2) of this Act or for substances other than municipal solid waste or sewage sludge is covered by the Toxic Cleanup Equity and Acceleration Act of 1993 and the amendments to this Act made by the Toxic Cleanup Equity and Acceleration Act of 1993 to the extent that the person is liable for the generation, transportation, or arrangement for the transportation, treatment, or disposal of municipal solid waste or sewage sludge.

"(2) NEGOTIATION OF SETTLEMENTS; MORATORIUM.—Eligible persons under this subsection may offer to settle their potential liability with the President by stating in writing their ability and willingness to settle their potential liability in accordance with this subsection. Upon receipt of such offer to settle, neither the President nor any other person shall take further administrative or judicial action against the eligible person, unless the President determines that the eligible person's offer or position during negotiations is not in good faith or otherwise not in accordance with this subsection or that the matters addressed include liability not related to the generation, transportation, or arrangement for the transportation, treatment, or disposal of municipal solid waste or sewage sludge. Nothing in this subsection shall limit or modify the President's authority under section 104(e) (42 U.S.C. §9604(e)).

"(3) TIMING.—Eligible persons may tender offers under this subsection within 180 days after receiving a notice of potential liability or becoming subject to administrative or judicial action, or within 180 days after a record of decision is issued for the portion of the response action that is the subject of the person's settlement offer, whichever is later. If the President notifies an eligible person that he or she may be a potentially responsible party, no further administrative or judicial action may be taken by any party for 120 days against such person.

"(4) EXPEDITED FINAL SETTLEMENT.—The President shall make a good faith effort to reach final settlements as promptly as possible under this subsection and such settlements shall—

"(A) allocate to all generation, transportation, or arrangement for the transportation, treatment, or disposal of municipal solid waste or sewage sludge a combined total of no more than four percent (4%) of the total response costs for the facility; *provided, however*, That the President shall reduce this percentage when the presence of municipal solid waste and sewage sludge is not significant at the facility;

"(B) require an eligible person under this subsection to pay only for his or her equitable share of the maximum four percent (4%) portion of response costs described in subparagraph (A);

"(C) limit an eligible person's payments based on such person's inability to pay, litigative risks, public interest considerations, precedential value, and equitable factors;

"(D) permit an eligible person to provide in-kind services with regard to the response action in lieu of cash contributions and to be credited at market rates for such services;

"(E) limit a publicly owned treatment works' payments if it has promoted the beneficial reuse of sewage sludge through land application when the basis of liability arises from sewage sludge generated 36 months after the date of enactment of this subsection or thereafter; and

"(F) be reached even in the event that an eligible person may be liable under sections 107(a)(1) or 107(a)(2) of this Act or for substances other than municipal solid waste or sewage sludge.

"(5) COVENANT NOT TO SUE.—The President may provide a covenant not to sue with respect to the facility concerned to any person who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f) of this section.

"(6) EFFECT OF AGREEMENT.—A person that has resolved his or her liability to the United States under this subsection shall not be liable for claims of contribution or for other response costs, penalties, or damages under this Act regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amounts of the settlement.

"(7) DE MINIMIS SETTLEMENTS.—Nothing in this subsection shall alter or diminish a person's ability to reach a settlement with the President under subsection (g) of this section.

"(o) FUTURE DISPOSAL PRACTICES.—This subsection applies only to the generation, transportation, or arrangement for the transportation, treatment, or disposal of municipal solid waste or sewage sludge occurring 36 months after the date of enactment of this subsection. Beginning at such time and with regard to such future municipal solid waste or sewage sludge, eligible persons who are municipalities or operators of publicly owned treatment works may assert the provisions of section 122(n) only under the following circumstances:

"(1) if liability arises from municipal solid waste collected and disposed of 36 months or later after the date of enactment of this subsection and the eligible person is a municipality, a qualified household hazardous waste collection program must have been operating while the municipal solid waste was collected and disposed; or

"(2) if liability arises from sewage sludge generated 36 months or later after the date of enactment of this subsection and the eligible person is an owner or operator of a publicly owned treatment works, a qualified publicly owned treatment works must have been operating while the sewage sludge was generated at such treatment works.

"(3) The term 'qualified household hazardous waste collection program' means a program that includes—

"(A) at least semiannual, well-publicized collections at conveniently located collection points with an intended goal of participation by ten percent of community households;

"(B) a public education program that identifies both hazardous household products and safer substitutes (source reduction);

"(C) efforts to collect hazardous waste from conditionally exempt small quantity generators under section 3001(d) of the Solid Waste Disposal Act, with an intended goal of collecting wastes from twenty percent of such generators doing business within the jurisdiction of the municipality; and

"(D) a comprehensive plan, which may include regional compacts or joint ventures, that outlines how the program will be accomplished.

"(4) A person that operates a 'qualified household hazardous waste collection program' and collects hazardous waste from conditionally exempt small quantity generators under section 3001(d) of the Solid Waste Disposal Act must transport or arrange to transport such waste in accordance with the Solid Waste Disposal Act and must dispose of such waste at a hazardous waste treatment, storage or disposal facility with a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. §6925), but such person is otherwise deemed to be handling only household waste under the Solid Waste Disposal

Act when it operates a qualified household hazardous waste collection program.

"(5) Nothing in this Act is intended to prohibit a municipality from assessing fees to persons whose waste is accepted during household hazardous waste collections, or shall prohibit a municipality from refusing to accept waste that the municipality believes is being disposed of in violation of the Solid Waste Disposal Act.

"(6) The term 'qualified publicly owned treatment works' means a publicly owned treatment works that complies with section 405 of the Federal Water Pollution Control Act (33 U.S.C. §1345).

"(7) The President may determine that a household hazardous waste collection program or a publicly owned treatment works is not qualified under this subsection. Minor instances of noncompliance do not render a household hazardous waste collection program or publicly owned treatment works unqualified under this subsection.

"(8) If the President determines that a household hazardous waste collection program is not qualified, the provisions of section 122(n) shall not apply, but only with regard to the municipal solid waste disposed of during the period of disqualification.

"(9) If a municipality or operator of a publicly owned treatment works is notified by the President or by a State with a program approved under section 402(b) of the Federal Water Pollution Control Act (33 U.S.C. §1342(b) that its publicly owned treatment works is not in compliance with the requirements of paragraph (6) of this subsection, and if such noncompliance is not remedied within twelve months, the provisions of section 122(n) shall not apply, but only with regard to the sewage sludge generated or disposed of during the period of noncompliance.".

(d) Section 122(g)(1)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended by inserting the following sentence at the end thereof: "The amount of hazardous substances in municipal solid waste and sewage sludge shall refer to the quantity of hazardous substances which are constituents within municipal solid waste and sewage sludge, not the overall quantity of municipal solid waste and sewage sludge.".

(e) Nothing in this section shall modify the meaning or interpretation of the Solid Waste Disposal Act.

(f) Nothing in this section shall modify a State's ability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to carry out actions authorized in such Act and to enter into a contract or cooperative agreement with the President to carry out such actions.

(g) The settlement procedures and bar on judicial and administrative proceedings addressed in this section shall apply even if any constituent component of municipal solid waste or sewage sludge may be considered a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 when the constituent component exists apart from municipal solid waste or sewage sludge.

(h) This Act and the amendments made by this section shall apply to each municipality and other person against whom administrative or judicial action has been commenced before the effective date of this Act, unless a final court judgment has been rendered against such municipality or other person or final court approval of a settlement agreement including such municipality or other person as a party has been granted. If a final court judgment has been rendered or court-approved settlement agreement has been reached that does not resolve all contested * * *

SECTION-BY-SECTION ANALYSIS OF THE TOXIC CLEANUP EQUITY AND ACCELERATION ACT OF 1993

SECTION 1

This section entitles this legislation as "The Toxic Cleanup Equity and Acceleration Act of 1993."

SECTION 2

Subsection (a)—Additional Definitions

The legislation adds three new definitions to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601 *et seq.* Any reference to "CERCLA" or "Superfund" should be construed as a reference to that act. The subsection does not alter any existing definitions under CERCLA and thus, for example, does not affect current law's definition of "person" as virtually any public or private entity or natural person, including federal, state, and local governments.

The subsection defines "municipal solid waste" (MSW) as including all waste materials generated by households and multiple residences, as well as waste from other sources when it is essentially the same as household waste. The definition also includes small amounts of hazardous waste that can legally become part of the municipal waste stream under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6921(d). The term does not include incinerator ash or waste from industrial processes not essentially the same as household waste but also regulated under Subtitle D of RCRA.

The subsection defines "sewage sludge" as essentially any residue removed during the treatment of waste water at a publicly-owned treatment works.

The subsection defines "municipality" to include any political subdivision of a state and includes individuals who act in an official capacity on behalf of a municipality.

Subsection (b)—Third-part Suits for MSW or Sewage Sludge

Under CERCLA, "potentially responsible parties" (PRPs) who have been notified by EPA that they may be liable for cleanup costs have the right to sue other parties who may also be responsible for the hazardous waste site. Such "third-party" or "contribution" suits provide PRPs a mechanism for making other polluters share the cleanup costs.

This subsection modifies CERCLA to prohibit third-party suits for contribution or for other response costs, penalties, or damages against any persons if the actions challenged were related to the generation or transportation of MSW or sewage sludge. As used herein, "generation" or "generators" is meant to refer to actions or persons described by section 107(a)(3) of CERCLA and may include arranging for the transportation, treatment, or disposal of hazardous substances. "Transportation" or "transporters" is meant to refer to actions or persons described by section 107(a)(4). To the extent municipalities or other persons owned or operated a facility, or generated or transported waste materials that do not meet the definitions of municipal solid waste and sewage sludge, the block on third-part suits does not apply.

The subsection defines two situations in which a municipality will not be liable under Superfund for exercising its regulatory power: when it owns a public right-of-way, such as a road or sewage pipeline, over which hazardous substances are transported, or when it grants a business license to a private party to transport or dispose of municipal solid waste or sewage sludge.

Subsection (c)—Settlements

The subsection creates a special settlement opportunity for any person alleged to be a generator or transporter of MSW or sewage sludge in an administrative or judicial action. Such persons may offer to settle their potential liability with the President by stating in writing their ability and willingness to pay their share of cleanup costs in accordance with this subsection. Upon receipt of such a good faith offer to settle, all further administrative or judicial action against such party is stayed pending negotiations with the President, unless the President determines that the party is not negotiating in good faith or that the settlement offer addresses liability not related to the generation or transportation of MSW or sewage sludge.

Eligible persons may tender offers either (1) within 180 days after receiving a notice of potential liability or becoming subject to administrative or judicial action or (2) within 180 days after a record of decision is issued for the portion of the response action for which the person may have liability, whichever is later. In any event, neither the President nor any other person may pursue administrative or judicial action against any eligible party for 120 days after such party receives a notice of potential liability from the government.

In negotiating final settlements with persons eligible to tender offers under this subsection, the President shall (1) make a good faith effort to reach such settlements expeditiously; (2) allocate to all generation and transportation of MSW or sewage sludge a combined total of no more than four percent of total cleanup costs; (3) reduce such percentage share when the presence of MSW or sewage sludge is not significant at the facility; (4) require each individual eligible party to pay no more than his or her fair share of the total MSW or sewage sludge share; (5) limit an eligible person's contribution based on such person's inability to pay, public interest considerations, and other equitable factors; (6) permit eligible persons to provide in-kind services credited at market rates in lieu of a cash contribution; and (7) beginning 36 months following the date of enactment, for disposal of sewage sludge occurring after the date, limit a publicly owned treatment works' payments if it has promoted the beneficial reuse of sewage sludge through land application.

The subsection provides further that eligible parties shall be able to negotiate settlements under its terms even if they have committed acts that could give rise to potential liability under other sections of the statute by, for example, acting as the owner or operator of a site.

The subsection states that the President may provide a covenant not to sue with respect to the facility concerned to any person who has entered into a settlement under the subsection and that any such settlement blocks all future claims of contribution or other cost recovery, penalties, or damages regarding matters the settlement addresses. Such a settlement does not discharge the liability of any potentially responsible parties who do not participate in it, although such parties' liability shall be reduced by the amount paid under the settlement.

This subsection further provides that beginning three years after the date of enact-

ment of the legislation, for disposal of MSW or sewage sludge that occurs at such time or later, municipalities wishing to take advantage of the settlement provisions of the subsection must take the following affirmative steps.

For potentially responsible municipal parties allegedly liable for the generation or transportation of MSW, eligible municipalities must establish a "qualified household hazardous waste collection program" that includes at least (1) semiannual, well-publicized collections at conveniently located collection points with the intended goal of participation by ten percent of community households; (2) a public education program that identifies both hazardous products and safer substitutes; (3) efforts to collect hazardous waste from conditionally exempt generators; and (4) a comprehensive plan, which may include regional compacts or joint ventures, outlining how the program will be accomplished.

For potentially responsible owners or operators of publicly owned treatment works whose liability allegedly arises out of the generation or transportation of sewage sludge, eligible parties must comply with section 405 of the Federal Water Pollution Control Act regulating the disposal of sewage sludge.

The subsection further provides that the President may determine that a household hazardous waste collection program or a publicly owned treatment works is not qualified under the subsection, but that minor instances of noncompliance do not render such programs or facilities unqualified. It states that when a municipality is notified that its publicly owned treatment works may not comply with the requirements of the subsection, the municipality shall have 12 months to rectify the identified problems. If such noncompliance is not remedied within 12 months, or if the President determines that a household hazardous waste collection program is not qualified for some period, the municipality shall lose its ability to use the settlement provisions of the subsection, but only with respect to waste materials disposed of during the period of noncompliance.

Subsection (d)—Volume of Municipal Solid Waste and Sewage Sludge

The subsection states that in determining eligibility for de minimis settlements under section 122(g)(1)(A)(i) of CERCLA, the amount of hazardous substances in MSW or sewage sludge shall refer to the quantity of hazardous substances which are constituents within the MSW or sewage sludge, not the overall quantity of such waste materials.

Subsection (e)—Effect on Other Law

The subsection states that the legislation does not modify the meaning or interpretation of the Solid Waste Disposal Act.

Subsection (f)—State Enforcement

The subsection states that the legislation does not modify the states' ability to carry out actions authorized by Superfund or through cooperative agreements with the President.

Subsection (g)—Constituent Components of MSW and Sewage Sludge

The subsection makes clear that the legislation shall apply to municipal solid waste and sewage sludge as defined, even though these materials may contain constituent components that are considered hazardous substances under Superfund when they exist apart from MSW or sewage sludge.

Subsection (h)—Retroactivity

This subsection provides that the legislation applies to all administrative or judicial actions that began before the effective date of the legislation, unless a final court judgment has been rendered or a court-approved settlement agreement has been reached.•

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 344. A bill to direct the Secretary of the Interior to conduct a study to determine the suitability and feasibility of designating the Fox and Lower Wisconsin River corridors in the State of Wisconsin as a National Heritage Corridor, and for other purposes; to the Committee on Energy and Natural Resources.

THE FOX-WISCONSIN RIVER NATIONAL HERITAGE CORRIDOR STUDY ACT OF 1993

• Mr. KOHL. Mr. President, I rise today to introduce the Fox-Wisconsin River National Heritage Corridor Study Act of 1993, and I welcome my colleague Senator FEINGOLD as an original cosponsor of this legislation. While identical legislation passed the Senate last year, it did not pass the House of Representatives before the conclusion of the 102d Congress.

The purpose of this legislation is to establish a process for determining the suitability and feasibility of designating the Fox and Lower Wisconsin River corridors as a National Heritage Corridor. The National Heritage Corridor designation could provide for the revitalization of this historic transport artery, and link together the significant tourist attractions of this region.

Stretching from Lake Michigan's Green Bay to the Mississippi River, the Fox-Wisconsin River Corridor has played a major role in the exploration and settlement of North America. Following this route, 17th century explorers Marquette and Joliet traveled down the Mississippi River and into the Gulf of Mexico, opening what became the Northwest Territory.

Throughout the 19th and 20 centuries, the Fox River played a significant role in the industrial development of this Nation. The Fox River boasts the country's oldest continuously operated manual lock system. It was also the site of the world's first hydroelectric plant. John Muir came to America as a Scottish immigrant and settled with his parents on the farm near the Fox River. Muir, who became perhaps America's foremost conservationist, learned his love of nature during his boyhood on the river. As an adult, he moved west and is credited with helping to establish Yosemite and Sequoia National Parks, along with the Sierra Club.

The Lower Wisconsin's sandy banks are also replete with history. Aldo Leopold was a leading scholar of conservation in the earlier part of this century. At his River Bottom farm on the banks of the Wisconsin River, he wrote A Sand County Almanac, which became a bible of the environmental movement in the sixties and seventies. Just downstream, Frank Lloyd Wright designed and built his school of architecture, Taliesin, 100 yards from the banks of the Wisconsin River. Just 2 weeks ago, I introduced the Taliesin Preservation Act of 1993, to make this internationally significant site an affiliate of the National Park Service and to authorize Federal funds to match restoration funds raised from State and private sources.

The Fox-Wisconsin Corridor contains hundreds of historical sites such as these, all of them well documented. The East-Central Wisconsin Regional Planning Commission produced an in-depth survey of historical landmarks along the Fox River. The Lower Wisconsin State Riverway Board, an office of the State government, has cataloged historical attributes of the Wisconsin River. In 1979, under the Wild and Scenic Rivers Act, the National Park Service produced a report on the Lower Wisconsin River, advocating that this natural resource be protected. Finally, the State historical society and the Department of Natural Resources have compiled extensive scientific, cultural, and historical data on both the Fox and Wisconsin Rivers.

While I believe that the designation of the corridor as a National Heritage Corridor would be beneficial to the people and the resources of the region, this legislation does not seek to make that designation at this time. Instead, this legislation would establish a 2-year study, to solicit strong input from local residents, to help in making a determination as to whether or not such a designation would be suitable. Local involvement at the planning stages of this effort will be critical if the Fox-Wisconsin River National Heritage Corridor is to be successfully established in the future.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 344

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 "Fox-Wisconsin River National Heritage Corridor Study Act of 1993".

SEC. 2. FINDINGS.

Congress finds that—

(1) the Fox-Wisconsin waterway is famous as the discovery route of Marquette and Joliet;

(2) as the connecting route between the Great Lakes and the Mississippi River, the waterway was critical to the opening of the Northwest Territory, and served as a major artery in bringing commerce to the interior of the United States and providing a vital communication link for early explorers, missionaries, and fur traders;

(3) within the Fox and Lower Wisconsin River corridors are an abundance of historic and archaeological sites and structures representing early Native Americans, European

exploration, and 19th-century transportation and settlement; and

(4) the unique aspects of the waterway, from the heavily developed portion of the Fox River to the pristine expanses of the Lower Wisconsin River, should be studied to determine the waterway's suitability and feasibility for designation as a National Heritage Corridor.

SEC. 3. STUDY OF FOX-WISCONSIN RIVER CORRIDORS.

(a) IN GENERAL.—Not later than 2 years after the date funds are made available to carry out this Act, the Secretary of the Interior (referred to in this Act as the "Secretary") shall prepare a study on the suitability and feasibility of designating the Fox and Lower Wisconsin River corridors in the State of Wisconsin as a National Heritage Corridor.

(b) REPORT TO CONGRESS.—On completion of the study referred to in subsection (a), the Secretary shall submit a report describing the results of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives.

SEC. 4. FOX-WISCONSIN RIVER STUDY ADVISORY COMMISSION.

(a) IN GENERAL.—There is established the Fox-Wisconsin River Study Advisory Commission (referred to in this Act as the "Commission") to advise the Secretary with respect to the preparation of the study required under section 3(a).

(b) MEMBERSHIP.—The Commission shall consist of 16 members, appointed by the Secretary, of whom—

(1) 4 members shall be made from recommendations submitted by the Governor of the State of Wisconsin, to represent affected State agencies;

(2) 4 members shall represent local governments from affected communities along the Fox and Lower Wisconsin River corridors; and

(3) 8 members shall be made from the general public, who shall have knowledge and experience in appropriate fields of interest relating to the preservation, use, and interpretation of the Fox and Lower Wisconsin River corridors, of whom—

(A) 4 members shall be residents of the Fox River region; and

(B) 4 members shall be residents of the Lower Wisconsin River region.

(c) CHAIRPERSON.—The members of the Commission shall elect a Chairperson from among the members of the Commission.

(d) VACANCIES.—Vacancies on the Commission shall be filled in the same manner in which the original appointment was made.

(e) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(f) COMPENSATION.—Members of the Commission shall receive no compensation as a result of their service on the Commission. While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(g) FEDERAL ADVISORY COMMITTEE ACT.—Section 14(b) of the Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to the Commission.

(h) ANNUAL REPORTS.—The Commission shall publish and submit to the Secretary and the Governor of the State of Wisconsin an annual report concerning the activities of the Commission.

(i) TERMINATION.—The Commission shall terminate on the completion of the study required under section 3(a).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.●

By Mr. AKAKA:

S. 346. A bill to amend the Internal Revenue Code of 1986 to adjust for inflation the dollar limitations on the dependent care credit; to the Committee on finance.

WORKING FAMILIES TAX RELIEF ACT OF 1993

Mr. AKAKA. Mr. President, today I am introducing legislation to provide a measure of tax relief to working families throughout America. My bill would restore value to the child and dependent care credit by requiring an annual adjustment of the credit for inflation.

Mr. President, recent events focused public attention on the problems faced by working Americans seeking affordable, quality child-care services for their children. The availability and affordability of adequate child care are the principal concerns expressed by an increasing number of middle-class working parents. Many parents are forced to patch together a network of child care providers to secure care for their children.

The evidence in support of improving the child and dependent care credit is clear. More than 56 percent of all mothers with children under 6 years work outside the home, and over 70 percent of women with children over age 6 are in the labor market. The number of single mothers working outside the home has dramatically increased in recent years.

The percentage of Hawaii households in which both parents work outside the home is even higher than the national average. According to projections developed by the Bank of Hawaii based on the 1990 census, 61.8 percent of all Hawaii families have both parents employed, and 71.3 percent of all households have at least two individuals in the work force.

The increased participation of single mothers in the labor market and the large number of two-parent families in which both parents work outside the home have made the dependent care credit one of the most popular and productive tax incentives ever enacted by Congress. Unfortunately, the value of the credit has declined significantly over the years as inflation has slowly eaten away at the value of this benefit. Measured in constant dollars, the maximum credit of $2,400 has decreased by 45 percent since it was enacted in 1981.

The maximum amount of employment-related child care expenses allowed under current law—$2,400 for a single child and $4,800 for two or more children—has simply failed to keep pace with escalating care costs. Unlike the earned income tax credit [EITC], the standard deduction, the low-income housing credit, and a number of other sections of our tax code, the dependent care credit is not adjusted for inflation.

The purpose of this credit is to partially offset the expense of dependent and child care services incurred by parents working outside the home. Yet, while the cost of quality child care has increased as demand exceeds supply, the dependent care credit has failed to keep up with the spiraling costs. The bill I introduce today corrects this chronic problem by automatically adjusting the dependent and child care credit for inflation. Under this legislation, both the dollar limit on the amount creditable and the limitation on earned income would be adjusted annually.

Mr. President, in the past 12 years, the average middle-class family with children has seen its income fall 5 percent, almost $1,600 after inflation. A family of four earning $35,000 a year has seen its tax burden increase since 1981. In part, this is due to the diminished value of the child and dependent care credit. In 1981, the flat credit for dependent care was replaced with a scale to give the greatest benefit of the credit to lower income working families. Since that time, neither the adjusted gross income figures employed in the scale, nor the limit on the amount of employment-related expenses used to calculate the credit, has been adjusted for inflation. Our bill provides a measure of much needed relief to working American families. It would index the child and dependent care credit and restore the full benefit of the credit.

The average cost for out-of-home child care exceeds $3,500 per child, per year. Child care or dependent care expenses can seriously strain a family's budget. This burden can become unbearable for single parents, almost invariably single mothers, who must balance the need to work with their parental responsibilities.

Numerous economic studies have shown that the economic policies of the 1980's had a disastrous impact upon the incomes of middle-income families. Inflation adjusted wages for the median worker fell 7.3 percent from 1979 to 1991. Working Americans have been losing ground in their struggle to preserve their standard of living. To compensate, American families have been forced to work longer hours, deplete their life savings, and go deeper into debt. There is an urgent need to enact changes in our tax code that are pro-family and pro-children. The Working Families Tax Relief Act meets both of these goals.

Mr. President, I ask unanimous consent that the text of the bill be included in the RECORD.

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

S. 346

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 "Working Families Tax Relief Act".

SEC. 2. INFLATION ADJUSTMENT OF DEPENDENT CARE CREDIT.

"(a) IN GENERAL.—Subsection (e) of section 21 of the Internal Revenue Code of 1986 (relating to expenses for household and dependent care services necessary for gainful employment) is amended by adding at the end thereof the following new paragraph:

"(10) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1993, each dollar amount contained in subsections (c) and (d)(2) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof."

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1993.

By Mr. PELL (for himself, Mr. STEVENS, Mr. DECONCINI, Mr. MOYNIHAN, and Mr. HATFIELD):

S. 345. A bill to authorize the Library of Congress to provide certain information products and services, and for other purposes; to the Committee on Rules and Administration.

LIBRARY OF CONGRESS FUND ACT OF 1993

• Mr. PELL. Mr. President, in my capacity as Chairman of the Joint Committee on the Library, I am again introducing legislation requested by the Librarian of Congress, Dr. James H. Billington, to authorize the Library to charge fees for specialized services to noncongressional users, to establish a separate revolving fund for the provision of certain information products and services and for other purposes. I am introducing this bill on behalf of myself and the other Senate members of the joint committee, Senators STEVENS, DECONCINI, MOYNIHAN, and HATFIELD.

The Senate Committee on Rules and Administration held a hearing on an earlier version of this legislation on July 22, 1992, and witnesses from the library community and from the information industry had an opportunity to present their views. Following the hearing, Library officials, with Senate Rules and Administration Committee staff, held an extensive series of discussions with representatives of the American Library Association, the Special Library Association, the Association of Research Libraries, the American Association of Law Libraries, as well as the American Association of Publishers and the Information Industry Association in an effort to resolve some of their concerns about the proposal. The cooperation and efforts of these groups are much appreciated by the committee.

The bill that I am introducing today reflects those extensive negotiations and thus is different in some important respects from S. 2748 that I introduced last May. I think it is a reasonable measure, in that it still accomplishes the Library's objectives in establishing a revolving fund to update its 1902 authority to recover the production and distribution costs of certain special services, but also goes a long way toward mitigating the objections of other interested parties in the library community as well as the publishing and information industries. The measure clearly establishes that the Library's current core services to the Nation's libraries and the public will remain free of charge.

The legislation is responsive to a draft General Accounting Office report that recommended that the Library seek legislation to authorize revolving fund accounts already in existence. In addition, the bill would authorize the Library to provide specialized fee-based services to business and industry and to the educational and information communities.

The Librarian of Congress has requested the legislation to accomplish three basic purposes:

First, to update limited authority given in a 1902 law under which the Library of Congress provides bibliographic products and services to the Nation's libraries, a service that saves these libraries some $360 million every year because they don't have to prepare original cataloging for every book they acquire.

Second, to make specialized library information products and services more readily available, for fee, to Federal, State, and local government agencies, foreign governments, as well as other libraries, schools, businesses, and industries. These specialized, tailored services would go far beyond the core services that the Library provides using appropriated funds.

Third, to create the modern administrative mechanism—a revolving fund—through which the Library can establish and recover its costs for providing new products and services designed to meet the specialized information needs of individuals or discrete groups and to protect the provision of core services.

Mr. President, I want to assure my colleagues that there are safeguards in the bill to ensure that: The first priority of the Library of Congress continues to be to serve the information and research needs of the Congress; core Library of Congress services shall continue to be provided at no additional cost to the Congress, Library of Congress users, and the Nation's libraries; the Library of Congress shall continue to make available to the Government Printing Office, for distribution to the depository library program, products and services when they become publications as defined by title 44; and the Library shall comply with all existing provisions of law that afford protection to copyrighted materials under the Copyright Act.

Language in a preliminary draft of the bill concerning copyright has been removed on the advice of the Senate Counsel, on the grounds that it would have replicated existing statutory language and thus was not needed.

In addition, Mr. President, the legislation provides strong fiscal controls for the operation of the Library of Congress revolving fund authorized by the bill. Obligations for fund service activities are limited to the total amounts specified in the appropriations process. The bill directs the Librarian to report on fund activities and financial transactions annually and provides for a General Accounting Office audit. The Librarian of Congress will notify the Joint Committee on the Library and publish notice of new fund service activities in the Federal Register, providing an ample period for public comment.

Mr. President, this legislation is necessary if the Library of Congress is to assist the Nation's businesses and educational institutions in obtaining the specialized information they need in order to remain competitive and productive. The purpose of this measure is to extend services that cannot be supported by appropriations or philanthropy. The Library of Congress is a national treasure that needs to be made more accessible to everyone. This bill helps to accomplish that goal.

Mr. President, I ask unanimous consent that a section by section analysis of the bill be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS OF S. 345, THE LIBRARY OF CONGRESS FUND ACT OF 1993

S. 345 is a bill to authorize the Library of Congress to establish a separate revolving fund for the provision of certain information products and services and for other purposes as described below. It is sponsored by Senator Claiborne Pell at the request of the Librarian of Congress and is under the jurisdiction of the Senate Committee on Rules and Administration.

SUMMARY

The legislation is remedial in that it addresses GAO concerns to establish a better statutory basis for existing gift revolving fund activities; modernizes the authority given in the 1902 law under which the Library provides bibliographic information services and products; defines distribution costs for these products and services; makes funds available until expended; and expressly authorizes the Library to extend the range of products and services it can offer and thus expand its community of users without diminishing products and services funded through appropriations. The legislation also affirms the Library's role as the national library and assures that the Library will continue to provide and expand its free core services to the Nation.

SECTION 1. SHORT TITLE

The act may be cited as the "Library of Congress Funded Act of 1993."

SECTION 2. FINDINGS AND PURPOSES

Findings

Established in 1800 to serve the Congress, the Library of Congress also serves the Nation by providing access to its collections and reference services in several ways: for example, on site to visitors and researchers; through interlibrary loan; and through acceptance of telephone and mail inquires. The legislation affirms that the Library of Congress, through appropriated funds, continues to provide core services at no cost to the Congress, to Library of Congress users and to the Nation.

Intent of Congress

In order to provide assurance that the legislation will not diminish the Library's core and national services, or affect the Library's responsibilities under Titles 17 and 44, this section makes explicit the Congress's intention that the Library continue to provide core and national library services, to support the depository library program under Title 44, to comply with the Copyright Act, Title 17 of the United States Code, and to provide specialized services for a fee. The Congress also intends that the Library consider a variety of sources in developing such specialized services.

Purposes

In 1902, the Library of Congress was first authorized to serve the Nation's libraries by producing and distributing catalog cards. These cards establish and describe the author, title, and physical characteristics of a book and contain subject headings and a classification number to enable researchers to locate books by author, title, or topic. Over the years, the Library of Congress has expanded its catalog card service by producing and distributing additional bibliographic and technical information products and services. In addition to the print format, the Library has utilized other formats to make cataloging data available, e.g., magnetic tape and CD-ROM, and has recovered the distribution costs for providing these products. The legislation modernizes the authority given in the 1902 law under which the Library provides these bibliographic information services and products; defines distribution costs for these products and services; and makes funds available until expended. As an indication of the importance of this centralized cataloging activity, the Library of Congress estimates that in FY 1992 it saved the Nation's academic and public libraries saved over $370 million in cataloging costs they would otherwise have expended by being required to create their own cataloging records.

Another purpose is to make library information products and services more readily available by clarifying and defining the Library's authority to be compensated for these information services and products. For example, the Law Library is often asked to provide analytical research reports; because the work would require an expenditure of time and effort far beyond what is possible on appropriated funds for core services, and because no administrative mechanism now exists for the Library to be compensated, such requests must be refused.

To remedy this problem, the legislation provides an administrative mechanism—a revolving fund—through which the Library may establish and recover its costs for providing new library products and services designed to meet the specialized information needs of individuals, groups, or entities. A fundamental reason to establish a revolving fund is to provide for the systematic disclosure of the relationship between program income and costs for products and services, thereby providing a firm basis for decisions regarding services to be undertaken and prices to be charged. Thus, the revolving Fund will improve accountability to the Congress, as recommended by the GAO, another stated purpose of the legislation.

SECTION 3. DEFINITIONS

The legislation defines three categories of information products and services provided by the Library of Congress as follows:

(1) "core library products and services" means domestic interlibrary loan and information products and services in any format customarily provided by libraries to users at no charge; the definition ensures that core services will not be frozen in time and can include electronic access to the contents of the collections and products and services resulting from future technologies.

(2) "national library products and services" means information products and services, in any format, including bibliographic, technical, and Library-created databases used by libraries and library organizations, which play a role in maintaining and improving library services throughout the Nation.

(3) "distribution costs" mean costs sustained by the Library of Congress, over and above the costs of services funded by appropriations, to package and distribute national library products and services. Consistent with current law, costs for acquiring and cataloging the Library's collections are excluded from distribution costs. Furthermore, the existing requirement to charge an additional ten percent over the above distribution costs is excluded in this legislation.

(4) "specialized library products and services" means customized information products and services which exceed core services, which are not national library products and services, and which are created to respond to the information needs of individuals or discrete groups of persons or entities. Some examples are: an analytical report on the ramifications of "Europe 1992" on international law done at the request of a law firm; gift shop items based on the collections; translations of materials in the collections; expedited document location, copying, and delivery; public use of commercial databases not available on appropriated funds; centralized acquisitions and services for Federal libraries; centralized acquisition of foreign materials for other libraries; training in research methods or special materials cataloging; conservation of a family keepsake book; consultant services in preservation activities; use of Library space for special events and programs; and electronic access to the contents of the collections.

Some products and services may be core, national, or specialized. A current (1992) example is American Memory, a pilot program which uses advanced technologies to disseminate copies of Library of Congress collections to remote locations throughout the United States. The program converts archival and primary-source material relating to American culture and history into electronic form. The first collections prepared include a collection of 1,000 Civil War photographs, a group of nearly 400 rare pamphlets written by African Americans between 1820 and 1920, and a set of printed broadsides from the Continental Congress. In time, these electronic collections may become an online resource, but currently the material is on laser videodisc and compact disc (CD-ROM disc format) for use with stand-alone microcomputers. American Memory is currently funded in part through appropriated monies and in part through nonappropriated monies. When the Library expands this product/service beyond the pilot phase, the costs to be recovered will include the packaging, distribution, and production costs that are not funded by appropriations.

(5) "production and distribution costs" are defined to mean full cost recovery of specialized products and services and also cover the research, development, production and distribution costs, including salaries and benefits, materials and supplies, inventory obsolescence, travel, operation and maintenance, depreciation, and related administrative costs.

TITLE I—LIBRARY PRODUCTS AND SERVICES

Section 101. National library products and services

In addition to clarifying the authority of the Librarian of Congress to recover the distribution costs associated with furnishing national library products and services, this section repeals the antiquated 1902 authority for the sale of catalog cards and other bibliographic information and makes funds available until expended.

Section 102. New fund service activities

Section 102(a) allows the Library to establish collaborative relationships with private sector or other entities to develop, produce, and distribute specialized products and services. However, no collaborative relationship will be permitted to interfere with the timely, equal, and equitable access by the public to materials in the Library's collections.

Section 102(b) directs the Library to publish a notice in the Federal Register each time significant new Fund service activities are proposed, given the public at least 45 days to comment, and publish the Library's final decision on a new specialized library product or service in the Federal Register. To provide guidance for public comments, the notice is to include information about the objective of the proposed activity, its cost, its intended audience, its benefits to the public, and the reason for Library of Congress participation. This section mandates that any new Fund service activity will be established only according to the provisions in section 202(d).

The phrase "Each time significant" new Fund service activities is included to make explicit that, once the Fund is established, the notice provision applies to significant changes in existing services now operated on nonappropriated funds, as well as to the five wholly new services. For example, the Library now operates the Photoduplication Service under a gift revolving fund authority. When the Photoduplication Service is transferred into the Fund, if an expedited document delivery component is added, that would represent a change significant enough to trigger the notice provision.

The effect of the provision overall is to improve accountability, to ensure that the public is informed in detail of the Library's specific plans to engage in specific fee-based services, and to assure that the public is given the opportunity to comment on the provision of such services.

Section 102(c) strengthens oversight of the Fund by the Joint Committee on the Library by mandating that the Library provide a detailed report on each of the five proposed new services before each is undertaken, and publish a notice in the Federal Register that includes the date of the report's submission to the Joint Committee and the fact of its availability from the Library. This provision offers interested parties an independent

forum to address its concerns over a proposed new Fund service should they disagree with the Library's proposal.

Section 102(d) augments the oversight role of the Joint Committee on the Library in relation to proposed new Fund services—in addition to the notice and reporting requirements in sections 102 (c) and (d), section 102(d) provides that the Committee may disapprove a request or request a delay in implementation should it so choose within thirty days after submission of the report by the Librarian.

Section 103. Movement of specialized products and services to another service category

This section ensures that specialized products and services can be shifted to the core or national library service categories if they meet the requirements of section 101.

TITLE II—LIBRARY OF CONGRESS REVOLVING FUND FOR SPECIALIZED PRODUCTS AND SERVICES

The legislation establishes full cost recovery for the production and distribution of specialized library products and services sold via a Library of Congress Revolving Fund. This practice embodies the principles of 31 U.S.C. 9701: "It is the sense of Congress that each service or thing of value provided by an agency to a person is to be self-sustaining to the extent possible." In the case of specialized services, the production and distribution costs are not paid from appropriated funds.

The Library currently provides a variety of these types of services via "Gift Revolving Funds," the most notable of which, the Photoduplication Service, has existed since 1938. However, the General Accounting Office in its August 1991 report, First Audit of the Library of Congress Discloses Significant Problems, recommended the establishment of a separate revolving fund to handle these types of activities. This legislation enables the Librarian to implement that recommendation.

Section 201. Definitions

Section 201 defines the "Library of Congress Revolving Fund" as that fiscal resource established in the United States Treasury to enable the Library of Congress to conduct a cycle of operations in which expenditures generate income, which is then credited directly to that resource. "Fund service activities" means the specialized library information products and services authorized by this Act, e.g., gift shop items and training in preservation methods, in addition to any other activities lawfully assigned by the Librarian of Congress to the Fund service units section 103 of this Act.

"Fund service units" means those organizational entities that, at the direction of the Librarian of Congress, are partially or fully sustained through the collection of fees credited to the Fund.

Section 202. Library of Congress revolving fund

Section 202 establishes the Library of Congress Revolving Fund in the Treasury as a "no year" fund to carry out Fund service activities; this means that money remains available in the Fund until expended. However, obligations for Fund service activities are limited to the total amounts specified in the appropriations act for any fiscal year. The section also sets forth the sources of the Fund capital, authorizes the Librarian to furnish specialized library products and services and to set fees to recover the costs of same.

It also prohibits commingling of Fund service unit accounts and gives the Librarian authority to invest available portions of the Fund in U.S. public debt securities; provides for the deposit of unobligated and unexpended balances into the Treasury; provides for biennial General Accounting Office audits of revolving fund activities; directs the payment of an annual interest charge by the Fund to the general fund of the Treasury for appropriations made to provide capital for Fund service units that predominantly sell library products and services to nonfederal customers, and directs the Librarian of Congress to report on Fund activities and financial transactions annually.

Section 202(1)(2) establishes a review process designed to improve accountability to the Congress and the Library's user communities, to obtain, in an organized and collaborative manner, public views on the Library's operations under the Act and to provide a specific opportunity to recommend legislative or other adjustments if warranted. These five-year reviews will augment the Fund that the legislation mandates the Librarian to make to the Congress as part of his Annual Report.

TITLE III—GENERAL STANDARDS AND LIMITATIONS

Section 301. Preservation of security classification

Through its Federal Research Division, the Library undertakes to supply information products and services on a cost-reimbursable basis to Federal agencies, among them defense-related agencies. This section ensures that the Librarian of Congress will respect and preserve the security classification of any information certified as being essential in the interest of national defense. Nothing in this legislation will modify or limit any statute pertaining to the classification of information.

Section 302. Application of act

This section sets out the exceptions: the legislation does not modify or otherwise change copyright law nor does it apply to the operations of the Congressional Research Service; neither does it permit the Library to impose redistribution fees on domestic use of core and national library products and services.

Section 303. Construction of act

This section provides that the Library is not required to charge fees for services and products acquired through reciprocal exchange agreements, and that the Library is not required to levy redistribution fees. This section also makes it clear that the legislation does not in any way modify the Library of Congress distribution of publications to Federal depository libraries as required by Chapter 19 of Title 44.

Section 304. Regulations

This section institutes a strong review process for establishing new Fund service activities. While the Library of Congress is not subject to the Administrative Procedure Act, it will hereafter follow the rule-making notification procedure of the Administrative Procedure Act for any new Fund service activities it proposes to undertake following enactment of this Act.•

By Mr. RIEGLE:

S. 347. A bill to amend the Internal Revenue Code of 1986 to promote long-term investment and economic growth in the manufacturing sector, restore capital gains incentives, encourage research and experimentation, restore and make permanent the exclusion for employer-provided educational assistance, and for other purposes; to the Committee on Finance.

MANUFACTURING REVITALIZE TAX ACT OF 1993

• Mr. RIEGLE. Mr. President, last month we marked a major turning point in our history with the inauguration of William Jefferson Clinton as the 42d President of the United States. We now have a President who shares the beliefs of many of us in this Chamber—specifically, that the United States needs a new strategy to ensure a growing and strong economy. These shared beliefs lead to the conclusion that we can change the failed policies of the last 12 years by taking those steps necessary to strengthen the critical sectors of our economy and create jobs for the millions of Americans who have begun to doubt in America's future.

We must think long-term and act immediately. Over the long-term our economy will grow to the extent that we actively spur innovation and productivity. We need to create an investment-led growth strategy. We must return our nation to the path of long-term sustainable growth where investment in human resources, physical infrastructure, technology, and productive capacity leads to higher value added and higher income and national wealth. Higher incomes and national wealth must then be plowed back into investment.

Our long-term strategy will require a number of elements. We must have sound macroeconomic policies that stimulate demand and promote price stability. We must have a capital formation policy that promotes savings and investment, without lowering our standard of living. We need policies to channel public and private investment into new products, services, processes, and markets and into the factors which promote innovation and productivity, including human resources, physical infrastructure, and technology development.

We must also have a strong trade policy and other policies that affect how our domestic market is organized to insure that American products and services can be sold to customers, both at home and abroad, on a competitive basis. This is crucial so that American businesses and workers can reap the benefits of their investments in productivity and innovation.

A long-term strategy also means paying close attention to productivity and innovation in our strategic industries. A general growth strategy is not enough. Without attention to specific industries, the overall economy could grow but the specific goals of high value-added, high standard of living, and economic and national security may not be met.

Key to any successful long-term economic strategy must be the revitalization of our manufacturing base. Manufacturing is the heart of our economy;

it keeps the lifeblood of the economy flowing. In formulating economic policy during the last decade, some believed that we could thrive with only the service sectors of the economy. This was a myth. It is true that the majority of jobs in a modern economy are in what is loosely defined as the service-producing sectors—transportation and communications, wholesale and retail trade, financial, general services, government. However, a strong manufacturing base supports a strong service economy—and vice versa. Services are important, but manufacturing matters.

Manufacturing matters for our national security—our ability to produce the products we need to defend ourselves. Manufacturing matters for international commerce—to produce goods to sell abroad to pay off our huge foreign debt. Manufacturing matters for the incomes and benefits of our citizens—service-producing jobs are on average lower paying than goods-producing jobs and frequently do not provide health care or retirement benefits. The growth of manufacturing jobs earlier this century helped many Americans move into the middle class—and the loss of manufacturing jobs threatens to move them out. Finally, manufacturing matters because services and manufacturing are intertwined—an economy the size of the United States must have both.

We must begin immediately to develop a long-term growth strategy. One of our first steps must be to address tax provisions needed to revitalize manufacturing. With that in mind, today I am introducing the Manufacturing Revitalization Incentive Act of 1993.

LEGISLATIVE PROVISIONS

The cornerstone of my proposal is a 15-percent permanent incremental investment tax allowance targeted to new manufacturing equipment. Coupled with this is alternative minimum tax relief so that those manufacturers who need this allowance the most will be able to use it. These provisions are similar to those I proposed last year in the Investment-led Growth Incentives Act of 1992.

One of the most distressing problems over the past two decades has been our relatively low levels of investment in new plant and equipment. The United States invests less than the average of the other group of seven industrialized nations as a percent of GDP and less than Japan in absolute terms. We cannot compete with Japan if they out-invest us. This provision attempts to change that by providing an incentive for business to invest in new manufacturing equipment.

For this same reason, the bill alters the depreciation allowances for taxpayers subject to the alternative minimum tax [AMT]. The overriding objective of the AMT, as stated in the legislative history to the Tax Reform Act of 1986, is, and I quote

> to ensure that no taxpayer with substantial economic income can avoid significant tax liability by using exclusion, deductions and credits. Although these provisions may provide incentives for worthy goals, they become counterproductive when taxpayers are allowed to use them to virtually eliminate all tax liability.

I largely agree with this goal. Yet our experience with the AMT has yielded some unexpected results. Recent studies indicate that the AMT may have a significant, negative impact on the ability of U.S. companies to compete internationally by raising the cost of capital. Further, during this recession, the AMT created perverse incentives against investment. When the AMT was enacted, Congress allowed a corporation to credit the amount of excess AMT paid—over the amount that would have been paid under the ordinary tax system—in future years when the taxpayer reverted to the ordinary tax system. Increasingly, however, we are seeing corporations that will be paying taxes under the AMT for years into the future, raising questions about the value of this credit. As our distinguished colleague Senator BOREN said during a hearing before the Subcommittee on taxation

> [W]e are in essence penalizing those companies that are making the largest capital investments to make themselves productive—the very thing we want to encourage in this country.

This situation cannot be allowed to continue.

The bill corrects this flaw by providing improved cost recovery under the AMT. A new AMT depreciation system would be operative for assets purchased in 1993 and beyond which allows a faster method and a slightly shorter recovery period than provided by current law. This proposal would continue to ensure that taxpayers with substantial economic interests continue to pay taxes because the ordinary tax system depreciation system is faster and shorter, but it would also allow a more realistic deduction for depreciation expenses. The basic structure of this depreciation system for AMT taxpayers is simple and one with which taxpayers have some familiarity.

Further, as the Congress included in H.R. 4210 and H.R. 11 last year, both vetoed by then President Bush, the bill repeals the adjusted current earnings depreciation adjustment to the AMT for new property placed in service after 1993.

The bill also alters the depreciation schedule for autos and light trucks. Under current law, autos and light trucks have a 5-year depreciation schedule even though a Treasury study indicates the useful life of a business vehicle is 3.5 years. Prior to 1984, vehicles were eligible to be fully depreciated over a 3-year period. The bill returns the depreciation schedule to 3 years. In addition, under current law, no more than $12,060 may be taken in depreciation over 5 years. Autos and light trucks are currently the only business subject to such a cap. The Manufacturing Revitalization Tax Act raises this cap to $17,100.

Changing the auto depreciation in this manner, advocates claim, will reduce the cost of the business vehicle by 5.5 to 8.5 percent, increase annual sales by 230,000 to 350,000 units, and increase employment among auto manufacturers and suppliers by 52,000 people.

The legislation includes the capital gains provisions similar to those adopted by Congress last year in H.R. 4210, which was vetoed by then President Bush. The only change I have made is to lengthen the holding period required from 2 to 5 years. I have done so because of my view that it is critical that we encourage a longer-term view within our investment system. I strongly favor tax incentives for venture and seed capital formation, which is critical for long-term growth. We do not need a broad-based capital gains tax cut. We need targeted incentives to channel capital into the areas where it is needed—like starting new businesses. I have incorporated the provisions of H.R. 4210 since they are likely to be acceptable to a majority in Congress, having been previously adopted.

To increase our investment in research and development, the bill includes a permanent research and experimentation tax credit and permanently establishes the rules for the proper allocation of the R&E credit. Research and development is one of the engines of economic growth and is vital in order to ensure that we are able to compete in the global marketplace. These provisions are needed to maintain that engine and allow us to compete.

Finally, the bill contains a permanent extension of tax credit for employer-provided educational assistance. While there are many expired tax credits that should be extended, I believe that the employer-provided educational assistance is critical to strengthening the industrial base of this country. Without a well-trained work force, we cannot expect to succeed in today's economy. The bill makes this tax credit permanent and raises the amount an employer may spend per employee.

