SENATE—*Tuesday, June 28, 1994*

(Legislative day of Tuesday June 7, 1994)

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.

PRAYER

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

Let us pray:

Eternal God, perfect in love, in truth, in justice, and in wisdom, we thank You for the prayer of King David, one of the greatest sovereigns of the ancient world.

O Lord, thou hast searched me, and known me. Thou knowest my downsitting and mine uprising, thou understandest my thought afar off. Thou compassest my path and my lying down, and art acquainted with all my ways. For there is not a word in my tongue, but, lo, O Lord, thou knowest it altogether.

—Psalm 139:1–4.

Lord, Thou knowest our future, collectively and individually, and Thou knowest our need of transcendent wisdom. Enable us to live and accomplish the work to which Thou hast called us in the wisdom of King David. Grant us confidence in the assurance of Your leading and the ability to follow it.

We pray in the name of Him Who is the way, the truth, and the life. 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, June 28, 1994.

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.

PRODUCT LIABILITY FAIRNESS ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 687, the Product Liability Fairness Act, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 687) to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Kohl/Cohen/Murray amendment No. 1930, to instruct courts to balance the public interest in health and safety against any need for privacy before allowing for secrecy in civil litigation, and bans court orders and agreements that would prohibit parties from sharing litigation information with Federal and State regulators.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. will be for debate on the Kohl amendment, No. 1930, with the time equally divided in the usual form.

Mr. GORTON. Mr. President, I suggest the absence of a quorum, time to be divided evenly between the two sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. Mr. President, I have no particular announcements to make but I am very much aware that Senator HERB KOHL from Wisconsin has an amendment that he wished to discuss this morning. The time will be equally divided and I would just simply say to him or to others who might have amendments, it is very important they be here very quickly because we are going to vote at 10 o'clock. I ask the time I have just used be charged in the appropriate manner.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. Mr. President, in my previous remarks, I should have said that the remarks that I have made should be charged equally as to both sides, and that is within the quorum call.

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

Mr. ROCKEFELLER. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The quorum call will be equally charged. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. Mr. President, as I listened to the arguments made during the course of yesterday by the opponents of this legislation, I think I was most surprised by the adamant view that the product liability system is working just fine and just dandy in its current form. Those of us who have worked hard on this legislation have tried to lay out every possible piece of evidence, testimony, and fact that we believe shows clearly and convincingly that the status quo of the current system of product liability is in dire need of reform and repair.

Let me share with my colleagues some examples of what West Virginia business leaders tell me about the need for product liability reform.

For these businesses, product liability reform is about jobs—and that is crucial for West Virginia. To give you some perspective in May, West Virginia's unemployment rate was 8.9 percent—that was a drop of three-tenths of 1 percent and good news for my State. But when unemployment is at almost 9 percent, protecting every job possible and creating new ones is a real priority.

One business in my State employs 150 people, and has a worldwide market. It's a family business, and when the current company owner first started to run the business over 25 years ago, the firm's liability insurance was $4,000 a year. Now the cost has skyrocketed to $500,000 a year. Liability insurance accounts for one-sixth to one-eighth of all payroll costs. Because this owner is so threatened by liability costs, I've been asked not to name the town or products, but in the trial outcomes over the history of this firm, the court

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

79-059 O—97 Vol. 140 (Pt. 10) 36

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

has yet to find any of their products at fault. The products are built to safety specification, yet their liability costs still soared.

Is this a balanced and fair system?

Another example comes from Princeton, WV. Mr. Don Downard is president of Downard Hydraulics. He has been in the hydraulics business about 30 years, and has owned his company since 1975. Downard Hydraulics employs 85 people to manufacture and rebuild hydraulic and mining components for the coal industry.

Mr. Downard says that his product liability costs are so high that equipment remains idle, and he simply cannot afford to expand his business or enter new markets with other products because of liability concerns—which means he won't be creating new jobs that are desperately needed in southern West Virginia.

Is this a balanced and fair system?

Let me tell you about J.H. Fletcher & Co. of Huntington, WV. This firm manufactures mining equipment, and employs 159 people and has 34 shareholders. Because J.H. Fletcher & Co. is a profit-sharing company and the costs of product liability litigation are withheld from the paychecks of each shareholder and employee. So far this year, an average of $6,000 has been deducted from each person. The company treasurer, Phil Cline says: "These costs are tremendous and undermine the very work ethic that our system has promoted." Mr. Cline also notes they are required to employ lawyers in almost every State where they have sales because of the current patchwork of product liability laws.