CREATING AN ECONOMIC STRATEGY

Mr. President, it is my hope that this legislation will begin the debate on this critical area of revitalizing our manufacturing base. Obviously, tax policy is only one part of an overall manufacturing strategy. This bill is only the first step. I am currently working with business and labor leaders, as well as many of my colleagues, on a comprehensive trade bill that will establish the rules of a fair trading system. We must take those steps nec-

essary to ensure that U.S. manufacturers have fair access to foreign markets. For example, as the original author of Super-301, I will work to see that this section is re-authorized and, where appropriate, strengthened.

In the months and years ahead we will need to focus our attention on creating policies to insure long-term investment-led economic growth. It must be growth that benefits all Americans—not like the so-called growth of the 1980's, which benefitted only a few. To return long-term sustained economic growth, all of us must play our part and work together to build our common future.

I look forward to working with the new Clinton Administration, business, labor, and my colleagues here in the Senate in both refining this legislation and introducing additional legislation with an eye toward creating a stronger and healthier manufacturing base. I ask unanimous consent that a copy of the legislation be included in the RECORD following my remarks.

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

S. 347

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Manufacturing Revitalization Incentives Act of 1993".

(b) REFERENCE.—Except as otherwise expressly provided, 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 Internal Revenue Code of 1986.

TITLE I—PROMOTION OF ECONOMIC GROWTH IN THE MANUFACTURING SECTOR

SEC. 101. SPECIAL ALLOWANCE FOR MANUFACTURING EQUIPMENT.

(a) IN GENERAL.—Section 168 (relating to accelerated cost recovery system) is amended by adding at the end thereof the following new subsection:

"(j) SPECIAL ALLOWANCE FOR CERTAIN EQUIPMENT ACQUIRED AFTER 1992.—

"(1) ADDITIONAL ALLOWANCE.—In the case of any qualified equipment—

"(A) the depreciation deduction provided by section 167(a) for the taxable year in which such equipment is placed in service shall include an allowance equal to 15 percent of the adjusted basis of the qualified equipment, and

"(B) the adjusted basis of the qualified equipment shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

"(2) QUALIFIED EQUIPMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified equipment' means property to which this section applies—

"(i) which is section 1245 property (within the meaning of section 1245(a)(3)),

"(ii) the original use of which commences with the taxpayer on or after February 1, 1993, and

"(iii) which is acquired by the taxpayer on or after February 1, 1993, but only if no written binding contract for the acquisition was in effect before January 1, 1993.

"(B) SPECIAL RULE FOR COMPUTER SOFTWARE.—Computer software which—

"(i)(I) is used to control or monitor a manufacturing process, or

"(II) is an integral part of the design or manufacturing process, and

"(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

shall be treated as qualified equipment.

"(C) EXCEPTIONS.—

"(i) ALTERNATIVE DEPRECIATION PROPERTY.—The term 'qualified equipment' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined—

"(I) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

"(II) after application of section 280F(b) (relating to listed property with limited business use).

"(ii) ELECTION OUT.—If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

"(iii) REPAIRED OR RECONSTRUCTED PROPERTY.—Except as otherwise provided in regulations, the term 'qualified equipment' shall not include any repaired or reconstructed property.

"(D) SPECIAL RULES RELATING TO ORIGINAL USE.—

"(i) SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iii) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after January 31, 1993.

"(ii) SALE-LEASEBACKS.—For purposes of subparagraph (A)(ii), if property—

"(I) is originally placed in service on or after February 1, 1993, by a person, and

"(II) is sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II)."

(b) EFFECTIVE DATE.—The amendment made by this section applies to property placed in service on or after February 1, 1993.

SEC. 102. ADJUSTMENT IN COMPUTING ALTERNATIVE MINIMUM TAXABLE INCOME.

(a) IN GENERAL.—Section 56(a)(1)(A) (relating to depreciation) is amended by inserting immediately after clause (ii) the following new clauses:

"(iii) ADDITIONAL ALLOWANCE UNDER SECTION 168(j).—The additional allowance for qualified equipment under section 168(j) shall be allowed.

"(iv) DEPRECIATION METHODS FOR CERTAIN PROPERTY PLACED IN SERVICE AFTER JANUARY 31, 1993.—In the case of property placed in service after January 31, 1993 (other than property with respect to which section 168(b)(2), (3), or (5) applies or property for which depreciation is determined under section 168(g)), clause (ii) shall be applied by substituting '200 percent' for '150 percent'."

(b) CONFORMING AMENDMENTS.—

(1) Section 56(a)(1)(A)(i) (relating to depreciation adjustments) is amended by inserting "(iii), or (iv)" after "clause (ii)".

(2) The flush sentence at the end of section 56(a)(1)(A) is amended—

(A) by striking "The preceding sentence" and inserting "Clauses (ii), (iii), and (iv)", and

(B) by adding at the end thereof the following: "For purposes of clause (iv), the applicable recovery period shall be 80 percent of the recovery period determined under section 168(g) (rounded to the nearest half year), but shall not be less than the applicable recovery period determined under section 168(c). If for purposes of the regular tax, depreciation is determined under section 168(g), the preceding sentence shall not apply."

(3) Section 56(a)(1) is amended by adding at the end the following new subparagraph:

"(E) Rules similar to the rules of section 168(f)(5) shall apply with respect to property described in subparagraph (A)(iv)."

(c) ELIMINATION OF ACE DEPRECIATION ADJUSTMENT.—Clause (i) of section 56(g)(4)(A) (relating to depreciation adjustments for computing adjusted current earnings) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to property placed in service on or after February 1, 1993, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A)."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service on or after February 1, 1993, in taxable years ending after such date.

(2) COORDINATION WITH TRANSITIONAL RULES.—The amendments made by subsection (c) shall not apply to any property to which paragraph (1) of section 56(a) of the Internal Revenue Code of 1986 does not apply by reason of subparagraph (C)(i) of such paragraph (1).

SEC. 103. ADJUSTMENTS TO AUTOMOBILE DEPRECIATION.

(a) IN GENERAL.—Clause (i) of section 168(e)(3)(B) (relating to 5-year property) is amended to read as follows:

"(i) any light general purpose truck which is rated at more than 6,000 pounds gross vehicle weight,".

(b) LIMITATION ON DEPRECIATION.—

(1) IN GENERAL.—Subparagraph (A) of section 280F(a)(1) (relating to limitations on depreciation) is amended by striking clauses (i), (ii), (iii), and (iv), and inserting the following:

"(i) $6,000 for the 1st taxable year in the recovery period,

"(ii) $8,000 for the 2nd taxable year in the recovery period, and

"(iii) $3,100 for each succeeding year in the recovery period."

(2) CONFORMING AMENDMENTS.—

(A) Section 280F(a)(1)(B)(ii) is amended by striking "$1,475" each place it appears in the text and heading and inserting "$3,100".

(B) Section 280F(d)(7) is amended—

(i) by striking "1988" and inserting "1994" in subparagraph (A), and

(ii) by striking "1987" and inserting "1993" in subparagraph (B)(i)(II).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service in taxable years beginning after December 31, 1993.

TITLE II—PROGRESSIVE CAPITAL GAIN RATES

SEC. 201. PROGRESSIVE CAPITAL GAIN RATES.

(a) IN GENERAL.—Section 1(h) (relating to maximum capital gains rate) is amended to read as follows:

"(h) PROGRESSIVE CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has qualified capital gain for any taxable year, then the tax imposed by this section shall be equal to the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on taxable income reduced by the amount of qualified capital gain, plus

"(B) the excess (if any) of—

"(i) a tax computed under the substitute table on taxable income, over

"(ii) a tax computed under the substitute table on taxable income reduced by the amount of qualified capital gain.

"(2) SUBSTITUTE TABLES.—

"(A) IN GENERAL.—In the case of any taxable year ending after January 31, 1993, the Secretary shall prescribe a substitute table for each of the tables under subsections (a), (b), (c), (d), and (e).

"(B) METHOD OF PRESCRIBING TABLES.—The tables under subparagraph (A) for any taxable year shall be the tables in effect without regard to this subsection, adjusted by—

"(i) substituting the capital gain rates for the rates of tax contained therein, and

"(ii) modifying the amounts setting forth the tax to the extent necessary to reflect the adjustments under clause (i).

"(C) CAPITAL GAIN RATES.—For purposes of subparagraph (B)(i), the capital gain rates shall be determined as follows:

"If the rate of tax is:	The capital gain rate is:
15 percent	0 percent
28 percent	14 percent
31 percent	21 percent
More than 31 percent	28 percent.

"(3) QUALIFIED CAPITAL GAIN.—For purposes of this subsection—

"(A) IN GENERAL.—The term qualified capital gain means net capital gain determined without regard to any gain taken into account in computing the exclusion under section 1202 (relating to gain from sale of small business stock).

"(B) TRANSITION RULE.—In the case of any taxable year beginning before February 1, 1993, and ending on or after such date, qualified capital gain shall be equal to the lesser of—

"(i) net capital gain, or

"(ii) net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year after January 31, 1993.

If the amount under clause (i) exceeds the amount under clause (ii) for such taxable year, the rate of tax under this section shall not exceed 28 percent with respect to such excess.

"(C) SPECIAL RULE FOR PASS-THRU ENTITIES.—

"(i) IN GENERAL.—In applying subparagraph (B) with respect to any pass-thru entity, the determination of when gain is properly taken into account shall be made at the entity level.

"(ii) PASS-THRU ENTITY DEFINED.—For purposes of clause (i), the term 'pass-thru entity' means—

"(I) a regulated investment company,

"(II) a real estate investment trust,

"(III) an S corporation,

"(IV) a partnership,

"(V) an estate or trust, and

"(VI) a common trust fund."

(b) TREATMENT OF COLLECTIBLES.—

(1) IN GENERAL.—Section 1222 (defining other terms relating to capital gains and losses) is amended by inserting after paragraph (11) the following new paragraph:

"(12) SPECIAL RULE FOR COLLECTIBLES.—

"(A) IN GENERAL.—Any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall be applied to the extent the gain or loss is taken into account in computing taxable income.

"(B) TREATMENT OF CERTAIN SALES OF INTEREST IN PARTNERSHIP, ETC.—For purposes of subparagraph (A), any gain from the sale or exchange of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(C) COLLECTIBLE.—For purposes of this paragraph, the term collectible means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof)."

(2) CHARITABLE DEDUCTION NOT AFFECTED.—

(A) Paragraph (1) of section 170(e) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)."

(B) Clause (iv) of section 170(b)(1)(C) is amended by inserting before the period at the end thereof the following: "and section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years ending after January 31, 1993.

(2) COLLECTIBLES.—The amendments made by subsection (b) shall apply to dispositions after January 31, 1993.

SEC. 202. INCREASE IN HOLDING PERIOD REQUIRED FOR LONG-TERM CAPITAL GAIN TREATMENT.

(a) IN GENERAL.—

(1) CAPITAL GAIN.—Paragraphs (1) and (3) of section 1222 (defining other terms relating to capital gains and losses) are each amended by striking "1 year" and inserting "5 years".

(2) CAPITAL LOSSES.—Paragraphs (2) and (4) of section 1222 are each amended by striking "1 year" and inserting "5 years".

(b) CONFORMING AMENDMENTS.—The following provisions are each amended by striking "1 year" each place it appears and inserting "5 years":

(1) Section 166(d)(1)(B).

(2) Section 422(a)(1).

(3) Section 423(a)(1).

(4) Section 584(c).

(5) Subsections (a), (b), and (c) of section 631.

(6) Section 642(c)(3).

(7) Paragraphs (1) and (2) of section 702(a).

(8) Section 818(b)(1).

(9) Section 852(b)(3)(B).

(10) Section 856(c)(4)(A).

(11) Section 857(b)(3)(B).

(12) Paragraphs (11) and (12) of section 1223.

(13) Subsections (b), (d), and subparagraph (A) of subsection (e)(4) of section 1233.

(14) Section 1234(b)(1).

(15) Section 1235(a).

(16) Subsections (b) and (g)(2)(C) of section 1248.

(c) TECHNICAL AMENDMENTS.—

(1) Section 7518(g)(3)(B) is amended by striking "6 months" and inserting "5 years".

(2) Section 1231(b)(3)(B) is amended by striking "12 months" and inserting "24 months".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 203. RECAPTURE UNDER SECTION 1250 OF TOTAL AMOUNT OF DEPRECIATION.

(a) GENERAL RULE.—Subsections (a) and (b) of section 1250 (relating to gain from disposition of certain depreciable realty) are amended to read as follows:

"(a) GENERAL RULE.—Except as otherwise provided in this section, if section 1250 property is disposed of, the lesser of—

"(1) the depreciation adjustments in respect of such property, or

"(2) the excess of—

"(A) the amount realized (or, in the case of a disposition other than sale, exchange, or involuntary conversion, the fair market value of such property), over

"(B) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(b) DEPRECIATION ADJUSTMENTS.—For purposes of this section, the term depreciation adjustments means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed."

(b) MAXIMUM RATE ON RECAPTURE AMOUNT.—Section 1 (relating to tax imposed) is amended by adding at the end the following new section:

"(i) MAXIMUM RATE OF TAX ON SECTION 1250 RECAPTURE AMOUNTS.—If a taxpayer has any amount treated as ordinary income under section 1250 for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(1) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(A) taxable income reduced by the amount treated as ordinary income under section 1250, or

"(B) the amount of taxable income taxed at a rate below 28 percent, plus

"(2) a tax of 28 percent of the amount of taxable income in excess of the amount determined under paragraph (1)."

(c) LIMITATION IN CASE OF INSTALLMENT SALES.—Subsection (i) of section 453 is amended—

(1) by striking "1250" the first place it appears and inserting "1250 (as in effect on December 31, 1992)", and

(2) by striking "1250" the second place it appears and inserting "1250 (as so in effect)".

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 1250(d)(4) is amended—

(A) by striking "additional depreciation" and inserting "amount of the depreciation adjustments", and

(B) by striking "ADDITIONAL DEPRECIATION" in the subparagraph heading and inserting "DEPRECIATION ADJUSTMENTS".

(2) Subparagraph (B) of section 1250(d)(6) is amended to read as follows:

"(B) DEPRECIATION ADJUSTMENTS.—In respect of any property described in subpara-

graph (A), the amount of the depreciation adjustments attributable to periods before the distribution by the partnership shall be—

"(i) the amount of gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

"(ii) the amount of such gain to which section 751(b) applied."

(3) Subsection (d) of section 1250 is amended by striking paragraph (10).

(4) Section 1250 is amended by striking subsections (e) and (f) and by redesignating subsections (g) and (h) as subsections (e) and (f), respectively.

(5) Paragraph (4) of section 50(c) is amended to read as follows:

"(4) RECAPTURE OF REDUCTION.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation."

(6) Clause (i) of section 267(e)(5)(D) is amended by striking "section 1250(a)(1)(B)" and inserting "section 1250(a)(1)(B) (as in effect on December 31, 1992)".

(7)(A) Subsection (a) of section 291 is amended by striking paragraph (1) and redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively.

(B) Subsection (c) of section 291 is amended to read as follows:

"(c) SPECIAL RULE FOR POLLUTION CONTROL FACILITIES.—Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4)."

(C) Section 291 is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(D) Paragraph (2) of section 291(d) (as redesignated by subparagraph (C)) is hereby repealed.

(E) Subparagraph (A) of section 265(b)(3) is amended by striking "291(e)(1)(B)" and inserting "291(d)(1)(B)".

(F) Subsection (c) of section 1277 is amended by striking "291(e)(1)(B)(ii)" and inserting "291(d)(1)(B)(ii)".

(8) Subsection (d) of section 1017 is amended to read as follows:

"(d) RECAPTURE OF DEDUCTIONS.—For purposes of sections 1245 and 1250—

"(1) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

"(2) any reduction under this section shall be treated as a deduction allowed for depreciation."

(9) Paragraph (5) of section 7701(e) is amended by striking "(relating to low-income housing)" and inserting "(as in effect on December 31, 1992)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after January 31, 1993, in taxable years ending after such date.

TITLE III—RESEARCH AND EXPERIMENTATION

SEC. 301. CREDIT FOR RESEARCH AND EXPERIMENTATION.

(a) PERMANENT CREDIT.—Section 41 (relating to the credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 28(b) is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after June 30, 1992.

SEC. 302. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) EXTENSION.—Paragraph (5) of section 864(f) (relating to allocation of research and experimental expenditures) is amended to read as follows:

"(5) YEARS TO WHICH RULE APPLIES.—This subsection shall apply to taxable years beginning after August 1, 1989."

(b) EFFECTIVE DATE.—The amendment made by this section applies to taxable years beginning after August 1, 1989.

TITLE IV—EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE

SEC. 401. EMPLOYEE EDUCATIONAL ASSISTANCE.

(a) EXTENSION.—

(1) IN GENERAL.—Section 127 (relating to educational assistance programs) is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 103(a) of the Tax Extension Act of 1991 is hereby repealed.

(b) INCREASE IN, AND INDEXING OF, MAXIMUM EXCLUSION.—

(1) IN GENERAL.—Paragraph (2) of section 127(a) is amended by striking "$5,250" each place it appears and inserting "$6,000".

(2) ADJUSTMENT FOR INFLATION.—Subsection (a) of section 127 is amended by adding at the end thereof the following new paragraph:

"(3) COST-OF-LIVING ADJUSTMENT OF MAXIMUM EXCLUSION.—In the case of any taxable year beginning in a calendar year after 1993, the dollar amount contained in paragraph (2) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1992.

(2) EXTENSION OF SECTION 127.—The amendments made by subsection (a) shall apply to taxable years ending after June 30, 1992.●

By Mr. RIEGLE (for himself, Mr. CHAFEE, Mr. MITCHELL, Mr. AKAKA, Mr. BAUCUS, Mr. BOREN, Mr. BRYAN, Mr. CAMPBELL, Mr. COHEN, Mr. CONRAD, Mr. DANFORTH, Mr. DASCHLE, Mr. DECONCINI, Mr. DURENBERGER, Mr. GRASSLEY, Mr. HATCH, Mr. HOLLINGS, Mr. JEFFORDS, Mr. PACKWOOD, Mr. PELL, Mr. PRESSLER, Mr. SARBANES, Mr. THURMOND, and Mr. WOFFORD):

S. 348. A bill to amend the Internal Revenue Code of 1986 to permanently extend qualified mortgage bonds; to the Committee on Finance.

PERMANENT EXTENSION OF QUALIFIED MORTGAGE BONDS

● Mr. RIEGLE. Mr. President, I rise today to introduce a bill to make Mortgage Revenue Bonds [MRBs] and Mortgage Credit Certificates [MCCs] a permanent provision of the Internal Revenue Code. I am pleased to be joined in offering this legislation by my colleagues Senators CHAFEE, MITCHELL, AKAKA, BAUCUS, BOREN, BRYAN, CAMPBELL, COHEN, CONRAD, DANFORTH, DASCHLE, DECONCINI, DURENBERGER, GRASSLEY, HATCH, HOLLINGS, JEFFORDS, PACKWOOD, PELL, PRESSLER, SARBANES, THURMOND, and WOFFORD.

This bill will permanently extend the tax-exempt status of MRB's. The tax-exempt status of MRB's have enabled State and local housing agencies to finance home mortgages for first time buyers at rates below the market—sometimes as much as 2.5-percent below conventional rates. This means that a low or moderate income family can save up $100 on their monthly mortgage payment than if they had obtained conventional financing. This cost differential enables buyers, who otherwise might not be able to get mortgage financing, to obtain a loan at an affordable rate.

MRB's are targeted to families with the greatest need. MRB's are only available to buyers who have not owned a home within the past 3 years, earn 100 percent or less of the applicable median income, and buy a principal residence that does not exceed 90 percent of the average home purchase price. In 1991, the average income of an MRB borrower was 76 percent of median income. Furthermore, the National Council of State Housing Agencies reported that the average purchase price on an MRB-assisted home was approximately $63,000 as compared to a conventional first time buyer average of $136,000.

Prior to its expiration in June, MRB's were the only Federal assistance targeted to first-time home buyers. During the past 15 years, MRB's have financed more than 2 million home purchases and accounted for 1 out of every 12 mortgages made to first-time buyers. In 1991 alone, MRB's financed 120,000 new loans.

In my home State of Michigan, MRB's and MCC's have enabled more than 50,000 families to buy homes. Furthermore, 57 percent of all MRB loans in Michigan were made in distressed inner city neighborhoods. The average income of persons assisted under the MCC program is $25,000 and the average income of persons assisted under the MRB single family program is $23,000. I am proud to say that Michigan has been an innovator in using these programs to assist thousands of families realize the dream of home ownership.

MRB's are also powerful job-generating tools. In 1991, new homes financed with MRB loans produced 40,000 jobs and generated over $1.1 billion in wages and tax revenues. The National Association of Home Builders estimates that if MRB's are not extended, as many as 37,000 jobs will be lost in 1993 and 63,000 jobs lost each year after. Recently, Housing Subcommittee Chairman PAUL SARBANES and I sent a letter to President Clinton urging him to include MRB's and other housing finance tools as part of an economic stimulus package.

I have been a long-time supporter of MRB's. Last Congress, I introduced S. 167, a bill which would have made the program permanent. This bill enjoyed the strong support of many of my colleagues and was cosponsored by 89 Senators, including three-quarters of the Finance Committee.

In the last decade, MRB's have been scheduled to sunset 7 times, making administration and timing of bond issues extremely difficult and costly. The MRB program lapsed on June 30, underscoring the need for permanent extension. Permanent extension was passed by Congress as part of the Revenue Act [H.R. 11], but this legislation was vetoed by then-President Bush. The legislation I am introducing today will make these vitally important programs permanent.

This bill will also permanently extend the Mortgage Credit Certificate [MCC] program, which is part of the MRB program. Like MRB's, MCC's are also issued by State and local housing agencies to provide financial assistance to first time home buyers. With an MCC, a home buyer may take a credit each year against his or her tax liability for a portion of mortgage interest paid.

I urge my colleagues in the Senate to support this bill and retain two valuable programs that promote first time home ownership throughout the Nation.

Mr. President, I ask unanimous consent that the 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. 348

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT EXTENSION OF QUALIFIED MORTGAGE BONDS.

(a) PERMANENT EXTENSION.—

(1) MORTGAGE BONDS.—Paragraph (1) of section 143(a) of the Internal Revenue Code of 1986 (relating to qualified mortgage bonds) is amended to read as follows:

"(1) QUALIFIED MORTGAGE BOND DEFINED.—For purposes of this title, the term 'qualified mortgage bond' means a bond which is issued as a part of a qualified mortgage issue.".

(2) MORTGAGE CREDIT CERTIFICATES.—Section 25 of such Code (relating to interest on certain home mortgages) is amended by striking subsection (h) and redesignating subsection (i) as subsection (h).

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a)(1) shall apply to bonds issued after June 30, 1992.

(2) CERTIFICATES.—The amendment made by subsection (a)(2) shall apply to elections for periods after June 30, 1992.●

● Mr. CHAFEE. Mr. President, I am pleased to once again join Senator RIEGLE in introducing legislation permanently extending the authorization for the Mortgage Revenue Bond program.

The dream of home ownership continues to become more and more difficult to achieve for many Americans. The Nation's home ownership rate is at its lowest level in almost two decades. This decline has occurred at a time when members of the baby boom were at the prime homebuying age and during one of the most sustained and vigorous housing recoveries on record.

Home ownership is an important part of the American dream and I believe we must continue to provide tax incentives for programs that assist low-income Americans in acquiring their first home. We must reverse the declining home ownership trend that has existed in this country since 1980. In many States, such as Rhode Island, where housing is very expensive when compared to median incomes, we must provide tax incentives for programs that assist low-income Americans in acquiring their first home.

The Mortgage Revenue Bond [MRB] program authorizes States to issue tax-exempt mortgage revenue bonds to provide below market-rate financing for the purchase of homes by citizens in those States. This below market-rate financing allows first-time homebuyers to purchase a home, when they would not be able to buy a house with any of the conventional financing methods.

In 1986, we adopted a State volume cap which placed a limit on the total amount of private purpose tax-exempt bonds that could be issued by a State. The MRB program expands the types of private-purpose bonds that can be issued by a State within its volume cap. I believe it is vitally important that we allow States to utilize the volume cap in the most beneficial way for each State's citizens.

The mortgage revenue bond program is an important part of the State housing program in my home State and its efforts to address the large affordability gap that exists in Rhode Island. Rhode Island Housing, the manager of our MRB program, utilizes State resources to provide second mortgages and interest rate buydowns combined with the MRB program to assist citizens of Rhode Island in the purchase of a home.

Since 1977, the Rhode Island Housing and Mortgage Finance Corporation [RIHMFC] has financed the purchase of more than 40,000 homes utilizing mortgages from the MRB program totaling almost $2.3 billion. The managers of the MRB program have calculated that approximately 80 percent of the families served by the MRB program would not have been able to qualify for a conventional mortgage.

In 1992, RIHMFC assisted over 2,600 Rhode Island families with the purchase of a first home. The median family income of the participants in the Rhode Island MRB program last year was $30,520—about 75 percent of Rhode Island's statewide median income for 1992. The average loan amount issued to these participants was $87,864 on an average purchase price of $98,251 compared to a statewide average sales price of $117,000 for all homes sold in Rhode Island.

The average age of all the recipients who have received mortgages provided by RIHMFC is 31.9 years, which indicates that the program is not assisting only young people right out of college. In fact, it is helping young families who may have been in the workforce for 10 or more years before they could afford to buy a first home.

The experiences of Rhode Island Housing illustrate the vital importance of this program to fulfilling the home-ownership dreams of low-income Americans. It is imperative for us to permanently extend the authority of the States to issue tax-exempt bonds to provide Mortgage Revenue Bond financing to our young families who would not otherwise be able to fulfill the American dream by purchasing a first home.●

By Mr. LEVIN (for himself, Mr. COHEN, Mr. GLENN, Mr. ROTH, and Mr. BOREN):

S. 349. A bill to provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes; to the Committee on Governmental Affairs.

LOBBYING DISCLOSURE ACT OF 1993

● Mr. LEVIN. Mr. President, today I am pleased to introduce with the strong support of President Clinton and Vice President GORE and the bipartisan leadership of the Governmental Affairs Committee, the Lobbying Disclosure Act of 1993. This bill will close the loopholes in lobbying disclosure laws, for the first time cover lobbying of the executive branch, and create a reasonable enforcement program for addressing disclosure violations.

Mr. President, I am pleased to include as cosponsors of this bill, Senators COHEN, GLENN, ROTH, and BOREN, and to announce that Congressman JOHN BRYANT, chairman of the Judiciary Subcommittee in the House with jurisdiction over this legislation, will be introducing the same bill in the House of Representatives today. With this strong base of support we are hoping for very prompt consideration of this legislation and speedy passage. We approved the bill in the Governmental Affairs Committee last year.

With the election of a new President committed to political reform, we have our best chance in years to clean up one of Washington's oldest problems—the patchwork of loopholes and exceptions that currently pass for lobbying disclosure laws.

We hear again and again that the American people have lost confidence in their elected officials. There is a widespread belief that Government today is too susceptible to the influence of well-connected and well-heeled lobbyists. In one recent poll more than

70 percent of Americans said they believe that our Government is controlled by special interests, rather than the public interest. Part of the gridlock so prevalent in Washington is attributed to special interests and their ability to block needed legislation.

Lobbying—that is, seeking to influence legislation and Government policy—is not bad. Far from it. It is a vital part of our participatory democracy. We deal every day with lobbyists for cities, counties, and States; lobbyists for public hospitals and private relief groups; lobbyists for police organizations and lobbyists for the Girl Scouts. Some lobbyists try to protect the jobs and benefits of our workers; others seek to improve the competitiveness of our industry. Some lobbyists work to keep our streets safe; some want to keep our air and water clean; others seek to reduce taxes.

The fact that we cannot and would not want to ban lobbying does not mean that general information about paid lobbying activities shouldn't be disclosed. Effective public disclosure of lobbying activities can ensure that the public, Federal officials, and other interested parties are aware of the pressures that are brought to bear on public policy by paid lobbyists. Such public awareness should inform the public of the broad array of lobbying efforts on all sides of an issue. In some cases, it may alert other interested parties of the need to provide their own views to decisionmakers. It also may encourage lobbyists and their clients to be sensitive to even the appearance of improper influence.

One of the reasons why the public is suspicious and distrustful of the relationship between lobbyists and Government officials is the cloak of secrecy that currently covers too many lobbyists and their activities.

Over the last 2 years, the Subcommittee on Oversight of Government Management, which I chair, has held a series of hearings on the lobbying disclosure laws. We learned that:

Fewer than 4,000 of the 13,500 individuals and organizations listed in the book "Washington Representatives" were registered as lobbyists. Three-quarters of the unregistered representatives interviewed by the GAO said that they contact Members of Congress and their staffs, deal with Federal legislation, and seek to influence actions of either Congress or the executive branch.

Only 825 persons were registered as active foreign agents—that is, persons employed to conduct political activities on behalf of a foreign principal—under the Foreign Agents Registration Act. In one case examined by the subcommittee, we found that 42 of 48 lobbyists for foreign manufacturers and their domestic subsidiaries were not registered under FARA.

Lobbyists who do register disclose expenditures as trivial as $27 lunch bills, $45 phone bills, $6 cab fares, and $16 messenger fees. One lobbyist even disclosed quarterly lobbying payments of $1.31 to one of its employees. Because of the way these costs are calculated, however, it is impossible to reach any accurate conclusion as to total lobbying expenditures.

Under existing statutes, there is no disclosure requirement when White House and other executive branch officials are lobbied, no disclosure when congressional staffers are lobbied, and only sporadic disclosure of lobbying by lawyers. These laws have been characterized by the Justice Department as "ineffective, inadequate and unenforceable"—which may explain why there doesn't appear to have been a single attempt to enforce them for almost 40 years.

The Lobbying Disclosure Act of 1993, which I am introducing today, would address these problems. This bill has been thoroughly examined through extensive hearings and committee consideration in the last Congress. It was reported last year by the Governmental Affairs Committee, but time ran out before it could be considered by the full Senate.

If enacted, the Lobbying Disclosure Act would replace existing lobbying disclosure laws with a single, uniform statute, covering the paid lobbying of Congress and the executive branch on behalf of both domestic and foreign persons. The new statute would replace the Federal Regulation of Lobbying Act; the disclosure requirements of the so-called Byrd amendment; the provisions of the Foreign Agents Registration Act [FARA] which apply to private persons and companies; and the HUD disclosure statutes. The provisions of the Byrd amendment prohibiting lobbying with appropriated funds would be left intact, as would the FARA provisions applicable to representatives of foreign governments and political parties.

The bill has three essential features: it would broaden the coverage of existing disclosure statutes to ensure that all professional lobbyists are registered; streamline disclosure requirements to make sure that only meaningful information is disclosed and needless burdens are avoided; and create a new, more effective and equitable system for administering and enforcing these requirements.

On the first point, the bill would require registration of all professional lobbyists—for example, anyone who is paid to make lobbying contacts with either the legislative or the executive branch of the Federal Government. People who are paid less than $1,000 to lobby, or whose lobbying activities are only incidental to, and not a significant part of, their jobs would not be covered.

The bill would define lobbying contacts to include communications with Members of Congress and their staff, offices and employees in the Executive Office of the President, and ranking officials in other Federal agencies. Activities that don't constitute lobbying—such as communications by public officials and media organizations; requests for appointments or for the status of an action and other ministerial communications; communications with regard to ongoing judicial or law enforcement proceedings; testimony before congressional committees and public meetings; participation in agency adjudicatory proceedings; the filing of written comments in rulemaking proceedings; and routine negotiations of contracts, grants, loans, and other Federal assistance—would be exempt from coverage.

On the second point, the bill would significantly streamline lobbying disclosure requirements by consolidating filing in a single form and a single location—one-stop shopping; replacing quarterly reports with semiannual reports; and authorizing the development of computer-filing systems and simplified forms. The bill would require a single registration by each organization whose employees lobby, instead of separate registration by each employee-lobbyist. The names of the employee-lobbyists—and any ranking legislative or executive branch position in which they served in the previous 2 years—would simply be listed in the employer's registration forms.

In addition, the bill would simplify reporting of receipts and expenditures by substituting estimates of total receipts or expenditures—by category of dollar value—for the current requirement to provide a detailed accounting of all receipts and expenditures. This reporting would be more meaningful than the current system, because the types of receipts and expenditures to be disclosed would be more broadly defined. The bill would also replace the requirement of FARA and the Byrd amendment to list each official contacted with a simpler requirement to identity the executive branch agencies, and the House and committees of Congress, that were contacted.

At the same time, the bill would close a loophole in existing law by requiring the disclosure of the identity of coalition members who are, in effect, clients—in that they contribute substantially—more than $5,000 in a semiannual period—to the coalition, help supervise its lobbying activities, and are likely to benefit directly if the coalition's lobbying efforts are successful. The bill would also enhance the effectiveness of public disclosure by requiring the disclosure of any foreign entity which supervises, directs, or controls the client, or which has a direct interest in the outcome of the lobbying activity. Any foreign entity with a 20

percent equitable ownership of a client would have to be disclosed.

Finally, the bill would improve the administration of the lobbying disclosure laws by creating a new Office of Lobbying Registration and Public Disclosure within the Justice Department to administer the statute; requiring the issuance of new rules, forms, and procedural regulations after notice and an opportunity for public comment; making guidance and assistance—including published advisory opinions—available to the public for the first time; authorizing the creation of computer systems to enhance public access to filed materials; avoiding intrusive audits or inspections through an informal dispute resolution process; and substituting a system of administrative fines—subject to judicial review—for the existing criminal penalties for noncompliance.

The bill we are introducing today contains a number of improvements over last year's bill. These changes are as follows:

The definition of "covered executive branch officials" is revised to include so-called Schedule C employees—political appointees serving in confidential or policy-making positions—as well as executive level officials and employees in the senior executive service.

The revised bill makes minor changes to the definitions of the terms "lobbyist" and "lobbying contact." The definition of "lobbyist" is revised to clarify that it applies on a client-by-client basis. The definition of "lobbying contact" is revised to clarify that the exclusion for written comments and other on-the-record communications applies regardless whether the communication is made with regard to legislation, regulatory proposals, or the administration of an ongoing program.

The revised bill adds a new provision making conforming changes to other statutes that refer to foreign agents and foreign principals to ensure that changes in the applicability of the Foreign Agents Registration Act do not result in any other changes to substantive law. In addition, the repeals of obsolete lobbying disclosure statutes are consolidated in a single section, and section 12(i) of the Public Utility Holding Company Act of 1935, which requires registration of list of statutes repealed.

The terms "income" and "expenses" are substituted for the terms "receipts" and "costs" to ensure that the Office of Lobbying Disclosure will have flexibility to require reporting of income and expenses when incurred rather than when received, if necessary to preclude evasion. In addition, flexibility is added to the provision addressing reporting of lobbying expenditures of nonprofit entities disclosing lobbying expenditures to the IRS, to accommodate differences in reporting periods.

Finally, the section on written decisions in noncompliance hearings is revised to ensure that such decisions will be available to the public, subject to appropriate redaction of confidential information.

President Clinton has said he will push for and sign legislation to toughen and streamline lobbying disclosure. The time is right for passage of this legislation and I hope that my colleagues will join me in enacting this bill into law.

Our new President has promised to push for and sign legislation to toughen and streamline lobbying disclosure. It is time for Congress to get behind the President on this important issue. The bill that Senators COHEN, GLENN, ROTH, BOREN, and I are introducing today would take a huge step in the right direction—the direction of Government in the sunshine, the direction of public disclosure and accountability—without impinging on first amendment rights. I hope that my colleagues will join me in supporting this bill and enacting this bill into law.•

• Mr. COHEN. Mr. President, I am pleased to join Senator LEVIN in reintroducing legislation which is designed to remedy the serious flaws in the current Federal lobbying disclosure laws.

The three major goals of this legislation are to bring uniformity, simplicity, and clarity to a system which can only be characterized as chaotic and counterproductive and, in my view, inimical to our system of government.

There is widespread agreement that the existing laws which govern lobbying are not serving the intended purpose of ensuring full public disclosure of lobbying activities. As the series of hearings held by the Senate Subcommittee on Oversight of Government Management revealed, the current system is riddled with loopholes, unnecessary and burdensome requirements, and there is little or no enforcement. As one of the subcommittee's witnesses observed, "present laws are being, if anything, observed in the breach."

The fundamental problem is that there is no agreement on who is required to register, what types of activities are covered, or what information must be disclosed. Many of the individuals who engage in lobbying are not registering, at least in some cases because they sincerely believe they are not required to, and those who do register are too often disclosing information that is of little use in making any determination as to actual lobbying activities or costs.

This situation subverts the public's confidence in government and in their elected officials which, as we all know, is at an all time low today. The low esteem in which public officials are held is due, in part, to the fact that the American people have come to the conclusion that the system is not serving the general public good and, instead, special interests are manipulating it to serve their own ends.

The depth of the public's concerns in this regard was made clear during the Presidential campaign last year. When H. Ross Perot decried the influence of special interests and high-priced lobbyists in Washington, he was articulating the outrage of many Americans who fear that high-paid hired guns are gaining access to Federal officials in an attempt to improperly influence the decisionmaking process. What the public wants to know is "who is doing what on behalf of whom and for how much?"

Under the current system, little relevant or useful information is being disclosed. The statutes are unclear and confusing, duplicative and burdensome, and require the disclosure of the wrong kinds of information. The failure of these laws to ensure public disclosure of appropriate and useful information about lobbying activities only serves to further undermine the public's confidence in government.

The legislation we are introducing is a comprehensive approach to reform which, when enacted, will be a significant improvement over the current situation. The bill would replace existing laws with a single, uniform statute and ensure that all professional lobbyists are registered. It would streamline the disclosure requirements to ensure meaningful disclosure to the public and to eliminate burdensome requirements on those who must register. It would also establish a new, more effective system for the administration and enforcement of these requirements. The responsible agency would be a new office created within the Department of Justice.

In conclusion, let me emphasize that the importance of ensuring effective public disclosure of lobbying activities cannot be understated. The public's suspicions concerning what is happening behind the closed doors of government offices can be significantly reduced or eliminated when there is adequate disclosure of these activities.

The lobbying disclosure reform measure being introduced today is a serious effort to comprehensively revamp the chaotic system that now exists. By replacing the ineffective patchwork of current laws with a uniform and simplified statute, the legislation will help to ensure that all professional lobbyist are registered and that lobbying activities are fully disclosed. More useful information will be disclosed to the American public and the press and, as a result, the public will be able to find an answer to the question "who is doing what on behalf of whom, and for how much?"

I want to commend Senator LEVIN for his commitment to achieving effective disclosure of lobbying activities. I hope our colleagues will join us in supporting this important legislation and will

work with us to see that it is enacted into law this year.•

• Mr. ROTH. Mr. President, I would like to take this opportunity to join Senators LEVIN, COHEN, and GLENN in voicing my support for the Lobbying Disclosure Act of 1993. While the U.S. Constitution quite clearly guarantees the right to free speech as well as the right to petition the Government for redress of grievances, Congress may, without infringing on these important first amendment rights, require that lobbying activities be disclosed to the public. Surely, there can be no question that both Congress and the public are well served by the disclosure of private pressures on public issues.

The role of interest groups in the U.S. system of government has been a matter of concern and debate for over 200 years. As James Madison articulated, a democratic, pluralistic society is best served by "devising an elaborate system of procedural 'checks and balances' to reduce the potential power of any single, strong group, whether representing a majority or a minority position." Even today, the subject bears directly on constitutional freedoms of petition, speech and assembly, and the limits of those freedoms and the manner in which they may be regulated. Thus, in crafting new disclosure laws, we must recognize that almost all lobbying is constitutionally protected.

As it stands now, the omnibus 1946 Federal Regulation of Lobbying Act, the 1938 Foreign Agents Registration Act [FARA], the so-called Byrd amendment, and the 1989 HUD Reform Act form a loose patchwork of Disclosure requirements that are too easily avoided. The Foreign Agents Registration Act and the Federal Regulation of Lobbying Act have been in place for decades. Indeed, FARA's dissemination policies have remained unchanged since 1938. These laws are so complicated and riddled with loopholes as to be neither enforced nor enforceable. Clearly, they fail to achieve the public interest they are meant to serve, namely, informing the public of various pressures brought to bear by lobbyists on the Federal Government. In short, the existing lobbying disclosure laws poorly serve both the public and the lobbying community.

There is clearly a need to consolidate and rationalize the diverse and often confusing laws not on the books. The Lobbying Disclosure Act, if enacted, will consolidate and reform the existing lobbying disclosure laws by improving and replacing a group of laws that are widely viewed as ineffective and unenforceable with a single statute. Importantly, the new law will broaden the coverage of existing disclosure statutes to ensure that all professional lobbyists are registered, including those representing foreign entities. Specifically, the bill requires the disclosure of any foreign entity which supervises, directs or controls the client, or which has a direct interest in the outcome of the lobbying activity.

As President Clinton said in his inaugural address, "let us resolve to reform our politics, so that power and privilege no longer shout down the voice of the people." More specifically, the "Putting People First," the President promised to "push for and sign legislation to toughen and streamline lobbying disclosure." Well Mr. President, you have my support. If enacted, the Lobbying Disclosure Act introduced today will bring about more thorough disclosure of lobbyists' activities while streamlining disclosure requirements to ensure that only meaningful information is disclosed and needless burdens are avoided. This legislation is nearly identical to S. 2766, lobbying reform bill introduced in the 102d Congress, which was marked up and reported by the Committee on Governmental Affairs, on which I serve as ranking Republican.

I am confident that the Lobbying Disclosure Act, should it become law, will go a long way towards clarifying existing disclosure laws and will yield more useful information to both Congress and the public. Americans deserve to know how their government works, and how decisions may be influenced by the activities of organizations heavily engaged in the legislative process. Although these reforms are important, they should not be confused with more comprehensive ethics reform. In addition to the above, we need to remedy abuses in our current system of campaign finance laws and reduce overall campaign costs so that the interests of the individual citizen are placed above special interests.•

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 350. A bill to amend the Federal Water Pollution Control Act to require the Administrator of the Environmental Protection Agency to make grants to the Massachusetts Water Resources Authority for construction of wastewater treatment; to the Committee on Environment and Public Works.

BOSTON HARBOR ACT OF 1993

Mr. KERRY. Mr. President, today I am joined by my good friend, the senior Senator from Massachusetts, in reintroducing legislation to continue the Boston Harbor cleanup effort. This legislation, which Senator KENNEDY and I originally authored during the last Congress, would authorize a major Federal funding commitment for the cleanup of Boston Harbor, one of America's most historic—and, unfortunately, dirtiest—coastal water bodies. Congressmen MARKEY, MOAKLEY, STUDDS, and KENNEDY are introducing similar legislation in the House today.

Each day, over one half billion gallons of sewage are discharged into the harbor—resulting in what is arguably the most serious coastal water quality problems in the Nation. While the practice of discharging sewage sludge has been halted, continuing discharge of wastewater that has not received secondary treatment required by the Federal Clean Water Act remains a serious environmental problem.

This pollution is a major continuing threat to water activities such as fishing, swimming, and boating, and to other uses that provide a boost to the Boston area's economy. In addition, the contamination continues to devastate the health of marine life and threaten the health of the citizens of the Boston area.

While the public health and user benefits of harbor cleanup are great, so, too, are the costs. The total capital program of the Massachusetts Water Resources Authority [MWRA], which is charged with harbor cleanup, totals $5.7 billion for both water supply and sewage treatment. Of that amount, $4.8 billion, in 1993 dollars, is for the wastewater capital program. This is by far the most costly public works program in the history of New England.

The MWRA has received $279 million in Federal grant funding since 1987. Should no additional grant funding be provided by Congress or the Commonwealth, roughly 95 percent of the wastewater capital program will be locally funded. However, Congress historically has provided 55 percent in Federal matching grants to other localities across the Nation for similar water projects. In fact, in some cases, the Government provided 75 percent matching funds to larger urban areas in need of assistance for similar projects.

Given the Federal mandate for such projects and the extraordinary size and crushing rate burden associated with this particular situation, it is only fair, reasonable, and just for the Federal Government to assume a significantly larger share of the financial burden than it has accepted to date.

I am pleased with our past efforts to obtain Federal assistance to help Massachusetts ratepayers in meeting the obligation for this massive federally mandated wastewater construction program for Boston Harbor. However, the Federal and State assistance to date has just begun to scratch the surface.

MWRA area residents are continuing to experience rate shock in undertaking this important environmental program and MWRA households have experienced increases of 30 percent or more in just one year. Some estimate MWRA rates could increase by about 20 percent or more a year for the next 5 years to an average of $1200 per household by the year 2000. At that rate, an average family would pay about $100 per month just for water and sewer service—perhaps the fastest growing and highest rates in the country. In fact, one re-

cent study estimates that MWRA district rates already are the highest in the Nation.

Even with significantly increased Federal and State assistance, rates will remain the highest or among the highest in the country; without it, our families will have the unchallenged if dubious distinction of paying more for sewage disposal than anyone else in any major metropolitan area of the United States.

The public health and environmental benefits of achieving Federal sewage treatment standards are obvious. In addition, as one of the largest public works projects in New England, the Boston Harbor cleanup will have significant economic benefits to Boston and the region. One Massachusetts study finds that every $1 billion of clean water investment produces 57,000 jobs, directly and indirectly. In addition, upon completion, it will allow removal, or avoidance of, any development moratoria related to inadequate sewage treatment facilities.

The Boston Harbor wastewater construction project is under way and on schedule. Its economic impact in generating much needed employment is significant. Plans are ready and additional Federal funding could be put to use this year as an important element in the Nation's effort to expand employment opportunities.

In addition to grant funding, in December, 1991, MWRA received $73.1 million in loans from the Commonwealth of Massachusett's State Revolving Fund established under Title VI of the Clean Water Act. However, since MWRA's own revenue bonds have a high rating, the State revolving fund [SRF] loans are expected to provide only minimal relief to the Authority's rate payers.

The legislation introduced today would authorize the appropriation of $1 billion over 5 years for the construction of wastewater facilities serving MWRA and Boston area households comprised of nearly 2.6 million persons and 5,500 businesses and industries. These funds would be used by MWRA to meet federally mandated secondary treatment requirements under a schedule previously ordered by the U.S. District Court.

Even in combination with the $279 million provided by Congress to date, this amount would bring the Federal share of the Boston Harbor project to approximately 20 percent of total costs, a far cry from the 75 percent Federal matching funds authorized for projects in the original Clean Water Act of 1972 or 55 percent for certain projects initiated after 1984.

Many other metropolitan areas in this country have complied with the Clean Water Act with the same significant assistance of these higher levels of Federal grant funding previously available. It is only fair and reasonable for the Federal Government to recognize its responsibility and expand its commitment to the Boston Harbor project. This bill enables that to happen. In the long run, this bill will save Massachusetts ratepayers thousands of dollars for each family—dollars they need to educate their children and meet a score of other important family financial burdens, instead of going primarily to pay some wealthy bond buyers rent on their money.

In past years, while the Massachusetts Congressional delegation has agreed that new clean water investments must be a top priority for the people of our State, the Reagan and Bush administrations have provided limited assistance. I am encouraged that the incoming Clinton-Gore administration views infrastructure needs as an important Federal responsibility and budgetary priority.

Today, I urge both President Clinton and my colleagues in Congress to recognize that what is really necessary and fair is a much more serious and multi year commitment to the cleanup of the historic Boston Harbor. We are not asking for the 75-percent Federal share of such costs that was provided for similar projects in the past, or even the 55 percent that was available for such projects at other times. We are simply asking that roughly 20 percent of this federally required, federally supervised clean-up be carried by the Federal Government, so that hard pressed Massachusetts ratepayers will not be left to carry this extraordinary load by themselves.

While the steps which would be authorized by the legislation we are introducing today are key to accomplishing the cleanup of Boston Harbor, we also recognize the vital role that must be played by the Governor and State government. Indeed, this is a problem so severe that it crosses all levels of government, and the actions of one will be sufficient without the committed and energetic involvement of all the others.

Finally, I would just like to add that the pricetag of the cleanup of Boston Harbor is just one example of a responsibility the Federal Government must share among many water investment projects throughout Massachusetts and across the country. Given the new administration's commitment to clean up assistance, I am hopeful that we will have more success in funding these other crucial water projects. My State has over 200 communities, from Holyoke to New Bedford to Lowell to Springfield, in need of new or improved water and sewer systems.

Mr. President, I hope that the Congress will provide expeditious and favorable consideration of this proposal and I ask unanimous consent that the text of the legislation be printed in the RECORD following my remarks.

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

S. 350

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 "Boston Harbor Wastewater Treatment Act of 1993".

SEC. 2. BOSTON HARBOR WASTEWATER TREATMENT GRANTS.

Title V of the Federal Water Pollution Control Act of 1972 is amended—

(1) by redesignating section 519 (33 U.S.C. 1251 note) as section 520; and

(2) by inserting after section 518 (33 U.S.C. 1377) the following new section:

"SEC. 519. BOSTON HARBOR WASTEWATER TREATMENT GRANTS.

"(a) IN GENERAL.—The Administrator shall make grants to the Massachusetts Water Resources Authority for constructing wastewater treatment works for the areas served by the Massachusetts Water Resources Authority.

"(b) FEDERAL SHARE.—The Federal share of a project described in subsection (a) shall not exceed 75 percent of the cost of construction of the wastewater treatment works. The non-Federal share may be satisfied by any combination of public or private funds or in-kind services.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section $1,000,000,000 for the period beginning on the first day of fiscal year 1994, to remain available until expended.

"(2) SUPPLEMENTAL FUNDS.—Funds made available under paragraph (1) shall be used to supplement and not supplant other amounts made available under titles II and VI.".

Mr. KENNEDY. Mr. President, I am pleased to join my colleague from Massachusetts, Senator KERRY, in reintroducing this legislation to help ease the burden of sharply escalating water and sewer rates in the Greater Boston area.

This legislation is urgently needed by the 2.5 million citizens in 61 communities in Massachusetts who are reeling under the crushing cost of the largest clean water public works project in the country. The Boston Harbor project is mandated by Federal environmental laws and on a strict court-imposed timetable that imposes most of the multibillion dollar expenses in the next few years.

The result is that Boston area residents and businesses face the highest water and sewer rates in the country. The average household is now paying about $500–$600 a year, and that figure is expected to rise to over $1,200 by the end of the decade. These rates are far higher than in other areas of the country.

To date, the Federal share toward the Boston Harbor project has been less than 8 percent. By contrast, communities across the country have had 55–75 percent Federal assistance on these kinds of projects in the past. An increase to $200 million in Federal assistance a year over the next 5 years, as envisioned by this legislation, would

still leave ratepayers with a very heavy burden, but would show that the Federal Government is working to ease the skyrocketing costs.

Help for Boston Harbor is not only a question of fairness. It is also a sound investment in a cleaner environment, a stronger infrastructure, and greater job creation for a region that has been particularly hard hit by the recession. I urge my colleagues to support this important legislation that will bring much-needed relief to the thousands of families and businesses in the Boston area.

By Mr. STEVENS:

S. 351. A bill to exclude deposits into a capital construction fund account under section 607(d) of the Merchant Marine Act from net earnings from self-employment; to the Committee on Finance.

S. 352. A bill to provide for the self-employment tax treatment of qualified withdrawals from a capital construction fund account under section 607(d) of the Merchant Marine Act; to the Committee on Finance.

CAPITAL CONSTRUCTION LEGISLATION

Mr. STEVENS. Mr. President, today I am introducing two bills which provide alternative approaches to resolving a tax problem which has been impairing the effectiveness of the capital construction fund program.

The first bill is similar to legislation I introduced in the 102d Congress as S. 1934. The bill would permit participants in the merchant marine capital construction fund—or CCF—program to reduce their self-employment income by the amount of contributions to their CCF account. Under current law, an amount equal to the amount deposited for the year into a CCF account reduces taxable income, but not self-employment income. The need for this provision can be better understood if I give some background on the purposes of the CCF program.

The purpose of the capital construction fund program, which was created by the Merchant Marine Act in 1936, is to improve the U.S.-flag merchant marine by providing fishermen a mechanism to facilitate accumulation of funds with which to acquire, construct, or reconstruct vessels. This is accomplished by permitting any citizen owning or leasing an eligible vessel to enter into an agreement with the Secretary of Commerce to establish a capital construction fund. Taxation of funds deposited into a CCF are deferred, in order to facilitate the accumulation of funds required for the acquisition, construction, or reconstruction of the specified vessel(s).

Essentially, this is a form of advance depreciation. Earnings which are placed into the CCF accounts are not subject to the income tax. However, when funds are withdrawn from the CCF accounts to acquire, construct or reconstruct a vessel, the basis of the vessel is reduced.

The advance depreciation benefit does not, however, apply to self-employment income. The Internal Revenue Service and the U.S. Tax Court have ruled that although the Merchant Marine Act provided that taxable income should be reduced by the amount deposited into a CCF, no provisions exist for earnings to be reduced in the determination of self-employment tax. Fishermen using the CCF program are therefore, in a sense, double-taxed with reference to self-employment income. They pay tax on their self-employment income at the time of the CCF deposit and lose future depreciation deductions against self-employment income due to the basis reductions required by the program.

Despite this double taxation, the Tax Court found in unlikely that Congress ever considered whether deposits into a capital construction fund established pursuant to section 607 of the Merchant Marine Act should be subject to the self-employment tax. *Eades* v. *Commissioner*, 79 TC 985 (Dec. 8, 1982).

I believe the Congress should squarely address this issue and make clear that deposits into CCF accounts will reduce self-employment income. The current situation where individuals must lose future depreciation against their self-employment income in order to utilize the CCF Program is inconsistent with that program's purpose. It doesn't make sense to provide reduction of taxable income as an incentive to use the CCF Program, and at the same time have a disincentive on the self-employment income side. This reduces the benefits CCF can provide to fishermen, which undermines the purposes of the program. I have, in fact, been told by administrators at the Fisheries Service that some fishermen are not using CCF because of the double taxation disincentive.

The first bill I am introducing today is substantially similar to S. 1934, which I introduced on November 7, 1991. It makes clear that deposits into CCF accounts will reduce—in addition to taxable income—net earnings from self employment. In addition, the bill provides for recapturing self-employment taxes for funds which are withdrawn from CCF accounts for nonqualified purposes, that is purposes other than acquisition, construction, or reconstruction of qualified vessels. However, unlike the bill I offered last Congress, my bill would be prospective only in order to hold down any revenue loss. The Joint Tax Committee has estimated the prospective losses to the Social Security trust funds to be $4 million per year.

I have also prepared an alternative bill which would have an even smaller revenue loss. Instead of providing for reduction of self-employment income up front, my alternative proposal would simply restore to users of CCF accounts the ability to apply depreciation against their self-employment income, notwithstanding that their basis has been automatically reduced for income tax purposes.

While this alternative bill would not fully restore the incentives of the program, it would nevertheless remove the tax penalty which now encumbers the program. The revenue losses of $4 million per year would also be reduced under this alternative approach.

I thank Senators for their attention and would welcome their support of my effort to clarify the tax treatment and ensure the effectiveness of the capital construction fund program.

I ask unanimous consent that the text of both bills be placed in the RECORD at the conclusion of my statement.

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

S. 351

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled,

SECTION 1. DEPOSITS IN CAPITAL CONSTRUCTION FUND ACCOUNT EXCLUDED FROM NET EARNINGS FROM SELF-EMPLOYMENT.

(a) IN GENERAL.—Subparagraph (A) of section 607(d)(1) of the Merchant Marine Act, 1936 (46 U.S.C. 1177(d)(1)) is amended by striking "taxable income (determined without regard to this section and section of such Code) for the taxable year shall be reduced" and by inserting "taxable income and net earnings from self-employment attributable to the operation of the agreement vessels (determined without regard to this section and section 7518 of such Code) for the taxable year shall each be reduced".

(b) NONQUALIFIED WITHDRAWALS.—Section 607(h) of the Merchant Marine Act, 1936 (46 U.S.C. 1177(h)) is amended by adding at the end thereof the following new paragraph:

"(7) NONQUALIFIED WITHDRAWALS SUBJECT TO SELF-EMPLOYMENT TAX.—

"(A) IN GENERAL.—In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by section 1401 of the Internal revenue code of 1986 (at a rate for such taxable year unless otherwise established by the taxpayer to the satisfaction of the Secretary) shall be determined without regard to section 230 of the Social Security Act (42 U.S.C. 430).

"(B) TAX BENEFIT RULE.—If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under section 1401 of such Code for any taxable year preceding the taxable year in which such withdrawal occurs, such portion shall not be taken into account under subparagraph (A).".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 7518(c)(1) of the Internal Revenue Code of 1986 is amended by striking "taxable income (determined without regard to this section and section 607 of the Merchant Marine Act, 1936) for taxable year shall be reduced" and by inserting "taxable income and net earnings from self-employment attributable to the operation of the agreement vessels (determined without

regard to this section and section 607 of the Merchant Marine Act, 1936) for the taxable year shall each be reduced".

(2) Section 7518(g) of the Internal Revenue code of 1986 is amended by adding at the end thereof the following new paragraph:

"(7) NONQUALIFIED WITHDRAWALS SUBJECT TO SELF-EMPLOYMENT TAX.—

"(A) IN GENERAL.—In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by section 1401 (at a rate for such taxable year unless otherwise established by the taxpayer to the satisfaction of the Secretary) shall be determined without regard to section 230 of the Social Security Act (42 U.S.C. 430).

"(B) TAX BENEFIT RULE.—If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under section 1401 for any taxable year preceding the taxable year in which such withdrawal occurs, such portion shall not be taken into account under subparagraph (A).".

(3) Section 1403(b) of the Internal Revenue Code of 1986 is amended by adding the following new paragraph:

"(3) For treatment of earnings of ship contractors deposited in special reserve funds, see subsections (d) and (h) of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177) and subsections (c) and (g) of section 7518."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of the amendment made by subsection (a) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.

S. 352

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. . SELF-EMPLOYMENT TAX TREATMENT OF QUALIFIED WITHDRAWALS FROM CAPITAL CONSTRUCTION FUND ACCOUNT.

(a) IN GENERAL.—Subsection (g) of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177) is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR SELF-EMPLOYMENT TAX.—In determining net earnings from self-employment for any taxable year, the basis of a vessel, barge, or container shall not be reduced by any qualified withdrawal in such taxable year."

(b) CONFORMING AMENDMENTS.

(1) Subsection (f) of section 7518 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(6) SPECIAL RULE FOR SELF-EMPLOYMENT TAX.—In determining net earnings from self-employment for any taxable year, the basis of a vessel, barge, or container shall not be reduced by any qualified withdrawal in such taxable year."

(2) Section 1403(b) of the Internal Revenue code of 1986 is amended by adding the following new paragraph:

"(3) For treatment of qualified withdrawals from capital construction fund accounts, see section 607(g)(6) of the Merchant Marine Act, 1936 (46 U.S.C. 1177) and section 7518(f)(6)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to withdrawals occurring after December 31, 1992.

By Mr. STEVENS:

S. 353. A bill to provide Alaska Native corporations, through an election process, standing to contest the disallowance of certain tax losses by the Internal Revenue Service if the purchasers of the losses agree; and to offset any associated revenue losses by increasing the interest rate on certain related tax deficiencies; to the Committee on Finance.

ALASKA NATIVE CORPORATION ACT OF 1993

Mr. STEVENS. Mr. President, the bill I am proposing today was included last year in H.R. 11. Since that legislation did not become law, I am reintroducing my legislation, which would provide Native corporations with the opportunity to go to court to contest Internal Revenue Service determinations with regard to the sale of net operating losses. This bill deals with standing only; it provides no new tax benefits of any kind and has been determined by the Joint Committee on Taxation to be revenue neutral.

First, let me briefly give some background. In 1984, Alaska Native corporations, or ANC's as we call them, were granted an exception from the general restriction on sale of net operating losses. This was granted in recognition of the decline in value of the lands and assets transferred to the ANC's by the Alaska Native Claims Settlement Act.

Many of the lands and assets had declined in value because of a delay in transfer and only a small fraction of their original value could be realized upon development or sale. Moreover, the losses generated thereby could not be utilized by the ANC's because they did not have offsetting income. However, if the losses could be sold to profitable corporations, economic value from these conveyed lands and assets could be realized. Hence the genesis of the ANC net operating loss [NOL] provision.

In 1986, Congress made clear its intention that these sales go forward and not be frustrated by the IRS applying theories of law in contravention to the express statutory provisions. Thus, as stated in section 60 of the 1986 act, except as otherwise provided, "no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law shall apply to deny the benefit or use of losses incurred or credits earned * * *."

In the 1988 tax law [TAMRA], the Native corporation NOL exception was phased out under the terms of specified transitional rules.

The most recent stage of the NOL process has been an audit of the losses by the IRS, followed by ANC agreement with any IRS-proposed adjustments, or litigation. Recently, however, the IRS has advanced a "spring-back theory" which is working to deny Native corporation standing in court to contest IRS determinations. Let me explain what has been happening.

In order to implement the NOL provisions, a subsidiary is formed to which the profits of the buyer corporation are transferred and the buyer's money for purchase of the NOL's goes into escrow. Such profits are then consolidated with losses generated by the ANC's so that little or no tax remains to be paid. If the IRS makes an adjustment which reduces the amount of the losses, there will be an excess of income in the subsidiary corporation formed to receive the buyer's profits. This would normally result in an additional tax due in the ANC's consolidated return and thus give the ANC the standing to challenge the assessment, both administratively and judicially.

However, the IRS has determined that such income does not remain in the ANC's consolidated return but instead "springs back" to the buyer—along with standing to challenge the IRS' determination. For those ANC's that have an alternative minimum tax liability, standing can nevertheless be achieved, provided the IRS chooses to assert that deficiency. However, for those ANC's that do not, the tax deficiency has "sprung back" to the buyer—and along with it, the ability to challenge in court the IRS' revaluation of the ANC losses.

The IRS position here is in conflict with the explicit admonition in the 1986 act that the IRS not frustrate these transactions without good and substantial reason. Nevertheless, the IRS has developed this novel "spring-back" theory to prevent ANC's from attaining standing to litigate the losses which they claimed on their own returns.

Mr. President, the bill I am introducing today has a single purpose: to grant ANC's, the true parties in interest, standing to litigate the NOL sales reported on their own returns. This is important because the buyer corporations are unfamiliar with the details of the losses claimed by the ANC-sellers. These losses are based on specific Alaskan transactions such as sales of timber, timber harvest rights, mining, and other natural resources. The buyer is usually a corporation from the lower 48 States which has depended upon the Native corporation, by contract, to be responsible for proving and defending these losses.

Most importantly, the real party at interest is the Native corporation because it has, in every case to my knowledge, contracted to indemnity the buyers for substantially all tax liability resulting from any losses incurred during the IRS audit.

Finally, the Native corporation is the party specifically designated by Congress to be the beneficiary under the NOL provision.

Mr. President, this bill will correct the standing problem, and will also have the collateral advantage of simplifying and consolidating audits.

Specifically, my legislation provides an elective process under which the Native corporation and one or more of its buyers may jointly elect to provide standing to an ANC, when denied by the IRS under the "springback" theory. This provides for a detailed statement which must be filed and the limited time frame in which the election must be made. Upon election, the Native corporation is the clear party at interest and the sole agent for resolution of the dispute with the IRS, with the Native corporation defending the losses claimed on its return. This is what was originally intended, and this bill will assure that this intent is fulfilled. At this point, I ask that a more detailed description of the bill, as well as a section-by-section analysis be entered into the RECORD following my statement.

Mr. President, as noted, this bill is procedural in nature and makes no substantive change to the tax law. The technical aspects of the statutory language and the description of the bill are based on extensive discussions with the Joint Tax Committee staff, and staff at the IRS and Treasury. The bill language is identical to section 7617 of H.R. 11, with the exception of a technical amendment adding new subparagraph (c)(1)(A)(v).

The Joint Committee originally estimated that enactment of this legislation would have resulted in a revenue loss to the Treasury of $15 million over 5 years. While I do not agree with the concept of associating revenue losses with a simple granting of standing, I fully understand that our budget process requires an offset to the Joint Committee's estimated loss. I have therefore included in my bill a provision that, in the event of an underpayment resulting from any case in which an election has been made, the applicable interest rate shall be calculated at the Federal short-term rate plus 3.50 percentage points, instead of the usual 3.0 points. This incremental increase in the interest rate on deficiency payments will, according the Joint Committee on Taxation, raise the required $15 million.

I would ask the distinguished chairman and ranking member of the Finance Committee to include in this year's tax bill the legislation I have introduced here today, which would guarantee Alaska Native Americans, through their congressionally created Native corporations, the fundamental right accorded all Americans—the ability to contest a tax determination made by the IRS with the full protection of the American judicial system.

Mr. President, I ask unanimous consent that several related documents be printed in the RECORD.

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

ALASKA NATIVE CORPORATION STANDING BILL—DESCRIPTION OF AMENDMENT

PRESENT LAW

Congress allowed Alaska Native Corporations ("ANCSA—Alaska Native Claims Settlement Act Corporations") to sell their net operating losses and other tax benefits ("NOLs") to unrelated profitable corporations ("Buyers") from 1984 to 1988. The Internal Revenue Service is now examining these transactions and has in some cases contested the amount of NOLs reported by the ANCSA Corporations. The Internal Revenue Service has taken the position that any excess assigned income "springs back" to the assigning corporation. As a result, the ANCSA Corporations would not have any regular income tax liability and therefore lack standing to defend the validity of their NOLs.

DESCRIPTION OF PROPOSAL

The proposal would provide ANCSA Corporations standing to defend the validity of their NOLs under certain circumstances. This proposal is procedural in nature and not intended to change the amount of tax, addition to tax, interest (except for the additional interest generated by the election process), penalty or similar amount that may otherwise be due with respect to an NOL sale, including, but not limited to, any alternative minimum tax.

(1) All federal income tax issues concerning the amount and validity of tax benefits of an ANCSA Corporation that were sold to a Buyer in a transaction permitted under section 1804(e)(4) of the Tax Reform Act of 1986 ("NOL sale") would be resolved by the ANCSA Corporation and the Internal Revenue Service under procedural rules applicable to taxpayers generally. For example, the IRS would issue a statutory notice of deficiency to the ANCSA Corporation thereby giving the ANCSA Corporation standing to resolve the issues by settlement or litigation and the ability to pay any deficiency and file a claim for refund and litigate in its name in the appropriate judicial forum. All IRS notices regarding ANCSA Corporation transactions for which an election has been made would be issued only to the ANCSA Corporation, which would provide copies of such notices to all Buyers affected.

(2) An ANCSA Corporation must obtain the written consent of a Buyer with respect to a particular NOL sale in order to receive standing with respect to such sale. In the case of an ANCSA Corporation that has entered into multiple NOL sales, this election is to be made independently by each Buyer with respect to each ANCSA Corporation, but, if made, must be elected by a Buyer for all NOL sales with a particular ANCSA Corporation for which the statute of limitations for assessment is open. If the ANCSA Corporation has dealt with multiple Buyers or profit subsidiaries in the taxable year, it is intended that the Internal Revenue Service will respect the allocation, or ordering of an ANCSA Corporation's losses among several Buyer corporations in a single year. This election must include an agreement by the Buyer to extend the statute of limitations for its own income tax return (solely with respect to any tax attributable to the subject NOL sale) for at least 180 days after the tax liability of the ANCSA Corporation is finally determined. Nothing in this provision compels the IRS to litigate with an electing Buyer. The provision merely allows electing corporations to proceed in the name of the ANCSA Corporation if there is a tax controversy with respect to the taxability of the income assigned by the electing Buyers. In other words, the IRS will issue a deficiency notice to the ANCSA Corporation for the taxes associated with the portion of the losses that were sold to an electing Buyer; such tax deficiency will be determined by reference to each Buyer separately and, if such tax amount cannot be determined precisely, will be calculated by reference to the maximum tax rate generally applicable to the individual electing Buyer. The IRS may continue to deal with a non-electing Buyer as it would with any other taxpayer, including administrative settlement or litigation of any contested amounts.

(3) Any tax with respect to an NOL sale will be determined at the rate applicable to the Buyer for the taxable year of the Buyer in which the NOL sale occurred (as if the income assigned from the NOL sale had been reported by the Buyer or an affiliated group of corporations which includes the Buyer), and the Buyer shall be responsible for the payment of such tax. For purposes of issuing a notice of deficiency, or making an assessment with respect to a payment of tax and the filing of a refund claim, the IRS will use its best efforts, working with the ANCSA Corporation and the Buyer, to determine the tax using a Buyer's actual effective tax rate. Any payment made to the IRS by an ANCSA Corporation on behalf of a Buyer shall be deemed to be a payment of tax by the Buyer for the taxable year in question. However, the ANCSA Corporation shall be treated as the taxpayer of such amounts (and of any amounts paid by the Buyer) for purposes of filing a claim for refund and a refund suit. Any overpayment that may be made with respect to an ANCSA Corporation transaction for which an election has been made shall be made jointly to the ANCSA and the electing Buyer as the persons who made the overpayment within the meaning of section 6401(a) of the Code; the IRS shall have no further payment obligation with respect to the electing Buyer for such overpayment. Nothing in this provision shall prohibit the Internal Revenue Service from using its authority under section 6402 of the Internal Revenue Code to offset against other liabilities of the ANCSA or the electing buyer the amount of any overpayment that arises as a result of this provision.

(4) A Buyer that elects under this provision shall have participatory rights in any administrative consideration of the tax consequences of an NOL sale (including the right to submit a written statement to the IRS regarding the proposed adjustment and to meet with the IRS at the same time as the ANCSA Corporation), and the right to file an amicus brief in any judicial proceeding commenced by the ANCSA Corporation with respect to such tax consequences. Any meetings with the IRS will be subject to the reasonable discretion of the IRS as to time, place, and manner and will be subject to the general standards of the IRS that are applicable to the time and place for interviewing a taxpayer. The foregoing administrative rights will not apply if the IRS determines that an extension of the statute of limitations is necessary to permit the exercise of such rights and the Buyer and the ANCSA Corporation do not agree to such extension. The same procedural rights are preserved for an ANCSA Corporation for those NOL sales

for which no election is filed. Any failure by the IRS to grant the rights discussed above will not affect the validity of the determination by the IRS of any adjustment of tax liability.

(5) Any final determination related to the ANCSA Corporation's NOL sales, whether by administrative settlement or final judicial decision, including any amount of tax, addition to tax, interest, penalty or similar amount, will be binding upon the ANCSA Corporation, the Buyer, and the IRS.

(6) For any underpayment resulting from a case in which an election has been made under this provision, the interest rate applicable pursuant to Section 6621 of the Internal Revenue Code shall be calculated at the Federal Short-term rate plus 3.50 percentage points.

EFFECTIVE DATE

This proposal would be effective for ANCSA Corporations whose statute of limitations for the period of assessment related to sales under section 1804(e)(4) of the Tax Reform Act of 1986 has not expired.

ALASKA NATIVE CORPORATION STANDING BILL—SECTION-BY-SECTION ANALYSIS

The proposed legislation would amend Section 5021 of the Technical and Miscellaneous Revenue Act of 1988, which provides limited procedural rights to an Alaska Native Corporation ("Native Corporation") with respect to the tax audit litigation of its sale of tax benefits ("NOL sale") to a subsidiary ("profit subsidiary") of an unrelated corporation ("Buyer") in a transaction allowed under section 1804(e)(4) of the Tax Reform Act of 1986 ("Native Corporation transaction"), by amending subsection (c) and adding a new subsection (f).

SUBSECTION (C)(1)—ELECTIVE NATURE OF PROVISION

Subsection (c)(1) allows a Native Corporation and one or more of its buyers to elect to have the income of the profit subsidiary included on the consolidated tax return of the Native Corporation for purposes of the issuance of a statutory notice of deficiency by the Internal Revenue Service ("IRS"). This would allow the Native Corporation to contest the proposed tax deficiency in the United States Tax Court.

Subsection (c)(1)(A) sets forth the terms of the election. The election for the taxable year of the election must be made within 120 days after the date of enactment of the amendment. The election must be filed jointly by the Native Corporation and by the Buyer with the Anchorage IRS district director and must: (1) identify the parties with particularly; (2) state the amount of income assigned by the Buyer that is subject to the election; (3) if the Native Corporation dealt with multiple Buyers or profit subsidiaries in the taxable year, describe the order in which such Native Corporation transactions occurred (it is intended that the IRS will respect the allocation, or ordering, of Native Corporation's losses among several buyer corporations in a single year); (4) state the agreement of the Buyer to extend its statute of limitations for assessment and collection solely with respect to the income of the profit subsidiary for the Native Corporation transaction in question; and (5) authorize the IRS to issue the check for any refund or overpayment jointly to the Native Corporation and the Buyer Corporation.

Subsection (c)(1)(A) also establishes that the election is available separately for each Buyer for each Native Corporation. Any Buyer that so elects must, however, elect for all Native Corporation transactions with the particular Native Corporation for all open taxable years.

Subsection (c)(1)(B) provides that any tax liability for the Native Corporation transaction will remain the same whether an election is made or not. Such tax liability will be calculated by reference to the tax return of the electing Buyer.

SUBSECTION (C)(2)—TREATMENT OF NATIVE CORPORATION COMMON PARENT AS SOLE AGENT

Subsection (c)(2) provides that the common parent of the consolidated return of an electing Native Corporation will be treated under the consolidated return regulations as the sole agent of the profit subsidiary with respect to the Native Corporation transaction, except for purposes of collection.

SUBSECTION (C)(3)—COLLECTION OF TAX FROM BUYER CORPORATION

Subsection (c)(3) provides that the Buyer and the profit subsidiary will be liable for any income tax attributable to the Native Corporation transaction as if no election had been made. This provision is necessary to ensure full collection of the tax by inclusion of any excess income in the Buyer's return.

SUBSECTION (C)(4)—TREATMENT OF NATIVE CORPORATION AS THE TAXPAYER FOR PURPOSES OF FILING A REFUND CLAIM

Subsection (c)(4) permits the Native Corporation to pay all or part of any tax that is assessed against the Buyer for a Native Corporation transaction for which an election has been made and to file a claim for refund as the taxpayer thereof. The Native Corporation is also treated as the taxpayer for purposes of filing a refund suit with respect to any taxes attributable to such Native Corporation transaction. The venue for any refund suit would be determined by reference to the Native Corporation. The Native Corporation and the electing Buyer would be the joint recipients of any tax overpayment that is finally determined by the IRS or a court.

SUBSECTION (C)(5)—PROCEDURAL RIGHTS OF ELECTING BUYER

Subsection (c)(5) provides an electing Buyer with the same rights that the Native Corporation has under existing law. That is, the Buyer will have the right to submit a written statement to the IRS, to meet with the IRS at the same time as the Native Corporation, and to file an amicus brief in any litigation proceeding commenced by the Native Corporation. The IRS will send all notices to, and deal directly with, the Native Corporation, which will have the responsibility of forwarding such notices and other information to its affected buyers.

SUBSECTION (C)(6)—FINALITY OF DECISION

Subsection (c)(6) establishes that any final determination of the amount of any taxes and other amounts due with respect to a Native Corporation transaction for which an election has been made, whether by administrative settlement or judicial decision, will be final and be binding upon all parties, i.e., the Native Corporation, the Buyer, the profit subsidiary, and the IRS. No further administrative or judicial action with respect to such amounts will be permitted.

SUBSECTION (C)(7)—PROCEDURAL RIGHTS WHEN NO ELECTION IS MADE

Subsection (c)(7) provides that, in the absence of an election, the IRS shall have full authority to settle or litigate with any non-electing buyer corporation with respect to any issue relating to a Native Corporation transaction. Subsection (c)(7) also provides a Native Corporation with the same procedural rights as an electing Buyer in those situations where no election is filed. That is, the native Corporation will have the right to submit a written statement to the IRS, to meet with the IRS at the same time as the non-electing Buyer and to file an amicus brief in any litigation proceeding commenced by the non-electing Buyer.

SUBSECTION (C)(8)—EFFECTIVE DATE

Subsection (c)(8) provides that this elective provision will be available to all Native Corporations for which the statute of limitations for assessment has not yet expired. Those Native Corporations for which the statute of limitations expires within 120 days after the enactment of the provision will be given the right to extend such statute by agreement with the IRS in order to permit them to make the election.

SUBSECTION (F)—SPECIAL INTEREST RATE

Subsection (f) is the funding mechanism for the election process set forth in amended subsection (c). It provides that, in the event of an underpayment resulting from any case in which an election has been made under subsection (c), the interest rate applicable pursuant to Section 6621 of the Internal Revenue Code shall be calculated at the Federal Short-term rate plus 3.50 percentage points.

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S. 354. A bill to section 108(f) of the Internal Revenue Code of 1986 to clarify the tax treatment of discharges of indebtedness under certain student loans; to the Committee on Finance.

STUDENT LOANS TAX ACT OF 1993

Mr. STEVENS. Mr. President, today I am introducing a bill to bring fairness and equity to the tax treatment of Alaska's student loan forgiveness program. I first introduced the provision on October 26, 1989. It was included last fall in H.R. 11 as section 7104(b)—but as Senators know, that bill was not signed into law. Nevertheless, this provision remains important to thousands of Alaskans, and I hope the Finance Committee will include it in this year's tax legislation.

Before I explain the need for this bill, I'd like to give Senators some background on this issue. In general, forgiveness of debt in return for an action on the part of the debtor is taxable and must be reported as other income. This principle applies generally to forgiveness of student loan debt.

However, section 108(f) of the Internal Revenue Code provides an exemption from taxation for certain student loan forgiveness programs; the exemption applies to student loan programs which condition forgiveness of the loans on the recipient "work(ing) for a certain period of time in certain professions for any of a broad class of employers." This exemption, in effect, permits States to treat as nontaxable grants, loan amounts made to individuals who end up serving in various needed professions in their home States.

However, in Alaska, one of our unique characteristics is that because of our small population and our loca-

tion, we have no professional schools in our State to train lawyers and doctors. Our student loan forgiveness program was therefore designed to encourage students to return to our State after receiving an education elsewhere. For loans made before July 1, 1987, Alaska will forgive up to 50 percent of the loan amount made to individuals who reside in the State for a specified number of years following their schooling.

Therefore, our loan forgiveness provisions—unlike those of other States—are conditioned on residing in the State for a specified period of time following a course of study. However, because the program is not tied into service in specific professions, Alaska's loan forgiveness program does not technically fall within the section 108(f) exemption.

The problem is that most recipients of student loan forgiveness in Alaska were unaware that their student loan forgiveness benefits are taxable. This is entirely understandable if one considers the fact that the Form 1040 instructions mailed out to taxpayers during the years at issue, 1987 and 1988, do not mention student loan forgiveness as a type of reportable other income. In fact, the instructions do not even mention debt forgiveness generally as a type of income. It is only if a taxpayer refers to a much more detailed IRS publication that he or she will find explanations of other income, which include debt forgiveness and student loan forgiveness.

Moreover, when you add to this the fact that student loan forgiveness programs in some States are exempt from tax, and student grant programs are largely exempt, you can understand why my constituents were unaware that their student loan forgiveness benefits are taxable. In addition, although the State began offering loans with a forgiveness option in the late 1960's, and continued the program through the 1987–88 school year, neither the Internal Revenue Service nor the State of Alaska had ever publicized the taxability of forgiveness benefits to Alaskans.

Then late in the summer of 1989, after the State had discontinued offering loans with a forgiveness option, the IRS District Office in Anchorage decided to initiate an enforcement project to collect tax on unreported student loan forgiveness income back to the 1987 tax year. Unfortunately, 3,000 Alaskans who benefited from the forgiveness program were caught totally unaware that forgiven amounts are considered to be income.

Now 3,000 young people who have come back to Alaska following their education have had to pay back taxes, plus interest, on 1987 and 1988 loan forgiveness amounts.

Mr. President, these amounts should not be taxed. Other States have been able to exempt their student loan forgiveness programs by conditioning forgiveness on entering into certain professions. To those of us in Alaska, bringing students of all professions home, is just as important to us, as attracting students into particular professions might be for the Lower 48.

The provision I am reintroducing today would bring Alaska's student loan program under the section 108(f) exemption. Specifically, the provision would exempt from taxation student loan programs which forgive loans "made by a State * * * which had no accredited professional schools for the study of law or medicine on the date the loan was made, if the individual resided for a certain period of time in the State after completion of the individual's attendance at the educational organization with respect to which the loan was made." The provision would be effective beginning with tax year 1987.

The provision would give relief to the 3,000 young people who had to pay back taxes and interest for 1987 and 1988 as a result of the IRS enforcement project. It would resolve an unfair situation which has lingered for too long. For those individuals who have already paid tax on loan forgiveness received during those years, the bill provides that they may receive refunds.

In addition, the provision would ensure equitable treatment to over 6,000 Alaskans who are currently participating in the student loan forgiveness project, by bringing Alaska's loan forgiveness program under the current law exemption. For the remaining few years of the forgiveness program, my bill will guarantee that Alaska's forgiveness program is given the same tax exempt treatment as other worthwhile forgiveness programs around the country.

Bringing Alaska's student loan forgiveness program under the section 108(f) exemption will incur only a limited revenue loss to the Treasury—$17 million for a 5-year period, according to the Joint Committee on Taxation. The annual revenue cost declines to $2 million per year by the third year after enactment and the forgiveness program will come to a conclusion by the end of the decade, since only pre-1987 loans may be forgiven.

I thank Senators for their attention and would welcome their support of this provision to bring fairness and equity to the tax treatment of student loan forgiveness.

Mr. SIMON (for himself, Mr. HATCH, Mr. DECONCINI, Mr. THURMOND, Mr. HEFLIN, Mr. CRAIG, Mr. KOHL, Mr. GRASSLEY, Ms. MOSELEY-BRAUN, Mr. BROWN, Mr. DASCHLE, Mr. COHEN, Mr. BRYAN, Mr. PRESSLER, Mr. SHELBY, Mr. BENNETT, Mr. GRAHAM, Mr. SMITH, Mr. KRUEGER, Mr. KEMPTHORNE, Mr. MATHEWS, Mr. NICKLES, Mr. CAMPBELL, and Mr. LUGAR):

S.J. Res. 41. A joint resolution proposing an amendment to the Constitution of the United States to require a balanced budget; to the Committee on the Judiciary.

BALANCED BUDGET CONSTITUTIONAL AMENDMENT

Mr. SIMON. Mr. President, I am pleased to announce today in the Senate, as well as the House, that we are introducing a constitutional amendment which will require a balanced budget unless there is a 60-percent vote of Congress to the contrary. I am pleased to say that so far we have 11 Democrats as cosponsors and 11 Republicans as cosponsors. The cosponsors on the Democratic side are Senator DECONCINI, Senator HEFLIN, Senator BRYAN, Senator DASCHLE, Senator SHELBY, Senator KRUEGER, Senator KOHL, Senator MOSELEY-BRAUN, Senator MATHEWS, Senator NIGHTHORSE CAMPBELL. On the Republican side, the chief cosponsor is Senator HATCH. The other Republican Senators are Senator THURMOND, Senator GRASSLEY, Senator BROWN, Senator COHEN, Senator PRESSLER, Senator CRAIG, Senator BENNETT, Senator SMITH, Senator KEMPTHORNE and Senator NICKLES.

Thomas Jefferson was not in the United States when the Constitution was written. He was in France. When he came back, he said, "If I could add one amendment to the Constitution, it would be to prohibit the Federal Government from borrowing funds." He said, "We should consider ourselves unauthorized to saddle posterity with our debts and morally bound to pay them ourselves." As in so many things, Thomas Jefferson was ahead of his time.

What is the problem today? The problem today, Mr. President, is that we are spending $800 million—more than $800 million—every day on interest that does absolutely nothing for us. In 1980, we spent $74 billion as our gross interest expenditure. This year the current estimate is $307 billion. The CBO reported to us just the other day that the current estimate on our deficit is $310 billion, and if we do not have some dramatic changes, 10 years from now, it will be $650 billion and 35 percent of the revenue of the Federal Government will go for debt service. That is assuming that there is not an increase in interest rates. That is the best case scenario. We have to get a hold of this problem.

The New York Federal Reserve Board says that the deficit in the 1980's cost us, in loss of savings, 5 percent loss in GNP, in national income. One percent, according to CBO, is 650,000 jobs. That means the deficit of the 1980's cost us over 3 million jobs. I cannot tell you how many of those jobs were in Illinois or Minnesota or Texas, but a lot of them were. We just cannot continue this. We have to face up to this.

What if, in 1980, we had had a balanced budget amendment to the Constitution? We would have an infinitely richer society today, and we better learn from what has happened. What has happened is a squeeze that hits all the social programs that I happen to believe in strongly. Interest is squeezing out our ability to respond. It is like a cancer, and the longer we wait in getting rid of that cancer, the tougher it is going to be.

We are the first generation of Americans to live on a huge credit card and say, send the bill to our children and our grandchildren. I heard Senator HATCH the other day say that a child born today will—if that child lives out a normal life span and if interest rates do not grow or increase—pay to the Federal Government on the average of $135,000 in interest.

We have to do better, and the Wellstones and the Kruegers and the Simons and the Hatches—everybody else here—have to be part of getting ahold of this thing.

One of the other things that happens is a massive redistribution of wealth. Who pays the $307 billion we are going to pay this year in interest? By and large, it is people of limited income. It is the employees we see around the Senate right now. They are paying that interest. Who collects it? How many of them own Treasury bonds? My guess, and I do not mean this disrespectfully to all of the good people here, very few of them own Treasury bonds.

We are taking from people of limited income; giving to those who are more fortunate. And it is a massive threat to something that I heard Senator PRYOR talking about just a few minutes ago, Social Security. Dorcas Hardy, the former Social Security Commissioner, says there is only one great cloud hanging over Social Security, and that is what happens in the future because of the Federal debt.

If I had a graph in front of you showing what is happening on Social Security retirement, it would show a gradual increase in numbers retiring until we get to the year 2010, and then it starts a sharp curve up because we are heavily dependent on Social Security retirement funds to buy our bonds. If we can slip by until the year 2010, at that point, whoever is in the Senate, whoever is in the House, whoever is in the White House, will have one of three choices to make:

First, you can dramatically cut back on Social Security. You can guess how politically popular that will be.

Second, you can dramatically increase taxes. And you can guess how politically popular that would be.

And the third option, which is the one we are headed toward if we do not pass this constitutional amendment, you can print more money. That is the politically easy way out, and it is the most dangerous of all three options.

What we have to do is adopt the fiscal discipline that Thomas Jefferson suggested a long time ago.

Now, I hear those who say this is a political gimmick. I heard Representative OLYMPIA SNOWE, over on the House side, say the other day, if this were a political gimmick, Congress would have it a long time ago. I think she is absolutely right. The little gimmicks just do not work now.

What about those who say Gramm-Rudman and the budget agreement have not worked? The answer is they have not worked because they are statutory. As soon as it squeezes a little bit, we change the law. And then we go ahead with business as is and keep piling up those deficits.

This is a sensible piece of legislation. Fred Bergson, a highly regarded economist who served in the Carter administration said, "If you had asked me 10 years ago would I favor a balanced budget amendment to the Constitution, I would have said that is ridiculous." He said, "Now I think it is essential."

More and more people who are economists and thoughtful on this are saying the same.

The lead witness in opposition to the constitutional amendment was the distinguished Harvard law professor, Larry Tribe, for whom I have great respect, and I would love to see him be the next Solicitor General for our Nation. Larry Tribe in testifying against it said, "I used to believe that it was unconstitutional in concept." This is not the kind of thing you ought to put in the Constitution. He said, "Even though I oppose it, I no longer believe that. I think the inability of one generation to force its debts on another generation is a major decision," and he said it really goes along with taxation without representation.

What we are calling for, Mr. President, is that by the year 1999—so we have plenty of time to work this out—we have to balance the budget. I think it is essential that we do so.

Mr. President, I would like at this point to yield 10 minutes to my colleague from Texas, Senator KRUEGER, the newest Member of the Senate, but I had the privilege of working with him in the House. I know that as a Member of the House, he was concerned about our fiscal problems, and he has already talked to me about things we can do to move toward a balanced budget. I am pleased to have him here as a colleague in the Senate, and I am pleased to yield 10 minutes to him at this point, Mr. President.

Mr. KRUEGER. I thank my distinguished colleague for yielding this time to me.

I rise to speak in favor of a balanced budget amendment to the U.S. Constitution. It is a serious thing to talk about changing such a precious document as our Constitution. But in supporting Senator SIMON and Senator HATCH and the bipartisan group that is supporting this amendment, we do so because the circumstances are so grave and so real.

I am proud as well to be a cosponsor along with my colleague from Texas, Congressman CHARLIE STENHOLM, who is introducing the same measure today in the other body.

In 1978, I cosponsored a balanced budget amendment when I was a Member of the House. It was not real popular then. But, had the Congress proceeded at that time with a balanced budget amendment, we would have been farther down the road, we would have had about a quarter of the size of the national debt that we currently have.

What we have had instead has been a mindless decade of gluttony and consumption. We have been eating up our seed corn, as my distinguished colleague from Illinois just said. We have had taxation without representation because we are taxing the next generation with our expenses.

Cicero once said we plant trees for the next generation.

We ought to be planting trees instead of simply garnering the fruit and cutting down the trees.

What we find is that our delay in 1978 has made our present circumstances more difficult. The medicine is harder to swallow today than it would have been a decade ago.

We can simply no longer ask the next generation to make these sacrifices for us.

First, Government must sacrifice and then we should ask the American people to sacrifice. We in Government must sacrifice our readiness to spend someone else's money. Like gluttons for our own future health, we need to adopt an austerity diet.

We have gone through the cafeteria line. We have totaled up too many calories and are getting a bit too portly, and we have been unable to discipline ourselves. Collectively, we need to impose this discipline through the document which each of us who came to this body swore to uphold, that is, the U.S. Constitution.

We must use that Constitution to force us to live within our means.

Mr. President, as legislators, we understand that situations rarely present themselves with conspicuous clarity. Few are the times where we can see quite unambiguously how and where we have arrived here.

Today, the Congress and the country have both arrived at that point. Sadly, we did not reach this point atop some pinnacle of prosperity nor of prudence. Instead, we are up to our necks in a well of red ink brought about by our own actions. Additions to the Federal deficit just this year will amount to $100 per family of four added to our debt every week. This week each Amer-

ican family of four is $100 deeper in debt than it was last week, not by its own choice but by the irrevocable momentum that we have set underway.

If we continue at our present rates of growth and under the present relationship of taxes and spending, we will find that our deficit will burst 20 percent of gross domestic product within the lifetimes of our children. This is not a legacy that I wish to leave my 4-year-old daughter, Mariana, nor my 3-year-old Sarah, nor is it a legacy, Mr. President, that I would wish to leave your children or the children of the people whom we represent in this distinguished body.

If we do not change our course, we will continue eating up our seed corn and we will have nothing left for investment in the future. Like the 800-pound gorilla that sits where it pleases, our deficit is a creature that is crowding out our own destiny.

Mr. President, we all know this. We all know that men and women of conscience and determination need the right tools to do the right thing. This is an enormous task and an enormously important job, and only constitutional clout can get that job done.

This measure requires the President to submit and the Congress to enact a balanced budget every fiscal year after October 1998 or within 2 years of ratification by the States themselves. It tightens definitions of outlays. It says that the smoke and mirrors can no longer fool us.

It allows a tax increase by a majority vote on both Houses and requires a three-fifths majority of both Houses to approve a deficit and to lift the budget ceiling. By doing so, it retains for us fiscal flexibility.

Mr. President, we are at a point where we have to admit we are serious about deficit reduction, or else we may as well admit that we are not. If we are not, let us just be honest enough to say so. Then the American families and businesses and investors can act in their own best interests while we are not acting in theirs. But if we are serious, let us establish that message. Let us show our seriousness by sending a balanced budget constitutional amendment to this body, to the other body, and indeed to the State legislatures across the land.

Toward the end of the last session, Congress narrowly defeated a measure virtually identical to this one. It is timely that the measure reappear now, because I think the American people have sent a very clear message that they think we must act on this crucial problem. It is essential that we prove it now, because we have seen the future, and it does not work. The people will expect Government first to sacrifice. We must make Government sacrifice first, and then the American people will follow. We have always been willing to sacrifice for a worthy goal. We will undertake that goal and that task. At this time, the American people simply do not believe they are getting value for their money from their Government. If the Government were a store, nobody would buy here. If the Government were an airline, nobody would fly it. We need to be a body worthy of the people's trust.

Mr. President, I am convinced that if we pass this balanced budget amendment, we will demonstrate to the people that we are once again worthy of their trust.

I yield the remainder of my time.

Mr. SIMON. Mr. President, I would like to refer to a chart. I see the distinguished President pro tempore on the floor here, and he has been great with charts and showing what happened. I thank my staff for preparing this, Aaron Rappaport and Susan Kaplan of my staff have been helping and Brant Lee, who is now practicing law in San Francisco helped, as well.

This is, in inflation adjusted terms, what happened from fiscal year 1981 to fiscal year 1993. You will see transportation is down 1 percent; education—and we all make speeches how important education is—down 1 percent; nondefense discretionary, generally, is up 9 percent; defense is up 17 percent; entitlements, largely Social Security, up 47 percent, largely because of Medicare and because of the growth in numbers.

But the great growth in the budget this last 12 years, the great growth is this gross interest figure. Everything else pales. If you were to say what should the priorities of this Nation be, let us just take a choice. Should we spend more money on education for the future of this country, or spend more money on interest? Well, it is very clear what our choice ought to be. It ought to be education. Yet, we have precisely reversed those kinds of priorities, because we have been imprudent.

Why is it necessary to have a constitutional amendment requiring a balanced budget? Mr. President, it is necessary to have a constitutional amendment, because we have shown in this body, both on the Democratic side and on the Republican side, that we are unable to make the tough choices.

If I can just go back to the last session, we had three major fights on appropriations, as my colleagues will recall. One of the major fights was on defense cuts, and we finally adopted, after much debate, an Exon amendment calling for a $1 billion cut—that is one-third of 1 percent.

The second big fight was on the space station. The third big fight was on the super collider in the State of the Presiding Officer from Texas.

How do we compromise on these three big appropriation fights? We compromise by passing everything, and that is what we do day after day, year after year, piling up the debt for our children in generations to come. How do we get in this kind of a mess? I am not sure any of us know that answer precisely. My instinct is that we ended up in this kind of a situation, because we have been heeding the polls too much.

I think one of the worst things that has happened to the body politic is the creation of polls. We wait and see what the polls have to say, and what the polls have told us is very clear: People want more services and lower taxes. And we have given them both. But we have given them both at the peril of the future of our country. We just cannot continue down this road. We have to get ahold of this thing.

I hope that we will, in this session, do what is needed. I intend to hold hearings on this in March, next month. By the end of the month, we will mark it up in the subcommittee, or in early April, and then we will proceed to the full Judiciary Committee where, frankly, we have the votes to get it out, and then it will come to the floor.

My hope is that the majority leader will give us time, but I know the rules of the Senate well enough that we are going to get this debated on the floor of the Senate, whether that is granted or whether it is not granted.

I respect those, like the majority leader, who oppose this. But public opinion is clear, and the public understands that we are going to have to make a sacrifice, that we have to decide that we cannot spend money on everything we would like, and that we are going to have to have some increases in taxes. There is just no way of doing it without doing both of those things. We have to assure the public that if there is an increase in taxes, it is going for this purpose, or for some other very constructive purpose.

Mr. President, I think it is vital that we move ahead.

I ask unanimous consent, Mr. President, to have printed in the RECORD at this end of my remarks a speech I gave to the Legislative Council of the American Association of Retired People on this subject yesterday.

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

(See exhibit 1.)

Mr. SIMON. I hope, Mr. President, that we will show the courage in this session to pass this.

Let me add one final word. There are those who oppose this, and I respect them. What I have to say is that most of those who are opposing this are doing it in a very shortsighted perspective.

Those who favor social programs, for example—and there has been no better champion of social programs in this body than PAUL SIMON—say we are likely to get squeezed. My friends, everybody is going to get squeezed a little bit. But if we do not do something about it, the squeeze will continue to be from interest chewing up everything else.

What if—I ask those who are on the other side—what if in 1980, we had had a balanced budget in place? We had less than 1 trillion dollars' worth of debt. We would not be spending this kind of money on interest. We would be doing the things that need to be done, and we would have made the tough choices.

We have not made the tough choices. Oh, we have done a little. And when I say a little, one of those who has helped to lead us is the new Presiding Officer, the Senator from Florida [Mr. GRAHAM], who I remember took 2 percent out of the operational funds of some offices, and we saved a little bit of money. And I commend him, and I was pleased to vote with him on that.