Each of these business leaders makes valid points about the need for balance and reform of our current product liability system.

My colleagues need to understand that there are real costs in maintaining the status quo—jobs aren't created, new products aren't brought to market, and workers ultimately pay the costs.

Mr. KOHL. Mr. President, we will vote on a bipartisan amendment that I introduced yesterday with Senator COHEN and Senator MURRAY. As a supporter of S. 687 who will definitely vote for the bill, let me say to my colleagues that this amendment gives balance to—and is completely consistent with—the product liability bill. Let me make it perfectly clear: Our amendment does not kill S. 687 in anyway; it makes S. 687 better.

The vote on our amendment will determine whether this body takes seriously its responsibility to protect public health and safety—by addressing the troubling problem of court secrecy.

The problem is this: Far too often, the court system allows vital information that is discovered in litigation—and which directly bears on public health and safety—to be covered up: to be shielded from families whose lives are potentially at stake, and from the public officials we have appointed to protect our health and safety. This happens through the excessive use of secrecy orders—which are really gag orders—issued by courts. This practice is not just wrong, Mr. President, it is unconscionable.

For example, 1 million women who received silicon breast implants in the 1980's were denied crucial information demonstrating the hazards of implants. The information was uncovered in a 1984 lawsuit but kept secret by court order until 1992.

What do we say to these women? How do we, as a civilized society, justify the secrecy orders that prevented them from making informed choices about what they were putting in their bodies?

And what do we say to the scores of young children injured while playing on defective merry-go-rounds that remained on the market for over a decade, Mr. President, because many lawsuit settlements concerning this sickening product were kept secret from the public and from the Consumer Products Safety Commission. These children—most under 6 years of age—lost fingers, hands, and feet.

Yesterday, I listed many more examples. Let me tell you about one example I did not mention. It involves a family which we must call the Does because they are under a secrecy order and were afraid to use their own names when talking to us.

The Does were the victims of a tragic accident which resulted in serious brain damage to their child. A friend of the Does is at similar risk, but Mrs. Doe is terrified of saying anything to her for fear of violating the secrecy order that governed her lawsuit settlement. Simply put, Mrs. Doe is afraid that if she talks, the defendant in her case will suspend the ongoing settlement payments that allow her to care for her injured child.

What sort of court system prohibits a woman from telling her friend that her child might be in danger? And, Mr. President, the more disturbing question is this: What other secrets are currently held under lock and key which could be saving lives if they were made public?

Our amendment is simple. It says that before courts allow for secrecy in lawsuits affecting public health and safety, they must look carefully at the circumstances and apply a balancing test: They may permit secrecy only if the need for privacy outweighs the public's need to know about potential health or safety hazards.

Moreover, courts could not, under this amendment, issue protective orders that would prevent disclosures to regulatory agencies. Because how can the FDA, the Consumer Product Safety Commission, and the Transportation Safety Board protect us if secrecy orders prevent them from knowing about safety problems?

Thus, our amendment—which we have modified in an effort to work with the business community—merely requires a reasonable balancing.

It says that because the courts are public institutions they need to consider—and only to consider—the public interest while dispensing justice. In cases where privacy interests are substantial—like trade secrets—confidentiality will still be allowed. So I ask, is this too much to ask? I do not think so.

At this point, let me say that our amendment is backed by the Consumer Product Safety Commission. In fact, even Prof. Jack Friedenthal, one of the country's leading experts on the courts who testified against our original anti-secrecy bill, now supports this measure. In response to the changes we made, Dean Friedenthal wrote that our amendment quote "makes a good deal of sense and eliminates my criticisms of the original bill."

Mr. President, again, this amendment does not—in any way—undermine S. 687. It does not modify or restrict the terms of S. 687 at all; that is, it would not change anything in the bill. Nor does it conflict with the broader aims of tort reform, which I support. It simply says that we must protect both the rights and interests of product liability defendants, and the interests of all Americans who are subject to health and safety hazards.

Mr. President, I have heard a lot of people tell me that my amendment would hurt S. 687. But no one has yet explained why. How can it be said that taking reasonable steps to prevent the senseless loss of life, and life-shattering injuries, hurts this bill? How can something that is good public policy hurt this bill? No one, so far, has argued against our amendment on the merits. At the conclusion of my remarks, will someone please explain why our amendment hurts S. 687?

In my view, this amendment most definitely belongs on the product liability bill. S. 687 is about product safety and striking the right balance between the rights of consumers and manufacturers. And that is exactly what our court secrecy amendment is about: product safety and striking a balance.

Our opponents have also repeatedly claimed that changes to the rules governing the courts should be made, in the first instance, by judges themselves, in the so-called rules-enabling process. According to them, Congress will have its chance to act when the judges submit to us their proposed judicial solution to the court secrecy problem—which, if we are lucky, will happen in a year or two or three.

Well, the Judicial Conference has been studying this issue for at least 4 years, and it has not proposed any solution of substance to the court secrecy problem.

So how much longer are we supposed to wait? Sometimes all we ever do in this city is study problems. It is time to start dealing with them. This fundamental health and safety matter is not the type of technical, procedural issue that we should leave for unelected judges and lawyer-lobbyists to address out of the public eye. Congress—all of us here—are responsible for health and safety policy. There should be no passing the buck.

Before concluding, let me also respond to the misleading statements that have been made regarding the Justice Department position on our amendment. First, Janet Reno has told me personally that court secrecy is a problem. But in truth, the Justice Department has never taken a position on this amendment. They have simply written a letter which, consistent with their way of doing business, asks us to go slow.

In closing, let me say that our courts are among the finest and the fairest in the world. But the time has come for us to ask: fair to whom? Yes, the courts must be fair to defendants, and S. 687 will move us in this direction. We should applaud Senator ROCKEFELLER for his efforts thus far. Because the courts are public institutions, however, our court system must also do its part to help protect the public.

Speaking as a strong supporter of S. 687, this is how I see the bottom line: A vote to table this amendment is a vote to ignore health and safety hazards. A vote for this amendment is a vote for public safety and the public's right to know. I believe it is that simple, and so I urge my colleagues to support our proposal.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ROCKEFELLER. Mr. President, I do not know how many times I am going to have to point out I am not a lawyer, but I am not. But since I am the only person in the Chamber at this moment other than my friend from Wisconsin, I need to say a couple of things. One is that there are many things about his amendment which not only do not give me any trouble, but with which I can be quite comfortable.

The problem is twofold. One is that his amendment has nothing to do—civil rules of procedure—with product liability reform. It is just not a part of what we are discussing. It is not on product-liability legislation. It does not belong in this bill. If it were to pass, I have to tell my colleagues in the strongest possible terms it would have a disastrous effect on the overall bill, the underlying bill, S. 687. I simply have to say that. It would have a disastrous effect on the bill. That is often said, incidentally, when people are trying to scare colleagues, but this I say in measured tones. It really would end S. 687.

The other part, is that judges do have a problem with this. They like to be able to keep certain things private so that they can put more pressure on getting litigation to come to closure, to have a settlement. And there are also many defendants, plaintiffs, and individuals who do not want to have what they are going through exposed publicly, perhaps for personal reasons and perhaps also because they do not want others to gain information for that and therefore to sue them again.

It is interesting; 41 State legislatures have considered protective orders and 39 of them have rejected changes. So that this impression I am giving is not one which is unique to this argument.

But the main point is that it is not a part of this bill. It should not be on this bill. As much as I respect—and I cannot say that enough times—the Senator from Wisconsin and find many things in his amendment to be attractive, it would be disastrous for this bill.

So those would be my comments, and I yield the floor.

Mr. KOHL. Mr. President, I thank my colleague.

Before I yield to my friend from Maine for 10 minutes, I simply want to point out that Senator ROCKEFELLER has not said why it would be disastrous to S. 687. In fact, courts are public institutions, and I think we all agree in the Senate that courts have a primary responsibility to protect the public interest, and that is what this court secrecy amendment is all about.

So I do not see why it cannot be made an integral part of the product-liability bill. I think it is consistent with the aims of the product-liability bill, which is to have fairness in the system both to defendants and to plaintiffs. I believe it is entirely consistent with my attempting to attach it to this bill.

I yield 10 minutes to my friend from Maine, Senator COHEN.

Mr. COHEN. I thank Senator KOHL for yielding.

Mr. President, we have often heard it said that sunshine is the best disinfectant. This is one of the reasons why Congress changed its rules of operation. It used to be the rule that hearings were closed unless we voted to open them. We decided some years ago that it was far better to open committee hearings unless there was a good reason to close them. So we reversed the rule. Now the committee hearings are open unless we specifically vote to shut out the public.