But we have been tinkering at the edges. I do not mean this critical of the Senator from Florida, or any of my colleagues. We have not made the tough choices around here, and we are going to have to. And if that threatens some of us getting reelected, so be it. If we do not have the courage to make the tough choices, we should not get reelected, anyway.

Mr. President, the Nation needs a constitutional amendment calling for a balanced budget. That is what Thomas Jefferson told us late in the 18th century. Thomas Jefferson was right, and I hope we heed his advice.

Mr. President, I ask unanimous consent that the joint resolution be printed in the RECORD.

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

S.J. RES. 41

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission to the States for ratification:

"ARTICLE —

"SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

"SEC. 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

"SEC. 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

"SEC. 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

"SEC. 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

"SEC. 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

"SEC. 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

"SEC. 8. This article shall take effect beginning with fiscal year 1999 or with the second fiscal year beginning after its ratification, whichever is later.".

EXHIBIT 1

A RISING TIDE OF RED INK SINKS ALL BOATS: THE NEED FOR A BALANCED BUDGET CONSTITUTIONAL AMENDMENT

(Address by U.S. Senator Paul Simon)

Thank you for inviting me to be with you today and to speak about an issue that is as urgent as today's headlines: the constitutional amendment I have introduced with a bipartisan group of colleagues to structurally discipline our fiscal policy so that balanced budgets again become the general rule, instead of the rare exception.

You are here this week to listen to Washington, but let me assure you that Washington is also anxious to listen to you, and to your options about the economic policies that will dominate the first months of the new Administration.

I come to you as a friend and ally. We have worked together in the past, and I know we will continue to work together on such issues as the long-term health insurance bill I have introduced, on the legislation I have introduced targeting senior abuse—on a variety of policy fights. Today I seek to begin enlisting your support for our proposed Balanced Budget Amendment.

I know you have opposed the Balanced Budget Amendment in the past. I known many of you believe that structural budget discipline like this could threaten programs that you, I and many others have fought hard to win for older Americans. I know that some opponents have told you that this proposal could threaten our Social Security, our retirement income, our hard-won health benefits for older Americans.

The economic gains older Americans have made over the last half-century should be a point of pride for this country. Americans can be proud that we live in a land that provides basic economics protections for its senior members. And older Americans should be proud that they have successfully fought for these gains and have organized, through AARP and in other ways, to become a powerful political force to defend these gains whenever they are under assault.

I am here to tell you that the course we are on, unless it is changed soon, absolutely threatens all of these programs that you and I have fought for and believe in so strongly. The fiscal folly that we have followed for more than a decade has brought us to a crossroads. We face a basic decision, whether through default or through our actions to choose wisely the course that will lead us away from the brink. To put it bluntly, the pay our compounding debt already has begun to choke our ability to respond to all other national priorities. Gross interest recently passed defense to become the second largest spending item in the budget, and soon it will pass Social Security to become the top spending item. This will happen if we do nothing. If we do not act, interest payouts will spiral upward until they consume not only Social Security but health care, education, transportation investments—every other need on our national agenda. My warning to you today is that a rising tide of red ink sinks all boats.

The way out, the way to renewed prosperity and national strength, will take sacrifice. All proposals and programs need to be on the table. As long as the crisis looms over us, the temptation will arise to look to the surplus of Social Security retirement trust fund for relief, because, as one of your spokesman said this week, "that's where the money is." That is why Washington is buzzing this week with talk of capping Social Security COLAs.

This is one senator who does not favor such a proposal. Social Security retirement was not the cause of our deficit. Everything should be on the table, and those who favor that approach should be free to make their case. I believe you, and I, and our allies can win that argument. But all generations will be called upon for sacrifice. We will have to look at health care costs. We will have to look at discretionary programs. We will have to consider new revenue sources. We will have to look at entitlements. Our only way out is a program of shared sacrifice, where everyone bears some of the burden today so that we can have a growing economy both today and tomorrow. These are challenges to which President Clinton summoned us in his inaugural address, and for which he will need our support in the months and years to come.

We will not restore fiscal responsibility without some sacrifices—for those whose programs are cut, for those who pay the taxes, and for the politicians who will have to risk political fire for taking part in the solution.

And that is precisely why we need a Balanced Budget Amendment. The political price of voting for tough, meaningful deficit reduction will be high. Only the constitutionally enforced discipline of a Balanced Budget Amendment will give us even the possibility of a fair and balanced program to get our fiscal house in order.

So I come to you today to ask for your support and to enlist your help in this practical and moral imperative. I come to you not as senior Americans, not as the leadership of one of the most powerful and respected interest groups in the nation, not as defenders of a proud legacy of advocacy for retired Americans. I come to you as citizens concerned about this great land, as mothers and fathers and grandparents who want our children and grandchildren to have a prosperous future, unencumbered by the massive debts that we otherwise will leave behind as their inheritance.

The tasks ahead are sobering, but I am optimistic about the outcome. I share the President's optimism and idealism about the American spirit and about the agenda before us. I believe we will achieve the discipline of a Balanced Budget Amendment. I believe deeply in this cause, and I would be honored to join with you in achieving it.

The argument for a balanced budget amendment is straightforward. It rests on three basic premises. First, that chronic federal deficits—year after year—pose a serious threat to the economic stability of our country.

Second, that Congress and past administrations have shown themselves to be insti-

tutionally incapable of balancing the budget, even as the national debt has reached crisis proportions.

Third, that only structural reform, a change in the very rules of the budget-making process, will restore the economy to fiscal stability. The balanced budget amendment I have proposed combines the flexibility and discipline necessary to return our nation to a sound economic footing.

Today, I will touch on each of these three points: that chronic deficits are dangerous, that government inaction has implications for all segments of our society—and the need for institutional reform to set us on a course for sound fiscal policy.

DEFICIT DANGERS

Over the last decade, the deficit numbers have worsened to the point that they are now deeply embedded in our budgets, in our priorities and in our national consciousness. We read and we hear the numbers now with a sense of numbness, as if this is now beyond our control and beyond the limits of our national will. Ross Perot hit upon an apt metaphor when he described the deficit as our crazy aunt up in the attic who no one talks about anymore.

But run-on deficits are anything but academic in the harm they cause. Here are some troubling figures about the state of our economy:

In Fiscal Year 1993, the budget deficit is expected to reach $310 billion. The Congressional Budget Office projects no improvement in the near future. Without changes in current policies, the deficit is projected to reach 357 billion dollars by 1998; and 650 billion dollars by 2003.

At the end of Fiscal Year 1980, the gross federal debt stood at 909 billion dollars. By the end of Fiscal Year 1993, the debt will reach 4.4 trillion dollars. The debt is now approximately $46,660 per American family.

Interest on the debt is $1,171 per person per year. At this rate, a child born today, living a normal lifespan of 75 years, will pay $87,825 in interest on the debt we've handed that child—and that assumes that no further debt is added to the pile and interest rates do not rise—both unlikely.

We wouldn't and couldn't allow this borrow-and-spend approach in our own households or in our businesses. But in our national budget we accept it and we send signals to those who represent us that we want it this way. To quote Congressman Andy Jacobs, our economic philosophy has become: "Eat, drink and be merry, for tomorrow our kids can pay our debts."

You do not need to be a financial genius to understand that these figures, if not turned around, mean economic chaos at some point down the road. Runaway deficits are like a runaway freight train. Sooner or later, we'll run out of clear track.

Professor Benjamin Friedman of Harvard in his book "Day of Reckoning" sums up our situation this way: "We are living well by running up our debt and selling off our assets. America has thrown itself a party and billed the tab to the future. The costs, which are only beginning to come due, will include a lower standard of living for individual Americans and reduced American influence and importance in world affairs."

Why are budget deficits so harmful? There are three basic reasons.

First, deficits tend to consume savings that we could use for productive investments. To fund the budget shortfall, the government must borrow continuously, consuming capital just to keep up. The resulting scarcity of capital also exerts upward pressure on interest rates, further depressing economic activity.

Second, the budget deficit is eroding our economic standing relative to the rest of the world. By raising interest rates and discouraging private investment, the deficit has slowed the growth in the nation's productive capacity relative to other countries.

Some of you have seen the television commercial which shows Chrysler executive Lee Iacocca standing in front of a plant. Chrysler borrowed $1 billion to build that plant and paid 12 and ⅜ percent interest. At approximately the same time, Nissan in Japan borrowed a similar amount and paid 4.5 percent interest. Clearly, American manufacturers are at a disadvantage because of the imprudent fiscal policies followed by the United States government. And while Chrysler made a decision to build, my guess is that someone at a Chrysler board meeting asked the question, "At 12 and ⅜ percent interest, can we make money on this?"

Thousands of American corporations have made the decision that they cannot make money at a similar rate of interest, and the jobs have gone to other nations. Our performance in reindustrialization will remain sluggish unless and until we get our economic house in order. Without increased productivity in this nation, our earnings will not increase. We cannot divide what has not been produced.

Even more significant to our international position, the budget deficit has been a principal factor in the nation's persistent trade deficits. A Congressional Budget Office study shows that each dollar reduction in the budget deficit will reduce the trade deficit 32 to 47 percent, or roughly one-third to one-half. Their report says, and I quote: "Deficit reduction increases investment, which in turn increases the productive capacity of the economy. Moreover, deficit reduction lowers borrowing from abroad, which reduces the amount of income that is generated in the United States but flows to foreigners." Unquote. Findings like these are echoed in other studies.

Not surprisingly, the persistent trade deficits remain a serious problem for our economy. Lester Thurow points out that the trade deficit has cost the United States at least 2.5 million jobs. The jobs that remain tend to be devalued because of the deindustrialization caused by the budget deficit and the resultant trade deficit. Many workers slip from industrial jobs to lesser paying service-sector jobs. From 1979 to 1989, we lost 7.7 percent of our manufacturing jobs, while service sector jobs increased 31.1 percent, absorbing most of those entering the job market.

Finally, the enormous interest payments that we must set aside to service the national debt puts our government in a straight jacket.

It is as if, for 25 years, we have been living on a credit card and sending the bills to our children and grandchildren. Now, our children must not only pay the bills, but the interest due on them as well. This fiscal year interest payments totalled 295 billion dollars, only seven billion dollars less than the number one spending item on the budget—Social Security payments.

That's more than 800 million dollars each day that the government throws away in interest payments. For this we get nothing: no education, no health care, no resources for the battle against drugs and crime, no job training, no housing. We are eating our seed corn instead of making the investments that we should be making to leave behind a standard of living that's better than the one we inherited.

For the past 12 years, interest payments have been the fastest growing item in the federal budget.

Our fiscal foolishness has constrained our ability to enact needed policy initiatives. For example, Taiwan—the Republic of China—is launching a $303 billion, six-year infrastructure program. That would be the equivalent of a $3.6 trillion program in our country, using the population comparison. Taiwan will move ahead significantly economically and in the quality of life because there has been in exercise of fiscal discipline in the past. They are prepared. We are a much larger, much wealthier nation, and we are not even considering anything like that because of our huge deficit. We cannot continue to pursue the borrow and spend course.

Who are the beneficiaries of our bloated interest payments? Primarily two groups—the rich and, increasingly, foreign investors.

Who will pay the 295 billion dollars in interest this fiscal year? Generally those who are the backbone of our nation: middle-income Americans, people who struggle to make the mortgage payments and car payments, those who have to strain to get their children through college.

The future prosperity of AARP members and your families will be directly affected by the economic burden imposed by the continuing federal deficits.

In a recent study, the General Accounting Office examined the effect of various budgetary strategies through the year 2020. The results were sobering. A continuation of our current policies would likely lead to economic stagnation—if a financial crisis does not occur first. Cutting deficits to 3 percent of Gross Domestic Product (from the 5+ percent at which they now stand), would only delay the confrontation with the deficit. To quote from the report, this would mean "death by a thousand cuts."

In contrast, achieving a balanced budget by the turn of the century would lead to long-term economic growth. By 2020, says the GAO, real income would increase to levels 36 percent higher than those achieved under current policies, and 7 percent higher than those achieved under the 3 percent deficit strategy.

When the squeeze finally comes, its not hard to see who will bear the burden.

The GAO report suggests that the discretionary non-defense portion of the budget will decline by almost one-third over the next 28 years unless the deficit is curbed. The squeeze will be caused by our massive interest payments—and the GAO says that this is an optimistic scenario, assuming interest rates will not rise, and the strong probability is that they will if we don't act on the deficit problem.

Social Security, of course, is also threatened, and we already see the pressures that are building to pit generation against generation. A rising proportion of our population has been retiring on Social Security. However, about the year 2010, that number starts rising sharply. At that point, whoever is in Congress, whoever is President, will have one of three choices to make: (1) Dramatically reduce Social Security. We know that is politically unlikely. (2) Dramatically increase taxes. We know that is most politically unlikely. (3) Print more money. That is the politically easy way out and the most dangerous of all three. But that is the road we are on if we don't get hold of this deficit monster.

But I don't want to leave you with the impression that I think that you should be con-

cerned about budget deficits only from the standpoint of self-interest. I truly believe that the basic issue here is a moral one.

Back in 1789, Thomas Jefferson put the point eloquently. He wrote: "The question whether one generation has the right to bind another by the deficit, it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves."

On the letterhead of your organization is the statement: "Bringing lifetimes of experience and leadership to serve all generations." As the Washington Post said last Friday, "Who more than grandparents want to reduce the future burdens on today's grandchildren." I think that fighting the deficit is something we must do for our grandchildren, if not for ourselves.

CONGRESSIONAL INACTION

The massive harm to our economy that we have already inflicted is clear. That harm will increase unless we take tough, firm action, and I see no approach, other than a constitutional amendment, that will force us to alter our course.

Congress and the President have the power now to pass a balanced budget. But both branches have repeatedly failed to do so. For the first 175 years of our nation's history, the budget was balanced 60 percent of the time. And, when there were deficits, they were relatively small. In recent times, however, the record is different. For the last 24 straight years, the government has run a deficit.

One might say that the problem is simply one of political will, but the real problem goes deeper than that. The issue is fundamentally one of institutional structure. Budgetary decisions are weighted significantly toward spending, not toward fiscal discipline. Indeed, when lawmakers choose to compromise, they understandably tend to compromise by giving everyone what he or she wants.

It has been too easy to ask for money but not ask for revenue or cuts in other spending to pay for it. Let me give you a very practical example, and one in which you and I have a special feeling. As you know, I have introduced legislation to offer insurance for long-term care. I pay for it, in my legislation, through a one-half percent increase in the Social Security tax, and by taking the cap off of the Medicare payments of 1.45 percent now paid on the first $125,000 earned but not on amounts above that level. Two of my colleagues in the Senate have come to me and said they liked my bill, and want to join as cosponsors—if I would take the tax off. That is precisely what we cannot do.

Our nation's infrastructure is desperately in need of significant improvement. This amendment neither directly helps nor hurts that, but simply says that whatever we do should be on a pay-as-you-go basis. As it should be.

THE BALANCED BUDGET AMENDMENT

The basic purpose of a balanced budget amendment is simple—to counterbalance the institutional pressure toward spending. It's not a new idea. Thomas Jefferson favored an absolute prohibition, which we do not propose. There are times, such as during a recession, when there should be a temporary deficit, and we provide for that.

The amendment I have introduced imposes a fiscal discipline on both the President and Congress. Under this amendment, the President must propose a balanced budget to Congress each year. Congress then must ensure that outlays match receipts, unless three-fifths of both chambers vote to suspend the balanced budget requirement for any given year. Congress may also waive the balanced budget requirements during wartime or when a threat of imminent military conflict exists. These provisions provide both the flexibility and the strong mandate required to ensure a fiscally responsible path for our nation.

Implementation of the Balanced Budget will undoubtedly cause pain. True. But any operation to remove a cancer growth causes pain, and we have a cancer growth in the deficit that eventually will cripple us economically if we do not act. The sooner the operation takes place, the less pain there will be, and the more likely there will be a healthy recovery by the patient.

The answers we choose under this discipline won't be and shouldn't be Paul Simon's plan for cutting the deficit. They will be the result of political give-and-take. My own belief is that it will take a modest mix of cuts in spending and tax increases to get hold of this, and we should start in Fiscal Year 1994. The most recent estimate by CBO projects a deficit in Fiscal Year 1993 of $310 billion. CBO's estimate for Fiscal Year 1994 is $291 billion, a reduction of $19 billion.

Doing this would require less courage than many of our governors and state legislative bodies have shown. My own view is that the solution on the spending side should emphasize sensible cuts in military spending, though many of my friends would have other priorities. In terms of revenue, let me point out that what is being discussed is appreciably less than many of our states have done. If you take recent state revenue increases, and multiply the state population to bring it to the national figure, North Carolina's tax increase translated into an increase of $37 billion nationally, California's translates into $60.8 billion, Pennsylvania's into $68.75 billion and New Jersey's would be $90.3 billion.

Polls show that the American people are willing to have both spending cuts and new revenue increases—if—and this is an important if—if they see this is going to reduce the deficit. The American public may not know the details about our fiscal plight, but they know instinctively that it affects them, and it is harming their children.

For those who are concerned that this might result in pressure for some middle-of-the-night tax increase passed by voice vote that members are unaware of, we have added the prudent precaution that any tax increase has to have a constitutional majority, which almost all tax increases have had anyway.

A sound economic program for the nation must be composed of more than exercising fiscal prudence. It should be a balanced program of improving education, rebuilding our infrastructure, encouraging corporate equity financing rather than debt financing, encouraging savings—and many more things. Once we have this amendment behind us, we can start dreaming and planning more realistically about the kind of nation we want to build for our children, but the dark cloud of this heavy deficit must first be removed.

Before closing, let me respond to some criticisms that have been used by opponents of the Balanced Budget Amendment.

Recently, the idea of a separate capital and operating budget has gained currency. According to this view, the operating budget would be balanced yearly, but the capital budget—or investment budget—would be permitted to run significant deficits. In its June report, the GAO rejects this view, predicting that the unbounded capital budget would become an excuse for excessive spending.

In any event, almost anything that can be done under a separate capital budget can also be done under a Balanced Budget Amendment. For example, the federal government recently built the new administrative building for the federal courts near Union Station by signing a long-term lease. The investment costs under this contract are spread out over a long period of time, and at the end of the period the government owns the building.

It is worth remembering that the biggest capital project in the history of humanity, the interstate highway system, initially was to be built with huge bond issues, as proposed by President Eisenhower. But thanks to the courageous leadership of Senator Albert Gore Sr. of Tennessee, the father of our Vice President, we raised the gasoline tax to pay for it, and we built the roads on a pay-as-you-go basis, saving the nation hundreds of billions of dollars in interest.

But, some opponents argue, if it is passed, Congress will find some way around it. Why will this be any more effective than Gramm-Rudman-Hollings? No. The problem with Gramm-Rudman-Hollings was that it was a statutory remedy. If the law started to pinch a little, we simply changed the law. So far as I know, however, not a single member of the Senate or House ever took the floor and said, "Let's just ignore the law." I introduced legislation to remove the wall, but never did I suggest that we should pretend the law did not exist. If that is true for the law, it is infinitely more true for the Constitution.

As senators we take only one oath, to "support and defend the Constitution." The Constitution says that we in Congress "shall be bound by oath or affirmation, to support this Constitution." Cynics say that we will just ignore the Constitution. While I differ with many of my colleagues on a host of issues, I do not believe that anyone here will say, "Let's just ignore the Constitution."

That is the real answer to those who say that the courts will end up running the nation. Congress does not want that, and the courts do not want that. I am confident we will honor the oath that we take. The risk of that happening is small indeed compared to the known risk of following the course of fiscal chaos on which we now are embarked.

Finally, the argument is made that we could balance the budget on our own, that we don't need a constitutional amendment. It is true that we could, but we won't. We have demonstrated that over and over and over again. We have elected too many people in both political parties who hold their finger to the wind to see what the latest political polls have to say, and the polls show clearly what people want: more services and lower taxes. We have given them both, at great peril to the future of the nation.

The reality is that we need a constitutional amendment to force us to do what we know is right. Our head tells us we should; our heart tells us we should; what we lack is the backbone to do it. This amendment will give us the backbone, give us the courage, if you will. And if the American public sees us failing to live up to the Constitution, they will remove us from office, as they should.

Mr. HATCH. Mr. President, I am pleased today to be introducing along with Senator SIMON and others the balanced budget constitutional amendment.

The national debt exceeds $4 trillion. This means every man, woman, and

child in America, and in my home State of Utah and all the other States, has a debt burden of $16,700; each and every one of us.

Back in 1974 it was $2,500 for each man, woman, and child in this country, and in my home State of Utah. And we thought that was terrible. But today, just a few years after that, 18 years later, we all owe $16,700. That debt burden has gone up exponentially.

Every child born in Utah will pay in a normal lifetime, nearly $135,000 in extra taxes just to pay the interest on the present Federal debt. No wonder deficit spending has been called fiscal child abuse.

Voter outrage concerning the deficit has fueled a revival of the balanced budget amendment debate. Even after the 1990 budget deal which has supposed to bring down the deficit, record-setting tax hikes were enacted at that time to bring the deficit down. All of this led to record deficits in the ensuing years. And why? Because Congresss—we Members of Congress—for every dollar we have increased in taxes, have spent $1.83.

So it does not benefit this country from a deficit reduction standpoint to rely on Congress' promises that if we increase taxes we will bring down the deficit. Because, since 1946, for every dollar we have increased in taxes up to 1990 we have spent $1.59, but since 1990, that budget agreement which was supposed to bring the deficit down exponentially, since 1990 for every dollar we increased in that massive tax bill, the largest in history, we have spent almost $2 in Congress.

I have to say, Congress does not expect to make their children and grandchildren pay their credit card bills. And if that is so, then it seems to me we have to do the things that have to be done. The best thing we can do is pass the balanced budget amendment to encourage Congress to make priority choices among competing programs. I have to say this is why over 70 percent of my fellow Utahns favor a balanced budget constitutional amendment. I have to say that is probably true across the country as well.

This week I received mail from Utahns who are concerned about the way the Federal Government soaks up capital to make interest payments which could be used for private investment or Government health or housing or family or education programs. The human implications of our mammoth debt are that our children are being shackled with an insurmountable burden as a result of our largess. Perhaps the most significant effect of today's unrestrained borrowing, however, will be the reduction in the political choices available to future governments of the Nation.

Next year, some estimates suggest that interest will consume 26 percent of all Federal revenues, at $296 billion—that is next year. That is more than the total Federal revenues back in 1975. Just the interest against the national debt is more than the total revenues 18 years ago.

Congress has proven itself wholly incapable of controlling the deficit. A balanced budget constitutional amendment is necessary to force Congress to keep faith with voters who expect them to end this fiscal folly. Only the constitutional discipline of a balanced budget amendment can return sanity to the out-of-control budget process.

The proposed amendment addresses a serious bias in the present fiscal process arising from the fact that Members of Congress do not have to approve new taxes in order to pay for new spending programs. Rather than to have to cast politically disadvantageous votes, Congress has been able to resort to increased levels of deficit spending. The balanced budget amendment proposes to end this spending bias by requiring the linkage between Federal spending and taxing decisions. It does not propose to read any specific level or taxing forever into the Constitution. And it does not propose to intrude the Constitution into the day-to-day spending and taxing decisions of the representative branch of the Government. It merely proposes to create a fiscal environment in which the competition between the tax spenders and the taxpayers is a more equal one to one, in which spending decisions will once more be constrained by available revenues.

Statutory efforts to control spending are inadequate. They are short-term. Any balanced budget statute can be repealed, in whole or in part, by the simple expedient of adopting a new statute. The spending bias is a permanent problem. It demands a permanent constitutional solution. The virtue of a constitutional amendment is that it can invoke a stronger rule to overcome the spending bias.

The human implications of our mammoth debt are that our children are being shackled with an insurmountable burden as a result of our largess. Over time, the disproportionate burdens imposed on today's children and their children by a continuing pattern of deficits will include some combination of the following:

First, increased taxes; second, reduced public welfare benefits; third, reduced public pensions; fourth, reduced expenditures on infrastructure and other public investments; fifth, diminished capital formation, job creation, productivity enhancement, and real wage growth in the private economy; sixth, higher interest rates; seventh, higher inflation; eighth, increased indebtedness to and economic dependence on foreign creditors; and ninth, increased risk or default on the Federal debt.

Perhaps the most significant effect of today's unrestrained borrowing, however, will be a reduction in the political choices available to future governments of this Nation. From 1952 through 1975, the interest on the Federal debt consumed between 6.7 percent and 8.3 percent of annual revenues. Since then, that percentage has risen steadily. By 1988, interest consumed 16.7 percent of annual revenues. Next year, some estimates suggest interest will consume 26 percent of all Federal revenues—at $296 billion, that is more than total Federal revenues in 1975.

In large measure, the Nation's economic problems are attributable to these facts. Unacceptable levels of inflation and unemployment, as well as enormous foreign trade imbalances, can be traced directly or indirectly to the fiscal policies and practices of the National Government.

The proposed amendment addresses a serious spending bias in the present fiscal process, which is the fact that Members of Congress do not have to approve new taxes in order to pay for new spending programs. Rather than having to cast such politically disadvantageous votes, Congress has been able to resort to increased levels of deficit spending.

Members of Congress have been free to respond to the concentrated pressures of various interest groups—and to reap the political advantages of doing so—without having to suffer concomitant political disadvantages of voting to reduce spending for programs favored by other interest groups or by voting to raise taxes.

The result is that Congress continues to spend regardless of the genuine will of the people. It continues to spend regardless of the fact that every Member of this body knows that the compounding of interest on our national debt caused by deficit spending is an economic disaster waiting to happen. We can no longer avoid accountability for spending and taxing decisions. We need a constitutional solution.

The balanced budget amendment proposes to overcome this spending bias by restoring the linkage between Federal spending and taxing decisions. It does not propose to read any specific level of spending or taxing forever into the Constitution, and it does not propose to intrude the Constitution into the day-to-day spending and taxing decisions of the representative branch of the government. It merely proposes to create a fiscal environment in which the competition between those who spend tax dollars and those who pay tax dollars is a more equal one—one in which spending decisions will once more be constrained by available revenues. In other words, Congress will have to operate on the same basis as every household in America.

Section 1 of the amendment would establish a balanced budget as a norm of Federal fiscal policy which could be

overcome only by three-fifths vote in both Houses of Congress. The President must submit a proposed balanced budget to Congress. Section 4 of the amendment would prohibit Congress from raising taxes and increasing the Federal Government's share of the national economy unless Members of Congress were willing to go on record as voting for tax hikes.

The major purpose of the balanced budget amendment is to ensure that, under normal circumstances, votes by Congress for increased spending will be accompanied by votes to, first, reduce other spending programs or, second, to increase taxes to pay for such programs. For the first time since the abandonment of the traditional balanced budget principle, Congress will be required to cast some politically difficult votes as a precondition for a politically attractive vote to increase spending.

This amendment is not a panacea for the economic problems of the nation. The amendment is, however, a necessary step toward securing an environment more conducive to honest and accountable fiscal decisionmaking.

The balanced budget amendment represents both responsible economic policy and responsible constitutional policy. Passage of this amendment would constitute an appropriate response by Congress to the pending applications by nearly two-thirds of the States for a Constitutional Convention on this issue.

In closing, I want to say how extremely pleased I am to stand side-by-side with my colleagues from both sides of the aisle and from both bodies of Congress as we unveil an amendment that will establish constitutional limitations on Federal spending and deficit practices. I want to pay special tribute to my colleague Senator SIMON, who has been a critical force in this effort over the years, and to Senator THURMOND, my predecessor as ranking minority member on the Senate Judiciary Committee. He has been a leader in this effort for many years, and we look forward to his continued participation.

I sincerely hope that this will be the year we enact this critical legislation to save future generations of Americans from this heavy economic burden.

Mr. President, just to conclude, my fellow Utahns back in 1975 each owned—man woman and child—$2,500 of the Federal deficit. That is how much they owed. By 1993, today, we each owe $16,700.

This second chart is a chart that lists Federal debt per capita in thousands of dollars. As you can see in 1970, it was down around $2,000. Now it is up to almost $17,000. It has continuously gone up as Members of Congress have been unwilling to do what needs to be done. So chart 2 shows the increase in the Federal debt per capita for 1970 to the present.

Let me go to chart 3. Chart 3 shows the size of Federal deficits that are run each year from 1970 to the present. Naturally, they are deficits that go below. It shows that the Congress has run a deficit in each of these years since 1970 and that each year's deficit has generally been increasing in size over that time. So it is a disgrace that we have allowed this to continue. Look how far that deficit has gone down as of 1993.

Let me go to chart 4 which shows a growth in Federal spending for various major budget items from 1975 to 1990. The growth of interest payments on the national debt, this red line, has far outstripped growth in the other areas of Federal spending. Defense has grown; entitlements and mandatory spending have grown a little bit more; nondefense discretionary has not grown as much of the other two. Total outlays have grown, but the largest item of growth in the Federal budget, and it is going up exponentially with compound interest, is this red line, net interest on the total debt.

Mr. President, these things cannot be ignored. We have to do something about it. I am convinced until we put fiscal discipline into the Constitution that the Founding Fathers assumed was there—they did not think anybody would continuously deficit spend during times of prosperity, or not during times of war or other tremendous economic difficulties, but as you can easily see, because of the continuation over the last 23 years of deficit financing getting worse and worse each year, the only way we are going to be able to solve this problem, it seems to me and I think to a large number of people in both bodies, is to pass Federal discipline that only a balanced budget constitutional amendment allows us to have.

So, Mr. President, I hope our colleagues will really take this seriously this year. This is the year to pass this; this is the year to accomplish this. I believe we will have the votes to do so, both in the House and in the Senate.

Mr. President, I want to thank, again, Senator SIMON for his courage in introducing this legislation and being willing to stand up for it. With that, I yield the floor.

Mr. DECONCINI. Mr. President, I want to express my strong support for Senator SIMON'S constitutional amendment to balance the Federal budget. I introduced my own amendment last week, just as I have in every Congress since coming to the Senate in 1977. I believe strongly that the budget crisis facing this country is of the utmost importance and that a constitutional amendment is necessary to get this country back on the road to fiscal responsibility.

The amendment being introduced today is the result of meaningful consultations last year between supporters in the House and the Senate. It is a bicameral, bipartisan amendment which reflects a strong commitment by many Members of Congress to enact a balanced budget amendment this year.

Why do we need a balanced budget amendment? Net interest on the debt, approximately $200 billion a year, is the third largest item in the Federal budget. This growth of interest costs translates into a major decline in funds available to finance any new discretionary programs. That $200 billion should be invested in the future, rather than used to pay past debts. The need for better education, health care, drug prevention, new roads, and bridges, and other domestic programs demands that we not lose sight of our budget deficit problems.

In order to reduce the debt of its 1980 level, the United States would have to collect a 45-percent surcharge on every American taxpayer's income tax bill for the next 12 years. This would mean approximately $4,000 a year in additional taxes for a couple earning $55,000 year for 12 years.

Since 1969, with the exception of years 1987 through 1990 when the increase in the deficit slowed, the annual deficit has grown larger every year. The 1990 deficit, in excess of $220 billion, was second only to the deficit of 1986 which was a record $221 billion. In 1991, an all-time record deficit was set at $269.5 billion, despite efforts to control spending. That record has not lasted long, because the deficit for 1992 was $290.2 billion. Clearly this negative trend will continue if a balanced budget amendment is not passed.

Some of my colleagues argue a balanced budget amendment is unnecessary because Congress already has the authority to control the deficit through legislation. The problem is that Congress lacks the self-discipline necessary to balance the budget and needs the force of a constitutional amendment to get the job done.

As we have proven over and over again, a constitutional amendment is needed because legislative rules can always be waived, and the next Congress can always reject the procedures and/or laws of its predecessors. However, if Congress adopts, and three-fourths of the States ratify, this amendment will become part of the fundamental law of the land impacting on generations far into the future.

This is a simple amendment. There is nothing here that would establish any permanent level of expenditures or taxes. There is nothing here that would prevent the Congress from approving any particular item of expenditure or taxation. It would not necessarily cut Social Security benefits or Medicaid. Clearly, these are priority items and would be considered as such.

What it would do is mandate that total spending of the United States for any fiscal year not exceed total reve-

nues for that year unless 60 percent of Congress approves a specific amount of deficit spending. It also provides that the debt limit cannot be increased unless three-fifths of both Houses agree by rollcall vote. And the President would be obligated to submit a balanced budget, thus sharing the burden for responsible budgeting between the executive and legislative branches. Taxes could be raised only by a majority of the full membership of each House, not merely those present and voting.

A balanced budget amendment provides accountability. In an effort to strike a balance between flexibility and enforceability, the amendment is flexible enough so that in times of recession or national emergency Congress could authorize specific deficit spending or increase taxes. They must, however, go on record as having voted to do so. The voters can then decide if their representatives in Congress are serious about fiscal responsibility. At present, Members avoid accountability through deficit spending, failing to make the tough political decisions required to choose between too many programs competing for too few dollars.

Clearly, the public wants a balanced budget amendment to the Constitution. Thirty-two States have passed resolutions calling for a balanced budget amendment convention. Only two more States, for a total of 34, are needed to convene a convention. It seems unlikely, however, that the magic number of 34 will be forthcoming any time soon. Three States have passed resolutions of rescission because of concerns over the possible scope of any constitutional convention and I know of no other States considering the issue.

It is up to the Congress to get the process moving again. The Nation's bottom line is immersed in red ink and immediate action is needed. However well-intentioned we may be in trying to reduce the deficit, we have failed.

I urge my colleagues to support this bipartisan, bicameral balanced budget amendment. It is time to say "no" to deficit spending and reimpose fiscal responsibility into the budget process.

Mr. THURMOND. Mr. President, I rise today to join with Senators SIMON, HATCH, and DECONCINI as an original cosponsor of legislation to amend the U.S. Constitution to require the Federal Government to achieve and maintain a balanced budget.

This legislation is essentially the compromise on which we agreed with proponents in the House during the 102d Congress. Also, it is similar to an earlier bill in March of 1986 which received 66 of 67 votes needed for Senate approval. Simply stated, this legislation calls for a constitutional amendment requiring that outlays not exceed receipts during any fiscal year. Also, the Congress would be allowed by three-fifths vote to adopt a specific level of deficit spending. Further, the Congress could waive the amendment during time of war. Finally, the amendment would also require that any bill to increase taxes be approved by a majority of the whole number of both Houses.

It is clear that the budget deficit is a top priority with the American people. Additionally, this legislation would be a key step to reduce and ultimately eliminate the federal deficit. The interest and attention which this problem has attracted speaks volumes as to the need for solutions to our Nation's runaway fiscal policy.

Our Constitution has been amended only 27 times in over 200 years. Amendment to the supreme law of our land is a serious endeavor which should only be reserved to protect the fundamental rights of our citizens or to ensure the survival of our system of government.

Mr. President, I believe that the very survival of our system of government is presently being jeopardized by an irrational and irresponsible pattern of spending which has become firmly entrenched in Federal fiscal policy over the last half-century. As a result, this fiscal policy has gone a long way toward seriously threatening the liberties and opportunities of our present and future citizens.

The Federal debt is over $4 trillion. Per capita, the Federal debt is over $16,000. This means that it would cost every man, woman and child in America $16,000 each to pay off the public debt.

The Federal deficit for fiscal year 1992 was $290.2 billion. The Office of Management and Budget projected the deficit for fiscal year 1993 to be $341 billion. In order to solve the deficit problem, congressional spending must be addressed.

I have believed for many years that the way to reverse the misguided direction of the fiscal government is by amending the Constitution to mandate, except in extraordinary circumstances, balanced Federal budgets. I know many other Members of Congress join me in wanting to establish balanced budgets as a fiscal norm, rather than a fiscal anomaly.

Those who oppose a balanced budget constitutional amendment and opt instead for self-imposed congressional restraint must face the fact that this restraint has not been forthcoming. Importantly, the Congress has only balanced the Federal budget one time in the last 30 years. Meanwhile, the level of annual budget deficits has grown enormously over this period of time. Continued deficit spending by the Federal Government will undoubtedly lead the Nation into more periods of economic stagnation and decline. The tax burdens which today's deficits will place on future generations of American workers is staggering. We must reverse the fiscal course of the Federal Government and a constitutional amendment is the only effective way to accomplish it. It is time for Congress to understand the simple fact that a government cannot survive by continuing to spend more money than it takes in.

Mr. President, the balanced budget amendment proposal has the support of many of our colleagues in the Congress, a Congress which holds diverse views on many issues. However, supporters of a balanced budget amendment share an unyielding commitment to restoring sanity to a spending process which is out of control and hurling our Nation headlong toward economic disaster.

I urge my colleagues to support this proposal so we may submit this important constitutional amendment to the States for ratification.

Mr. GRASSLEY. Mr. President, I rise today to announce my cosponsorship of this balanced budget amendment to the Constitution. There has never been such a need for an amendment to restore fiscal discipline to our Government.

Various statutory means have been tried to control our budget deficit. Yet, year after year, the budget deficit increases. Like a mirage, the reductions in the deficit that are estimated to occur only a few years down the road never materialize. Ten years ago, we were only 5 years away from a balanced budget; 5 years ago, we were only 5 years away from a reduced budget deficit. The plain truth is that we will not get on the road to a balanced budget without fundamental change.

In last year's Presidential campaign, the Federal budget deficit became a major focus of discussion. The American people want action on the deficit. Since statutory measures have been tried and found wanting, we must enact a balanced budget amendment to the Constitution. Today, we are not merely sapping American economic strength; we are robbing from the economic futures of generations yet to come.

The balanced budget amendment introduced today is a step to restoring sound budgetary policy. It will require a three-fifths vote of Congress to have an unbalanced budget, and it requires the same vote to increase the national debt ceiling.

Nonetheless, we should be prepared to act even more decisively. Our budget deficits have not been caused because Government has decided to insufficiently tax. The percentage of GNP that taxes consume has been basically stable for many years now. The budget deficit that results from the GAP in revenues and expenditures is nearly entirely due to the fact that the growth in expenditures has increased dramatically in recent years. Congress has

raised taxes a number of times, but the tax increases have only fueled further spending. If we are to truly restore a balanced budget, we must recognize that the focus must be to prefer spending cuts to tax increases. The balanced budget amendment introduced today will not advance that objective. Thus, I will continue to press for a balanced budget amendment that requires a super-majority to impose tax increases. We should enact procedures that make cutting spending easier than raising taxes. Additionally, we should not overlook other valuable ways to achieve a balanced budget, such as line-item veto authority, that will reduce unnecessary spending and narrow the budget deficit with the least pain to the national interest.

Thus, I cosponsor this balanced budget amendment, but will maximize every opportunity to strengthen the balanced budget amendment that will pass this body, to make sure that we can restore fiscal health to our country without creating a built-in pressure to increase taxes.

Mr. COHEN. Mr. President, I am pleased to join Senators SIMON, HATCH, and others in introducing legislation calling for a balanced budget amendment. Amending the U.S. Constitution is not something that should be entered into lightly. Indeed, for many years I opposed a balanced budget amendment. I felt that it was unnecessary and that Congress and the President should be able to reduce the deficit without a constitutional requirement. In light of the ballooning deficit, however, it appears as though my hopes were overly optimistic.

The will of the people for the past decade or more has been for lower taxes and higher spending. The result has been a burden on future taxpayers who will be saddled with debt. Political leaders have been coconspirators in this endeavor.

It should make us very queasy to look at the mountains of debt we are passing along to our children and their children. By our actions and choices, we are jeopardizing the future of our children. Our debt-financed consumption binge will lower future economic growth and future standards of living. The question is whether we will address the problem now or delay and exacerbate the problem. As a recent GAO report on the deficit pointed out, "The key question facing policymakers is not whether to undertake major deficit reduction, but when and how."

The balanced budget amendment answers the question of "When?" by saying "Now." Deciding on the "how" will not be easy, but it will only get more difficult with time. We should take a lesson from the savings and loan experience. Early and decisive action on that problem could have saved billions of dollars for the American taxpayer. Taking steps now to reduce the deficit will save billions of dollars over the long term.

To reduce the deficit, we must seriously consider changes that have long been thought politically impossible.

We must make vertical cuts in government spending. There are plenty of programs that, despite pleasant titles and laudable goals, have not met their objectives. We need to shift these resources into programs, like Head Start, R&D programs and infrastructure, where the rate of return on public investment is demonstrable.

We must also curtail the growth of entitlements which have become deeply ingrained and interwoven into the fabric of American life, and make some tough choices about what we want and what we can afford.

After cutting spending wherever possible, new revenues will also likely be necessary. It is critical, however, that these new revenues go to deficit reduction and not to fund additional Government programs that we simply cannot afford.

Our economy suffers from a lack of savings and a lack of investment. Both deficiencies are caused by excessive public borrowing. We have been unable to come to terms with this deficit. Despite its limitations, I think a constitutional amendment will force us to come to grips with the deficit before it worsens.

I firmly hope that a balanced budget amendment will mark a new beginning—a point at which we say, "Enough is enough." A constitutional amendment will hold Congress' and the administration's feet to the fire in a way that neither the Gramm-Rudman-Hollings law nor the 1990 Deficit Reduction Act were able to. Congress and the President will not be able to circumvent the Constitution the way it has these statutes.

I fully agree that a balanced budget amendment is no substitute for leadership and the willingness of Congress and the President to make the tough choices. The amendment, however, will force us to confront decisions that, heretofore, we have been unwilling to make.

To those making alarmist claims that the amendment would force us to double taxes or shut down the Government, I would make two points:

First, no one expects a $300 billion deficit to be eliminated in 1 year. Suggesting that a balanced budget amendment would require this is disingenuous to say the least. The budget did not get $300 billion out of line in 1 year, and no reasonable person expects it to be straightened out in 1 year. What is critical, however, is that we begin in earnest to reduce the deficit and gradually reduce the national debt.

Second, the amendment would still permit deficit spending if a three-fifths majority in each House agrees to do so. If any of the dire consequences that some have predicted would follow from a balanced budget amendment were to come to fruition, Congress and the President would have the flexibility to borrow funds to avert disaster. However, I would like to re-emphasize that I do not believe that a balanced budget amendment would cause the Federal sky to fall as some suggest.

We cannot reduce the deficit without some sacrifice. We have a deficit in the first place because Congress and the President have told the American people that they can have both lower taxes and more Government. The world sacrifice has been banned from the political lexicon. It must reappear if we are to ever make serious progress in reducing the deficit.

By the same token, however, I do not think the pain of spending cuts will require the level of sacrifice that some suggest. Over the past few years, many States have been forced to cut back government services. While in some cases, these cuts have been too abrupt and too painful, in many other cases, the cuts have made State governments more efficient. Many States found that, when forced to, they could do more with less money. I think the Federal Government is simply going to have to go through the same process.

I cannot close without noting the irony of those who, in the same breath, argue that the amendment is a gimmick that would not work while also arguing that it will force deep cuts in spending. Interest group after interest group has descended upon Washington to testify how terrible a balanced budget amendment would be. But if you listen closely to many of them, they are not simply arguing against the constitutional amendment, they are arguing against a balanced budget—period. Perhaps a constitutional amendment is a less than perfect tool for balancing the budget, but I cannot agree with those who oppose balancing the budget by any means.

Some opponents of the amendment have ridiculed a balanced budget amendment as an easy political vote. On the contrary, this is a very difficult vote—as the defeat of such an amendment last year demonstrated. The easy votes have been the ones we have been casting around here for the past decade or more where we buy now and pay later. The easy thing to do is to satisfy the wants of today's voters at the expense of tomorrow's. A balanced budget amendment will put an end to those kinds of easy votes.

The burden of the budget deficit is great. Unfortunately, the long-term costs of maintaining the deficit are less appreciated than the short-term costs of eliminating the deficit. As painful as it is to tackle the deficit today, it will be even more difficult to address this problem down the road. I urge my colleagues to support the balanced budget amendment so that we may get on with the work at hand.

Mr. BRYAN. Mr. President, I am pleased to be an original cosponsor of the joint resolution which will amend the Constitution to require a balanced Federal budget. I applaud the efforts of Senator PAUL SIMON and Senator STROM THURMOND to introduce this resolution early in the 103d Congress and begin the debate.

In January, the departing administration issued its final budget report estimating a staggering $327.3 billion deficit for fiscal year 1993. This is over $30 billion more than the Bush administration led us to believe during the 1992 Presidential campaign. The rising debt is a "Sword of Damocles" hanging over our heads, we must arm for the battle or our economy is doomed.

The accumulated national debt has quadrupled since 1980 from the red ink that results when Government spends more than it collects. In 1981, the national debt was $1 trillion. In the last 12 years, the national debt has reached an unprecedented level of $4 trillion. This debt is mortgaging our children's future, as the U.S. Treasury borrows $895 million a day.

Mr. President, our burgeoning Federal deficit is the greatest problem facing our Nation today. The interest payments consume dollars that could otherwise go for urgent needs such as infrastructure. It is necessary to force Congress and the President to set priorities and determine what is a critical need and what would be nice to fund.

Forty-eight State Governors face constitutional provisions limiting deficit spending and make those tough decisions every time they submit a budget to the legislature. For 6 years, as Governor of Nevada, I submitted balanced budgets to the State legislature.

Mr. President, a balanced budget amendment is not a panacea, it will not solve all of our fiscal difficulties. A balanced budget amendment will, however, compel both the President and Congress to evaluate those difficult choices necessary to bring Federal spending under control.

Mr. GRAHAM. Mr. President, it was not my intention to speak this morning, but having just yielded the chair to its distinguished current occupant and having listened to several comments that were made relative to the balanced budget amendment, I would like to take this opportunity first to ask unanimous consent to be listed as an original cosponsor of the balanced budget resolution as submitted by the distinguished Senator from Illinois [Mr. SIMON].

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

Mr. GRAHAM. Also, Mr. President, I wish to share a few thoughts on that issue. As with many of my colleagues, I have just completed a campaign for reelection in my State. I would describe the attitude of the people of Florida as to what has happened to our sense of Federal budget discipline as one of being appalled at what has occurred. This is true among all of our citizens, but I think particularly true among older Americans, older Americans who grew up with a value system of personal responsibility, generations who fought wars and lived through depressions while still maintaining fiscal responsibility for the Nation.

I have done a brief analysis using the generations of my own family. My father was born in Croswell, MI, in 1885. On the day he was born, the national debt was less than $3 billion. We had fought many wars, including the not too distantly completed Civil War by the time my father was born, and yet the deficit was less than $3 billion.

I was born in 1936 in the middle of the Depression. We had fought a great World War by that time, as well as dealt with tremendous economic adversity. The national debt was less than $35 billion.

My first child was born in January of 1963. We had fought another great World War, a war in Korea, were in the first stages of Vietnam, had gone through all of the post-World War II/cold war expenditures. The national debt at the birth of my first child was $350 billion.

In October 1990, our first granddaughter was born. When she was born, the national debt was verging on $4 trillion.

I use that just as a personal example in the life of one American family of what has happened to the intergenerational sense of responsibility for our Nation's fiscal future.

I believe that the balanced budget amendment is essentially a generational compact. It is a statement that each generation of Americans will be responsible for its own fiscal affairs and will not place those into the future.

I recently participated in a television program with Senator GRAMM, of Texas, on the issue of sacrifice, drawing from the statement made by President Clinton in his inaugural address. I analyzed the issue of sacrifice as not one of whether we are going to have to sacrifice but who was going to have to sacrifice. It is not a question of whether this ballooning national deficit is going to require change in our lifestyles in a whole variety of manner; it is a question of whether we are going to do it or whether we are going to ask our grandchildren to do it.

I anticipate that there are going to be some restatements of criticism of the balanced budget amendment. One of those is going to be that we are going to be restricting future generations' ranges of options by placing the balanced budget amendment in the Constitution. The answer to that is, yes, we are going to be restricting future generations' ranges of options in that we are going to say to them, as we have been unwilling to say to ourselves, it is unacceptable for one generation of Americans to place this burden on the future.

It is true that most amendments to the Constitution have the effect of freezing a current philosophy of Government into the future. For instance, when we passed the amendment that said 18-year-olds could vote, we were taking a set of social values of that year and saying they would be a permanent part of the political values of America.

While this balanced budget amendment will, of course, be an amendment to the Constitution, in my judgment it has in practical effect the opposite consequence. That is, it doesn't enchain the future. It frees the future because it says that future generations will not be asked to pay for the expenses of their parents and grandparents.

A second argument that I anticipate will be made is that a balanced budget amendment is just an easy way out, that it creates the facade of doing something about the deficit without requiring real political action.

My response to that is it provides a spine for political action. If anyone wants to make the case that without that spine we have shown a willingness over the last dozen or more years to deal with the budget deficit, I would ask them to take the statistics of my own family and defend what has occurred. I believe we have been in a process of political avoidance of responsibility in the recent past and that, while a constitutional amendment will not substitute for political will, it will require us to face the consequences of our action and to take the necessary steps to bring fiscal responsibility to our Federal Government.