That is precisely what Senator KOHL is attempting to do with this amendment, to reverse the presumption of operation. The way the system operates now is that once a settlement is agreed to, it has a confidentiality covenant contained within it; the courts simply yield to that process. They do not open it unless they are compelled to open it by overriding reasons. We want to reverse that presumption and say that sunshine is the best disinfectant, that sunshine is the best deterrent to putting defective products out in the marketplace.

It is an important issue to the victims of defective products, to the potential victims of defective products, and to the public at large. People would be shocked to find out that evidence of a defective product is often withheld from the public and from Government regulators with the sanction of the court. I do not think most people understand that we give the court's imprimatur to a confidentiality agreement when their public health is at risk.

The result is that hundreds—perhaps even thousands—of other innocent people can be injured or killed by the same defective product by virtue of these confidentiality agreements. Why would a manufacturer or a seller of a defective product insist on the confidentiality of a settlement? It is pretty obvious: to protect his or her or its financial interests because exposure of the defect of that product might lead to greater lawsuits and perhaps even to the elimination of that company or, at least, to the production of that product.

How about a plaintiff? Why would a plaintiff agree to a code of silence about what he or she has discovered over the defectiveness of a particular product? Obviously, to end years of litigation, to pay for necessary medical expenses, loss of wages, pain and suffering, and maybe even to preserve an element of privacy. Is not that participating in a coverup on the part of a plaintiff? The answer is yes. But a plaintiff has no legal obligation to do otherwise; maybe a moral obligation, but usually in these circumstances economic necessity outweighs any moral obligation to alert the general public as to what that plaintiff has discovered.

Congress has a higher duty. The courts have a higher duty than simply to cover up a particular defect. That duty is to protect the public interest, and the burden is there now but the practice has been to protect the confidentiality rather than the public interest.

So this amendment, as I indicated before, reverses the process. It allows the court to rule in favor of confidentiality, but it shifts the presumption in favor of disclosure. And as I pointed out just a moment ago, we have done precisely the same. Congress has decided to open its doors unless we vote to close them.

I would like to consider several types of cases. Senator KOHL has talked about the silicon breast implant case, and how many thousands of women had to go without notice of the potential threat to their lives for so many years because of a confidentiality agreement.

How about a case in which a manufacturer of a car produces a gas tank that is made of metal so thin it resembles onion skin and puts it behind the rear bumper of a car? Every time that car is hit or smacked from behind by a car going 5 or 10 miles an hour, it erupts into flames. We have had cases like that. The manufacturers have said, "Look. Let us settle this case, and, by the way, I will pay you *x* millions of dollars if you just don't reveal exactly what you discovered about our manufacturing process." Is that something that we want to endorse?

Or how about a sticky accelerator case? We had hundreds of cases of sticky accelerators, accelerators that go down and lock down while a car is in gear and cannot be pulled back. Do you want to sanction covering up those kinds of defects with the potential of injuring hundreds if not thousands of people? That is what has taken place in the past.

The role of the courts primarily is to resolve private disputes. That is clear. But it also is the duty of courts to take into account public interest when the public interest so demands. Once private parties cross the threshold into the public court system, it seems to me it is fair for the courts to consider the public interest. Obviously, the litigants lose a measure of confidentiality. The notion that we can call upon the public courts supported by millions of tax dollars and yet preserve our total private rights seems to me to be inconsistent with the public interest.

Do private litigants have a right to expect confidentiality? Maybe. If so, it is not a constitutional right. It is one that has evolved by practice rather than under the protection of the Constitution, and we have a right to change that practice, which is precisely what Senator KOHL is speaking to today.

The argument has been that this is going to bog down the courts. Possibly. I think it is unlikely. We are talking about a fairly small percentage in the cases dealing with product liability and defective products that are considered each year in the courts. It only applies to a small percentage of cases. It will not be a heavy burden for the courts to bear. But, even if it required more work on the part of the courts, according to Judge Abner Mikva, that is a responsibility the courts ought to be eager and willing to assume.

Perhaps there will be fewer settlements. But I think it is unlikely because it is in the economic interest for the parties to settle, without regard to whether or not this material is going to be disclosed.

But let me offer a counterview. I think perhaps even more cases will be settled without ever going into litigation as a result of this legislation. If parties are so concerned that a defect in their manufacturing process is going to get out into the public, they will probably want to settle without going to the court in the first instance. You can make the counterargument that you will have fewer cases clogging the courts because the parties will be more eager to settle out of court.