Most States have a constitutional provision requiring a balanced budget. I believe that the relative difference between the actions of States over the last 12 years and the actions of the Federal Government, where the States have maintained a relative discipline over their fiscal house while we have had virtually none, is some support for the proposition that a constitutional amendment assists rather than retards the achievement of political will.

As a former State legislator and Governor, I recognize that having a constitutional amendment requiring a balanced budget is not the end of the process; it just sets the context in which difficult political decisions must be made.

So, Mr. President, I applaud Senator SIMON and his colleagues who have developed and introduced this resolution. I am pleased to join with them, and I look forward to this body engaging in a very constructive debate, which I hope, in 1993, will lead to the conclusion of passage of a resolution to amend the United States Constitution to require a balanced budget and the early action by the States to ratify that resolution.

I thank the Chair.

Mr. CRAIG. Mr. President, I am pleased to join my colleague from Florida, Senator GRAHAM, in his comments and his cosponsorship of the balanced budget amendment. In fact, today several have come to the floor to speak of this most important issue. This week we did join together in the formal introduction of that amendment. It is an important occasion, and I say that because in a very clear, bipartisan way at this moment in our Nation's history Senator SIMON, who chairs the Constitutional Subcommittee, which has the jurisdiction over the amendment, along with Senator HATCH, of Utah, who is the ranking member on the Judiciary Committee, along with Senators DECONCINI, of Arizona, Senator HEFLIN, myself, and many others, this week made what I think is the beginning statement of a very important process that has to go forward from this time.

You heard Senator GRAHAM speak of a chronology of time that involved his family associated with deficits and our Federal budget. This past summer, one of our colleagues, who was home with open heart surgery, asked if every day I would come to this floor and submit the Federal debt of the day. It was clearly a reawakening for me to every day submit for our record the Federal debt as the U.S. Treasury was recording it.

You and I watched, Mr. President, as that debt jockeyed between $3.9 trillion and $4 trillion and finally broke over into $4 trillion and stayed in $4 trillion and began to accumulate additional billions of dollars.

I do not know of any clearer message than the message that I participated in giving which says that our Nation and our Government and our finances are in trouble at this moment if we do not have the political will to deal with this issue.

Today we started, with the introduction of this amendment, I hope, a process to reinstate the political will of fiscal responsibility that our colleague from Florida has talked about. A constitutional amendment requiring a balanced budget does not guarantee; it simply defines and begins to dictate a process that we must garner the political will to follow and develop the leadership in for future generations.

As I came from my office this morning, I had spoken with young people who are in Washington now attending congressional workshops for our young, and one of the things that almost invariably these young people ask is, "Senator, what do you plan to do about the debt and the deficit?" They are finally beginning to realize that the very sustenance of this country, its vitality is beginning to be sapped by the inability of this Government and this Congress to deal with its fiscal affairs.

One of the analogies I oftentimes use in visiting with our young people is to say, if we do not get our debt under control, and our deficit, it is not that you will not be able to live in a free society; it is that you will not be able to live in it in a way that you might choose. You will no longer have the opportunity that I had as a young person of your age. You will be restricted because your Government will require, of your productive ability, 60 percent of the reward of that production or more just to finance the Government and its debt.

Now, I am not talking about the rich. I am talking about middle-income Americans 20 or 30 years from now who by their local State and Federal Governments will be required to give up to 70 or 80 percent of their productivity just to take care of Government and debt and debt structure. What about a new car? What about a new home? What about a lifestyle and a savings for their young and the future of their young? It is that kind of economic stagnation that clearly will result from our failing to deal with this deficit issue.

We are in unique economic times today. We are growing as an economy. Our unemployment is growing; our ability to lift off and gain at 3 or 4 percent is relatively stagnant. Why?

If you believe in the old adage that deficit spending creates economic stimulus—and this past year we deficit spent at $320-plus billion—then by definition the economy ought to be screaming. There ought to be jobs for everybody. There ought to be people lined up at our borders waiting to fill the empty jobs that would be generated by this form of deficit spending.

For some reason, it is not happening. And for the first time in our country's history, the reason is that the deficit and debt burden are so great, it now strangles the economy, dragging it down, not allowing it to lift off and to create the kind of jobs and economic viability and activity that we would oftentimes expect of it.

Last week, as a new member of the Joint Economic Committee, I was privileged to have before us the Chairman of the Federal Reserve, Alan Greenspan. He talked about the uniqueness of this current economic condition. There were a few on our panel who wished to chastise him for his alleged inability to appropriately handle the M-2 funds of our Nation. It was largely only an excuse to direct attention away from their profligate voting and spending here in the Congress and the debt burden that is dragging the economy down.

Mr. Greenspan did not have a lot of answers, but I thought he made some very profound statements. In response to a question about the relationship between the deficit reduction and economic recovery, the much-touted idea of an economic stimulus package, that is being worked on today by the new administration and by this Congress, I asked Mr. Greenspan that question—what should we or could we expect? He said, "If a credible long-term deficit reduction package were in place, the credit markets would easily, immediately respond, if it were believable, and if Congress could be trusted in fulfilling it."

What is he saying? I think he was reflecting on a 1990 budget agreement in which we raised well over $130 billion in new revenue, and we promised for every dollar of new spending, we would cut 12. Just the reverse happened. We spent well beyond what we had intended to and we did not cut a dime. And budgets grew and the country began to grow weary of promise after promise, that this Government and this Congress would become fiscally responsible.

In other words, economic growth can no longer be related to a stimulus package. It can only be related to very specific actions taken by this Congress to convince the economists of this country that we mean business in controlling, spending, and bringing the deficit down and putting our debt in some form of explainable and manageable context. That is our responsibility, and I challenge our new President to make deficit reduction as much a part of his economic package as any form of new spending, because I find it unique, if not ironic, that we would be talking about new spending at a time when we cannot even pay for the spending that is currently going on.

Twenty-four years of uninterrupted economic deficits; 32 deficits in 33 years, and 55 deficits in the last 63 years. Not only in August and September of this year did we break over into the $4 trillion debt mark and stay there and move beyond it, Mr. President, and I believe that to be a historic time—something happened in early January of this year that is just as historic.

For the first time in our Nation's history, we are borrowing from our country and our country spends more money than they can generate in this sense: This year for the first time Federal borrowing equalled more than the personal savings of the individuals of our country and the retained earnings of corporate America. And we wonder why there are no new jobs today, because there is no money to invest in jobs, because we are borrowing, we the Government. No new money, no new savings, that is sucked in by our Government to pay for what we believe to be the immediate needs and the priorities of our country.

We wonder why the economy is sluggish. We can make all kinds of excuses, but if we do not come to this floor and look at ourselves and blame ourselves, none of those excuses have any base or validity, for it is our problem herein and our inability to be fiscally respon-

sible that has caused the problems in the economy that we now choose to blame on someone other than George Bush, because he is not around anymore to blame.

Having said that, it is imperative that we respond to the citizens of our country. It is imperative that we give to them for their consideration and ratification, a constitutional amendment that would, for the first time, do what Thomas Jefferson said well over 200 years ago: That if he had but one addition to the Constitution to make, it would be to deny this Government the ability to borrow. In other words, he would be saying to us today, as he said 200 years ago: Spend within your means, do not borrow money, for if you do, you borrow from future generations; and if you do that you destroy the freedom that this country has always stood for.

I hope that we can, in our future days of deliberation in the 103d Congress, bring forth a constitutional amendment and send it to the States for their ratifications, and let go forward one of the greatest debates that will occur in the history of our country. I am totally confident that three-fourths of the States will rally and vote for and support a constitutional amendment to balance the budget.

But that is not going to be just the most important thing that will happen, because in each one of those States will occur a debate about the Federal budget and what it means and what it does and the kind of impacts it has on our economy. And there will be a much greater understanding across the land of what deficit spending does and the kind of impact it has on ordinary, everyday working men and women's lives. Out of that debate, I hope will come an adherence to the responsibility of balancing a budget, and on that will be a public opinion that will force upon this Congress a balanced budget for now and future generations.

I ask unanimous consent that other comments and thoughts about the balanced budget process be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS OF THE BIPARTISAN, BICAMERAL CONSENSUS BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

This section sets forth the general rule of this Article, and the central principle to be observed and enforced, that the Government of the United States shall not live beyond the means provided for it by the true sovereign, the people.

Therefore, the section establishes, as a norm of federal fiscal policy and process, that the government's spending should not exceed its income. While popularly—indeed, universally—referred to as requiring a "balanced budget", its mandate is both simpler and more comprehensive, requiring a balance (or surplus) of cash inflows relative to cash outflows.

Any departure from the general rule in this section and its guiding principles should be an extraordinary event, based on a compelling need. As is commonly the case with constitutionally established parameters for the legislative process, no attempt is made to enumerate all the circumstances that might justify deficit spending; if a three-fifths supermajority of each House of Congress believes an emergency, crisis, or urgency exists (and if the President concurs), it does. This formulation makes the option of deficit spending both difficult to exercise yet available when a fairly strong national consensus exists.

DETAILED ANALYSIS:

"Total outlays" and "total receipts" are defined below in Section 7.

"* * * fiscal year * * *" is intended as a term defined in statute and having no other, specific, constitutional standing. It is a commonly understood term in both private and public usage. While the definition of a fiscal year could be changed from time to time, the concept is sufficiently well understood that a blatant attempt to contravene the intent of the amendment would not be acceptable.

For example, creation of a "transition fiscal year" of 18 months to facilitate reforms in the budget process clearly would be consistent with the amendment. On the other hand, legislation purporting to implement the amendment that promised to balance the budget for the "fiscal year 1998–2008" (and, presumably, with little or nothing in the way of procedural discipline in the early portion of that "year"), clearly would be unconstitutional. Certainly, a simple "rule of reason" would be applied to any statutory definition of a "fiscal year."

"* * * shall not * * *" is a term readily obvious in its intent, spirit, and application. It is mandatory language simply meaning you may not. Saying that "Total outlays * * * shall not exceed total receipts" states both the goal to be pursued and the yardstick by which successful compliance with this amendment is measured. It prohibits fiscal behavior intended or reasonably likely to produce a deficit within a fiscal year.

"* * * three-fifths of the whole number of each House of Congress * * *" indicates the minimum proportion (60%) of the total membership of each House needed to approve expenditures producing a deficit. Currently, this would mean 60 of the 100 Senators and 261 of the 435 Representatives.

The term "whole number" is derived from, and intended to be consistent with, the use of the phrase in the 12th Amendment to the Constitution, "two-thirds of the whole number of Senators" (which is set as the quorum necessary for the purpose of electing the Vice President in case no candidate receives an Electoral College majority).

"* * * shall provide by law * * *" both states a simple consistency with other provisions of the Constitution and clarifies a difference between the deficit spending provided for under this amendment and a deficit planned for in a Congressional Budget Resolution.

Article I, Section 7, Clause 3 of the Constitution states: "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States" for signature or a veto. Clearly, a vote by both Houses that results in deficit spending would be such a vote.

However, an additional reason for adding this clarifying language is that such a vote might easily be confused with the deficit that may be estimated in a budget resolution, which currently is not presented to the President. While budget resolutions are Concurrent Resolutions generally passed by both Houses, concurrence is not necessary, since budget resolutions actually fall under the "Rules of its Proceedings" that "(e)ach House may determine" under Article I, Section 5, Clause 2. This is because budget resolutions merely set target amounts for subsequent budget decisions made within each House. (The ultimate decisions requiring concurrence, appropriations, other direct spending bills, or revenue bills, are presented to the President.) In fact, the House often proceeded to act pursuant to a House-passed budget resolution in prior to and in lieu of House-Senate agreement on a single resolution.

Obviously, the ⅗ vote on permitting a deficit under this amendment is not a determination of an internal rule in either House, but has direct and immediate consequences external to the rules of either House. Therefore, the words "by law" state what normally would be obvious, but which might be confusing here, due to current budget resolution procedures.

"* * * a specific excess of outlays over receipts * * *" means that the maximum amount of deficit spending to be allowed must be clearly identified. Thus, enforcement of the amendment through the political process will be facilitated by improving elected officials' accountability to the public. The specific excess which is provided for by law would not apply to outlays in more than one fiscal year and may, in fact, apply to an excess that occurs over a shorter period, such as the remainder of a fiscal year when the law is enacted mid-year.

Ensuring such accountability is a cornerstone of the Balanced Budget Amendment, and restores the public's general—and diffuse—interest in fiscal responsibility to an equal competitive footing with the special interests who demand programmatic spending and tax preferences. Today, federal officials can reap the rewards of satisfying the incremental demands of special interests without ever having an individual decision identified as a decision that results in a deficit. This informational imbalance is corrected by the mandate in Section 1 that deficit spending cannot occur without a specific identification of the amount.

Changes from H.J. Res. 290/S.J. Res. 298, as introduced:

As originally introduced, Section 1 of H.J. Res. 290 read:

"Prior to each fiscal year, the Congress and the President shall agree on an estimate to total receipts for that fiscal year by enactment of a law devoted solely to that subject. Total outlays for that year shall not exceed the level of estimated receipts set forth in such law, unless three-fifths of the whole number of each House of Congress shall provide, by a rollcall vote, for a specific excess of outlays over estimated receipts."

The new Section 1 in the substitute takes cognizance of numerous comments offered, regarding the original language, in 1987 and 1990 hearings in the House Committee on the Judiciary, 1992 hearings in the House Committee on the Budget, during House floor debate in 1990, and otherwise. The authors have attempted to be responsive to all thoughtful comments and criticisms and to streamline and simplify the language.

"Prior to each fiscal year" was deleted both as hortatory (possibly even surplus) language, and in response to the inevitable question, "What if it isn't done by the beginning of the fiscal year?" Such simple timing questions are best left up to implementation and enforcement legislation.

"Congress and the President shall agree" was removed because "agree" truly was hortatory language. Although it stated a laudable goal, this phrase caused some confusion and raised a question of the legal consequences of a lack of an actual agreement. The words, "by enactment of a law", in the original language referring to establishing a receipts estimate, have clear meaning within the Constitution currently and would control, rather than the hortatory "agree" language. It was intended that Congress still could override a presidential veto of a receipts estimate. In deleting all of the first sentence of the original Section 1, all such possible confusion is also removed. (NOTE: In S.J. Res. 298, as introduced, this phrase was reworded as, "* * * and estimate of total receipts * * * shall be determined by enactment of a law * * *.")

"* * * an estimate of total receipts * * * by enactment of a law devoted solely to that subject * * * is deleted from Section 1 to remove the mandating of a specific procedural step that, however beneficial, is not necessary in the Constitution.

The authors in no way intend for the substitute to require a less flexible process in the establishment of a receipts estimate and the use of that single estimate as a benchmark against which to measure total outlays throughout the fiscal year. On the contrary, the substitute provides the same flexibility as would have been permitted under H.J. Res. 290 as introduced, and consistent with the language and purpose of Section 1 of the substitute. The permissible use of estimated receipts is moved to a new Section 6 which requires implementation and enforcement legislation.

Changes from S.J. Res. 18, as reported:

Section 1 of the substitute is substantively the same as Section 1 of S.J. Res. 18 as reported by the Committee on the Judiciary.

Section 2. The limit on the debt of the United States held by the public shall not be increased unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

No section of this Article should be read in isolation, especially Section 1. Section 2 provides the essential mechanism which not only enforces an honest budgeting process in pursuit of the general rule and principle stated in Section 1, but also will operate to make the amendment self-enforcing.

This Section is inspired by the often-quoted desire expressed by Thomas Jefferson, in his November 26, 1798 letter to John Taylor:

"I wish it were possible to obtain a single amendment to our constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its constitution; I mean an additional article, taking from the government the power of borrowing."

The authors here have drawn from recent experiences of the government and modern economic theory to reach a compromise with then-Vice President and later President Jefferson: Section 2 takes from the government the power of borrowing, unless three-fifths of the total membership of both Houses votes to approve a specific increase in the amount that may be borrowed.

Section 2 provides strong enforcement, indeed, for the provisions of Section 1. When the government runs a deficit, that necessitates additional borrowing to meet its obligations. Failure to authorize that level of borrowing could, in a worst-case scenario, result in a default by the government of the United States. Treasury securities might not be redeemed. Government services could be threatened with a shutdown, subject to the availability of receipts.

Today, such a consequence is occasionally threatened when an impasse within Congress or between Congress and the President jeopardizes passage of essentially ministerial legislation raising the statutory limit on the public debt by a simple majority. Under this amendment, the threat of default would loom when the government runs a deficit, thus providing a powerful incentive for balancing the budget.

This simple threat of default does not fully explain the way Section 2 will operate to enforce the fiscal norm of balancing outlays and receipts. Because a debt-increase bill represents an admission of failure of enormous magnitude, passage is always a difficult matter.

Under current law, Members of Congress not infrequently have rounded up 50% plus one of the Members of one House to threaten to push the government to the brink of insolvency unless a pet amendment is added to this must-pass legislation, despite consistent efforts by the Administration and the Congressional leadership of both parties in both Houses to pass a "clean" debt bill. This "debt bill blackmail", in fact, was the tactic used to enact the original Gramm-Rudman-Hollings law of 1985.

By lowering the "blackmail threshold" associated with passage of the regular debt limit bill from 50 percent plus one in either body to 40 percent plus one, Section 2 increases the motivation of the Administration and the Leadership, including the Chairs of the relevant committees, to do whatever is necessary, legislatively and cooperatively, even to the point of balancing the budget, to avoid facing such a difficult debt vote.

It is in no way the intent of the authors and supporters of this amendment that a default or shutdown should happen. However, the threat of such consequences is analogous to the deterrence effect of fines or legal damages in other situations.

Because borrowing, and increases in any limits on cumulative borrowing, must be enacted in law, Section 2 makes the amendment effectively self-enforcing. Such legislation usually involves large enough numbers of dollars to be borrowed that extensions of authority to borrow generally are used up in a year or so. The current statutory limit on the public debt, enacted as a part of the Budget Enforcement Act late in 1990 and allowing borrowing into 1993, is very much an exception in this regard; this lengthy term of borrowing, not quite three years, was made possible only by the status of the Act as an extraordinary, five-year plan. Virtually no elected official can stand the political heat of supporting a huge, multi-year increase in the government's level of indebtedness. This simple political dynamic will ensure that the self-enforcement provided by Section 2 occurs frequently enough to be effective.

Finally, when three-fifths of both Houses have "gutted up" and, under Section 1, voted explicitly for a specific excess of outlays, there is no intent in this amendment to "punish" them by later forcing a second three-fifths vote on the debt limit. Both decisions can be approved by the same, single, three-fifths vote in the same legislation.

Detailed analysis:

"* * * debt of the United States held by the public * * *" is a widely used and understood measurement tool. The Congressional Budget Office's January 1992 Economic and Budget Outlook: Fiscal Years 1993–1997 book, in its Glossary, defines "Publicly held federal debt" simply as: "Debt issued by the federal government and held by nonfederal investors (including the Federal Reserve System)." On page 66 of the same volume, CBO further explains, "Debt held by the public represents the government's appetite for credit and is the most useful measure of federal debt." The current, widely used and accepted meaning of "debt held by the public" is intended to be the controlling definition under this Article.

The "debt held by the public" differs from the gross federal debt in that the latter, according the CBO, page 66, "includes the securities (about $1 trillion and climbing) issued to government trust funds." The gross debt is the "close cousin" (per CBO) of the "public debt".

The Congressional Research Service's Manual on the Federal Budget Process, December 24, 1991, in its glossary, defines "Public debt" as: "Amounts borrowed by the Treasury Department or the Federal Financing Bank from the public or from another fund or account. The public debt does not include agency debt (amounts borrowed by other agencies of the Federal Government). The total public debt is subject to a statutory limit."

A requirement of a three-fifths vote on the "public debt" has been issued in some previous formulations of the Balanced Budget Amendment. The use, here, of "debt held by the public" is a refinement based on a 1990 recommendation by the Administration and subsequent review by the authors of the implications of using the different measures of debt. "Debt held by the public" has been chosen for two reasons:

First, as pointed out by CBO, common sense suggests that the most appropriate benchmark to use is the federal government's borrowing from all non-federal-government sources.

Second, the purpose of this section is to motivate an avoidance of deficits. When the Social Security or other federal trust funds run surpluses, this does not cause total outlays to exceed total receipts and the government does not increase its borrowing from non-government sources. Therefore, Congress and the President should not be forced to surmount the three-fifths vote hurdle on debt bills if they have not run a deficit and increased net federal borrowing. Section 2 matches the benchmark used in the enforcement process to the policy objectives desired.

"The limit on the debt * * * held by the public * * *" obviously assumes the establishment of a new statutory limit on this measure of federal borrowing. This limit may be established in addition to, or as a replacement for, the current statutory limit on the public debt. Article I, Section 8 of the Constitution simply says, "The Congress shall have Power * * * To borrow Money on the Credit of the United States * * *." The exact process of carrying out this power is left up to the Congress to provide for by law.

When establishing a new statutory limit on the debt held by the public (which will require a three-fifths vote to increase), Congress may or may not wish to continue to set by statute a limit on the public debt. The fact that a simple majority could continue

to be required to pass such a public debt limit would not, in any way, create procedural or legal conflicts. At times when a trust fund surplus necessitates an increase in the public debt, such action would become more ministerial and less difficult than currently is the case. Increases in both limits certainly could be contained in the same bill that is passed by a three-fifths vote.

Changes from H.J. Res. 290/S.J. Res. 298, as introduced:

The substitute makes no changes to this section as it appeared in the Article as introduced.

Changes from S.J. Res. 18, as reported:

Language relating to a limitation on debt, such as Section 2 of the substitute, was not included in S.J. Res. 18 as introduced or reported. Language requiring a three-fifths vote to increase the limit on the public debt was added on the Senate floor both to S.J. Res. 225 in the 99th Congress (a predecessor to the current S.J. Res. 18, in 1986) and to S.J. Res. 58 in the 97th Congress (in 1982).

Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which total outlays do not exceed total receipts.

In Section 3, the amendment extends to the President's annual budget the same norm of fiscal balance expected of the Congress. The current statutory requirement that the President submit a budget is codified in the Constitution to ensure that the President remains engaged with Congress in the budget process. Of course, this requirement of submission of a single document in no way alters the current constitutional balance of powers or separation of responsibilities. It also is perfectly consistent with the current constitutional provisions that the President "shall * * * recommend to [Congress'] Consideration such Measures as he shall judge necessary and expedient" (Article II, Section 3).

Detailed analysis:

"Prior to each fiscal year * * * was retained in Section 3 because of the long-understood legislative principle that deadlines certain can be set, and in fact are commonly expected to be set, for specific actions by the Executive. Currently, the deadline for submission of the President's budget is set by statute and occurs well in advance of the fiscal year for which it is written. Such statutory provisions are, and will remain, consistent with Section 3.

"* * * a proposed budget * * *" means a document similar, in broad terms, to that which is regularly submitted under current law. The amendment in no way restricts the discretion of Congress to enact changes in what is or is not required in such a budget, as long as the document remains useful for the purposes of planning federal spending activities.

"* * * in which total outlays do not exceed total receipts." Per se, a "budget" is a document in which all relevant future numbers are planned, recommended, projected, estimated, or assumed. This is true, as a matter of definition, of all documents called "budgets," public or private. Therefore, no qualifiers are added to this language in Section 3, such as "estimated receipts" or "recommended outlays". To include such terms would be redundant at best, and inadvertently confusing or limiting at worst.

Changes from H.J. Res. 290/S.J. Res. 298, as introduced:

The substitute makes no changes to this section as it appeared in the Article as introduced.

Changes from S.J. Res. 18, as reported:

This section of the substitute is identical to language in S.J. Res 18 as reported.

Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

The purpose of this section is to increase the accountability of Members of Congress when they consider legislation to increase revenue, in light of the amendment's requirement to balance receipts and outlays. The increased pressure the amendment will create for fiscal discipline may increase temptation to shield a certain amount of legislative decision-making from public view. Tax bills have been known to pass, occasionally, by voice vote.

The enhanced "tax accountability" (or, more precisely, accountability with regard to passage of bills to increase federal revenue) provided by the unvarying requirement for a rollcall vote, is supplemented by the requirement that such bill also shall not become law unless passed by a supermajority, in this case a majority of the whole number of each House.

The rollcall vote and supermajority requirements will serve to maintain a level playing field between the public's more general and diffuse interest in restraining the government's appetite for revenues and the more focused pressure that special interest groups can apply for individual spending programs.

Detailed analysis:

"No bill * * * shall become law unless * * *" is drafted in the negative to conform to the style used in Article I of the Constitution, in phrases such as, "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census * * *" and "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law * * *."

"* * * revenue * * *" has the same meaning here as in Article I, Section 7, which states, "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."

"* * * bill to increase revenue * * *" means legislation making policy changes in the government's exercise of its sovereign power to tax or otherwise compel payments to the government. "Revenues" and "receipts" are largely synonymous, but not always so, especially when being use prospectively. Both are expressed in terms of quantities of dollars flowing into the Treasury. However, "revenue" is more closely connected to the tax rates, tax base, Customs rates, or other policy criteria formulated to produce inflows of receipts. A "receipt" is a more purely and more comprehensive quantitative concept. For example, a bill to step up Internal Revenue Service enforcement of current tax laws and enhance collection of taxes currently going uncollected definitely would result in increased receipts, but would not be "a bill to increase revenue," and therefore, not subject to the requirement of a majority of the whole House for passage. ("Receipts" are further defined under Section 7.)

"* * * majority of the whole number of each House * * *" means, under current law, never less than 218 votes among the 435 Members of the House of Representatives and never less than 51 votes in the Senate, which numbers 100 Members. The "whole number of each House" is defined under Section 1, above.

This language is not intended to preclude the Vice President, in his or her constitutional capacity as President of the Senate, from casting a tie-breaking vote that would produce a 51-50 result. This is consistent with Article I, Section 3, Clause 4, which states: "The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided." Nothing in Section 4 of the substitute takes away the Vice President's right to vote under such circumstances. The language requires (in today's Senate of 100) 51 votes to pass a revenue-increasing bill, not the votes of 51 Senators. Obviously, in a 51-50 vote, 51 still constitutes a majority of the whole number of 100. Also obviously, while the Vice President could turn a 49-49 tie into a 50-49 result, this would not constitute a majority of the whole number.

Changes from H.J. Res. 290/S.J. Res. 298, as introduced:

The substitute makes no changes to this section as it appeared in the Article as introduced.

Changes from S.J. Res. 18, as reported:

Section 4 of the substitute is substantively the same as Section 3 of S.J. Res. 18 as reported.

Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

This section reaffirms the traditional priority presumptively attached to matters of national self-defense. In such cases, especially when the Congress and the President have taken an action as extraordinary as declaring war, financing that effort should proceed unimpeded by any requirement of additional, extraordinary votes.

Detailed analysis:

The first sentence of Section 5, or a virtually identical counterpart, has been a fixture in almost every major version of the Balanced Budget Amendment over the years. Consistent with Article I, Section 7, Clause 3, such a simple majority vote to waive this Article would have to be presented to the President for his or her approval.

The second sentence recognizes that, for most of the military conflicts in which the United States has engaged, there was not a formal declaration of war. Nevertheless, a sufficient self-defense interest is present in such situations that a Section 1 supermajority should not be required to fund such an engagement. Further definition of the criteria set forth for the "majority of the whole number" waiver in Section 5 is not needed, since the Section requires simply that the joint resolution required for the waiver declare such conditions to be present.

Changes from H.J. Res. 290/S.J. Res. 298, as introduced:

The first sentence of the substitute Section 5 makes no changes to this section as it appeared in the joint resolution as introduced. The second sentence has been added, based on an amendment approved by the Senate Committee on the Judiciary to companion legislation, S.J. Res. 18.

Changes from S.J. Res. 18, as reported:

The first sentence of the substitute Section 5 is substantively the same as Section 4 in S.J. Res. 18 as introduced.

The second sentence was approved by the Senate Committee on the Judiciary and included as an amendment to S.J.Res 18 as re-

ported. The difference between, and graduation of, the waiver requirements in the two sentences is intentional, and is based on the principle that the threshold of difficulty for deficit spending should be raised as the declared level of the seriousness of the military engagement declines.

Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

This section requires the adoption of legislation necessary, appropriate, and reasonable to enforce and implement the Balanced Budget Amendment. There is no need—and arguably it would be a bad idea—explicitly to foreclose the possibility of judicial interpretation or enforcement. However, this language further tilts presumptions of such responsibilities toward extremely limited court involvement. This language also is intended to prevent the possibility of an interpretation that could shift the current balance of power among the branches in favor of the Executive.

Detailed analysis:

"The Congress shall enforce and implement * * *" differs from clauses included in several other amendments that state, "The Congress shall have power to enforce * * *." This latter clause has been employed only where there was concern that the question could arise as to whether Congress had the power to pre-empt state laws or constitutions or was venturing impermissibly beyond its constitutionally enumerated powers and into the rights reserved to the states or the people.

Here, no such question of pre-emption is conceivable. Congress clearly has the power to enforce and implement this Article, under the "necessary and proper" clause in Article I, Section 8, which states: "The Congress shall have Power * * * To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

This section creates a positive obligation on the part of Congress to enact appropriate implementation and enforcement legislation. As a practical matter, this language simply requires what is inevitable and predictable. It is a simple statement that, however well-designed, a constitutional amendment dealing with subject matter as complicated as the federal budget process needs to be supplemented with legislation. It is a means of owning up to the truth in the arguments made by many Members of Congress—both supporters and opponents—that Members must expect to do more than cast this one vote to pass this one amendment, to ensure that deficits are brought down and, ultimately, eliminated.

The inclusion of a positive obligation to legislate does not make the Article more difficult to enforce, nor is it without precedence in the Constitution. Article I, Section 2, Clause 3 provides: "Representatives and direct Taxes shall be apportioned among the several States * * * according to their respective Numbers, which shall be determined by * * * [an] actual Enumeration * * * made within three Years * * * and within every subsequent Term of ten Years, in such Manner as they shall be Law direct. * * *" The critic who today asks, "What if Congress just doesn't enact implementing and enforcing legislation?" Would be the counterpart of the critic who might have asked in 1787, "What if Congress just doesn't authorize or appropriate for a Census, if, in their own self-interest, they don't want the current apportionment to be changed?" In this case, it manifestly would be in Congress' own best interest to enact legislation ensuring a complete and clearly-defined budget process consistent with the Balanced Budget Amendment.

"* * * which may rely on estimates of outlays and receipts." This phrase allows Congress the flexibility in explicit language that it will need in practical effect, to make reasonable decisions and use reasonable estimates, when appropriate, as a means of achieving the normative result required in Section 1. To some extent, this phrase, too, states the obvious, that the process of budgeting and taxing and spending inevitably involves relying on estimates. "Estimates" means good faith, responsible, and reasonable estimates made with honest intent to implement Section 1 and not evade it.

The estimates contemplated in Section 6 do not apply in any way to a determination of the amount of debt referenced in Section 2. "Debt" there means actual, not estimated, debt.

Section 1 provides the standard by against which compliance with the amendment is measured. Section 6 clarifies that implementation and enforcement legislation may provide for the use of reasonable and appropriate estimates in the process of complying with Section 1. Section 6 is intended to support, strengthen, and aid the effectiveness of the other provisions of the amendment. This provision also will provide additional insurance against intrusion by the courts into the finer details of questions of compliance with the amendment.

Section 6 must not be interpreted in any way that would weaken or allow evasion of any other provision of this amendment. Over the course of the fiscal year, outlays may not exceed receipts. To the extent that any reasonable and lawful action can be taken to prevent an excess, it must be taken. On the other hand, for example, a brief dip in receipts or jump in outlays need not trigger a sequester, rescission, or other offsetting action if there it is reasonable to assume that such a "glitch" will be offset naturally in the near-term by normal economic or budgetary fluctuations.

In order to allow for an unexpected shortfall of receipts or an unexpected increase in outlays without triggering a three-fifths debt vote under Section 2, it would be necessary that the actual debt held by the public be held below the debt limit, by a sufficient amount to offset the amount by which actual receipts or outlays may differ from estimated receipts or outlays.

It also should be noted that outlays are both more predictable and more controllable than receipts. Therefore, the handling of outlays necessarily must be held to a stricter standard than the treatment of receipts. To be more specific, of course, is difficult until the actual design of implementation and enforcement legislation emerges. In all cases, the standard to be applied to the accuracy and adjustment of estimates is to be a rule of reason.

Changes from H.J. Res. 290/S.J. Res. 298, as introduced:

Section 6 is a new section. It was added to this substitute in part to clarify the role of Congress in the implementation and enforcement of the amendment, in part to require the enactment of such legislation, and in part to clarify that whatever process Congress enacts to enforce this amendment may provide for the use of reasonable estimates.

It is also the intent of this provision to allow the use of a single level of total estimated receipts for a fiscal year, enacted into law at the beginning of the budget process, as the fixed target amount which outlays throughout the fiscal year may not exceed. In other words, Section 6 is intended to allow Congress to enact into law the process of measuring actual outlays against a fixed receipts estimate in the same way that was outlined in H.J. Res. 290 as introduced. Nothing in H.J. Res. 290 as introduced would have prevented Congress from imposing a more stringent process of measuring actual outlays against constantly-updated receipts estimates throughout the fiscal year. Section 6 of the substitute is no more and no less restrictive in this regard.

Changes from S.J. Res. 18, as reported:

Section 6 is a new section.

Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

This section makes clear that, for purposes of computing a deficit, balance, or surplus under this amendment, there is no such thing as "off-budget" receipts or outlays. By requiring *all* cash inflows and outflows to be counted, the most commonly anticipated loopholes are prevented from ever being created. Simple refinancing of outstanding debt at the same net cost of borrowing would not be affected in the normal course of business and, of course, borrowing is not considered a receipt, but rather is recognized as only the means of financing deficit spending.

As currently used and reported, both "receipts" and "outlays" are well-understood, inclusive concepts used with consistency in the budgetary process.

Detailed analysis:

"* * * receipts * * *" is to be interpreted consistently with the use of "Receipts" in Article I, Section 9, Clause 7, which provides, in part, that "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

The definition of "budget receipts" in A Glossary of Terms Used in the Budget Process (1981), as quoted in S. Rept. 99-162 and S. Rept. 99-163 (committee reports on S.J. Res. 13 and 225, respectively) still applies:

"Collections from the public (based on the Government's exercise of its sovereign powers) and from payments by participants in certain voluntary Federal social insurance programs. These collections, also called governmental receipts, consist primarily of tax receipts and social insurance premiums, but also include receipts from court fines, certain licenses, and deposits of earnings by the Federal Reserve System. Gifts and contributions (as distinguished from payments for services or cost-sharing deposits by State and local governments) are also counted as budget receipts. Budget receipts are compared with total outlays in calculating the budget surplus or deficit. Excluded from budget receipts are offsetting receipts which are counted as deductions from budget authority and outlays rather than as budget receipts."

"* * * outlays * * *" means all disbursements from the U.S. Treasury, directly or indirectly through federal or quasi-federal agencies created or under the authority of Acts of Congress. The Glossary (as cited above) defines "outlays" as follows:

Obligations are generally liquidated when checks are issued or cash disbursed. Such payments are called outlays. In lieu of issuing checks, obligations may also be liq-

uidated (and outlays occur) by the maturing of interest coupons in the case of some bonds, or by the issuance of bonds or notes (or increases in the redemption value of bonds outstanding). Outlays during a fiscal year may be for payment of obligations incurred in prior years (prior year outlays) or in the same year. Outlays, therefore, flow in part from unexpended balances of prior-year budget authority and in part from budget authority provided for the year in which the money is spent. Total budget outlays are stated net of offsetting collections, and exclude outlays of off-budget Federal entities. The terms expenditure and net disbursement are frequently used interchangeably with the term outlays.

"Expenditures", in fact, also appears in Article I, Section 9, Clause 7, as quoted above, and is used there in symmetry with "Receipts". "Outlays" is used in this Section because of that word's overwhelmingly prevalent use in recent and current budget terminology.

Changes from H.J. Res. 290/S.J. Res. 298, as introduced:

The substitute makes no changes to this section as it appeared in the Article as introduced.

Changes from S.J. Res. 18, as reported:

The substitute makes no changes to this section as it appeared in the Article as introduced.

Section 8. This article shall take effect beginning with fiscal year 1998 or with the second fiscal year beginning after its ratification, whichever is later.

By passing this amendment and sending it to the States for ratification, the Congress intends to bind itself, in mutual cooperation with the President, to adopt an orderly deficit reduction plan that will bring the budget into compliance with this amendment no later than fiscal year 1998.

Changes from H.J. Res. 290/S.J. Res. 298, as introduced:

The effective date has been moved from fiscal year 1995 or the second fiscal year to fiscal year 1998 or the second fiscal year. This change reflects both the passage of time since H.J. Res. 268, 101st Congress, was considered on the House floor in 1990 (with the fiscal 1995 date) and a realistic, consensus estimate of the time needed to allow for a "glide path" down to a zero deficit. (NOTE: S.J. Res. 298, as introduced, included an effective date of fiscal year *1997* or the second fiscal year after ratification.)

Changes from S.J. Res. 18, as reported:

S.J. Res. 18 as introduced and reported simply provided that the Article would take effect with the second fiscal year beginning after its ratification.

ANSWERS TO COMMONLY-ASKED QUESTIONS ON THE BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

(NOTE: The questions and answers below were revised and updated just prior to House consideration of H.J. Res. 290 on June 10–11, 1992. For ease and swiftness of editing, all references to H.J. Res. 290 from earlier editions of this Q&A were left intact. However, these materials have been updated to apply to the Bipartisan, Bicameral Consensus version of the amendment agreed to by the principal sponsors and supporters of H.J. Res. 290/S.J. Res. 298 and S.J. Res. 18 in a series of meetings completed on June 9.)

Won't a constitutional requirement of a "balanced budget" simply invite moving some items off-budget?

H.J. Res. 290 does not require that a single document, a "budget," be written in balance. Instead, it deals with actual spending and taxing bills, and how actual outlays conform to estimated receipts. Taking any item "off-budget" would have absolutely no effect on the operation of H.J. Res. 290.

Wouldn't the temptation remain great to commit some other evasion, such as manipulating the definitions of terms used in the BBA?

Terms such as "outlays", "receipts," "debt held by the public", and "raising revenue" either already appear in the Constitution or are commonly understood. In the 99th Congress, Senate Reports 99–162 and 99–163 and Senate floor debate on S.J. Res. 225, and in the 101st Congress, the House floor debate, went to some lengths to establish a legislative history for and preventing misinterpretation of these and other terms as used in a BBA. This year the House Budget Committee compiled a formidable amount of testimony on all sides. It also remains the appropriate role of the Members engaged in floor debate this year to build similarly clear definitions.

Won't the BBA be unenforceable in other ways, causing erosion of respect for other Constitutional provisions as well?

To a certain extent, the provisions of H.J. Res. 290 are self-enforcing or interactively enforcing. Effective enforcement and orderly implementation certainly are expected in the form of enabling legislation; Members such as the Chairman of the Budget Committee have served notice most effectively in that regard. Beyond that, enforcement either is implied by the ramifications of stalemate or inaction or, to a very limited degree, could be obtained in the courts.

The Constitution requires Congress and the President to take the necessary steps to carry out Constitutional mandates. Congress is empowered to make all laws that are "necessary and proper to execute the mandate of the constitution." The President and Members of Congress take only one oath, promising to "preserve, protect and defend the constitution." It is assumed that Congress and the President will monitor each other and to the limits of their authority enforce the provisions of the amendment against the other.

The public will also have a significant role. A breach of the amendments' provisions would be readily apparent, and if a breach occurs a political firestorm very likely would erupt from the public. Public accountability is provided for in the provision that requires any vote to run a deficit to specify which outlays are "excess."

Finally, as a last resort, the judicial branch may act to insure that the Congress and President do not subvert the amendment. A member of Congress or an appropriate Administration official probably would have standing to file suit challenging legislation that subverted the amendment.

Wouldn't H.J. Res 290 dangerously and inappropriately transfer power to the courts in a whole new area by opening up to court challenge on Constitutional grounds virtually every budgetary decision made by Congress (and the President)?

The courts could make only a limited range of decisions on a limited number of issues. They could invalidate an individual appropriation or tax Act. They could rule as to whether a given Act of Congress or action by the Executive violated the requirements of this amendment. Indeed, a limited role is appropriate: In the words of *Marbury* v. *Madison*, the judiciary has a fundamental obligation to "say what the law is."

But it would be inappropriate for the courts, and it would be inappropriate to call upon the courts, to rewrite budget priorities and fiscal law. Senate Reports 99–162 and 99–163 and the accompanying Senate debate once again provide much guidance, this time as to how the "political question" doctrine of *Baker* v. *Carr*, 369 U.S. 186 (1962), the requirement to a justicable case or controversy (see e.g., *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227 (1937), and questions of standing would prevent the floodgates of litigation from opening upon the process in place under a suitable BBA. For example, *Riegle* v. *Federal Open Market Committee*, 656 F.2d 873 (DC Cir. 1981), "counsel[led] the courts to refrain from hearing cases which represent the most obvious intrusion by the judiciary into the legislative arena: challenges concerning congressional action or inaction regarding legislation."

The traditional judicial doctrine of "standing" requires that a plaintiff has a direct and specific, personal stake or injury. A "generalized" or "undifferentiated" public grievance, such as would suggest "taxpayer" standing vis-a-vis macroeconomic policy decisions, is not recognized.

Most questions that will arise as to compliance or enforcement will either be resolved through enabling legislation or will arise during policy-making events that trigger the self-enforcing mechanisms in the BBA (i.e., 3/5 vote to pass an increase the debt that results from a deficit in a given year) or currently in place (i.e., threat of government shutdown if a legislative deadlock persists).

Finally absolutely no role for the courts is foreseen beyond that of making a determination as to whether an Act of Congress or an Executive action is unconstitutional and a court order not to execute such Act or action. A purely restraining role is anticipated for the courts and could be guaranteed by Congress in appropriate legislation specifying standing, jurisdiction, and remedies.

If the judiciary is involved, couldn't a case drag on for years past the fiscal year in question, making every case moot?

The courts have shown an ability and willingness to expedite their processes in an emergency. Recent examples are the reapportionment cases involving Massachusetts and Montana that went all the way to the Supreme Court and were resolved in a matter of months. Congress could further ensure expeditious handling, for example, giving the Supreme exclusive and original jurisdiction over cases arising under the BBA.

What if the President and Congress do not enact necessary legislation required in implementing and enforcing statutes?

Currently, under the Constitution, if Congress fails to make appropriations or provide for further Treasury borrowing the government faces risk of shutdown. We will face the same result if Congress fails to pass necessary legislation required by implementing legislation. Absent the enactment of some other specific procedure, and assuming a defict situation begins developing a fiscal year, the amendment obviously implies that responsibility on the part of Congress and the Executive to estimate receipts and monitor outlays on an ongoing basis and to identify the point during the fiscal year at which disbursements simply will have to cease.

In any event, of course, failure to enact legislation or take other positive actions required or implied by this amendment will result in the "train wreck" of an increase in the debt held by the public needing to pass by a three-fifths vote of both Houses.

What if Congress, ignoring the provisions in H.J. Res. 290, nevertheless passes appropriations in excess of estimated revenues?

The general charge that outlays not exceed receipts creates a general obligation for Congress and the Executive to construct a statutory framework to enforce and implement the BBA, in advance of its effective date. Indeed, such legislation would be essential in managing the budget down its "glide path" to an eventual balance. The ultimate form of such legislation could include a revised Gramm-Rudman-Hollings type sequester, and enhanced Pay-as-you-go mechanism, or some other process reforms.

The language of Section 1 also creates an ongoing obligation to monitor outlays and make sure they do not breach the target amount fixed in an estimate of receipts. This does not envision any sort of discretionary "impoundment" power on the part of the President or courts. However, the Executive branch would be under an obligation to estimate whether outlays will occur faster or at higher levels than expected and to notify Congress promptly. If an offsetting rescission is not enacted or other appropriate legislative action not taken, then the President would be bound, at the point at which the government "runs out of money," to stop issuing checks (unless, of course such exigencies already have been accounted for in enforcement and implementation legislation in advance).

The deterrent of a budgetary "train wreck" always exists to motivate responsible budgeting: either the possibility of a government shutdown or of the need to round up ⅗ of both Houses to pass a debt increase bill without any "blackmail amendments." (For example, Gramm-Rudman-Hollings was a "blackmail amendment" attached to a debt ceiling bill in 1985, when 51 Senators refused to pass a "clean" bill.)

What is to prevent Congress and the President from drastically over-estimating revenues and then declaring, "oops," when outlays and receipts are unbalanced at the end of the fiscal year?

If such a scenario occurred, Congress would have to pass a debt ceiling increase by a three-fifths vote. The threat of a "train wreck" on the debt limit vote provides a powerful incentive for truth-in-budgeting. Any such mis-estimates will catch up rapidly with its authors within a year. A transparent mis-estimate would be subject to the very public process of budget-making. Congress and the President would avoid a widely publicized "mistake" because of its political impact.

Why is H.J. Res. 290, as introduced, different from previous BBA versions, in that it requires a ⅗ vote to raise the limit on federal "debt held by the public", rather than the "public" or "gross" debt?

When the Social Security and other trust funds run surpluses, those surpluses are invested in U.S. Treasury securities, meaning they are borrowed by the U.S. Treasury and the "public debt" (approximately the same as the "gross federal debt") is increased by that amount. Such borrowing is an intragovernmental transfer between accounts, and does NOT increase the "debt held by the public." Since the intent of the debt limit vote in the BBA is to enforce the amendment and deter deficits, the "debt held by the public" is the closest currently-used and commonly-understood measure of indebtedness that approximates the amount that indebtedness has been increased because of total deficit spending. In other words, H.J. Res. 290 was not meant to "punish" Congress by requiring a difficult ⅗ vote just because trust funds are running a surplus.

If a contracting economy causes a revenue shortfall, wouldn't harmful, pro-cyclical measures, such as cutting spending or raising taxes be required in mid-year?

Not under H.J. Res. 290. This BBA was designed to react flexibly to sudden changes in the economy by establishing the joint receipts estimate as the outlay ceiling for the entire fiscal year. A revenue shortfall would not precipitate any mandatory changes in taxing or spending.

If a contracting economy causes social spending outlays to rise in mid-year, would compensating action be required?

Possibly. Rather than try to anticipate every economic contingency in Constitutional language, the authors of H.J. Res. 290 wrote what they believe remains a sufficiently flexible amendment. Several responses are possible; for example:

(1) Congress can only control what is reasonably controllable. Often, such outlay changes will be sufficiently small that it cannot be determined with reasonable precision that an imbalance will exist at the end of the fiscal year. In such a case, no adjustment would be necessary.

(2) To the extent such outlay increases are foreseeable and fairly certain, a mid-year adjustment might be necessary, relying on offsetting rescissions or other account adjustments, as is the case when a supplemental appropriations must be made deficit-neutral.

(3) If Congress and the President agree that the economic situation warrants outlay levels above the receipts ceiling, achieving a ⅗ majority to approve such spending is not an insurmountable hurdle.

What if a law enacted in the good faith belief which is revenue-neutral turns out to increase revenues?

As with other laws that may be challenged on Constitutional grounds, if it were shown that Congress and the President acted in good faith and had a reasonable basis for projecting revenue-neutrality, the law would not be struck down.

What if a bill provides for both increases and decreases in revenues?

H.J. Res. 290 refers to a "bill to raise revenue." The clear intent is to look to the overall revenue effect of a bill.

What effect would H.J. Res. 290 have if in the process of building a "consensus deficit-reduction bill," revenue increases were combined with spending reductions?

H.J. Res. 290 differs from some previous BBAs in that it does not require a "vote directed solely to that subject" in the case of increasing revenues. Certainly, most of the sponsors of H.J. Res. 290 would not object to such language. However, as currently written, H.J. Res. 290 simply would require the authors and managers of such a combination bill to make a strategic decision as to whether they preferred to offer separate revenue and spending-cut bills or to subject the spending-cut provisions tied to the revenue-raising provisions in a single bill, with a need to pass by a majority of the whole membership.

Couldn't the various super-majority requirements in the H.J. Res. 290 thwart the wills of majorities in both Houses and the President?

Yes. Such is also the case with Senate filibusters, Gramm-Rudman-Hollings points of order, and other procedures today. As is the case with all super-majority requirements in the Constitution (or in law), the purpose is to protect the immediate rights of a significant minority, and arguably the long-term rights of the people, against a "tyranny of the majority," a phrase frequently invoked by the nation's Founders.

In the case of H.J. Res. 290, a sufficient structural bias exists for deficit spending and against accountability in tax decisions that compensating super-majority protections are warranted. Moreover, it is noteworthy that the super-majority levels involved are reasonable and modest.

Shouldn't economic policy be kept out of the Constitution?

Economics is politics and vice-versa. Governance inescapably involves addressing questions of economics. Moreover, our Constitution is replete with economic policy. For example, it refers to private property rights; prescribes Congressional (and Executive) roles in federal fiscal activities such as raising revenue, spending, and borrowing; provides for uniform duties, imposts, and excises; discusses the regulation of interstate commerce; discusses the coinage and value of money; and deals with counterfeiting, patents, and whether it encompasses broad and fundamental principles, its relevance is not transitory, and its importance is far-reaching in scope and over time. The need for a BBA and the proposal of H.J. Res. 290 in response meet this test.

Shouldn't the federal government have the flexibility to enact counter-cyclical economic measures?

Yes, and this flexibility is preserved in H.J. Res. 290 by allowing Congress to spend in excess of revenues if three-fifths of the members agree that deficit spending is warranted. What the amendment would do is mitigate against the structural bias to spend and borrow (and raise taxes somewhat in preference to restraining spending) in good times as well as bad. In restoring this level playing field, H.J. Res. 290 strikes a reasonable balance between requiring fiscal responsibility and allowing flexibility.

Wouldn't adopting a BBA result in cutbacks in services for the poor and needy, for senior citizens, for health and housing programs, and even possibly for defense programs?

The BBA itself would do none of these things. It would force the Executive and Legislative Branches to prioritize within a balance of receipts and outlays and force into the light of day what actual decisions and trade-offs are necessary. If this does not result in cutbacks of government programs, it will ensure that we pay for all the government we want.

Since "the BBA itself would do none of these things," isn't it just a "political free lunch," raising false hopes while diverting attention from the real and difficult budget decisions that need to be made?

Far from that, H.J. Res. 290 would force Congress, the President, and the public to own up to the hard choices that need to be made. It is general because most provisions in the Constitution, encompassing broad principles as they do, should be broadly worded. But its result will be to make unavoidable the asking of those questions some in elective office have avoided: How much government do we want? How willing are we to pay for it? Which programs should be priorities?

Should the Constitution dictate such details as the budgetary period (fiscal year)?

Some such reasonable parameters are necessary to provide for an enforceable amendment. Again, the authors are receptive to perfecting changes, although it is important that whatever parameter is used is not susceptible to subterfuge (e.g., merely including a term like "fiscal period" to be defined in statute). Senate Reports 99-162 and 99-163 suggested using "fiscal year," but allowed that a reasonable statutory re-definition could include a biennial "year."

Doesn't H.J. Res. 290 imply that the President would have enhanced powers to block spending based on a pretext of unconstitutionality?

A frequent criticism of previous BBA proposals has been that the President is not brought into the budget process sufficiently to share the responsibility of governing and the blame of impasse, although the President can criticize the Congress that "holds the purse strings." H.J. Res. 290 recognizes the accepted role the President has played under statute since the 1920s, by requiring the President to submit a balanced budget. The President must also share fiscal and political responsibility with Congress for H.J. Res. 290's joint receipts estimate. But beyond the role in that new joint estimate, H.J. Res. 290 does not broaden in any way the powers of the President. On the other hand, it does make the President more accountable for how the budget process proceeds.

Why do so many economic analyses project devastating results under a BBA?

Those that do generally assume either (1) that a balanced budget would be imposed immediately, without transition, or (2) that the requirement for balance will be adhered to without exception and that Congress (and the President in his or her recommendations) will not exercise its prerogatives under a flexible amendment to enact counter-cyclical measures.

This amendment will not go into effect until, at the earliest, two years after ratification. Once passed through both houses, we would hope that Congress would recognize the impending deadline and act to meet that date by which the budget must be balanced. By allowing a multi-year phase in, we believe any such "drastic" economic effects would be diminished, if not erased.

This amendment has the flexibility to address economic emergencies through the ⅗ release vote on balancing the budget. This allows Congress and the President to act in response to circumstances such as a recession or some other emergency, while insuring that such a decision is made in a fiscally responsible manner.

Of what use is a BBA in today's atmosphere of impending fiscal crisis, if it won't be in force for several years?

(1) A BBA is a long-term proposition. It should be adopted because it is a valid response to a long-term and structurally inherent problem.

(2) It's long-term nature not withstanding, even a BBA that is not in effect for several years will prompt deficit-reduction actions in anticipation of its being in place. Therefore, submission of the amendment to the states would stimulate an immediate response in federal fiscal behavior.

Mr. CRAIG. It is so important, Mr. President, that the American citizenry understand what we are about with this issue. Because, as I think most citizens recognize, Congress cannot pass an amendment. They can only offer forth an amendment in the form of a resolution. Because you see, we—you and I and other Senators and Congressmen and women—do not write the Constitution. It is the law of the land. It is the law of the citizenry. And they are the only ones who can write it.

We will propose an amendment that will go forth for their consideration and their acceptance or their rejection. For you see, the Constitution is really the people's law and it is that law under which we must live.

I certainly hope that in the coming days we can gain the political will to stand forth on this floor and vote, by a two-thirds majority, for a resolution that I and others have introduced this week, and that the House can follow suit also, and that we will send this forth to the citizens of this country for a most extensive and important debate and consideration of how we do our business as a government and what a government should be expected to do for its people and, as importantly, what a government should not be expected to do for its people.

By Mr. BUMPERS (for himself, Mr. BROWN, Mr. BRYAN, Mr. COATS, Mr. D'AMATO, Mr. DODD, Mrs. FEINSTEIN, Mr. FORD, Mr. HATCH, Mr. HEFLIN, Mr. HELMS, Mr. JOHNSON, Mr. KOHL, Mr. LIEBERMAN, Mr. METZENBAUM, Mr. MOYNIHAN, Mr. NUNN, Mr. PELL, Mr. PRYOR, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, Mr. STEVENS, and Mr. WARNER):

S.J. Res. 42. A joint resolution to designate the month of April 1993 as "Civil War History Month"; to the Committee on the Judiciary.

CIVIL WAR HISTORY MONTH

Mr. BUMPERS. Mr. President, I rise today to introduce a joint resolution to designate April 1993 as Civil War History Month.

As many of my colleagues know, I have had a longstanding interest in and love of Civil War history. I believe the Civil War was the most momentous and defining event in the growth and development of our Nation. The suffering and turmoil of the conflict forever changed the shape and character of American society. As Shelby Foote, the noted Civil War historian, said about the war, "any understanding of this Nation has to be based on an understanding of the Civil War. It is very necessary if you're going to understand the American character in the 20th century, to learn about this enormous catastrophe of the 19th century. It was the crossroads of our being and it was a hell of a crossroads."

Because I cherish our Nation's history, I believe we must make every effort to educate our citizens about it. Today, I am introducing a joint resolution that will help heighten our understanding and interest in the Civil War. I urge my colleagues to join me in this important effort.

I ask unanimous consent that the joint resolution be printed following my remarks.

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

S.J. RES. 42

Whereas the period of American history known as the "Civil War" is universally recognized as one of the most significant landmark eras in our Nation's heritage;

Whereas the continuous growth of the public's awareness of and interest in the Civil War period remains an integral part of America's cultural heritage;

Whereas the study, preservation, and interpretation of literature and sites associated with this period are imbedded in the educational and cultural heritage of our country;

Whereas the beginning of the Civil War occurred in April of 1861 with the firing on Fort Sumter in Charleston, South Carolina, and the effective ending of the Civil War occurred in April of 1865 with the surrender of the Army of Northern Virginia at Appomattox, Virginia, making April the most important month of the year in Civil War history; and

Whereas the heritage of the Civil War deserves the attention and respect of all individuals in the United States: Now, therefore, be it

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That April of 1993 is designated as "Civil War History Month", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

By Mr. LIEBERMAN (for himself, Mr. DODD, Mr. MOYNIHAN, Mr. D'AMATO, and Mr. LAUTENBERG):

S.J. Res. 43. A joint resolution designating the week beginning June 6, 1993, and June 5, 1994, as "Lyme Disease Awareness Week"; to the Committee on the Judiciary.

LYME DISEASE AWARENESS WEEK

• Mr. LIEBERMAN. Mr. President, today I am pleased to introduce legislation to designate the week of June 6, 1993 and the week of June 4, 1993 as Lyme Disease Awareness Week. Lyme disease takes its name from a cluster of cases identified in Lyme, CT in 1976; however, researchers now believe that it has been present in the United States since the 1940's. This tick-borne disease has now been found in 49 States. Although 40,000 cases of Lyme disease were reported to the Centers for Disease Control between 1982 and 1991, few doctors and even fewer members of the general public recognize the symptoms of Lyme disease.

Left untreated, Lyme disease can cause severe arthritis, heart disease, and neurological complications. The damage caused by untreated Lyme Disease can be irreversible. Lyme disease poses particular risks to pregnant women because it can cross the placenta causing premature labor, fetal damage, miscarriages, and stillbirths. Jamie Forschner, a lovely 5-year-old boy from Connecticut, died from complications caused by Lyme disease which he contracted when his mother was pregnant. Jamie's 5-year battle to live taught all of us lessons about love and the strength of the human spirit. Lyme Disease Awareness Week is a marker to remind us that no other child should have to suffer the way Jamie did. We must continue to teach

the public about the disease and pursue research on prevention and treatment.

Education, prevention, and research on this disease are vital because existing diagnostic tools cannot accurately detect the presence of the disease and there is, at this time, no vaccine which protects against Lyme disease. People who contract the disease often go through years of tests and a variety of treatments before a proper diagnosis is made.

To protect people from the worst effects of Lyme disease we must focus on prevention, early detection, and early treatment. Physicians and the general public must be taught what precautions to take to prevent the disease. They must learn how to recognize its early symptoms, so that those with Lyme disease receive the immediate antibiotic treatment necessary to prevent permanent damage.

We must focus particular attention on educating pregnant women and children and those who care for them, since children are the group most affected by Lyme disease. Children are especially vulnerable in the summertime because of their outdoors activities. Parents, camp counselors, those leading outdoor trips, and children themselves must be taught how to guard against Lyme disease and how to recognize its symptoms. I believe Lyme Disease Awareness Week can play an important role in teaching the American people about this devastating disease.

Mr. President, I ask that the full text of the resolution be printed in the RECORD following my remarks.

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

S.J. RES 43

Whereas Lyme disease (borreliosis) is spread primarily by the bite of four types of ticks infected with the bacteria Borrelia burgdorferi;

Whereas Lyme disease-carrying ticks can be found across the country—in woods, mountains, beaches, even in our yards, and no effective tick control measures currently exist;

Whereas infected ticks can be carried by animals such as cats, dogs, horses, cows, goats, birds, and transferred to humans;

Whereas our pets and livestock can be infected with Lyme disease by ticks;

Whereas Lyme disease was first discovered in Europe in 1883 and scientists have recently proven its presence on Long Island as early as the 1940's;

Whereas Lyme disease was first found in Wisconsin in 1969, and derives its name from the diagnosis of a cluster of cases in the mid-1970's in Lyme, Connecticut;

Whereas 49 states reported more than 40,000 cases of Lyme disease from 1982 through 1991;

Whereas Lyme disease knows no season—the peak west coast and southern season is November to June, the peak east coast and northern season is April to October, and victims suffer all year round.

Whereas Lyme disease, easily treated soon after the bite with oral antibiotics, can be difficult to treat (by painful intravenous injections) if not discovered in time, and for some may be incurable;

Whereas Lyme disease is difficult to diagnose because there is no reliable test that can directly detect when the infection is present;

Whereas the early symptoms of Lyme disease may include rashes, severe headaches, fever, fatigue, and swollen glands;

Whereas if left untreated Lyme disease can affect every body system causing severe damage to the heart, brain, eyes, joints, lungs, liver, spleen, blood vessels, and kidneys;

Whereas the bacteria can cross the placenta and affect fetal development;

Whereas our children are the most vulnerable and most widely affected group;

Whereas the best cure for Lyme disease is prevention;

Whereas prevention of Lyme disease depends upon public awareness; and

Whereas education is essential to making the general public, health care professionals, employers, and insurers more knowledgeable about Lyme disease and its debilitating side effects: Now, therefore, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the week beginning June 6, 1993 and June 5, 1994 is designated as "Lyme Disease Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate programs, ceremonies, and activities. •

By Mr. LIEBERMAN (for himself, Mr. DODD, Mr. D'AMATO, and Mr. COHEN):

S.J. Res. 44. A joint resolution designating the week beginning April 18, 1993, as "Primary Immune Deficiency Awareness Week"; to the Committee on the Judiciary.

PRIMARY IMMUNE DEFICIENCY AWARENESS WEEK

Mr. LIEBERMAN. Mr. President, I rise today to introduce legislation to declare the week of April 18, 1993, as Primary Immune Deficiency Awareness Week. Primary immune deficiency is of great concern to thousands of American families. It is a genetic defect to the immune system that affects 1 in 500 persons, most of them children, in the United States today. Despite its prevalence, it is a condition which many doctors and most families know little about. Although it can cause a lifetime of serious illness and death, primary immune deficiency is often misdiagnosed and not properly treated. There are treatments which can significantly improve the health of those suffering from primary immune deficiency, protect their vital organs, and save their lives, yet many families suffer alone with little medical or psychological support.

A Connecticut family, the Modells, have suffered through this ordeal. Jeffrey Modell struggled bravely with primary immune deficiency until it took his life at the age of 15. Fred and Vicki Modell experienced the enormous medical, emotional, and financial difficulties of dealing with primary immune deficiency, and they saw that families with this problem had nowhere to turn for help. Out of their heartache and struggle they founded the Jeffrey Modell Foundation, a national nonprofit research foundation which operates a 24-hour information and referral hotline, and helps fund and coordinate the struggle against primary immune deficiency through activities in three areas: research, physician and patient education, and patient support.

The Modell Foundation has done an extraordinary job, but we need to expand our efforts to increase public awareness; 500,000 Americans are known to be affected by this disease. We need to ensure that parents and health care professionals know the symptoms of primary immune deficiency, that they know where to turn for assistance, and that we are supporting research efforts to increase our understanding of this condition and ways to treat it. I hope my colleagues will join me in declaring the week of April 18 through April 23, 1993 as National Primary Immune Deficiency Awareness Week.

Mr. President, I request that the text of the bill be printed in the Record immediately following my remarks.

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

S.J. RES. 44

Whereas primary immune deficiency is a congenital defect in the immune system such that the body cannot adequately defend itself from infection;

Whereas primary immune deficiency is most often diagnosed in children and affects more children than leukemia and lymphoma combined;

Whereas primary immune deficiency is believed to affect 500,000 Americans and possibly more because people are undiagnosed and misdiagnosed;

Whereas many forms of primary immune deficiency are inherited;

Whereas there are currently considered to be 70 forms of primary immune deficiency ranging from SCVID which is fatal is left untreated to chronic recurring infections and allergies that cannot be managed with prophylactic antibiotics;

Whereas the earliest symptoms of primary immune deficiency are easily confused with a number of common illnesses or infections so that physicians often fail to diagnose and treat the underlying problem;

Whereas once suspected, primary immune deficiency can be diagnosed through a series of blood screenings which test immune function;

Whereas early intervention and treatment can save lives as well as prevent permanent damage to lungs and other organs;

Whereas many forms of treatment are available once a specific diagnosis is made, procedures such as BMT may result in complete cure, and other treatments like monthly infusions of gamma globulin dramatically reduces a patient's risk of infections and enables him or her to lead a normal life;

Whereas patients may have long periods of normal health then suddenly be struck by severe fevers and infections;

Whereas lack of public awareness can lead to anxiety and leave families isolated and confused;

Whereas education is essential to make the general public, health care professionals, employers, and insurers more knowledgeable about primary immune deficiency: Now, therefore be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the week beginning April 18, 1993 is designated as "Primary Immune Deficiency Awareness Week," and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such a week with appropriate programs, ceremonies and activities.

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. FORD, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from California [Mrs. BOXER], and the Senator from Wisconsin [Mr. FEINGOLD] were added as cosponsors of S. 2, a bill to establish national voter registration procedures for Federal elections, and for other purposes.

S. 15

At the request of Mr. ROTH, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 15, a bill to establish a Commission on Government Reform.

S. 27

At the request of Mr. SARBANES, the names of the Senator from Illinois [Mr. SIMON] and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of S. 27, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia.

S. 36

At the request of Mr. BOREN, the name of the Senator from Wisconsin [Mr. FEINGOLD] was added as a cosponsor of S. 36, a bill to amend section 207 of title 18, United States Code, to tighten the restrictions on former executive and legislative branch officials and employees.

S. 67

At the request of Mrs. KASSEBAUM, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 67, a bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents.

S. 71

At the request of Mr. METZENBAUM, the name of the Senator from Wisconsin [Mr. FEINGOLD] was added as a cosponsor of S. 71, a bill to prohibit discrimination by the Armed Forces on the basis of sexual orientation.

S. 185

At the request of Mr. GLENN, the name of the Senator from Wisconsin [Mr. FEINGOLD] was added as a cosponsor of S. 185, a bill to amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

S. 208

At the request of Mr. BUMPERS, the names of the Senator from Arkansas [Mr. PRYOR], the Senator from Hawaii [Mr. AKAKA], the Senator from Ohio [Mr. METZENBAUM], and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of S. 208, a bill to reform the concessions policies of the National Park Service, and for other purposes.

S. 210

At the request of Mr. WOFFORD, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 210, a bill to provide for cost-of-living adjustments for pay and retirement benefits for Members of Congress and certain senior Federal officials to be limited by the amount of social security cost-of-living adjustments, and for other purposes.

S. 236

At the request of Mr. MCCAIN, the names of the Senator from South Carolina [Mr. THURMOND], and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of S. 236, a bill to increase Federal payments to units of general local government for entitlement lands, and for other purposes.

S. 253

At the request of Mr. CRAIG, the names of the Senator from Indiana [Mr. LUGAR], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Kansas [Mr. DOLE], the Senator from New Mexico [Mr. BINGAMAN], the Senator from North Carolina [Mr. HELMS], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Alabama [Mr. SHELBY], and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of S. 253, a bill to authorize the garnishment of Federal employees' pay, and for other purposes.

S. 254

At the request of Mr. JOHNSTON, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 254, a bill to amend the Internal Revenue Code of 1986 to impose a fee on the importation of crude oil or refined petroleum products.

S. 296

At the request of Mr. BUMPERS, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 296, a bill to require the Secretary of Agriculture to submit monthly financial obligation and employment reports to Congress for the Food and Safety and Inspection Service, and for other purposes.

S. 300

At the request of Mr. MACK, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 300, a bill to provide for the utilization of the latest available census data in certain laws related to airport improvements.

S. 302

At the request of Mr. MACK, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 302, a bill to provide for the utilization of the latest available census data in certain laws related to Energy and Natural Resources.

S. 303

At the request of Mr. MACK, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 303, a bill to provide for the utilization of the most current census data in certain laws related to the environment and public works.

S. 304

At the request of Mr. MACK, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 304, a bill to provide for the utilization of the latest available census data in certain laws related to urban mass transportation.

S. 305

At the request of Mr. MACK, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 305, a bill to utilize the most current Federal census data in the distribution of Federal funds for agriculture, nutrition, and forestry.

S. 306

At the request of Mr. MACK, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 306, a bill to provide interim current census data on below poverty, urban, rural, and farm populations.

S. 307

At the request of Mr. MACK, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 307, a bill to require that, in the administration of any benefits program established by or under Federal law which requires the use of data obtained in the most recent decennial census, the 1990 adjusted census data be considered the official data for such census.

S. 308

At the request of Mr. MACK, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 308, a bill to require the use, in Federal formula grant programs, of adjusted census data, and for other purposes.

SENATE JOINT RESOLUTION 11

At the request of Mr. SARBANES, the names of the Senator from Minnesota [Mr. DURENBERGER], the Senator from Montana [Mr. BURNS], the Senator from Missouri [Mr. DANFORTH], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from North Dakota [Mr. CONRAD], the Senator from South Dakota [Mr. PRESSLER], the Senator from Hawaii [Mr. INOUYE], and the Senator from Alabama [Mr. SHELBY]

were added as cosponsors of Senate Joint Resolution 11, joint resolution to designate May 3, 1993, through May 9, 1993, as "Public Service Recognition Week."

SENATE JOINT RESOLUTION 22

At the request of Mr. SPECTER, the names of the Senator from New Jersey [Mr. BRADLEY], the Senator from New York [Mr. MOYNIHAN], the Senator from Maine [Mr. MITCHELL], the Senator from Ohio [Mr. METZENBAUM], the Senator from West Virginia [Mr. BYRD], the Senator from Oklahoma [Mr. BOREN], the Senator from Florida [Mr. GRAHAM], the Senator from Nevada [Mr. REID], the Senator from Georgia [Mr. NUNN], the Senator from Massachusetts [Mr. KERRY], the Senator from Iowa [Mr. GRASSLEY], the Senator from Florida [Mr. MACK], the Senator from Mississippi [Mr. COCHRAN], the Senator from Arizona [Mr. MCCAIN], the Senator from New Hampshire [Mr. GREGG], the Senator from Wyoming [Mr. WALLOP], the Senator from South Carolina [Mr. THURMOND], the Senator from Utah [Mr. HATCH], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Oregon [Mr. PACKWOOD], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Kansas [Mr. DOLE] were added as cosponsors of Senate Joint Resolution 22, joint resolution designating March 25, 1993, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

SENATE JOINT RESOLUTION 30

At the request of Mr. D'AMATO, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Utah [Mr. HATCH], the Senator from Missouri [Mr. BOND], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Florida [Mr. MACK], the Senator from Maine [Mr. COHEN], the Senator from Vermont [Mr. JEFFORDS], the Senator from Utah [Mr. BENNETT], the Senator from Wyoming [Mr. WALLOP], and the Senator from North Dakota [Mr. CONRAD] were added as cosponsors of Senate Joint Resolution 30, joint resolution to designate the weeks of April 25 through May 2, 1993, and April 10 through 17, 1994, as "Jewish Heritage Week."

SENATE JOINT RESOLUTION 36

At the request of Mr. LEAHY, the names of the Senator from Missouri [Mr. BOND], the Senator from Louisiana [Mr. BREAUX], the Senator from Montana [Mr. BURNS], the Senator from Indiana [Mr. COATS], the Senator from Maine [Mr. COHEN], the Senator from New York [Mr. D'AMATO], the Senator from New Mexico [Mr. DOMENICI], the Senator from North Dakota [Mr. DORGAN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Nebraska [Mr. EXON], the Senator from California [Mrs. FEINSTEIN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Hawaii [Mr. INOUYE], the Senator from Vermont [Mr. JEFFORDS], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Texas [Mr. KRUEGER], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Michigan [Mr. LEVIN], the Senator from Georgia [Mr. NUNN], the Senator from South Dakota [Mr. PRESSLER], the Senator from Michigan [Mr. RIEGLE], the Senator from Delaware [Mr. ROTH], the Senator from Tennessee [Mr. SASSER], the Senator from Alabama [Mr. SHELBY], the Senator from Illinois [Mr. SIMON], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Wyoming [Mr. WALLOP], the Senator from Virginia [Mr. WARNER], and the Senator from Pennsylvania [Mr. WOFFORD] were added as cosponsors of Senate Joint Resolution 36, joint resolution to proclaim March 20, 1993, as "National Agriculture Day."

SENATE RESOLUTION 35

At the request of Mr. LAUTENBERG, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of Senate Resolution 35, resolution expressing the sense of the Senate concerning systematic rape in the conflict in the former Socialist Federal Republic of Yugoslavia.

SENATE CONCURRENT RESOLUTION 9—URGING THE PRESIDENT TO NEGOTIATE A COMPREHENSIVE NUCLEAR WEAPONS TEST BAN

Mr. MITCHELL (for himself, Mr. HATFIELD, Mr. EXON, Mr. LEAHY, Mr. PELL, Mr. BIDEN, Mr. JEFFORDS, Mr. KENNEDY, Mr. DASCHLE, Mr. LEVIN, Mr. ROCKEFELLER, Mr. FORD, Mr. WELLSTONE, Mr. HARKIN, Mr. DODD, Mr. FEINGOLD, Mr. KOHL, Mr. SARBANES, Mr. CAMPHELL, Mr. AKAKA, Mr. KERRY, and Mr. SASSER) submitted the following concurrent Resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 9

Whereas the United States has sought to limit nuclear testing through the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, the Treaty on the Non-Proliferation of Nuclear Weapons of 1968, the Threshold Test Ban Treaty of 1974, and the Peaceful Nuclear Explosions Treaty of 1976;

Whereas a multilateral, comprehensive ban on nuclear weapons testing would help protect individual health and the environment, and enhance efforts to halt the proliferation of nuclear weapons;

Whereas both France and the Russian Federation have voluntarily suspended their underground nuclear testing programs;

Whereas the United States has joined France and the Russian Federation in suspending nuclear testing to enable a full review of United States underground nuclear testing policy and to promote negotiations to end nuclear testing worldwide; and

Whereas, since the beginning of the nuclear age, United States Presidents have supported and sought to negotiate a comprehensive nuclear weapons test ban: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress urges the President to initiate, at the earliest possible time, multilateral negotiations toward a comprehensive nuclear weapons test ban.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

Mr. MITCHELL. Mr. President, last year, the Congress changed America's nuclear testing policy from one of madness to one of hope.

Congress decided that instead of sustaining an infinite commitment to developing new nuclear weapons, the United States would commit itself to negotiating an end to their development.

We are fortunate to have a new President who shares this view.

President Clinton has voiced his commitment to negotiating a comprehensive nuclear test ban.

I join with my distinguished colleagues, Senator HATFIELD and Senator EXON, in welcoming this far-sighted approach to the problems of nuclear proliferation and conflict.

But the President has an enormous range of issues with which he must deal immediately.

That is why Senators HATFIELD, EXON, and I have joined together to introduce this resolution. The resolution expresses our hope that an end to nuclear testing be given immediate priority because the problem is so urgent and the potential payoff so great.

The purpose of this resolution is to urge the President to give this issue the attention and commitment it deserves.

It has long been U.S. policy to seek a comprehensive test ban, but only limited steps have been taken toward this goal.

Now, Congress has required that the United States nuclear testing program be suspended for 9 months, to match the Russian and French moratoriums on nuclear testing.

Congress has allowed a limited number of nuclear tests to be conducted in order to ensure that all safety improvements are made to nuclear weapons remaining in the U.S. arsenal.

Most significantly, Congress has decided that all nuclear weapons tests will stop by 1996 if no other nation tests.

The specifically stated aim of this law—which was vehemently opposed by President Bush—is to facilitate a comprehensive nuclear weapons test ban.

I had hoped that the passage of the law would result in a changed attitude on the part of the agencies responsible for nuclear weapons and their tests.

As the most recently submitted report on this subject from the Bush administration demonstrates, this is not the case.

I am concerned that many individuals in these agencies remain trapped

in old thinking, and still do not accept the redirection of American policy as now embodied in U.S. law.

Thus it may well require more than a stated policy in support of a comprehensive test ban in order to effect change. The President will have to make clear to his officials, new and old, that change has come. President Clinton must be engaged in this issue if the old thinking on nuclear testing is to be replaced with a truly post-cold war vision.

I hope that this resolution will send a positive and supportive message to President Clinton.

Congress shares his view that a comprehensive test ban is critically important and urges him to make it an immediate priority.

The transition from fear to hope is difficult, but finally possible. We must do all we can to achieve it.

Mr. EXON. Mr. President, I am pleased to join the majority leader and Senator HATFIELD in drafting this concurrent resolution urging the President to initiate, at the earliest possible time, negotiations toward a comprehensive nuclear weapons test ban. Last year I joined my two colleagues in authoring landmark legislation establishing a temporary testing moratorium and strict limits on follow-on testing as steps toward achieving a comprehensive test ban by 1996. This resolution is the next important step.

Now that legislation establishing a comprehensive test ban date has been signed into law, it is time for our country to work with the international community to negotiate a true and verifiable ban, an essential step in closing the Pandora's box of nuclear weapons proliferation. Past administrations have not made such negotiations a priority, and, as a result, the world community has questioned our commitment to this goal, a goal which the United States has officially endorsed in a number of treaties.

I applaud the leadership of Majority Leader MITCHELL and Senator HATFIELD and their staffs for their diligent work in seeking to lower the threat of nuclear war today and in the future. Likewise, I wish to thank the many Senators who have signed on as original cosponsors of this legislation for their commitment to this truly historic endeavor.

Mr. President, I yield the floor.

Mr. HATFIELD. Mr. President, 4 months ago, by act of Congress, our Nation's nuclear weapons policy was revamped. All underground nuclear weapons testing has been suspended for 9 months, to be followed by a specific and limited testing program leading ultimately to a total ban on testing by 1996.

Since the nuclear age first emerged, our Nation's highest national security priority has been to avoid nuclear war and to block the proliferation of nuclear weapons. The negotiation of a comprehensive test ban is part of this strategy and many of the world's leaders, including President Clinton, have expressed interest in initiating discussions toward the negotiation of a CTB.

The resolution introduced by the majority leader, Mr. MITCHELL, the chairman of the Subcommittee on Strategic Forces and Nuclear Deterrence, Mr. EXON, and me is intended to be a statement of Congressional interest in early and vigorous efforts to promote a comprehensive test ban. A companion to this resolution is being offered in the House of Representatives by Majority Leader GEPHARDT and Representative KOPETSKI.

The message of this resolution is important and urgent. While our Nation's economic crisis and domestic concerns command great attention, so too should this mater of national security. Four of the five recognized nuclear states have suspended their testing programs. There is growing concern about the environmental damage done by underground nuclear tests. And as old enemies fade away, new crisis emerge because nuclear proliferation has not been contained.

There is no doubt in my mind that the President intends to show great leadership in addressing these issues. I hope that every Senator will join us in sending a message from Congress that we share his priorities for a peaceful world is to rid the nuclear threat.

SENATE CONCURRENT RESOLUTION 10—PROVIDING FOR A CONDITIONAL RECESS OR ADJOURNMENT OF THE SENATE

Mr. FORD (for Mr. MITCHELL) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 10

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Thursday, February 4, 1993, or Friday, February 5, 1993, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand recessed or adjourned until 12:00 noon, or until such time as may be specified by the Majority Leader, or his designee, in the motion to adjourn or recess, on Tuesday, February 16, 1993, or until 12:00 noon on the second day after Members are notified to reassemble pursuant to section 2 of this resolution, whichever occurs first; and that when the House of Representatives adjourns at the close of business on Thursday, February 4, 1993, or Friday, February 5, 1993, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned until 12:00 noon on Tuesday, February 16, 1993, or until 12:00 noon on the second day after Members are notified to reassemble pursuant to section 2 of this resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and the House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

SENATE RESOLUTION 64—RELATING TO THE LOWERING OF THE ESTATE TAX EXEMPTION

Mr. LUGAR (for himself, Mr. DOLE, Mr. LOTT, Mr. BOND, Mr. GRASSLEY Mr. SMITH, Mr. PRESSLER, Mr. KEMPTHORNE, Mr. GORTON, Mr. MCCAIN, Mr. HATFIELD, Mr. DANFORTH, Mr. WALLOP, Mr. BURNS, Mr. ROTH, Mr. THURMOND, Mr. COCHRAN, Mr. COATS, Mr. GRAMM, MR. COVERDELL, Mr. SIMPSON, Mr. NICKLES, Mr. D'AMATO, Mr. SHELBY, and Mr. BROWN) submitting the following resolution; which was referred to the Committee on Finance:

S. RES. 64

Whereas the average savings rate in the United States (2.9 percent of income) is lower then that of any other industrialized country;

Whereas government taxation of estates, which is the accumulation of assets throughout one's lifetime, discourages individuals and families from saving and investing;

Whereas estates often include the small businesses and farms of middle- and low-income Americans;

Whereas small businesses and farms have historically created most of the net new jobs in this country and fueled the growth of the economy generally;

Whereas there are nearly two million family-owned farms in the United States with an average value of $252,000;

Whereas assets that compromise the farm values are items such as: land, farm buildings, operator's residence, machinery, automobiles, breeding stock, grain stored on farm, and other stored farm inputs such as seed and fertilizer;

Whereas recently proposed legislation would decrease the threshold for estate tax exemption to $200,000;

Whereas decreasing such threshold would raise effective estate tax rates to a level so high that the heirs of homeowners, farmers and small business owners with assets over $200,000 could be forced to liquidate their assets to pay the taxes incurred by the proposed change in the tax law; and

Whereas liquidation of productive assets to finance tax liabilities would destroy jobs and further harm the fragile economy: Now, therefore, be it

Resolved, That the Senate opposes any attempt to lower the estate tax exemption or raise the effective rate of taxes on estates, or impose additional taxes on estates such as a capital gains tax at death, because such measures contradict the fundamental goal of the United States Government of encouraging long-term private savings through which productive investment promoting economic growth can be realized.

Mr. LUGAR. Mr. President, I have been deeply concerned that some officials in the current administration of President Clinton have been discussing a major tax increase that would reduce Americans' incentives to save, discourage the creation of new jobs, and force the sale of small businesses and farms that represent the work of a lifetime for many Americans. The Clinton ad-

ministration is considering higher taxes on estates.

Independent small businesses are perhaps the single most important ingredient of American prosperity. They represent the best possibility for an increase of jobs in the current economy. Clearly they represent dreams and toil. Businessmen and farmers work hard, because they wish to succeed and prosper, but the ambition is not theirs alone. Part of the American dream has always been to build up a business, farm, or ranch, that could be kept in the family after one generation passed way, and that those businesses and farms could be passed on to one's children, the fruit of the life's work of a generation.

I have some personal experience in this area. My father died when I was in my early thirties, leaving his 604-acre farm in Marion County, IN, to his family. It became my responsibility to manage the farm, which had unfortunately built up considerable debts during his long illness at the end of his lifetime. It took a number of years, but we were successful, fortunately, in working out the financial problems and repaying the money. The farm is today profitable. We simply could not have worked through those problems if some of the high-tax options now being discussed had been the law of the land back then.

We hear of proposals to reduce the present $600,000 tax exemption for estates. Another proposal is to impose a capital gains tax upon the death of the business or farm owner, on the difference between the farm or business' current value and the late owner's basis or original costs plus improvements minus depreciation.

Let us consider how devastating such a tax increase could be. Farms, for example, tend to be held over many years and decades. The average value of land and buildings on an acre of U.S. farmland was less than $200 in 1970, but about $700 in 1990. Farmers will tell you that farming is not 3½ times more profitable today than it was in 1970. The increase in land prices has not been fueled by rising profits, but by inflation and urban encroachment.

In the Midwest, the contrast is still more dramatic because land is more productive and prices are higher. Very good Corn Belt land might command $2,000 an acre in my State, and if it had been in the same family not for 20 years but for 40 years, it might have appreciated by a factor of 10 over that time. If the farm is 500 acres—about the size of the average U.S. farm today—then a 28 percent capital gains tax on a capital gain of $1,800 per acre means the estate owes the IRS $252,000—not counting estate tax—and that is clearly double taxation.

What will the heirs do? If they are wealthy and particularly attached to farming, they may come up with the cash, but not many people are in this position. Most people will have to sell the farm or a major part of it.

And I would remind my urban colleagues that this dilemma arises as a result of a career in farming that, in the vast majority of cases, has not been either luxurious or lucrative. Farmers have lots of assets but little income. Many small businessmen are in the same situation.

On his death, the farmer or businessman hopes to pass on to his children the land that represents a great deal more than income. As I have said, this is part of the American dream: keeping a farm or business in the family, not selling it to strangers or seeing a lifetime's work disintegrate.

But some people do not believe in this particular part of the American dream. Instead, they believe wealth should be redistributed, and particularly that wealth arising from estates. Fortunately, the majority of Congress has disagreed with this philosophy. Once upon a time, we had a president who also disagreed, so in 1981 we effectively increased the estate tax exemption to $600,000. For good quality Corn Belt land, that still exempts only a 300-acre operation.

An acre of good quality land will net a farmer today about $35 an acre in profit, for a total income from the 300 acres of only $10,500—not really even a middle-class income in most of the country.

Now, we are certain to face a number of tough choices this year. But that does not mean we should blindly accept every tax increase that comes along the pike just because it is alleged to raise revenue. Surely we should also look at its economic effect.

Mr. President, small business is where the jobs are. During the 1980's, Fortune 500 companies cut their total employment by 3.5 million jobs. So where did the eighty's employment boom come from? Small businesses created more than 20 million jobs during that decade.

One of our present economic problems is that small businesses are not creating jobs at their previous healthy clip. The recent recession is partly to blame, of course, as is the reluctance of banks to make loans to businesses.

Given this problem, how much sense does it make to increase estate taxes on small businesses? Make no mistake: Decreasing the estate tax exemption, or taxing capital gains at death, will hit small businesses hard. It will mean an increase in distress sales of businesses by hard-pressed heirs, increasing the supply of commercial real estate on the market. That implies further erosion in real estate values. Does anyone in this Chamber think that is what the country needs?

Moreover, you are very unlikely to add to your payroll if you face the imminent prospect of liquidating all or part of your business. For people who inherit a business, higher estate taxes will mean less hiring.

Finally, there would also be important—and negative—effects on the incentives people have to save and invest. If you know that when you die your children will probably have to sell the business you built up over your lifetime, does that make you more likely to take the risk of starting a new business or enlarging your business? To ask the question is to answer it. Now why do we want to reduce the incentive to start up businesses? Why do some in the administration want to reduce Americans' incentive to save—as these new proposals would certainly do—since one motive for saving is to accumulate funds to buy or start a business?

Mr. President, I offer today a resolution expressing the sense of the Senate that we oppose a reduction in the threshold for estate tax exemption, an increase in the effective rate of taxes on estates—which this year can already be as high as 50 percent—or the levying of capital gains at death. The resolution is nonbinding, but it will put Senators on record in favor of small business job creation, in favor of incentives to save and invest, and in opposition to redistributionist taxes that would be a disaster for farms and small businesses all over America. I offer the resolution on behalf of myself and Senators DOLE, PACKWOOD, LOTT, BOND, GRASSLEY, SMITH, PRESSLER, KEMPTHORNE, GORTON, MCCAIN, HATFIELD, DANFORTH, WALLOP, BURNS, ROTH, and COATS, and urge my other colleagues to cosponsor it as well.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The senator from Texas.

Mr. GRAMM. Mr. President, I ask unanimous consent that I be added as a cosponsor.

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

Mr. GRAMM. I congratulate our dear colleague from Indiana. I have offered a similar resolution. We know that there was an effort in the House to raise inheritance taxes in the last session of Congress. We know there was additional debate in the Senate.

I am getting a lot of mail from people, I say to my colleague from Indiana, who are very concerned about this. And I think it is very important that the Senate go on record early saying we do not intend to allow estate taxes to be raised putting Americans in the position where virtually every family farm and every family business in America would have to be sold to pay taxes on wealth that has been built up over the years with after-tax income. So I thank my colleague for his leadership.

Mr. GRASSLEY. Mr. President, we just heard the introduction of a resolution on the estate tax exemption by

Senator LUGAR. I want to join him and our Republican leader, Senator DOLE, in offering that resolution, which resolution opposes any reduction in the estate tax exemption or any new tax on capital gains at death.

At the end of the last Congress, I had an opportunity to speak on this subject. I spoke directly to the point of the secret-tax approach of the Democrats in the other body, and how they were pushing the proposal that would devastate rural and small-business America.

This dangerous tax proposal in the last Congress was embodied in a bill with the number H.R. 4848, that was introduced by the majority leader in the other body, Congressman GEPHARDT, and by the Congressman from California, Mr. WAXMAN.

H.R. 4848 of the last Congress, I believe, would have severely reduced the estate tax exemption to a point where it would have been very detrimental to the economy of rural America. It would have reduced that exemption from $600,000 down to $200,000. That means that the estate tax on rural America, particularly the small farms and the small businesses, would then kick in on assets of over $200,000 instead of the $600,000 exemption; so that $400,000 more in assets would have been subject to Federal taxes.

More recently, President Clinton has floated what I consider another bad economic idea, and that is of taxing capital gains at death. Most of this gain is due to inflation, not real growth. So it would have been a tax on phantom income.

The new President and the people in his administration seem to be literally falling all over themselves to raise taxes. They try to couch these taxes in terms of taxing the so-called rich. But history has shown us that when the Democrats talk about taxing the rich, it is always the middle- and lower-income taxpayers that end up getting hit the hardest.

As I argued last year on this very same subject matter, I said: Look at the 1990 tax bill as an example. While the House Democrats were talking of taxing the rich, they were proposing to get rid of indexing, the indexing of the personal income tax, which, of course, is an across-the-board tax increase for middle America.

In addition, there was talk of increasing the gas tax, which was done, which is a regressive tax that hit the poor and middle class the hardest and there is talk this year of raising the gas tax. Of course, reducing the estate tax exemption or taxing capital gains at death falls neatly into the political rhetoric of taxing incomes over $200,000. Of course, we know who will be hit hardest. The people who propose these taxes are going to be taxing family farmers and small business people, the very backbone of our country.

People who are experts on estate taxes advise me that lowering the State tax exemption would hurt farmers more than any other group because of the high proportion of estate contained in land and equipment. As an example, just referring to the average size farming operation in my State, which I know does not sound very large to most people, it probably sounds small to most people, but the average size operation in my State is 340 acres. So just in regard to the land values alone, most farm estates would be devastated if the unified credit were lowered to $200,000 or inflationary capital gains were taxed at death.

I only hope that if or when such new taxes come up for a vote that Members have the sense to defeat what I consider ill-conceived and downright dangerous attempts that are going to bankrupt family farms and small businesses of America. In the meantime, I urge my colleagues to strongly support the resolution before us opposing these taxes because, as a practical matter in doing this, you are talking just strictly about creating jobs because that 340-acre farming operation is an average for my State. With the average value of land of $1,200, you can see it is just about $425,000 that it takes to create just one job, and that is just the land. Then add to that a couple hundred thousand dollars of capital it takes to put together the machinery to operate that.

You can see creating one job is much more expensive than it is in the cities of America, in industrial America, or in service America, service jobs America. You would be doing away with this. Plus, it usually takes two in a family to operate this, husband and wife. Women in this country usually outlive the men. That is probably as true in rural America. Outside of Social Security, most of the retirement is going to be in the return on this land. Every husband who dies wants to make sure that that farm provides some income for that spouse who will be left for another 6 or 7 years on average.

But with this $200,000 exemption, or with this taxing of capital gains at death, you are going to be in the very same situation we were in in 1979 and 1980, when that widow sold that farm to pay the estate tax and had very little left to live on. Besides, it is kind of a tradition if you have a son or daughter who wants to continue that farming operation, let us pass that on to a younger generation.

The average farmer in my State is 56 years of age. Twenty percent of them are going to retire in the next 5 or 6 years. Out of 103,000 farming units in my State, only 3,000 of those, or 3 percent roughly, are under 30 years of age. What are we going to do in America to get young people into agriculture? This problem of this taxing of capital gains on estates at death, or reducing this exemption, is just going to make it that much more difficult for young farmers to get started farming. I hope that all the Members of this body will take a serious look at either one of these proposals, and I hope you will support the Lugar resolution which states how bad the proposals of reducing the exemption are on small businesses and small farmers.

I yield the floor, and 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. 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.

Mr. DOLE. Mr. President, I rise to support the resolution offered by Senator LUGAR which expresses the Senate's opposition to lowering the estate tax exemption. Legislation was introduced last year to lower the exemption from $600,000 to $200,000 in an effort to raise additional revenue. This legislation would have been particularly costly to hard-working, middle-class Americans. While it has not been proposed yet in this session, we fear that there is some support for resurrecting that bill.

Throughout my years in the Congress, I have been a strong supporter of family-owned farms which are so vital to our country's economy. I feel this legislation would have disastrous effects on this crucial segment of our society.

There are nearly 2 million family-owned farms across our country with an average value of $252,000. Remember, these are family-owned farms, many of which have been held for generations. Under the proposed legislation, the average farmer would not be able to pass the farm to his children without incurring an enormous tax bill.

Many of these farm owners will be forced to liquidate their assets to pay the increased taxes. Along with that liquidation would be a loss of legacy, a loss of family tradition, and, economically, a loss of jobs. Good jobs.

It is important to note that farmers are not the only ones who have a stake in the estate tax issue. A study by the Kansas Farm Management Association shows that the value of land rented by farmers averages $404,000 per farm. That means that there are a lot of landlords living in the city who have a sizable interest in the passing of this generation.

The owners of other small businesses will be affected in much the same way as farmers. Lowering the amount of the estate tax exemption could effectively wipe out many of these small businesses with the passing of this generation.

Another big problem this legislation would pose is its effect on the Nation's homeowners.

The median value of single-family homes in this country is $104,000. While some may say that amount is within the new exemption, let me remind you that various areas of the country do not fall in this category.

While median home values in my home State fall within the exemption, what about those in the San Francisco area where the median value of a home is $258,000? Or Orange County in California at $234,000?

Many people in these areas would not even be able to leave the family home to their children without the Government taking a big chunk.

It has been suggested that the administration may impose additional taxes on estates such as a capital gains tax at time of death. This proposal would cause the same, if not more, hardship as lowering the estate tax exemption would.

Lowering the estate tax exemption, or imposing additional taxes on estates, may produce revenues, but as these examples show, it would put additional strain on our struggling economy and place a real hardship on millions of Americans.

With that in mind, Mr. President, I ask my colleagues to support this legislation.

SENATE RESOLUTION 65—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES FOR THE COMMITTEE ON THE JUDICIARY FOR THE PERIOD MARCH 1, 1993 THROUGH FEBRUARY 28, 1994

Mr. BIDEN, from the Committee on the Judiciary, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 65

Resolved,

That, in carrying out its powers, duties and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on the Judiciary is authorized from March 1, 1993, through February 28, 1994, and March 1, 1994, through February 28, 1995, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee for the period March 1, 1993, through February 28, 1994 under this resolution shall not exceed $5,397,100.00 of which amount (1) not to exceed $40,000.00 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended) and not to exceed $1,000.00 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946.)

(b) For the period March 1, 1994, through February 28, 1995, expenses of the committee under this resolution shall not exceed $5,515,215.00 of which amount (1) not to exceed $40,000.00 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and not to exceed $1,000.00 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1993, and February 28, 1994, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employers paid at an annual rate, the payment of stationery supplies purchased through the Keeper of Stationery, U.S. Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 1993, through February 28, 1994, and March 1, 1994, through February 28, 1995, to be paid from the Appropriations account for "Expenses of Inquiries and Investigations."

SENATE RESOLUTION 66—EXPRESSING THE OPPOSITION OF THE SENATE TO THE IMPOSITION OF AN IMPORT FEE ON CRUDE OIL AND REFINED PETROLEUM PRODUCTS

Mr. AKAKA (for himself and Mr. INOUYE) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 66

Whereas an import fee on crude oil or refined petroleum products would have an inflationary effect on the United States economy and would have widespread adverse impacts throughout the United States;

Whereas for each dollar the import fee is increased, the cost of petroleum for United States consumers increases approximately $6,200,000,000;

Whereas an oil import fee could potentially stall our country's economic recovery and harm the ability of United States companies to compete in foreign markets;

Whereas such a fee, even though applied only to imports, would increase the price of all oil consumed in the United States, because the price of domestically produced crude oil and domestically refined products would increase to the same level as imported oil;

Whereas such a fee would have widespread indirect inflationary costs by raising the cost of all consumer goods;

Whereas the additional costs resulting from an oil import fee would be disproportionately greater in areas of the country that rely on imported oil and petroleum products; and

Whereas the adverse inflationary effects of such a fee would far outweigh the marginal increase in Federal revenues: Now, therefore, be it

Resolved, That it is the sense of the Senate that neither the President nor the Congress should impose any import fee on the importation of crude oil or refined petroleum products.

Mr. AKAKA. Mr. President, today I am introducing legislation which expresses the opposition of the Senate to the imposition of an import fee on crude oil and refined petroleum products.

I remind my colleagues that only a few months ago Congress completed action on the Energy Policy Act of 1992. This legislation was the product of a 2-year effort to thoughtfully examine and comprehensively restructure our Nation's energy policy. Without question, it is one of the most significant achievements of the 102d Congress.

The ink on the energy bill has barely dried. Yet a drumbeat has begun to rise from this Chamber and echo through the halls of Congress. It is an old and familiar sound, and its message has been rejected by Congress in the past.