Are we rushing ahead of the Judicial Conference? No. We are not rushing ahead of them. We are tired of waiting for them. We are tired of waiting for the Judicial Conference. Four years have transpired already, and no action. We are not going to wait for Godot, and we are not going to wait for the Judicial Conference. This is what Senator KOHL is saying. We have had it in terms of waiting for them to resolve this issue.

I would like to conclude with a comment by one of our witnesses, Gerry Spence, who says:

> Everywhere nowadays we hear it argued that the public has a duty to protect itself. But none of us can protect ourselves without the necessary information with which to do so * * *. The state of the law, as practiced today, is much like a trap set along the trail. The hole in the ground is covered with branches and leaves. The unsuspecting falls in. Now, instead of sounding the alarm that a trap has been laid, we permit the trapper to quietly reset his trap in order to catch the next passer-by. This cannot be permitted in a civilized society.

This amendment should be adopted overwhelmingly because we cannot permit the current system to continue in a civilized society.

Mr. President, I yield the floor.

Mr. GORTON. Mr. President, will the Senator from West Virginia yield time to me?

Mr. ROCKEFELLER. Mr. President, how much time do the opponents have?

The ACTING PRESIDENT pro tempore. Sixteen minutes and 5 seconds.

Mr. ROCKEFELLER. I yield such time as the distinguished Senator may use.

The ACTING PRESIDENT pro tempore. The Senator from Washington.

Mr. GORTON. Mr. President, the Senator from Maine has made an eloquent and persuasive argument in favor of at least the principles of disclosure which are contained in the bill. I believe it is important for not only the Senator from Maine but for all of the Members of the Senate to understand that in the last 4 years almost all of the public policies for which the Senator from Maine pleads are, in fact, the law. There is, of course, a Federal agency that is delegated the responsibility of dealing with product safety: the Consumer Product Safety Commission. In 1990, when the Consumer Product Safety Act was amended to require the manufacturers of products to report to the CPSC if a specific product model is the subject of three or more product liability suits alleging death or grievous body injury within a 2-year period.

In other words, the kind of information which the proponents here feel should be generally available in the case of dangerous products is in fact generally available through the very Federal agency which is designed to deal with product safety today. And it is made available in a way that does not undercut the private nature of litigation.

The Senator from Maine has made two points. Congress has now opened up its processes. Therefore, the courts ought to open up their processes. Congress is a public body elected by the people of the various States of the United States. The courts are opened by definition to private litigants. The Senator from Maine said once you go to court, you give up that right of privacy. But you go to court then at least in exactly 50 percent of the cases, Mr. President, because you were forced to do so, not because you wish to do so. The plaintiff in each case has gone to the courts because he, she, or it, wishes to do so. The defendant, by definition, does not wish to do so.

Under the proposal set out by this amendment, the only way to avoid this publicity is to settle before a lawsuit has even been brought, which means that you have to pay off every case whether it is well-founded or ill-founded.

The courts as a venue for private litigation between private parties who, in at least the case of the defendants, do not seek to be in that venue in the first place is profoundly different from the situation in any public venue. And when we have a law today which requires dangerous products—not even those that have been proven to have caused death or grievous bodily harm but just subject to three or more lawsuits in any given year to be made public, whatever the public policy for disclosing these defects, and maybe that public policy has already been debated and adopted—it is exactly for that reason, I suspect, that those who spend much of their careers studying an issue in the judicial council have taken a great deal of time to discuss what is obviously a very complicated issue with some good arguments on both sides of it. They have far more at stake and knowledge than we do.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KOHL addressed the Chair.

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

Mr. KOHL. We have 7½ minutes.

Mr. President, I do not think Senator GORTON or Senator ROCKEFELLER would disagree that when we have the imperfect products on the market that have the capacity to injure thousands, if not hundreds of thousands of people, they should be off the market. That is what this bill attempts to do only, as Senator COHEN pointed out, when these cases reach the courts. This will not prevent these agreements from being

reached outside the court. We are only talking about when cases like this reach the courts, and we are suggesting where you have imperfect products on the market and the cases reach the courts, the courts are public institutions that have a public responsibility to step in and do what is right for the American public. That is what this amendment is all about.

I yield the floor.

Mr. HEFLIN addressed the Chair.

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

Mr. KOHL. Mr. President, I yield 2 minutes to the Senator from Alabama.