The drumbeat I speak of is the demands by my colleagues from oil producing states to impose an import fee on crude oil.

The purpose of my resolution is to allow the Senate to record its opposition to proposals to establish a fee on imported oil. Such a fee would be bad energy policy as well as bad tax policy. Imposing an oil import fee would be inflationary, regressive, and would drain purchasing power from the economy at a time when it can least afford it.

In their zeal to raise tax revenues and lift the domestic oil exploration and refining industry out of the doldrums, the proponents of an oil import fee have advanced a proposal that is penny-wise and pound foolish. The last thing our country needs is an oil import fee to further burden our faltering economy.

SENATE RESOLUTION 67—TO REMOVE "SELECT" FROM THE TITLE OF THE SELECT COMMITTEE ON INDIAN AFFAIRS AND TO DESIGNATE ROOM 485 IN THE RICHARD BREVARD RUSSELL SENATE OFFICE BUILDING AS THE "ROOM OF THE FIRST AMERICANS"

Mr. INOUYE (for himself and Mr. MCCAIN) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 67

Resolved,

SECTION 1. COMMITTEE NAME.

The Select Committee on Indian Affairs is hereby redesignated as the "Committee on Indian Affairs".

SEC. 2. ROOM OF THE FIRST AMERICANS.

The room in the Richard Brevard Russell Senate Office Building currently designated as room 485 is hereby redesignated as the "Room of the First Americans".

Mr. INOUYE. Mr. President, I rise today, to introduce a measure that some might suggest is long overdue, but there are reasons that we have not taken this action sooner.

The Select Committee on Indian Affairs was made a permanent committee of the Senate on June 6, 1984, but up until this time, we have retained the word "select" in our title, because we wanted a reminder that this committee, like the people it is intended to serve, was once considered a small and insignificant committee in the Senate.

When I joined the committee, there were only five members. It was a committee on which no one wanted to serve. Today, the Indian Affairs Committee is a committee of choice. We have 18 members and are thus of comparable size to many of the so-called "A" committees.

Today, the conditions in Indian country are no longer perceived to be hopeless—today, the problems of this Nation's first Americans are finally getting the attention that they have so long deserved.

And so today, in order that all Americans may know that the Indian Affairs Committee is a permanent committee of the Senate, I rise to introduce this resolution proposing to remove the word "select" from the title of the committee. I am joined in this effort by my esteemed colleague and vice-chairman of the Indian Affairs Committee, Senator JOHN MCCAIN.

This resolution would also provide for the naming of the hearing room that is assigned to the Indian Affairs Committee. When this resolution is approved by the Senate, as I hope it will soon be, the room in the Richard Brevard Russell Senate Office Building currently designated as room 485 will be redesignated as the "Room of the First Americans".

Mr. President, I will be encouraging my colleagues on the Committee on Rules and Administration to expedite consideration of this resolution, and I will in turn, be calling upon my colleagues in the Senate to approve this resolution at the earliest possible time.

Mr. President, I believe that it is time that we send a message to Indian country—that their concerns are important to this body and to our country—and that the Committee on Indian Affairs is our commitment to a sustained effort to improve the lives of this Nation's first Americans.

AMENDMENTS SUBMITTED

FAMILY AND MEDICAL LEAVE ACT OF 1993

DOLE AMENDMENT NO. 15

Mr. DOLE proposed an amendment to the bill (S. 5) to grant family and temporary medial leave under certain circumstances, as follows:

On page 15, between lines 4 and 5, insert the following:

(g) LIMITATION ON LEAVE ABOVE CALCULATED COST.—

(1) LIMITATION.—Notwithstanding any other provision of this Act, no employer shall be required to provide a greater period of leave than the period calculated under paragraph (2)(B) to any eligible employee of the employer during the applicable calendar year.

(2) CALCULATION.— Each employer shall calculate, for the 1993 calendar year and for each subsequent calendar year—

(A) the average cost to the employer of providing leave in accordance with this title over such calendar year to an eligible employee who takes such leave; and

(B) based on such average cost, the period of such leave that the employer can provide for $7.30 per eligible employee taking such leave during such calendar year.

(3) ADJUSTMENT.—In the case of any calendar year beginning after 1993, the dollar amount contained in paragraph (2)(B) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 for the calendar year, by substituting "calendar year 1992" for "calendar year 1989" in subparagraph (B) thereof.

On page 40, between lines 21 and 22, insert the following:

"(g)(1) Notwithstanding any other provision of this subchapter, no employing agency shall be required to provide a greater period of leave than the period calculated under paragraph (2)(B) to any employee of the employing agency during the applicable calendar year.

"(2) Each employing agency shall calculate, for the 1993 calendar year and for each subsequent calendar year—

"(A) the average cost to the employing agency of providing leave in accordance with this subchapter over such calendar year to an employee who takes such leave; and

"(B) based on such average cost, the period of such leave that the employing agency can provide for $7.30 per employee taking such leave during such calendar year.

"(3) In the case of any calendar year beginning after 1993, the dollar amount contained in paragraph (2)(B) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code of 1986 for the calendar year, by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof.

DOLE (AND WALLOP) AMENDMENT NO. 16

Mr. DOLE (for himself and Mr. WALLOP) proposes an amendment to the bill S. 5, supra as follows:

On page 53, strike line 1 and insert the following:

SEC. 405. LIMITATION.

(a) IN GENERAL.—Notwithstanding any other provision of this Act or any amendment made by this Act, no employer shall be required to comply with any requirement of this Act in any period for which the employer fails to receive—

(1) Federal financial assistance or a reduction in Federal tax obligations that is sufficient to pay for the cost to the employer of compliance with all applicable requirements of this Act for such period; or

(2) a certification from the appropriate entity of the Federal Government that compliance with such requirements will not increase the expenses of the employer during such period.

(b) DEFINITION.—As used in this section, the term "employer" means—

(1) an employer, as defined in section 101(4);

(2) an employing agency, within the meaning of subchapter V of chapter 63 of title 5, United States Code, as added by section 201;

(3) an employing office, as defined in section 501(h)(1); and

(4) an employing authority, within the meaning of section 502.

DOLE (AND OTHERS) AMENDMENT NO. 17

Mr. DOLE (for himself, Mr. THURMOND, Mr. COATS, Mr. GRAMM, Mr. SMITH, Mr. FAIRCLOTH, Mr. KEMPTHORNE, Mr. WARNER, Mr. LOTT, Mr. MCCAIN, Mr. HELMS, Mr. NICKLES, Mr. MURKOWSKI, Mr. WALLOP, Mr. COVERDELL, Mr. SIMPSON, Mr. GREGG, Mr. MACK, and Mr. CRAIG) proposed an amendment to the bill S. 5, supra, as follows:

SECTION 1. REVIEW OF DEPARTMENT OF DEFENSE POLICY CONCERNING SERVICE OF HOMOSEXUALS IN THE ARMED FORCES.

A thorough review of all Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, shall be conducted by the Congress before July 15, 1993.

All Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, as in effect on January 1, 1993, shall remain in effect until the completion of this review with respect to the Army, Navy, Air Force, and Marine Corps and unless changed by law.

Any proposed change in this policy shall be submitted by the President in the form of a bill and shall be introduced in each House of Congress by the majority leader in each House. The bill introduced in the Senate, placed on the calendar, be amendable with germane or relevant amendments, and shall be voted on no later than the close of business three days of session after its introduction.

The bill introduced in the House shall also be voted on no later than the close of business three days after its introduction. If both houses agree to their separate bills, upon receipt of the House bill, if it is identical, the Senate shall be deemed to have passed the House bill in lieu of its own bill and the same

shall be transmitted forthwith to the President.

Any conference report shall be nondebatable.

MITCHELL AMENDMENT NO. 18

Mr. MITCHELL proposed an amendment to amendment No. 17 proposed by Mr. DOLE to the bill S. 5 supra, as follows:

Strike all after section 1 and insert in lieu thereof the following:

It is the Sense of Congress that:

(a) The Secretary of Defense shall conduct a comprehensive review of current Departmental policy with respect to the service of homosexuals in the Armed Forces:

(b) Such review shall include the basis for the current policy of mandatory separation; the rights of all service men and women, and the effects of any change in such policy on morale, discipline, and military effectiveness;

(c) The Secretary shall report the results of such review and consultations and his recommendations to the President and to the Congress no later than July 15, 1993;

(d) The Senate Committee on Armed Services shall conduct—

(i) comprehensive hearings on the current military policy with respect to the service of homosexuals in the military services; and

(ii) shall conduct oversight hearings on the Secretary's recommendations as such are reported.

DOLE (AND OTHERS) AMENDMENT NO. 19

Mr. DOLE (for himself, Mr. THURMOND, Mr. COATS, Mr. GRAMM, Mr. SMITH, Mr. FAIRCLOTH, Mr. KEMPTHORNE, Mr. WARNER, Mr. LOTT, Mr. MCCAIN, Mr. HELMS, Mr. NICKLES, Mr. MURKOWSKI, Mr. WALLOP, Mr. COVERDELL, Mr. SIMPSON, Mr. GREGG, Mr. MACK, and Mr. CRAIG) proposed an amendment to amendment No. 17, as amended, proposed by Mr. DOLE (and others) to the bill S. 5, supra, as follows:

SECTION 1. REVIEW OF DEPARTMENT OF DEFENSE POLICY CONCERNING SERVICE OF HOMOSEXUALS IN THE ARMED FORCES.

A thorough review of all Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, shall be conducted by the Congress before July 15, 1993.

All Executive orders, Department of Defense directives, and regulations of the military departments concerning the appointment, enlistment, and induction, and the retention, of homosexuals in the Armed Forces of the United States, as in effect on January 1, 1993, shall remain in effect until the completion of this review with respect to the Army, Navy, Air Force, and Marine Corps and unless changed by law.

Any proposed change in this policy shall be submitted by the President in the form of a bill and shall be introduced in each House of Congress by the majority leader in each House. The bill introduced in the Senate, placed on the calendar, be amendable with germane or relevant amendments, and shall be voted on no later than the close of business three days of session after its introduction.

The bill introduced in the House shall also be voted on no later than the close of business three days after its introduction. If both houses agree to their separate bills, upon receipt of this House bill, if it is identical, the Senate shall be deemed to have passed the House bill in lieu of its own bill and the same shall be transmitted forthwith to the President.

Any conference report shall be nondebatable.

PRESSLER (AND DODD) AMENDMENT NO. 20

Mr. DODD (for Mr. PRESSLER and Mr. DODD) proposed an amendment to the bill S. 5, supra, as follows:

Strike section 302(1) of the bill and insert the following:

(1) conduct a comprehensive study of—

(A) existing and proposed mandatory and voluntary policies relating to family and temporary medical leave, including policies provided by employers not covered under this Act;

(B) the potential costs, benefits, and impact on productivity, job creation and business growth of such policies on employers and employees;

(C) possible differences in costs, benefits, and impact on productivity, job creation and business growth of such policies on employers based on business type and size;

(D) the impact of family and medical leave policies on the availability of employee benefits provided by employers, including employers not covered under this Act;

(E) alternate and equivalent State enforcement of title I with respect to employees described in section 108(a);

(F) methods used by employers to reduce administrative costs of implementing family and medical leave policies;

(G) the ability of the employers to recover, under section 104(c)(2), the premiums described in such section; and

(H) the impact on employers and employees of policies that provide temporary wage replacement during periods of family and medical leave.

In section 303(a)(1) of the bill, strike "and 2" and insert "and 4".

In section 303(a) of the bill, strike paragraph (1)(C)(ii) and all that follows through paragraph (2) and insert the following:

(ii) EXPERTISE.—Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor management issues. Such members shall include representatives of employers, including employers from large businesses and from small businesses.

(2) EX OFFICIO MEMBERS.—The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Commerce, and the Administrator of the Small Business Administration shall serve on the Commission as nonvoting ex officio members.

DODD AMENDMENT NO. 21

Mr. DODD proposed an amendment to the bill S. 5, supra; as follows:

In section 101 of the bill, add at the end the following:

(13) SPOUSE.—The term "spouse" means a husband or wife, as the case may be.

In section 102(b)(1) of the bill, in the first sentence, strike "paragraph (1)" and insert "subsection (a)(1)".

In section 102(b)(1) of the bill, in the second sentence, strike "subparagraph (B)" and insert "paragraph (2)".

In section 102(b)(1) of the bill, in the second sentence, strike "paragraph (1)" and insert "subsection (a)(1)".

In section 102(b)(2) of the bill, strike "paragraph (1)" and insert "subsection (a)(1)".

In section 103(b)(4)(B) of the bill, strike "and".

In section 103(b)(5) of the bill, insert ", or leave on a reduced leave schedule," after "leave".

In section 103(b)(5) of the bill, strike the period and insert a semicolon.

In section 103(b) of the bill, add at the end the following:

(6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(D), a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

(7) in the case of certification for intermittent leave, or leave on a reduced leave schedule, under section 102(a)(1)(C), a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the son, daughter, parent, or spouse who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

In section 104(c)(3)(C)(i) of the bill, strike "(A)(i)" and insert "(A)(ii)".

In section 104(c)(3)(C)(ii) of the bill, strike "(A)(ii)" and insert "(A)(i)".

In section 108(c) of the bill, in the heading, insert "OR LEAVE ON A REDUCED SCHEDULE" before "FOR INSTRUCTIONAL".

In section 6383(b)(5) of title 5, United States Code, as added by section 201 of the bill, insert ", or leave on a reduced leave schedule," after "leave".

In section 6387 of title 5, United States Code, as added by section 201 of the bill, strike "under" and insert "to carry out".

In section 303(a)(1)(C)(i) of the bill, strike "Members" and insert "members".

In section 502, in the heading, strike "CONGRESSIONAL EMPLOYEES" and insert "HOUSE EMPLOYEES".

In section 502(c) of the bill, strike "the resolution in".

BROWN (AND OTHERS) AMENDMENT NO. 22

Mr. BROWN (for himself and Mrs. KASSEBAUM) proposed an amendment to the bill S. 5, supra; as follows:

On page 10, strike line 22 and all that follows through page 11, line 24, and insert the following:

(3) INTERMITTENT LEAVE.—

(A) IN GENERAL.—Leave under subparagraph (A) or (B) of paragraph (1) shall not be taken by an employee intermittently unless the employee and the employer of the employee agree otherwise. Subject to subparagraph (B), subsection (e), and section 103(b)(5), leave under subparagraph (C) or (D) of paragraph (1) may be taken intermittently when medically necessary.

(B) ALTERNATIVE POSITION.—If an employee requests intermittent leave under subparagraph (C) or (D) of paragraph (1) that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that—

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(b) REDUCED LEAVE..—On agreement between the employer and the employee, leave under subsection (a) may be taken on a reduced leave schedule. Such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Wednesday, March 3, and Thursday, March 4, 1993, at 9:30 a.m. on each day, to hold hearings on legislation pertaining to the financing of congressional election campaigns. The committee will receive testimony on S. 3, S. 7, S. 62, S. 87, S. 94, and any other bills referred by the time of the hearings.

Senators, Representatives, individuals, and organizations wishing to testify or submit a statement for the hearing record are requested to contact Mr. Jack Sousa, chief counsel of the Rules Committee, at 202-224-5648.

For further information regarding these hearings, please contact Mr. Sousa.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Thursday, February 4, 1993, from 11 a.m. to 12 noon and from 1:15 p.m. to 2:45 p.m., to hold hearings on Senate Committee funding resolutions. The committee will receive testimony from the chairmen and ranking members of the following committees: Judiciary; Finance; Appropriations; Indian Affairs; Labor and Human Resources; Budget; Small Business; Commerce, Science, and Transportation; Environment and Public Works; and Foreign Relations.

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

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, February 4, 1993, at 2 p.m., in open session, to receive testimony on "Economic Reform in the Former Soviet Union: The Current Situation and United States Policy Options."

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

ADDITIONAL STATEMENTS

ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT

• Mr. INOUYE. Mr. President, I wish to commend Senator SHELBY for his introduction of S. 265, the Economic Growth and Regulatory Paperwork Reduction Act. I am pleased to be a cosponsor of this measure.

The provisions contained in S. 265, among other things, would streamline banking operations by eliminating unnecessary paperwork, simplifying banking procedures, and reducing regulatory impediments to lending without undermining the safety and soundness of our Nation's financial institutions. In addition, the measure would improve credit availability to small businesses, and residential, agricultural, and low- to moderate-income communities without adding to the budget deficit.

Our banking regulations have become too costly and burdensome to the Federal Government, to our Nation's financial institutions and to consumers. Credit availability has been hampered as a result of continued paperwork compliance, and other regulatory requirements. While banking regulations are necessary, they should be carried out in a manner that is most efficient and consistent with public policy objectives.

In the interest of our Nation's economy, it is time to forge ahead, and eliminate the unnecessary regulatory redtape. Our financial institutions must be able to serve the public in a manner that enhances public confidence and promotes economic growth. I urge my colleagues to support S. 265, the Economic Growth and Regulatory Paperwork Reduction Act.•

TRIBUTE TO COLUMBIA

• Mr. MCCONNELL. Mr. President, I rise today to pay tribute to Columbia in Adair County.

Columbia is a small town in the rolling hills of central Kentucky, located approximately 95 miles southeast of Louisville. Despite its size and location, Columbia is making great strides toward the future.

In recent years, Columbia has begun to renovate many of its historic buildings. This past summer, a newly renovated theater opened to be used for movies and community events. A new bypass is being planned to help alleviate the traffic problems in downtown Columbia. The town is also renowned for its expansive historic courthouse.

Though residents do not consider it a college town, Columbia is home to Lindsey Wilson College. This Methodist college helps provide employment for many in the community and adds to the charm of this small southern town.

I applaud Columbia's efforts to maintain its historic charm, but at the same time its move forward, making it one of Kentucky's finest towns.

Mr. President, I ask that this tribute and a recent article from Louisville's Courier-Journal be submitted in today's CONGRESSIONAL RECORD.

COLUMBIA

(By Kirsten Haukebo)

Downtown in this farming community, there are shops, banks, pool halls, a courthouse, a burger joint, a tattoo parlor and soon, a chic little cafe serving cappuccino.

That's right. The frothy specialty coffee more often associated with European sidewalk cafes and urban sophisticates is going to hit Columbia, home of the Bell Pepper Festival.

There's no telling how the drink will go over with the locals—the cafe is due to open next spring—but it's just one of several signs that Columbia is sprinting into the '90s.

Other clues:

The renovation of a handful of buildings on the square in the past year. Some businesses have uncovered treasures in the process. Reed Brothers Insurance found an irreplaceable carved American chestnut ceiling hidden behind ugly tiles.

Plans for a long-awaited bypass that will ease the chaotic traffic around the square.

The arrival of an innovative chicken processing plant that sells expensive French-bred, free-range chickens. The "yuppie chickens," as Columbia real estate agent Emily Sargent calls them, are said to be tastier and lower in fat.

The opening in July of the Columbian, a plush, newly renovated movie theater. The large-screen cinema shows first-run movies and has a stage for community events. A new theater group plans to use the property.

That's a lot of activity in a town where the opening of a McDonald's restaurant is a major event.

Actually, a McDonald's did come to town recently, a fact that Mayor Pam Hoots and others like to trumpet. As theater manager Ben Burris, 22, explains, "It's great to be able to go to McDonald's and see a movie in the same town. For years, we were doing that in Campbellsville."

But the man who renovated the movie theater, Adair County native Ben Arnold, has other designs on Adair County's diet. His cafe, planned in a vacant storefront across the alley from the theater, will serve healthful food, he said.

Arnold, a scientist who is president of Image Analysis Inc. of Irvine, Calif., bemoans the eating habits of his hometown. He notes that Adair County has unusually high rates of heart disease, even for Kentucky.

"There is a group of people here that have bacon and eggs for breakfast, a hamburger for lunch and a steak for dinner. They will surely die early of heart disease," Arnold says.

His cafe—which he admits will be more of a mission than a profit-making venture—will be named Cafe Columbio, after his favorite sidewalk cafe in Paris.

Arnold, 47, grew up on a farm and attended a one-room school. He went on to Centre College, earned graduate degrees from Harvard and Yale and developed several products used in the medical field.

Arnold lives part-time in Adair County and is planning to move his small, high-tech medical-equipment firm to Columbia over the Christmas holiday.

"It's really kind of wonderful to get on a country road and drive without having any

traffic and having clean air and clean water. Wading up the creek has become a bigger value to me than it was 30 years ago," Arnold said.

About 10 years ago, Arnold noticed that downtown Columbia, like so many other town centers, was starting to lose its charm as Wal-Mart and other discount stores clustered on its outskirts.

The old movie theater had a special place in Arnold's heart. He saw his first movie, a Western, there. And Arnold found a willing and capable manager in Burris, who had once leased the theater at the age of 16 and tried valiantly to get it back on its feet. (Like most 16-year-olds, Burris simply didn't have the necessary capital.)

When Arnold mentioned he'd also like to open a cafe and serve cappuccino, Burris went to Louisville to try the drink. He reports that it was pretty good.

Burris is no country bumpkin, but he has been cast in that role before. Last July, as a delegate to the Democratic National Convention in New York, Burris was adopted by a radio station looking for a delegate who'd never been to the city before. The station flew him around in a helicopter and quizzed him on such topics as whether his hometown has cable television.

It does, but that's not to say there aren't some things about Columbia that New Yorkers would find quaint. The Bank of Columbia, for example, closes at 2 p.m. Columbia's seven police officers spend the better part of their time on such tasks as community crime-awareness education, escorting business people to banks for after-hours deposits and unlocking car doors after motorists have left the keys inside.

The morning after Halloween this year, Bank of Columbia President Wanda Hill discovered that someone had thrown eggs at her house. She called the police. When Officer Justin Claywell arrived, "we just got out a bucket and scrubbed and got it all off before you know it," Hill said.

Said Claywell: "We don't want to go out there with this big macho attitude. We want people to know we're there to help them, no matter how trivial."

People in Columbia wave at each other with such frequency that even the locals joke about it.

"I'll have people say to me, 'I saw you going down the street and you didn't wave,'" said insurance agent Dan Antle. "A lot of people around here have one hand on the steering wheel and keep the other one up."

Most visitors to Columbia are struck by its distinctive, historic courthouse, standing alone in the middle of the town square.

"When I'm out in the state and I say I'm from Columbia, they'll say, 'That town with the great big courthouse.'

Another jewel from Columbia's past is on display at a museum in Los Angeles. The Wells Fargo Bank and Museum told Alta Garnett that her father's stagecoach was the best-preserved specimen they'd ever seen, Garnett said.

The stagecoach to Campbellsville was a necessity for turn-of-the-century Columbia, which has never had rail service. In 1973, the Cumberland Parkway provided the first fast and easy route in and out of town.

And most of the young people head out, looking for greater job opportunities.

"I can't pick off on my hand five people who stayed here after graduation. All of my friends left. After graduation, it was 'whoosh,'" said Burris, the theater manager.

Lindsey Wilson College accounts for some of the incoming traffic. Many students are commuters from nearby towns. The private college, affiliated with the United Methodist Church, is in its sixth year as a four-year institution. It was founded in 1903 as a training school to prepare people from south-central Kentucky for Vanderbilt University in Nashville, Tenn.

The college in Columbia was named after the stepson and nephew of an early financial backer, Catherine Wilson of Louisville.

In recent years, Lindsey Wilson has become well known for its ace soccer team, for which it draws student athletes from around the world.

But while Columbians appreciate the payroll and other benefits of the college, they don't think of themselves as living in a college town.

"Lindsey is there; Adair County is there. We just sort of co-exist. It's not like a real college town," said Donna Shirley, a teacher at Col. William Casey Elementary School.

"In a way that might be an asset. We're allowed just to stay a small town. That's what they remember us by," Antle said.

The courthouse is formidable enough to serve as a sound shield during concerts at the annual Bell Pepper Festival—on one side of the square a country band plays; on the other; a rock group. The location of the courthouse has its drawbacks, though. Heavy traffic whizzes around it all day. Whether you can reach the building on foot depends on your skill at dodging cars and trucks.

That traffic will ease up, however, with the construction in 1995 or '96 of the bypass, something trucking companies, among others, lobbied for. ("You should see those trucks go around. Sometimes they nearly tear the courthouse down," said Sargent, the real-estate agent.)

For many years, the courthouse had on file a warrant for the arrests of members of the Jesse James gang. The notorious gang was wanted for the robbery and killing of a clerk at the Bank of Columbia in 1872. The original warrant disappeared during the major courthouse cleaning in 1975, but copies still exist.

It's uncertain if members of the James gang actually committed the crimes, because no one ever was prosecuted. But details of the crimes led many to believe the gang was to blame. A couple of men arrived in town a few days before the heist, posing as cattle buyers—a common tactic in James gang robberies in Kentucky. The robbers piled the money (probably a couple of hundred dollars, but accounts vary) into a wheat sack, another trademark.

Also, two Columbians claimed that Frank James, Jesse's brother, later admitted shooting the clerk, R. A. C. Martin, whose portrait still hangs on the bank wall.

A brighter spot in the town's history is the fact that it was the girlhood home of Mark Twain's mother, Jane Lampton.

The large brick house where she grow up is being renovated by a couple who moved to Columbia this year from South Carolina. The 1812 house had been empty for five years before David and Eva Rigney bought it.

There were gaping holes in the walls.

Population (1990): Columbia, 3,845; Adair County, 15,360.

Per capita income (1989): $10,981, or $2,892 less than the state average.

Jobs (1990): Manufacturing, 1,076; wholesale and retail trade, 638; services, 840; state/local goverment, 602; construction, 94.

Big employers: Oshkosh B'Gosh (clothing), 718 employees; Lindsey Wilson College, 161; Imo Industries (hydraulic pumps), 90.

Education: Adair County public schools, 2,541 students; Lindey Wilson College, 1,091.

Media: Newspapers: The Adair Progress, weekly; The Farmer's Pride, weekly, Radio; WAIN-AM/FM (country).

Transportation: Cumberland Parkway and Ky. 80 and 55 are the major roads serving Columbia. Eleven truck companies provide service. Air: Columbia/Adair County airport, one paved runway. Nearest commercial air service is Standford Field in Louisville, 97 miles northwest of Columbia. Rail: Nearest rail service is Glasgow, 37 miles west of Columbia.

Topography: Farmland, gently rolling hills with large, flat ridgetops.

FAMOUS FACTS AND FIGURES

No one knows for certain how Columbia got its name, but some historians say it was named in honor of Christopher Columbus. The town was founded around 1800 on Russell Creek, a tributary of the Green River.

Adair County was the adopted home of Arkansas native Janice Holt Giles, who wrote "The Kentuckians" and other historical novels of the American frontier. She is buried in Caldwell Chapel Cemetary near her Adair County home.

Ed Diddle, longtime coach of Western Kentucky University's men's basketball team, was born in Adair County. As coach of the Hilltoppers from 1922 to 1964, he compiled a record of 759 victories and 302 defeats. Diddle was a colorful character who was known for waving a red towel during games, a practice fans continued after his death.•

WAR ZONES IN THE PLAYGROUNDS

• Mr. SIMON. Mr. President, last week National Public Radio reported about schoolchildren in San Jose participating in "duck and play dead drills" reminiscent of the "duck and cover nuclear attack drills" from the 1950's. The new enemy has infiltrated our communities and our school playgrounds. Gangs, gang warfare, drug dealers, and violent crime have become part of the landscape.

Crime drills are becoming as routine as fire drills and earthquake drills in California. In the face of violence, students are given warnings and are instructed to hit the ground; teachers are instructed to lock their classrooms.

Students are exposed to needles, drug sales, arrests, gun fights, gangs, as well as domestic violence. Educators feel safety programs are necessary to help children cope with daily life. San Jose's police department conducts safety programs and counsels children and teachers about gangs and crime and teaches them basic survival skills.

Several principals have had to "strike deals" with gangs offering them use of the school on weekends and cleaning up after them in exchange for their not vandalizing the school and declaring the school a "safe zone" free from gang activity.

Many of our communities have become war zones and our children victims of the trauma that accompanies war.

Is this really what we want our children learning in school? Violence has reached epidemic proportions in com-

munities across the country. It is time we addressed it as an epidemic and bring together the resources and creativity of both the public health and the law enforcement community.

Mr. President, I ask that the transcript of the NPR report be printed in full in the RECORD.

The transcript follows:

SAN JOSE SCHOOLS PREPARE KIDS FOR VIOLENT CRIME

City schools everywhere do what they can to protect themselves from violent crime that spills over from their neighborhoods, but if you want a sign of what has happened consider this—'duck and play dead drills' are replacing the old 'duck and cover nuclear attack drills' from the 1950s. In San Jose, California, some schools actually conduct these drills so that students and teachers can practice what to do in case of a shoot-out.

NPR's Isabel Alegria reports.

Isabel Alegria, Reporter: Clyde Arbuckle [sp] Elementary School is located right in the middle of an area of San Jose that has long been plagued by gang warfare, drug dealers and violent crime. Today, Lou Henry [sp], principal of Clyde Arbuckle, stands in the school playground which is bordered on one side by a field, and on the other by a ramshackle apartment complex. He points at the apartments.

Lou Henry, Principal, Clyde Arbuckle Elementary: The first balcony there at the end of the apartment, that's where the shooting took place.

Alegria: Lou Henry is recalling the day a few years ago when he faced a school principal's worst nightmare. The gunman didn't hit anyone and was quickly subdued by police, but the incident left students, parents and staff badly shaken.

Much more common than this incident is a police chase across school grounds, says Henry, or when he has to confront a stranger on the campus.

Mr. Henry: And I have to knock on wood. I yet have to have a situation where I haven't been able to communicate with someone, and there have been maybe a couple of instances where someone was really pretty loaded on crack or something like that, and that case, I still was able to talk to him, and if I don't show up back in this office in a certain amount of time, my staff calls 911 or call the police. They know it's something that—I mean, I'd be able to handle.

Alegria: Henry says if anyone is seen on or near campus with a gun, five bells go off and children are instructed to hit the ground and teachers to lock their classrooms. Several times a year, students and teachers practice the procedures. Crime drills have become as routine as the fire and earthquake drills required in California schools.

Educators say children need safety programs to help them cope with daily life. At Clyde Arbuckle, a class of fifth-graders responds in unison when asked if people sell drugs in their neighborhood. [Interviewing class] How do you know?

1st Fifth Grader: You can find——

Alegria: The kids say they find needles, witness drug sales, arrests and even gun fights. Domestic violence is frequently mentioned. Many live alongside gangs or experience the violence firsthand.

1st Student: I saw a blue gang. They were fighting with a red gang, and a kid—he hit a man with a bat.

2nd Student: My dad was like real drunk, and then like he pulled out my—his gun and pointed it at my head and he said, 'If you want to live to be ten?' So, I said, 'yeah,' so he put it away, and that's how I got really scared of my dad.

Alegria: But even with training and drills, when actually faced with violence, the children may forget what the school has taught them. If you heard shots on the playground, the kids were asked, what would you do?

3rd Student: Run to the nearest classroom.

Alegria: [interviewing students] Okay. Anybody else?

4th Student: Run to a teacher and tell 'em that people are shooting guns outside, and go tell a teacher, and the teacher could go call the cops.

Alegria: [interviewing] Okay.

5th Student: If I hear a gun shooting, um, at the school, I like—if I can't find my brother, I would just drop to the ground—just lie down like that—like that.

Alegria: About a third of San Jose's 73 elementary schools have safety programs and have invited police to come in and counsel the children as part of a program called "Project Crackdown." Some schools use bells and hand signals to warn children of danger. Edenvale [sp] Elementary School principal Merill Smith [sp] says to keep violent incidents from happening at his school, a deal was struck with gang members many years ago that declared the school a safe zone which would be kept clean of gang markings known as "tags."

Merill Smith, Principal, Edenvale Elementary: In exchange for that, it became the responsibility of the principal to make sure that if somebody came into the community and tagged the school, that those tags were gotten rid of immediately. Secondly, we made an agreement that, during the weekend, we wouldn't but the groups about using the school, drinking beer, and that we would clean up after them on Monday morning in exchange for not vandalizing the school.

Alegria: Smith says the in-school safety program involves parents who have in turn organized to make their South San Jose neighborhood a safer place to raise their children.

Alex Bedregon [sp] is a San Jose police officer who conducts seminars about gangs and crime for teachers and students. He says the programs at Arbuckle and Edenvale may seem extreme to outsiders, but he considers them long overdue in areas plagued by gangs and crime.

Alex Bedregon, San Jose Police Officer: If, you know, there's that kind of activity in the neighborhood, then we have an obligation as adults in the community to make sure that our children are safe, and you know, what may seem inappropriate or overreaction in one community is really survival perhaps in another community.

Alegria: In San Francisco, I'm Isabel Alegria.●

CONCERNING SANTIAGO MURRAY

● Mr. REID. Mr. President, I would like the Senate to recognize the efforts in Nicaragua of Mr. Santiago Murray, a representative of the Organization of American States [OAS]. Mr. Murray's courage and humanity have contributed a great deal to the restoration of peace in Nicaragua. As the General Coordinator of the OAS International Commission for Support and Verification [CIAV], he has worked tirelessly to demobilize and resettle former resistance fighters and their families into society. He is a man of peace laboring to heal the wounds of war.

Mr. Murray has helped to disarm 22,500 members of the Nicaraguan resistance, and to repatriate 18,000 people from Honduras to Nicaragua. Former resistance fighters have been fed and treated medically, and at the end of hostilities, 238 distribution centers were established to feed over 100,000 people for 12 months. Families have been provided with construction materials and tools for building homes and agricultural implements. In all, 1,231 homes and 41 schools have been built. Rice and bean seeds, along with fertilizers, have been distributed widely. Additionally, Mr. Murray has supervised the creation of the human rights observance and verification project, which tracks and verifies the implementation of the peace accords between the Nicaraguan Government and the former members of the resistance.

Mr. President, I ask that the article by Mr. Mike O'Callaghan, former Governor of Nevada,. be printed in the RECORD. The article appeared in the Las Vegas Sun on December 16, 1992.

The article follows:

WHERE I STAND

(By Mike O'Callaghan)

MANAGUA, NICARAGUA.—Heroes are very special people who go beyond the call of duty to help others and make this a better world.

During the days of jungle combat, when the resistance forces called Contras were fighting Daniel Ortega's Soviet-equipped army, there were hundreds of men, women and children I viewed as heroes. Following the peace agreement, it was my good fortune to bring three busloads of wounded heroes back home to Nicaragua from a rehabilitation center near Tegucigalpa, Honduras.

Santiago Murray came to Nicaragua almost three years ago, following the election which ousted Daniel Ortega from the presidency. Since coming to this country, he hasn't been wounded nor has he wounded or killed another human. His life has oftentimes been in danger, but he doesn't carry a gun into even the most dangerous situations.

I first met Santiago shortly after the Nicaragua national election in February 1990. He came to assume his present position as head of the International Commission for Support and Verification, known as CIAV. His job, as a representative of the Organization of American States, is identify and aid those resistance fighters and their families returning home.

The slender and wiry native of Argentina usually has a cigarette in one hand, a phone in the other and a cup of strong coffee nearby. Santiago has the energy to work night and day to solve any problems facing people needing help. I have seen him work around the clock to get an innocent person released from a government prison and then put him on a plane for Miami and safety.

It was Santiago who put together the final peace agreement in April 1990. After several days of gathering information, the key players from the outgoing and incoming governments and the resistance forces were brought together in the CIAV building for an all-night session which ended in a treaty agreement. Cardinal Obando y Bravo was instrumental in hammering out the agreement.

It was also the cardinal and Santiago who insisted that the Miskito Indians be allowed into the peace conference and have their voices heard. Four Miskito leaders and I participated that night. Initially, the government wheels and other resistance leaders had shunted the Indians aside, despite their key combat role along the Rio Coco and the Atlantic coast.

Since that time, it has been Murray who according to one foreign diplomat, has "kept some semblance of peace in the countryside." Even this week, he has been in the mountains meeting with jackal and his armed followers, who are demanding the government take the army officers guilty of brutality out of their area and also have more local people trained as police. They have legitimate complaints, and Murray is the man who listens and recognizes that some action should be taken.

"He has true compassion for people and has been a voice for those who put down their arms and returned home," a former resistance leader told me.

An American diplomat with several years' experience in Central and South America said it best when describing the CIAV leader. The American told me that "Santiago is a brave man who views injustices to Indians just as abhorrent as the human rights violation of light-colored people in Western Nicaragua.".

If ever a single individual should be recognized with the world's highest human rights award, it's this tough but kind man from OAS, who will soon complete a strenuous three-year stint of duty in this country.

He is also a very pragmatic person and, because of him, the Miskito Indians have new fishing boats, hundreds of wounded returnees have obtained tools and seeds and resumed farming, and even more important, he has provided a voice for those who for generations have been forgotten by the ruling classes.

Santiago Murray is a special human being who has eagerly carried the burden for those less fortunate. Despite possible violence and physical danger, he has carried out his mission which still is far from finished.

He's my kind of hero.•

FAIR TRADE ENFORCEMENT ACT OF 1993

• Mr. DASCHLE. Mr. President, yesterday the distinguished Senator from Michigan, Senator LEVIN, and I introduced the Fair Trade Enforcement Act of 1993. We were joined by our distinguished colleague from Louisiana, Senator JOHNSTON. The bill's approach is simple: It uses access to our market as leverage to open foreign markets to American goods and services.

Fair trade benefits everyone: consumers, businesses, and workers. While most people would agree on this proposition, there is strong disagreement on the means to achieve this goal. The previous administration tried to open other markets by setting a good example here at home. The United States has one of the most open markets in the world. Not surprisingly, in many areas of trade policy, the approach failed. With no incentive for other countries to change their practices, American companies lose tens of billions of dollars to foreign trade barriers.

There is every reason to believe that the new administration will be stronger on this issue. In fact, President Clinton has expressed support for a stronger section 301 enforcement mechanism. Our legislation is consistent with this goal and, in fact, would provide a useful tool for trade negotiators.

There is an increasing awareness of the fact that in a globalized market exports are vital to our economic well-being. According to the Department of Commerce, almost 20,000 U.S. jobs result from each $1 billion in exports. Many economists believe that the current recession would be far worse if not for the positive effects of exports. As a result, we can no longer afford to tolerate trade practices in foreign markets that unfairly exclude American products.

There is little argument that the old Super 301 process produced positive results. Markets were opened as a direct, and indirect, result of the exercise of authority under the 1988 Omnibus Trade Act. Yet, the Bush administration could have accomplished more. In 1990, the final year of the Super 301 authority, they chose to identify completion of the Uruguay round as their highest priority, ignoring the hundreds of foreign trade barriers named in that year's national trade estimate report.

The Fair Trade Enforcement Act of 1993 or FTEA makes a strengthened Super 301 a permanent part of the U.S. arsenal for combating unfair trade practices and opening foreign markets. We are not trying to protect our domestic industries by closing the door to competition from fairly traded imports. Yet, if other countries are unwilling to open their markets to our products, this bill will place equivalent restrictions on their products until they do.

It requires the U.S. Trade Representative to name priority practices in each of three vital sectors: agriculture, manufacturing, and services. The 1992 National Trade Estimate Report alone lists hundreds of trade barriers in 43 countries and two regional trading bodies—and this is not an exhaustive list.

The bill also requires USTR to target priority practices in each country where we have a merchandise trade deficit that exceeds 15 percent of the total U.S. merchandise trade deficit—excluding petroleum imports. It is true that a trade surplus is not automatically a result of unfair trade practices. The United States has a positive trade balance with many countries. But, let us be realistic. A substantial and persistent trade surplus warrants close examination. If a country contributes to 15 percent or more of our total trade deficit, this bill would require USTR to look carefully at the practices of that country and identify trade barriers in that country that contribute to the deficit.

The bill provides that, if for whatever reason the administration does not use this tool effectively to combat the most flagrant trade violations, the Congress can require the administration through procedures set up under the bill to initiate Super 301 investigations against particular practices.

The bill also removes the discretion that USTR had under the expired legislation to impose sanctions if negotiations do not remove the discriminatory practice. Under our proposal, if negotiations fail, USTR must impose equivalent restrictions—equivalent to the cost of the trade barrier to U.S. interests. If the President in his discretion decides not to impose equivalent restrictions, he must submit an alternate action plan for approval by Congress. Congressional approval is conditioned on passage of a joint resolution considered under the fast-track procedures.

These latter provisions should be welcomed by the administration as a forceful tool that will provide leverage in negotiations with our trading partners.

In drafting this legislation, we have attempted to be responsive to legitimate concerns that have been raised in connection with the various proposals to reauthorize Super 301. We have given USTR more time to informally address trade concerns with our trading partners prior to formal identification under Super 301. In response to former-Ambassador Carla Hills' concern that certain deadlines under the old Super 301 constrained her negotiating flexibility, the bill allows USTR to establish a plan of action for consulting and removing the barriers to U.S. products and services.

Finally, to avoid resentment by countries that complained of being singled out under the 1988 Trade Act, we have eliminated the priority country designation. The focus of this bill is on elimination of priority practices that constitute unfair barriers to U.S. exports. No country should resent or fear FTEA if its market is open and its international obligations are met.

This legislation is not inconsistent with our objectives in the Uruguay round of GATT negotiations. In my view, the Fair Trade Enforcement Act of 1992 can only help the Uruguay round by putting teeth in the oft-stated U.S. commitment to fair trade. Real progress in the GATT negotiations may very well depend on our trading partners understanding and believing our commitment.

The need for a strengthened Super 301 will not disappear, even if an agreement is reached in the GATT negotiations. If the round is successful, our trading partners will have to undertake substantial new commitments to remove barriers and open their markets to exports. FTEA would help ensure that these obligations are met. FTEA would also be available to combat trade barriers not addressed in the Uruguay round.

Our bill is balanced, and it is fair. We are simply proposing that our trading partners give American companies the same opportunities we give theirs.

We want to maintain the United States as the most open market in the world. Let us give other countries the incentive required to emulate this standard. I hope that my colleagues will join in supporting the passage of the Fair Trade Enforcement Act of 1993.

No one has been more dedicated to addressing fair trade issues than the Senator from Michigan. I have enjoyed working with him on this legislation immensely, and I look forward to working with him again this year to see that it is passed. We are very pleased that the Senator from Louisiana is joining us in this effort.

Mr. President, I ask unanimous consent that the full text of the bill and a summary of it be printed in the RECORD at the close of my remarks.

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

S. 301

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 "Fair Trade Enforcement Act of 1993".

SEC. 2. PERMANENT STATUS OF "SUPER 301" PROGRAM; MANDATORY PRIORITY PRACTICES.

(a) IN GENERAL.—Section 310 of the Trade Act of 1974 (19 U.S.C. 2420) is amended by striking subsections (a) and (b), by redesignating subsections (c) and (d) as subsections (e) and (f), respectively, and by inserting before subsection (e), as redesignated, the following new subsections:

"(a) MANDATORY IDENTIFICATION.—

"(1) IN GENERAL.—By not later than 60 days after the date in any calendar year on which the report required under section 181(b) is submitted to the appropriate congressional committees, the Trade Representative shall identify priority practices described in paragraph (2) or (3) of this subsection.

"(2) IDENTIFICATION OF PRIORITY PRACTICES.—The Trade Representative shall identify as a priority practice any act, policy, or practice specified under section 181(a)(1), and any other major barrier and trade distorting practice, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent.

"(3) IDENTIFICATION OF SPECIFIC PRIORITY PRACTICES.—

"(A) GENERAL RULE.—The priority practices described in paragraph (2), shall include—

"(i) major barriers and trade distorting practices in the agricultural, manufacturing, and services sectors; and

"(ii) if for any calendar year the United States merchandise trade balance (excluding trade petroleum imports) was in deficit, the major barriers and trade distorting practices of each foreign country that—

"(I) accounted for not less than 15 percent of such deficit, and

"(II) had a global current account surplus for such year in an amount equal to or greater than the amount of the United States' deficit with the foreign country.

"(B) EXCEPTION WHERE CERTIFICATION MADE.—The Trade Representative shall not be required to identify practices with respect to a sector described in subparagraph (A)(i), if the Trade Representative certifies to the Congress for any calendar year that major barriers and trade distorting practices do not exist or have been eliminated with respect to such sector.

"(4) GUIDELINES.—The priority practices identified by the Trade Representative under this section shall reflect—

"(A) the international competitive position and export potential of United States products and services,

"(B) circumstances in which the sale of a small quantity of a product or service may be more significant than its value,

"(C) circumstances in which the practice has the effect of imposing a total or near total barrier to the importation of foreign goods or services, and

"(D) the measurable medium-term and long-term implications of Government procurement commitments to United States exporters.

"(b) REPORT.—

"(1) LIST OF PRIORITY PRACTICES.—At the same time the identification is made under subsection (a), the Trade Representative shall submit to the Committee on Finance of the Senate and to the Committee on Ways and Means of the House of Representatives, and shall publish in the Federal Register, a report which lists—

"(A) the priority practices identified under subsection (a), and

"(B) the amount estimated under paragraph (2) with respect to each such priority practice.

"(2) ESTIMATE OF LOST EXPORTS.—The amount estimated under this paragraph is the total amount by which United States exports of goods or services to each foreign country which has a priority practice identified under subsection (a) would have increased during the preceding calendar year if the priority practices of such country did not exist. For purposes of the preceding sentence, the Trade Representative may use the estimates made under section 181 to the extent appropriate.

"(c) INITIATION OF INVESTIGATION.—

"(1) IN GENERAL.—The Trade Representative shall initiate an investigation under section 302(d), and consultations under section 303(a), with respect to each priority practice identified under subsection (a) or with respect to each priority practice to which a resolution described in subsection (d) applies.

"(2) TIMETABLE OF TRADE REPRESENTATIVE.—Not later than 21 days after the date a report is submitted under subsection (b), the Trade Representative shall submit to the appropriate congressional committees a timetable for initiating and completing the investigation and consultations with respect to each priority practice identified under subsection (a) or to which a resolution described in subsection (d) applies.

"(d) MANDATORY INVESTIGATION INITIATED BY CONGRESS.—

"(1) RESOLUTION BY COMMITTEE.—Upon the adoption by either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate of a resolution that—

"(A) describes a priority practice of a foreign country, and

"(B) states that it is the opinion of the Committee that such priority practice is an act, policy, or practice that is described in section 301,

the Trade Representative shall initiate action under subsection (c).

"(2) JOINT RESOLUTION.—Upon enactment of a joint resolution described in paragraph (3), the Trade Representative shall initiate action under subsection (c).

"(3) JOINT RESOLUTION DESCRIBED.—A resolution is described in this paragraph if it is a joint resolution—

"(A) which is introduced in either the Senate or the House of Representatives not later than 15 days after the date on which the Trade Representative submits the report required by subsection (b),

"(B) which is sponsored by not less than one-fourth of the duly elected and sworn Members of the House in which it is introduced, and

"(C) the matter after the resolving clause of which contains the name of the foreign country, the practices of such country identified as priority practices, and a finding that elimination of such priority practices is likely to have significant potential to increase United States exports, either directly or through establishment of a beneficial precedent.

"(4) APPLICATION OF CONGRESSIONAL 'FAST TRACK' PROCEDURES TO JOINT RESOLUTION.—

"(A) Except as provided in subparagraph (B), the provisions of section 152 (other than subsection (a)) shall apply to a joint resolution described in paragraph (3).

"(B) For purposes of this paragraph—

"(i) section 152(d)(2) shall be applied by substituting '10' for '20',

"(ii) section 152(e)(2) shall be applied by substituting '10' for '20',

"(iii) section 152(f)(2) shall be applied by substituting 'text of the joint resolution described in section 310(d)(3)' for 'texts of joint resolutions described in section 152 or 153(a)', and

"(iv) section 152(f)(3) shall be applied by substituting 'joint resolution described in section 310(d)(3)' for 'joint resolution described in subsection (a)(2)(B)'.

"(5) RULEMAKING POWER.—Paragraph (4) is enacted by Congress—

"(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such it is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

"(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 310 of the Trade Act of 1974, as redesignated by subsection (a), is amended—

(A) by striking "In the consultations" and all that follows through the first comma in paragraph (1) and inserting "In the consultations with a foreign country which has a priority practice identified under subsection (a) or (d),";

(B) by striking "subsection (a)(1)(A)" in subparagraph (A) of paragraph (1) and inserting "this section"; and

(C) by striking "subsection (b)" in paragraph (2) and inserting "this section".

(2) Paragraph (1) of section 310(f) of such Act, as redesignated by subsection (a), is amended to read as follows:

"(1) On the date in each calendar year on which the report the Trade Representative is

required to submit under subsection (b), the Trade Representative shall also submit a report which includes—

"(A) revised estimates of the total amount determined under subsection (b)(2) for each priority practice that has been identified under this section,

"(B) evidence that demonstrates, in the form of increased United States exports to each foreign country with respect to which a priority practice has been identified during the previous calendar year—

"(i) in the case of a foreign country that has entered into an agreement described in subsection (e)(1), substantial progress during each year within the 3-year period described in subsection (e)(1)(A) toward the goal of eliminating the priority practice identified under this section by the close of such 3-year period, and

"(ii) in the case of a country which has not entered into (or has not complied with) an agreement described in subsection (e)(1), the elimination of such practices, and

"(C) to the extent that the evidence described in subparagraph (B) cannot be provided, any actions that have been taken by the Trade Representative under section 301 with respect to such priority practices of each such foreign country.".

(3) Paragraph (2) of section 310(f) of such Act, as redesignated by subsection (a), is amended—

(A) by striking "subsection (a)(1)(A)" each place it appears and inserting "this section"; and

(B) by striking "in any calendar year beginning after 1993".

(4) Section 303 of such Act (19 U.S.C. 2413) is amended—

(A) by inserting "or pursuant to the timetable prescribed by section 310(c)(2)" in paragraph (1) of subsection (a) after "section 302"; and

(B) by adding at the end of subsection (b) the following flush sentence:

"This subsection shall not apply to any consultation involving a priority practice identified under section 310.".

(5) Section 305(a)(1) of such Act (19 U.S.C. 2415(a)(1)) is amended by inserting "and section 301(e)" after "in paragraph (2)".

(6)(A) The heading for section 310 of such Act (19 U.S.C. 2420) is amended to read as follows:

"SEC. 310. MANDATORY IDENTIFICATION OF PRIORITY PRACTICES.".

(B) The table of contents of chapter 1 of title III of such Act is amended by striking the item relating to section 310 and inserting the following:

"Sec. 310. Mandatory identification of priority practices.".

SEC. 3. INVESTIGATIONS, DETERMINATIONS, AND MANDATORY ACTIONS.

(a) INVESTIGATIONS.—Section 302 of the Trade Act of 1974 (19 U.S.C. 2412) is amended by adding at the end thereof the following new subsection:

"(d) INITIATION OF INVESTIGATION FOR SECTION 310 PRIORITY PRACTICES.—Upon the identification of a priority practice under section 310(a) or the adoption of a resolution under section 310(d), the Trade Representative shall initiate an investigation under this chapter (in accordance with the timetable submitted under section 310(c)) and shall publish a notice of such investigation in the Federal Register.".

(b) DETERMINATIONS BY TRADE REPRESENTATIVE.—Section 304(a) of such Act (19 U.S.C. 2414(a)) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4)(A) If an investigation is initiated under this chapter by reason of section 302(d), the Trade Representative shall make an affirmative determination under subparagraph (A) of paragraph (1) that—

"(i) the rights to which the United States is entitled under any trade agreement are being denied, or

"(ii) an act, policy, or practice described in section 301(a)(1)(B) exists.

"(B) Such determination shall be made on or before—

"(i) in the case of an investigation which does not involve a trade agreement, the date which is 12 months after the date on which a timetable is submitted under section 310(c)(2), or

"(ii) in the case of an investigation which involves a trade agreement (other than an agreement on subsidies and countervailing measures described in section 2(c)(5) of the Trade Agreements Act of 1979), the earlier of—

"(I) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or

"(II) the date that is 18 months after the date on which a timetable is submitted under section 310(c)(2).".

SEC. 4. ALTERNATIVE PLAN TO ELIMINATE PRIORITY PRACTICES.

Section 301 of the Trade Act of 1974 (19 U.S.C. 2411) is amended—

(1) by striking "If" in paragraph (1) of subsection (a) and inserting "Except as provided in subsection (e), if";

(2) by inserting "(or upon a determination under section 304(a)(4))" in paragraph (1) of subsection (a) after "section 304(a)(1)";

(3) by adding at the end of paragraph (2) of subsection (a) the following flush sentence:

"In the case of an affirmative determination under section 304(a)(4) involving a priority practice identified under section 310, this paragraph shall not apply unless a joint resolution (described in subsection (e)) permits such application and is enacted into law."; and

(4) by adding at the end thereof the following new subsection:

"(e) ALTERNATIVE PLAN FOR SECTION 310 PRIORITY PRACTICES.—

"(1) In the case of a priority practice identified under section 310 with respect to which an affirmative determination is made under section 304(a)(4), the President shall, not later than 30 days after the date of such determination, direct the Trade Representative to take action under subsection (a)(1) or submit to the Congress an alternative plan described in paragraph (2).

"(2) An alternative plan is described in this paragraph if it—

"(A) provides in detail the action the Trade Representative plans to take to eliminate a priority practice, including—

"(i) any reciprocal limitation, restriction, or action of the kind referred to in paragraph (3),

"(ii) the period of time that will be required to implement fully the plan and the specific interim results that should be achieved under the plan from time-to-time during that period, and

"(iii) the number of jobs to be created and the estimated increase in exports resulting from implementation of the plan;

"(B) cites the legal authorities for taking the measures contemplated by such plan;

"(C) contains, if the President considers that statutory authority is necessary for the implementation of any part of the alternative plan (including the implementation of any reciprocal limitation, restriction, or action referred to in paragraph (3)), appropriate suggested legislative proposals; and

"(D) states the reasons why the alternative plan is preferable to taking action under subsection (a)(1).

"(3) An alternative plan shall provide, in the case of unsatisfactory progress by a foreign country in eliminating the priority practice, for the implementation, for such time as may be appropriate, by the President of a restriction, limitation, or other action that is reciprocal in scope and effect to such priority practice.

"(4) If the President transmits an alternative plan to the Congress under paragraph (2) and a joint resolution described in paragraph (6) is not enacted within the 60-day period beginning on the date on which the alternative plan is transmitted, the Trade Representative shall take action under subsection (a)(1).

"(5) If the President transmits an alternative plan to Congress under paragraph (2) and a joint resolution described in paragraph (6) is enacted within the 60-day period beginning on the date on which the alternative plan is transmitted, the alternative plan shall take effect and the President shall direct the Trade Representative to implement appropriate action in accordance with the terms of such plan to obtain the elimination of the priority practice.

"(6) A joint resolution is described in this paragraph if it is a joint resolution—

"(A) which is introduced in either the House or the Senate not later than 15 days after the date the President submits an alternative plan to Congress under paragraph (2), and

"(B) the matter after the resolving clause of which is as follows: 'That the Congress approves the alternative plan transmitted under section 301(e) of the Trade Act of 1974 to the Congress on .', the blank space being filled with the appropriate date.

"(7)(A) Except as provided in subparagraph (B), the provisions of section 152 (other than subsection (a)) shall apply to a joint resolution described in paragraph (6).

"(B) For purposes of this paragraph—

"(i) section 152(f)(2) shall be applied by substituting 'text of the joint resolution described in section 301(e)(6)' for 'texts of joint resolutions described in section 152 or 153(a)', and

"(ii) section 152(f)(3) shall be applied by substituting 'joint resolution described in section 301(e)(6)' for 'joint resolution described in subsection (a)(2)(B)'.

"(8) Paragraph (7) is enacted by Congress—

"(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such it is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

"(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"(9) For purposes of paragraphs (4) and (5) the 60-day period shall be computed by excluding—

"(A) the days in which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

"(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.".

SEC. 5. ESTIMATION OF BARRIERS TO MARKET ACCESS.

Section 181(a)(1)(C) of the Trade Act of 1974 (19 U.S.C. 2241(a)(1)(C)) is amended by striking ", if feasible,".

SEC. 6. ACTIONS BY THE UNITED STATES TRADE REPRESENTATIVE.

(a) MANDATORY ACTION.—Section 301(a)(1)(B)(ii) of the Trade Act of 1974 (19 U.S.C. 2411(a)(1)(B)(ii)) is amended by inserting "(or threatens to burden or restrict)" after "restricts".

(b) DISCRETIONARY ACTION.—Section 301(b)(1) of such Act (19 U.S.C. 2411(b)(1)) is amended by inserting "(or threatens to burden or restrict)" after "restricts".

(c) DEFINITIONS.—Section 301(d) of such Act (19 U.S.C. 2411(d)) is amended by adding at the end thereof the following new paragraph:

"(10) An act, policy, or practice that threatens to burden or restrict United States commerce is an act, policy, or practice that does not currently burden or restrict United States commerce, but, if not corrected, is reasonably expected to burden or restrict United States commerce.".

OVERVIEW OF THE FAIR TRADE ENFORCEMENT ACT OF 1993

Permanently reauthorizes and strengthens the "Super 301" provisions of the 1988 Trade and Competitiveness Act.

The bill targets for elimination "priority practices" of other countries that unfairly exclude U.S. exports.

Under the bill, USTR is required to identify major barriers and trade distorting practices in each of three specific categories: agriculture, manufacturing, and services.

In addition, USTR must name priority practices of any country with a trade deficit which accounts for 15% or more of the total U.S. merchandise trade deficit (excluding trade petroleum imports).

The Finance or Way and Means Committee may require USTR to commence a 301 investigation with respect to discriminatory practices not cited by USTR. The Congress may also require USTR to take action under Super 301 by passing a joint resolution.

Under the FTEA, the USTR has flexibility to structure negotiations, but the negotiations must be completed within the deadlines. As in the original Super 301, in most cases there would be a one year deadline with additional time, up to a maximum of eighteen months, if dispute resolution procedures under a multilateral or bilateral agreement are available.

If negotiations do not result in the elimination of the discriminatory practice, USTR must impose sanctions.

Sanctions must take the form of equivalent restrictions equal to the cost of the cited priority practice on U.S. commerce.

If USTR recommends against imposition of the mandatory sanctions despite the failure of the negotiations to remove the unfair trade practice, USTR must obtain Congressional approval of an alternative action plan. Congressional approval is conditioned on passage of a joint resolution considered under "fast-track" procedures.

The bill requires the USTR to prepare an estimate of the cost to U.S. commerce of the cited discriminatory practice.

USTR would be required to identify priority practices whether or not they are included in the National Trade Estimate report.

The bill also incorporates the provisions of a bill introduced earlier by Senator Daschle which will strengthen our ability to respond to discriminatory trade practices that threaten to burden or restrict U.S. commerce.

Certain amendments have been made to the 1988 Trade Act to be responsive to the following concerns:

To avoid resentment by countries that complained of being singled out under the 1988 Trade Act, we have eliminated the "priority country" designation. The focus of this bill is on elimination of "priority practices" that constitute unfair barriers to U.S. exports.

We have lengthened the time between release of the National Trade Estimate Report and the date on which the USTR is required to identify "priority practices" from 30 days to 60 days. This may encourage countries to voluntarily remove their trade barriers to avoid having that practice identified under Super 301.

In response to former Ambassador Hill's concern that certain deadlines under the old Super 301 constrained her negotiating flexibility, we have removed the requirement that consultations being within 30 days of the identification of the practice under Super 301. The bill requires USTR to establish a plan of action for consulting and removing the barrier to U.S. products and services.●

● Mr. LEVIN. Mr. President, the legislation introduced yesterday builds on the bill Senator DASCHLE and I first introduced in 101st Congress after the Bush administration failed to enforce the Super 301 in 1990. Although that law was intended to get the administration to target priority unfair trade practices for negotiations, in 1990, the second and final year of the Super 301 legislation, the administration named no new countries or practices and only continued the identification of India.

The Bush administration, like those for 20 years before it, said it made progress on trade. But the results didn't match the rhetoric as we continue a hemorrhaging loss of manufacturing jobs. This is particularly true with regard to Japan.

Over the past 12 years, the United States has lost 2.6 million manufacturing jobs. Ten percent of these jobs were lost in Michigan. Japan gained 2.1 million manufacturing jobs over the same period.

Back in 1970, President Nixon said after meeting with Prime Minister Sato that Japan intended "to accelerate the reduction and removal of its restrictions on trade." In 1974, President Ford said Japan will negotiate "to reduce tariff and other trade distortions." In 1984, President Reagan said "Japan has made considerable progress in opening its markets further to American products, and we are confident we'll see more progress in the months ahead." In 1991, President Bush said it is time "to move ahead" on trade, (The United States and Japan) have "made solid progress" in easing trade tensions.

Our trading partners no longer take these threats seriously. Japan's Prime Minister Miyazawa recently said, "Whenever there is a new Administration, they always blow a lot of hot air, but after several months, it quiets down."

This lack of action is reflected in a 1992 annualized U.S. trade deficit of $82 billion and a 1993 U.S. trade deficit that is expected to surpass $100 billion. Two-thirds of our total trade deficit is with one nation, Japan. In 1991, our trade deficit with Japan was $43.4 billion. The 1992 deficit, when the final data is available, is expected to be even higher. So, United States trade policy should give a very high priority to Japan. We should use our trade laws aggressively to open Japan's markets. We must adopt the rule of reciprocity to achieve fair trade

One obvious target for trade action is the auto parts sector. In 1991, the automotive trade deficit comprised a whopping 74 percent of the United States-Japan trade deficit. The auto parts portion of that deficit was $9.2 billion alone. These huge deficits loom while Japan protects its home automotive market to the tune of allowing only 3 percent total foreign penetration. United States auto parts compete everywhere in the world, but they are effectively kept out of Japan's market. No State feels the negative effect of this unlevel playing field more profoundly than Michigan.

If another country decides to restrict their markets to U.S. products, that's their decision. But if we tolerate it, that's our decision. We should fight back—with our Government being a partner in the effort of U.S. industries to survive and thrive.

The Super 301 trade law was intended to require action, and produced some results when it was used. But it was abandoned in practice in 1990, the second and final year it was in effect. The U.S. Trade Representative's 1990 Report on Foreign Trade Barriers included 20 pages of Japanese trade barriers, 12 pages of Canadian barriers, and another 12 pages of EC barriers, yet only India was identified in 1990 for continued negotiations under Super 301. And when no agreement was reached with India, no action was taken as a result.

We don't need to recreate the wheel, but we do need to use it and improve it. Super 301 is the basis of a good idea, but without strengthening it and using it, it's more often than not a toothless tiger. It is not enough to simply renew Super 301. We must strengthen our negotiators' hands and increase our chances of success in opening closed markets by requiring action when fundamental trade fairness demands it.

President Clinton's economic plan, putting people first, acknowledges the need for stronger trade law. It calls for passage of a "stronger, sharper super 301."

The bill Senator DASCHLE and I introduced last year and are reintroducing today is consistent with the President's request for stronger, sharper

super 301 legislation. It extends the old super 301, but strengthens it in some key respects. It provides criteria to ensure that the law is used each year there are major barriers to our products, and it requires equivalent restrictions should the negotiations fail to eliminate the identified barriers. This legislation is intended to boost America and defend American jobs the way other governments defend their jobs.

Under this proposed super 301 procedure, each year, the U.S. Trade Representative must identify as priority practices major trade distorting barriers or practices in the agricultural, manufacturing and service sectors, and must also include trade distorting practices of any country comprising 15 percent or more of the total U.S. trade deficit. Once priority practices are identified, an investigation and negotiations are initiated in each case.

This legislation seeks to open markets unfairly closed to our products by making a strengthened version of super 301 a permanent part of our trade law. It would require the administration to attempt to negotiate away the most harmful trade barriers to American agriculture, manufacturing, and services. If negotiations fail to eliminate those barriers, this bill would require equivalent restrictions be placed on that country's products equivalent to the cost of those discriminatory practices to our businesses. The requirement for equivalent restrictions is the key to this bill. They are essential to successfully getting rid of the trade barriers that cost the United States so many jobs.

Under our bill the administration may waive the equivalent restrictions only with congressional approval. This process differs from former super 301 which allowed the administration a waiver for economic or national security reasons. Our bill further differs from former super 301 in that our legislation would require equivalent restrictions if negotiations fail. Our bill effectively uses access to our market to dramatically strengthen the hand of our negotiators because the individuals on the other side of the table will know for the first time what will happen if the practices are not eliminated.

There is clear precedent for using equivalent restrictions to change behavior. There is a little known office in the State Department called the Office of Foreign Missions. Its role is to remove costly and unfair restrictions on American diplomats abroad. It does this by placing equivalent restrictions on the other country's diplomats in the United States. For instance, when Ecuador placed a 25-percent tax on telephone charges at the American Embassy in Ecuador, we put an equivalent tax on telephone charges at the Ecuadoran Embassy here. As a result, Ecuador's foreign ministry has recommended that the tax be dropped.

Similarly, when The Netherlands applied their VAT tax to the United States mission in The Netherlands, we responded by applying our sales tax to their mission here. The Netherlands has now agreed to reimburse us for the VAT tax.

Requiring equivalent restrictions is a common sense policy which we should surely apply to restrictions on American exports and not just to restrictions on American diplomats. Our policy of placing equivalent restrictions on foreign diplomats when they place restrictions on ours has not started a diplomatic war; it has usually eliminated the restrictions.

Why are we so willing to defend our diplomats from unreasonable and costly foreign restrictions, but we have not been willing to do the same for American jobs and American companies? We ought to stop begging and stop pleading and just simply place equivalent restrictions on foreign products until they remove the discriminatory restrictions from our products. The bill we are introducing will do just that. We have lost hundreds of thousands of well-paying jobs to unfair trade practices and it has to stop.

Mr. President, American manufacturers and farmers are ready, eager and able to compete, but it is up to the Government to ensure that they have access to foreign markets. Ensuring that other countries trade fairly will go a long way to helping bring our soaring deficit into balance. We won the cold war by being strong. We will not win the economic contest ahead by keeping one hand tied behind our back. This legislation will help ensure that we have a strong trade policy, based on fairness, and the necessary tools to ensure a strong economic future.•

COMMENDATION OF LARRY BLOOM AND THE CINEPLEX ODEON CORP.

• Mr. SIMON. Mr. President, recently, Chicago Alderman Larry Bloom and the Cineplex Odeon Corp. reached an agreement designed to reduce violence in and around movie theaters in Chicago. The Cineplex Odeon Corp. has agreed to avoid concentrating violent films in certain areas of the city and to be sensitive to community concerns about violence.

By the age of 16, the typical child has seen over 200,000 violent acts, including over 30,000 murders, on television and in movies. There is no doubt that entertainment violence is absorbed and imitated—especially by children. Violence in movies and on television is adding to violence in our society. Recently, the entertainment industry has taken steps to address this problem. I am pleased that they will be meeting in the spring to discuss what further steps can be taken.

This agreement is an excellent example of how business and government can work together to improve the community. I commend Alderman Larry Bloom and the Cineplex Odeon Corp. for their efforts.•

THE 35TH ANNIVERSARY OF COUNTRY MUSIC ASSOCIATION

• Mr. SASSER. Mr. President, I rise today to call attention to the 35th anniversary of the Country Music Association, which is headquartered in my hometown of Nashville, TN: Music City, U.S.A. This celebration will be marked on February 6, 1993, with a special on the CBS television network.

It is fitting that this anniversary comes at a time when country music has gained newfound popularity throughout America. Part of country music's appeal stems from the fact that it is uniquely American. Beginning in rural areas with its roots in American folk songs and spirituals, country music can express basic human emotions and ideals we all share: joy, sadness, faith in God, reverence for nature, pride in country, and love of family. Country music has played an integral part in our Nation's history, reflecting the ethnic and cultural diversity of the American people.

Country music has long had a strong regional appeal, but over the past several years, it has become the music of mainstream America. Between 1990 and 1991, there was a gain of over 6 million new country music listeners and more than 2,500 country music radio stations. In 1991, country music albums made up almost 20 percent of the albums on Billboard Magazines Top 200 list. As a result, there has been an increase in the number of country-music television specials on the major networks and country radio continues to expand. Country music has even taken root in many European countries as well as Japan. While some aspects of Americans culture are reviled in these nations, country music thrives. This serves as a testament to the appeal of country music.

The Country Music Association has been the driving force behind this success. Founded in 1958, the Country Music Association was the first association to promote a type of music. Each year, the association produces a glamorous awards shows, live from the Grand Ole Opry House, as well as a fan fair celebration in Nashville where thousands of country music fans can meet the top talent in country music. The source of the association's success can be found in its ability to change within the industry, while not straying from its mission to foster interest in country music.

All Americans should be proud that this pure American form of music is not in the hearts and souls of Americans as a result of the support of the Country Music Association and its many members. I take this opportunity

to congratulate the association on their 35th anniversary, and wish them many more successful years.•

NATIONAL CHILD PASSENGER SAFETY AWARENESS WEEK

• Mr. BINGAMAN. Mr. President, I would like to bring to your attention the fact that February 8–14 of this year is National Child Passenger Safety Awareness Week. While we all agree that child safety should be a year long—and life long—activity, citizens in New Mexico are using this week to focus statewide attention on the need to secure our children safely while riding in vehicles.

Recently, my home State has achieved an admirable seat belt usage rate for adults, and as a result, New Mexico had the lowest number of traffic fatalities in 25 years. However, we have been neglecting our children. It pains me to report that statistics related to childhood motor vehicle deaths in New Mexico are grim: they have doubled in the past 2 years. A review of the State's traffic fatality reports shows that for the 18 children, ages 5 and under, who were killed on New Mexico roadways in the past 3 years, only one was properly secured.

Motor vehicle crashes are the number one cause of death and injury for children, nationwide. They are also the most preventable. The cure is in our hands. Proper and consistent use of car seats and seat belts can be the most protective measure we can provide for our children. If all care givers would use car seats and seat belts for children, as well as for themselves, the number and severity of deaths and disabilities from motor vehicles would be dramatically reduced. According to the National Highway Traffic Safety Administration, 80 percent of vehicle crash deaths and injuries could be prevented for children under the age of four through the proper and consistent use of car seats.

Earlier this year, the New Mexico Department of Health provided a contract to Safer New Mexico Now, a non-profit traffic safety organization, to encourage, assist, and enhance child passenger safety education, services, and training programs. During the National Awareness Week, communities all around New Mexico are working to direct attention to the importance and value of safe transportation of our children. The Governor of New Mexico issued a proclamation designating the week in New Mexico. Volunteers are distributing information to parents, staffing exhibit tables at prominent locations, encouraging retail stores to sell car seats at discounted prices, conducting car seat surveys, working with hospitals and clinics to implement and expand low-cost car seat programs. Media personnel are featuring public service announcements and news segments about car seats and seat belts for children. Pediatricians are being asked to highlight child passenger safety issues with their clinics. Law enforcement personnel are playing a visible role in enforcing car seat use and sharing information with parents on the need to properly secure their children.

Today, I ask my esteemed colleagues in the Senate to join with me in commending the citizens of my home State of New Mexico on this commitment to saving children's lives. Nationally each year, nearly 700 children under the age of five are killed in auto accidents. These children deserve a chance to live and we can all play a pro-active part in giving them that chance: secure your children in vehicles. Buckle up. Take the pledge with New Mexicans to start a habit with your children that can last a lifetime, their lifetime.•

TRIBUTE TO MICHELLE AKERS-STAHL

• Mr. GRAHAM. Mr. President, it is no accident that I have chosen today to honor Floridian Michelle Akers-Stahl. Last year, Congress passed a commemorative bill designating the fourth of February as the National Women and Girls in Sports Day. It is on this occasion that, on behalf of the citizens of Florida, I rise to honor this outstanding citizen and athlete.

Michelle Akers-Stahl is not only a world-renowned soccer player, but she is also a leading proponent of women's and children's athletic programs. Her hometown of Oviedo, FL, the University of Central Florida, where she is currently assistant coach, and soccer fans throughout the Sunshine State, are proud to claim this native Floridian.

Michelle Akers-Stahl has been described as the best female soccer player in the world. While attending the University of Central Florida, she was named four-time "All-American." She is best known, however, for her integral role in capturing the Women's 1991 World Cup Championship for the United States. This marks the first World Cup victory for a U.S. team.

It is difficult to believe that this world champion soccer player has not already earned in Olympic medal. Yet it was only last September that Congress passed a concurrent resolution to encourage the Olympic Committee to include women's soccer as an Olympic medal sport. The United States would likely win a gold medal in women's soccer with this talented woman leading our national team. I am hopeful that all Americans will have the opportunity to support Michelle and her teammates at the 1996 centennial Olympic games in Atlanta, GA.

Please join me in honoring Floridian Michelle Akers-Stahl on this day dedicated to female athletes.•

FREDERICK EVANS: AN ILLINOIS ASSET

• Mr. SIMON. Mr. President, today, I would like to commend a very special young man from Illinois. His name is Frederick Evans and he is a 16-year-old sophomore at the Lincoln Senior High School in East St. Louis, IL.

Frederick is a member of the Principal Scholars Program at Lincoln, he serves on the deacon board at his church, and he is a member of the African-American Awareness Committee. In his spare time, he enjoys fishing and baseball.

Frederick was in Washington for the inaugural at the request of President Clinton. He, and five other youths traveled the parade route on inauguration day and distributed hundreds of "Prevention Works" lapel pins featuring the President's trademark saxophone. Frederick, who is himself a prevention success story, wore a sweatshirt that said, "We have better things to do than drugs." There is no doubt that this is true is Frederick's case. He is a very busy person.

"Prevention Work" is the theme of a U.S. Center for Substance Abuse Prevention public education program to let Americans know that prevention efforts around alcohol, tobacoo, and other drugs are working and save lives and health care dollars.

Frederick Evans is a special person in credit to Illinois and is an example to all young people, not just those in trouble with drugs.•

"I688+"

• Mr. D'AMATO. Mr. President, not surprisingly, my statement proposing an "I688+" attack submarine has ruffled feathers among some of my colleagues who continue to support either the *Seawolf*, the *Centurion*, or both. To reiterate, by I688+ I mean a baseline I688-class sub with the inclusion, on a case-by-case basis, of new technologies, *Seawolf*-derivative or not, that are more affordable than those currently fielded by the I688-class, offer identical or improved capabilities, and match or better both the weight and space footprints and the power and cooling requirements of the systems or components being replaced.

To my distressed friends, let me make two points, and then offer a challenge. One, affordability will drive all submarine decisions for the foreseeable future. Two, if the submarine industrial base is to survive, we must fund a submarine this year.

Now the challenge. Gerald Cann, Assistant Secretary of the Navy for Research, Development, and Acquisition, testified before Congress last year that an internal Navy estimate indicated that "the first ship would be around $1.4 billion and the second ship would be in the order of $1.2 billion" were the Navy to restart the I688 line. This esti-

mate, coming as it does at the end of the I688 Program, represents hard numbers. I consider it a baseline.

For those who support either *Seawolf*, *Centurion*, or both, $1.4 billion is the number you have to beat with your lead ship, or, in the case of *Seawolf*, hull No. 3. Not someday, but this year, fiscal year 1994. I welcome any briefing, any material, any idea that puts forward a credible, cheaper, comparably capable alternative to an I688+. Show me, and such detail that I can, when convinced, bring your arguments before the experts among us with some hope of successfully enlisting their support.•

HONORING THE TUCSON METROPOLITAN CHAMBER OF COMMERCE MAN AND WOMAN OF THE YEAR AND THE RECIPIENTS OF THE FOUNDERS AWARD

• Mr. DECONCINI. Mr. President, on February 12, 1993, four outstanding individuals will be honored by the Tucson Metropolitan Chamber of Commerce. These individuals follow a long tradition of men and women who have contributed leadership, support and inspiration to our community. The honorees are George Miraben, Man of the Year, Louise Thomas, Woman of the Year, and Gordon Packard and Nancy Bissell, corecipients of the Founders Award.

I would like to take a moment of the Senate's time to share with my colleagues the achievements of these fine individuals.

George Miraben is most known for his tireless efforts on behalf of the United Way of Greater Tucson. George worked extensively as a public relations and communications expert as well as a chief fundraiser and chairman of the board for the Tucson United Way. His fundraising efforts in 1990 set an all-time record for Tucson United Way contributions. In fact, he was recently recognized for these achievements by being presented with the National Society of Fund-Raising Executives' Volunteer Fundraiser of the Year Award.

George's volunteer work extends even further. He is active in many organizations including: director of the American Cancer Society, the Downtown Development Corp., Chicanos Por La Causa, the Arizona Sonora Desert Museum Foundation, and the Wellness Council of Tucson.

Louise Thomas' contributions to our community are best seen through her dedication to the Tucson Ronald McDonald House. She is a founding member of the board of trustees and the Children's Auxiliary for the Ronald McDonald House, and in 1983, founded the Angel Charity for Children. Under Louise's direction, the nonprofit Angel Charity has raised an incredible six million dollars for Pima County children's charities.

Because of her extensive involvement with numerous community organizations and societies, Louis accrued a vast number of honors and awards. These include the Distinguished Citizens Award presented by the College of Medicine and the University of Arizona Alumi Association, the Outstanding Volunteer Fundraiser of the Year Award by the National Society of Fund-Raising Executives, the Good Samaritan Health Services "Sammy" Award, the YWCA Women on the Move Award and the Roots and Wings Outstanding Dedication Award.

The corecipients of the 1992 Founders Award are Gordon Packard and Nancy Bissell. No words could accurately reflect the time, commitment and charity that they have given to the unfortunate and homeless in our city. For the last 10 years, Gordon and Nancy have volunteered their lives to the Primavera Foundation, an organization they founded which is dedicated to providing aid to over 500 homeless and jobless men and women.

Gordon has dedicated himself to a number of other organizations that offer assistance to the homeless. He is a member of the Board of Directors for the National Coalition for the Homeless, was a cofounder of the Southern Arizona Coalition for the Homeless, and is Chairman of Housing Now. Nancy also worked extensively as a volunteer in the Peace Corps in La Paz, Bolivia as well as the St. Martins Center Soup Kitchen, sponsored by the Episcopal Diocese of Arizona.

Both Gordon and Nancy have been honored as recipients of several awards for their outstanding community involvement including the Good Samaritan Award and the National Association of Social Workers Community Service Award.

I would like my colleagues to join me in congratulating all the recipients at this year's award ceremony. The lifelong dedication exhibited by these four individuals is certainly deserving of praise and admiration. Our community benefits immensely from their work, and they serve as role models for all whose lives they touch.•

BRITANNICA'S 225TH ANNIVERSARY

• Mr. SIMON. Mr. President, I am pleased to take this opportunity to recognize Encyclopedia Britannica on its 225th anniversary. The Encyclopedia Britannica is based in my home State of Illinois, and is the oldest English language encyclopedia in continuous publication. The Britannica requires no lengthy introduction because all my colleagues here in the Senate have probably referred to this invaluable resource at one time or another. And no one who uses it can help but be impressed by how extensive and thorough it is. Now comprising 32 volumes and three parts, the Encyclopedia covers an incredible array of topics.

This renowned reference work was born in Edinburgh, Scotland, in 1768. It was the brainchild of three men: William Smellie, an editor; Andrew Bell, an engraver; and Colin Macfarquhar, a printer. They pooled their money and talents and created the first edition of what was to become a literary institution. That first edition contained 2,689 pages in three volumes, with 160 full-page copperplate engravings. It consisted of 44 treatises on major scientific systems, 30 other articles three or more pages long, and hundreds of dictionary entries. The entries ranged from extensive do-it-yourself advice to short and succinct definitions.

In 1768, in the midst of the industrial revolution, the Encyclopedia Britannica attracted little notice. But with time, it proved more durable than many other creations of that era. George Washington paid a guinea for a lottery ticket to win a copy of the Encyclopedia and lost, but he then went out and bought his own. Washington liked it so much that he wrote Alexander Hamilton, urging him to purchase one as well.

Sir Walter Scott, James Mill, Ricardo, Malthus, Hazlitt, John Playfair, and Lord Jeffrey were all early British contributors. Over the years, figures such as Algernon Swinburne, Robert Louis Stevenson, Stephen Leacock, Edward Everett Hale, H.L. Mencken, Sir Julian Huxley, Lin Yutang, Herbert Hoover, Douglas MacArthur, George Bernard Shaw, Sigmund Freud, Leon Trotsky, and Albert Einstein all contributed, demonstrating the unique breadth and variety of the entries.

More than 6,800 authorities contributed to today's edition, including Isaac Asimov, Edith Simon, Hans Morgenthau, Nicholas Katzenbach, C. Northcote Parkinson, Irving Wallace, Edmund Muskie, Jacques Barzun, Loren Eiseley, Nigel Calder, Ashley Montagu, and David Ben-Gurion.

In addition to its role as one of the leading reference publishers in North America, Encyclopedia Britannica also markets its products in more than 100 countries around the world. To help commemorate its 225th anniversary, Britannica is reissuing a replica of its first edition.

Today, under the able leadership of Robert P. Gwinn, Encyclopedia Britannica maintains its reputation by keeping pace with current events and developments. Mr. Gwinn has been publisher for nearly 20 years, and served as a director and a member of Britannica's executive committee for 14 years prior to that. Under Mr. Grinn's direction, Britannica has also become an internationally esteemed publisher of video and computer software products, many of which are among the leading educational tools in use today. Encyclopedia Britannica has moved

into a host of new enterprises and into an era an unequaled profitability.

Encyclopedia Britannica has enriched the lives of millions throughout the world for over two centuries. The motto of the University of Chicago, used for every edition of the Encyclopedia Britannica, is "Let Knowledge Grow From More to More and Thus Be Human Life Enriched." Britannica has lived up to this motto for 225 years, and it will certainly continue to do so for many years to come.•

THE 75TH ANNIVERSARY OF UKRAINIAN INDEPENDENCE DAY

• Mr. RIEGLE. Mr. President, I would like to take this opportunity to add my voice to the millions of Ukrainians all over the world celebrating the 75th anniversary of the establishment of a sovereign and independent Ukraine. On January 22, 1919, at a mass demonstration in Kiev, Ukrainians adopted a proclamation which not only affirmed their independence and the existence of the United Ukrainian Republic, but also affirmed many of the democratic freedoms which we, as Americans, hold so dear.

The Proclamation of 1919 guaranteed freedoms of speech, press, religion, assembly the freedom to strike, and other basic human rights for the Ukrainian people. The Ukrainian proclamation also embraced the ideal of national-personal autonomy for minorities and affirmed the individual rights of members of each minority.

This independence from czarist Russian domination proved to be short lived and within 3 years this young republic was tragically overrun by the superior military forces of the Russian Bolsheviks. For the next 70 years, the Ukrainian people suffered greatly at the hands of the Soviets. Under Soviet control, Ukrainian political self-determination was stifled and basic human liberties were denied. The Ukrainian people, however, endured the brutal repression of a regime which sought to break their spirit. Despite this horrible repression, including the fiendish government-planned famines of 1932 and 1933 which resulted in the deaths of three to eight million Ukrainians, the Ukrainian spirit survived.

It is this undying spirit of a courageous people which burst forth on August 24, 1991. On that date, after the coup d'etat which occurred in the U.S.S.R. 5 days earlier, the Ukraine again declared itself an independent nation. As a long-time supporter of Ukrainian independence, I was proud to finally see the realization of this long sought dream. The people of Ukraine managed to survive as a nation, with their own language, culture, and historical experience. The original proclamation of January 22, 1919 was a symbol to which all the Ukrainian people could look as they strove for the reclamation of independence, finally achieved on that glorious day in 1991.

Since declaring its independence, Ukraine, following the example set in 1919, has pledged itself once again to the ideals of ethnic and minority rights. The Ukrainian Republic has announced a pledge to adhere to the principles of the Helsinki Final Act and the Charter of Paris, which embody respect for human rights and democratic values. Finally, the Ukrainian Legislature is currently preparing a new constitution, which promises to embody democratic values, for which the Ukrainian people were denied under Soviet repression.

As a young country, little more than a year old, Ukraine faces formidable challenges. This new nation currently endures a tense relationship with Russia in the Commonwealth of Independent States due to disagreements over economic reform, the status of the Black Sea fleet, and control over the Crimea. In addition, Ukraine suffers under a sluggish economy which is preventing the country's further progress. While Ukraine provided 20 percent of the Soviet agricultural production and 17 percent of its industrial output and is rich in natural resources, its dependence upon the other CIS countries and political confusion over economic reforms has prevented the new government from making efficient use of its resources.

As Ukraine embarks upon its bold journey as an independent country with a Democratic tradition, the United States, in concert with other nations, must do every thing possible to help Ukrainians finally achieve their goal of stability and freedom. I applaud our Government's commitments to assist Ukraine as it makes the transition to freedom. I believe we must support the courageous Ukrainian people who stand for the same ideals which Americans enjoy. It is very important that our current commitments of humanitarian relief and technical assistance continue so that the Ukrainian people, who fought so long and so diligently for their rights and freedom, never again have to endure the shackles of foreign dominance.•

TRIAL BALLOONS

• Mr. SHELBY. Mr. President, over the past week we have heard a number of so-called trial balloons regarding various spending cuts or tax increases that have emanated from the other end of Pennsylvania Avenue. I salute President Clinton for his willingness to make reducing the annual Federal deficit a top national priority. I plan to support him whenever possible in this most important undertaking. However, I cannot and will not support any reduction in the Social Security COLA. I want to thank the chairman of the Finance Committee, Senator MOYNIHAN, for quickly shooting this trial balloon out of the sky. I hope that his quick action on this matter will prevent the idea from resurfacing when the Congress considers the President's budget proposal.

Mr. President, this is not the first time that the idea of reducing COLA's has been thrown about in spending reduction discussions. I am sure that it will not be the last time that we propose to balance the budget on the backs of the elderly and the disabled. For this reason, I would like to take a few minutes to speak about the absurdity and injustice of this idea. Shared sacrifice in dealing with the deficit does not mean a freeze in Social Security COLA's. Any downward change in the current COLA formula would mean that a Social Security recipient's benefits will no longer keep pace with inflation. The current formula is tied to the Consumer Price Index. A reduction in the COLA calculation will incrementally reduce the purchasing power of a Social Security check, decreasing its real value on an annual basis.

Mr. President, be assured that very few Americans who are receiving Social Security are investing their benefits in mutual funds. One-fifth of elderly Social Security recipients had family incomes of under $10,000. A full 70 percent of elderly recipients have no more than $30,000 per year in household income. Over one-third of elderly recipients have incomes that place them below the poverty line. Social Security often covers the small margin between dire poverty and survival for recipients. Four-fifths of aged recipients who live alone derive half to all of their income from Social Security. This means that their income goes to pay rent or mortgage payments, food and utility costs, and, not least of all, increasingly expensive medical bills. Reducing the COLA will only shrink the margin of comfort and security for most recipients. Zero percent inflation will never be a reality in a free market economy. Could we really take an action on the COLA calculation that will be guaranteed to worsen the living conditions of most recipients on an annual basis. In good conscience, I cannot and will not support any such effort.

Mr. President, this year's COLA will be only 3 percent. This is the second lowest increase in the last four decades. Perhaps it is easier in the years with lower inflation, and therefore lower COLA's, to think that the COLA formula can be adjusted downward. I suppose that some of the so-called policy experts assume that the difference between a $40 increase and a $50 increase in benefits will not be noticed. However, the amount of an increase is not at issue here. The purchasing power of a Social Security check is the real heart of the matter.

Anything less than an inflation rate adjusted COLA is guaranteed to reduce

the real value of benefits. In addition, let us not forget that despite overall low inflation during the past years, medical costs have soared at double digit rates. This ever increasing cost falls heaviest on the elderly and disabled citizens who are dependent upon Social Security.

Mr. President, I am deeply disturbed by another issue that is raised by this proposal. At issue is the concept of shared sacrifice. I have heard repeatedly in the past few days about the need for the elderly to sacrifice for the good of their grandchildren and children. How can I tell my constituents, young and old, that the elderly have to sacrifice their Social Security COLA's when the Social Security trust fund is expected to be around $400 billion by the end of the year.

This is exactly what the floaters of this trail balloon expect me to do. Why, Mr. President? We know the answer. This proposal takes the mask off the fact that the Government is using the trust fund to offset the deficit. It is a trust fund in name only. We are using excess Social Security revenues as operating funds under the guise that we will pay the fund back at some point in the future. Mr. President, Social Security taxes are bringing in more than we are paying out in benefits. Using these excess collections to finance other Government spending is deceptive to the elderly and to the working age population. We are asking the elderly to sacrifice because their benefits are not in a trust fund. Rather, we are using the taxes that should pay for present benefits and prepare us for the retirement of future generations to finance the present deficit.

If the Congress were the trustee of a private trust fund, it would be removed for mismanagement. The elderly are asked to sacrifice because of our mismanagement. If the fund existed as it was supposed to, as an actual trust, then we would not have to soak the elderly to pay for the deficit.

This is not simply an issue of old versus young. The use of excess Social Security tax collections to pay for present expenses is an extra burden on working, younger Americans. Part of the Social Security tax is not old age insurance, it is another form of income tax on working Americans. We levy huge Social Security taxes on working Americans, telling them that we are saving for their retirement. In reality we are hiding an extra withholding tax and spending the rest to pay for present Social Security benefits.

As the present working population ages they will have to pay more in taxes to cover the empty trust fund that they thought they were paying into. Or they will be asked to sacrifice again because we have spent the tax receipts ostensibly marked for their retirement. This is not a generational issue, Mr. President. The current COLA suggestion reveals a deeper problem in how we tax Americans and manage the Social Security trust fund. The current set of practices threatens every generation of Americans.

To conclude, Mr. President, I hope that there is no intention on the part of the President to pursue this proposal; that this is in fact a trial balloon that has run out of helium. However, I wish to assure my constituents, my colleagues, and all Americans, that I will stand vigorously against any reduction in Social Security benefits. I am sure that many of my colleagues will join me in this effort.•

AZERBAIJANI BLOCKADE OF ARMENIA

• Mr. RIEGLE. Mr. President, I rise today to call attention to the tragedy facing the Armenian people this winter. Just 2 weeks ago, an explosion in Georgia destroyed the only gas line which supplied the Armenian capital. This devastating event left the already beleaguered city without any electricity or heat to protect the populace against the near freezing temperatures of the Armenian winter. Even with the eventual repair of this vital pipeline, however, the Armenian people might only receive a scant few hours of electricity each day. This emergency alone might be overcome but it is magnified by many other devastating problems including: no public transportation; no newspapers; and no fresh water. What food is available, is too expensive for the average Armenian to afford. In addition, the colder winter and a sewage system which is in great disrepair bring numerous medical problems for which there is precious little medical help available. The once proud Armenians are now forced to scavenge the streets for firewood and tens of thousands face possible death by exposure and starvation.

This tragedy is the result of the brutal blockade which Azerbaijan has imposed upon the people of Armenia as a result of the two countries' conflict over Nagorno-Karabakh. Over the past 4 years, Azerbaijan has forced Armenia to its knees with this unrelenting policy. Humanitarian relief which appears to be readily available, has not been able to reach Armenia; and, the possibility of settlement seems dim.

This war imposed by Azerbaijan is doubly cruel, when one considers that it came upon the heels of the 1988 earthquake. That earthquake destroyed nearly half of Armenia's industrial base and left many people homeless. Nevertheless, it is the Azerbaijani blockade which now brings this young country to its knees, its economy to a standstill, and threatens to leave thousands dead from starvation and malnutrition. Despite numerous calls for cease-fires, the war and blockade continues.

Recently, the U.N. Security Council called for emergency fuel and humanitarian assistance to be sent to Armenia and for the end of the cruel blockade by Azerbaijan. I have joined with other Senators, including Senators SIMON and DOLE, in writing to Secretary General Boutros-Ghali urging him to use all of his available powers to ensure that aid reaches Armenia and to further the Minsk process in order to peacefully settle the problem over Nagorno-Karabakh. The letter specifically requests the Secretary General to urge neighboring States to facilitate the delivery of humanitarian supplies and to press for a dialog between the parties to obtain a cease-fire in the area. I applaud these efforts to bring a peaceful settlement to the emergency situation in Armenia.

I co-sponsored a bill during the 102d Congress which demanded that Azerbaijan halt its blockade of Armenia, respect the human rights of Armenians and other minorities living in Armenia, and participate constructively in international efforts to resolve peacefully and permanently the conflict in Nagorno-Karabakh. Under this bill, the United States would be prohibited from providing any assistance to the Government of the Republic of Azerbaijan, unless the President determined that the above requirements were met. I would again support such measures to end the brutal repression of the Armenian people.

Armenia once had a promising future, being the first republic to declare its independence and to reestablish democracy after the disintegration of the U.S.S.R. This ruthless Azerbaijani blockade has prevented the Armenian people from establishing democracy and a free market system. We must make sure that these proud people and their country are allowed to again enjoy their freedom and economic independence. The United States must do all it can to end the violence in this area and prevent the pointless suffering of thousands in Armenia.•

NATIONAL BURN AWARENESS WEEK

Mr. FORD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 20, National Burn Awareness Week; that the Senate proceed to its immediate consideration; that the joint resolution be deemed read a third time, passed, the preamble agreed to; that the motion to reconsider be laid upon the table; that any statements relative to the passage of this item appear at the appropriate place in the RECORD.

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

So the joint resolution (S.J. Res. 20) was deemed read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, is as follows:

S.J. RES. 20

Whereas the problem of burn injuries and death in the United States is one of the worst of any industrialized nation in the world;

Whereas burn injuries are one of the leading causes of accidental death in the United States;

Whereas every year over 2,000,000 people in the United States are victims of some form of burn injury, and children account for between one-third and one-half of this total;

Whereas of the number of people injured by burns over 70,000 are hospitalized, resulting in 9,000,000 disability days and $100,000,000 in costs annually;

Whereas over 6,000 people die from burn injuries annually, and the rehabilitative and psychological impact of burns is devastating;

Whereas young children are in the highest risk group suffering from hot liquid burns and injuries caused by child fire play and fire setting;

Whereas older adults and the disabled are also at great risk and extremely susceptible to burn injuries;

Whereas burn survivors often face years of costly reconstructive surgery and extensive physical and psychological rehabilitation in overcoming disabilities of fears of rejection by family members, friends, coworkers, schoolmates, and the general public;

Whereas it is estimated that approximately 75 percent of all burn injuries and deaths could be prevented by a comprehensive national educational and awareness campaign and by changes in the design and technology of homes and consumer products;

Whereas general public awareness of the need for smoke detectors and home fire escape plans, in combination with an understanding of the risk associated with items in the home environment, can cause a reduction of injuries and loss of life; and

Whereas there is a need for an effective national program that deals with all aspects of burn injuries and burn prevention: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the weeks of February 7, 1993, through February 13, 1993, and February 6, 1994, through February 12, 1994, are designated as "National Burn Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States and all Federal, State, and local government officials to observe those weeks with appropriate programs and activities.

MEASURE REFERRED TO LABOR AND HUMAN RESOURCES COMMITTEE—S. 267

Mr. FORD. Mr. President, I ask unanimous consent that S. 267 be discharged from the Governmental Affairs Committee and referred to the Labor and Human Resources Committee.

The PRESIDING OFFICER. Without objection, it is ordered.

READING OF WASHINGTON'S FAREWELL ADDRESS

Mr. FORD. Mr. President, I ask unanimous consent that, notwithstanding the resolution of the Senate of January 24, 1901, on Tuesday, February 23, 1993, immediately following the prayer and the disposition of the Journal, the traditional reading of Washington's Farewell Address take place, and that the Chair be authorized to appoint a Senator to perform this task.

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

MEASURE INDEFINITELY POSTPONED—S. 5

Mr. FORD. Mr. President, I ask unanimous consent that calendar No. 3, S. 5, be indefinitely postponed.

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

ORDERS FOR TUESDAY, FEBRUARY 16, 1993

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate reconvenes on Tuesday, February 16, the Journal of the proceedings be approved to date, and following the time for the two leaders, there be a period for morning business not to extend beyond 12:30 p.m., with Senators permitted to speak therein for up to 5 minutes each; that on Tuesday, the Senate stand in recess from 12:30 p.m. to 2:15 p.m., in order to accommodate the respective party conferences; further, that at 2:15 p.m., Tuesday, February 16, the Senate proceed to consideration of calendar No. 2, S. 1, the National Institutes of Health authorization bill.

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

RECESS UNTIL TUESDAY, FEBRUARY 16, 1993

Mr. FORD. Mr. President, if there is no further business to come before the Senate today, I now move that the Senate stand in recess until 12 noon, Tuesday, February 16, according to the provisions of Senate Concurrent Resolution 10.

The motion was agreed to, and the Senate, at 8:31 p.m., recessed, as provided for under Senate Concurrent Resolution 10, until Tuesday, February 16, 1993, at 12 noon.

CONFIRMATION

Executive nomination confirmed by the Senate February 4, 1993:

EXECUTIVE OFFICE OF THE PRESIDENT

LAURA D'ANDREA TYSON, OF CALIFORNIA, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.