Mr. HEFLIN. Mr. President, I rise somewhat with mixed feelings on this issue. I have always believed that the courts enabling act should be followed. But there is a bigger issue here involved, particularly because of certain language that is in this bill. That language deals with the Food and Drug Administration approval, and it gives a complete defense against punitive damages.

The language in the bill gives a drug or medical device manufacturer a complete defense against punitive damages, if it has Food and Drug Administration approval. Many pharmaceutical drugs come together to coalesce to either form a danger or a benefit. If court secrecy goes to the extent that it can affect matters relating to a proposed new drug to be approved, and there is found through discovery various elements that would cause great concern and would therefore probably cause FDA not to approve, or the Federal Aviation Administration not to approve in the case of aircraft, and that is kept secret because of a court protective order, then I think there is a major public policy issue that must be addressed.

I think the Kohl amendment has been crafted in a manner to take care of situations that should be addressed. Therefore, I think because of the language relating to the FDA and FAA, and the complete defense for certain industries—which, in my judgment, are wrong—we fail to realize that according to a GAO study, 51.2 percent of all FDA-approved drugs will have to have a recall after having received approval.

So I think that we should be cautious, and I think the Kohl amendment in this instance should be adopted.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ROCKEFELLER. Mr. President, how much time does the opposition have?

The ACTING PRESIDENT pro tempore. They have 12 minutes.

Mr. ROCKEFELLER. I yield 5 minutes to the Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair and my colleague.

Mr. President, I rise to oppose the amendment offered by my friend from Wisconsin, Senator KOHL, and I do so reluctantly because I think he may be onto something here. And I do so reluctantly because he has done this in his normal thoughtful fashion. But there are reasons both of substance and procedure that lead me to oppose this amendment at this time, although it is possible at a later time that I would support such an amendment.

Let me talk very directly about the impact that this amendment might have on the underlying bill. It has been more than a decade that efforts have been made here in Congress to reform the product liability laws because of the costs they take out of our society, the impact they have on our economy, and the impact they have on people and consumers.

This bill before us, the underlying bill, S. 687, is a carefully crafted and balanced bill. It is a long way from the original bill proposed 10 or 12 years ago which, in many ways, was a defendant's wish list. It is not that now. One of the things that the sponsors of this bill, and this Senator as one of them, have tried to do is not take on every issue in the area of tort reform.

Unfortunately, this amendment offered by the Senator from Wisconsin threatens that carefully crafted compromise. I know that is not the intention of the Senator. I know he is specifically interested in this proposal that is the subject of the amendment. But the fact is that there are those who are opposed to the underlying bill who would like to see this amendment pass, not so much because they support the amendment, but because of the effect it will have on passage of the underlying bill. In fact, one of the lobbyist lobbying against product liability has described this amendment in a local legal newspaper as one that would create a tactical advantage for those opposing the underlying bill.

For that reason, I support the underlying bill because we have worked so hard on it, and I reluctantly oppose the amendment. There are other reasons, as well.

First—and this has been referred to before—Attorney General Reno's Department of Justice urged Congress not to enact protective order legislation immediately, such as in the amendment of the Senator from Wisconsin. We should not act immediately. We should step back and allow the process we in Congress have created to work its will. That is to stay, we should let the judicial rulemaking process of the Judicial Conference of the United States, which is considering this very subject, run its course.

That process is exactly what we contemplated would occur when we in Congress enacted the Rules Enabling Act, and we should let that process finish, then come back and evaluate its recommendations on this subject matter.

Mr. President, second, in reviewing the language of the amendment, this Senator feels that I would benefit by having more time to review the subject matter of the amendment on a complicated area of litigation.

For example, the amendment appears to be drafted so as to protect only information that encroaches upon a privacy interest. But what about proprietary business information? Is it the intent of this amendment to say that the courts cannot protect confidential business information or trade secrets? If this is true, the amendment will substantially chill the development of new, innovative products.

Another question is, what is the scope of information which is relevant to the protection of public health and safety—that is the language from the amendment—information relevant to the protection of public health and safety? Does that include, for instance, the formula for a new drug or synthesis process? Does it include detailed schematics on exactly how to build a cutting-edge product? Does it include the formula or manufacturing process for new materials?

So while the interest in public disclosure—which I support and I believe is commendable—is part of this amendment, the amendment raises questions about what would prevent competitors from mining these filings for what would otherwise be trade secrets.

I am also concerned this amendment can multiply litigation on collateral issues and, in that sense, expand litigation and costs related to litigation that this underlying bill is attempting to limit.

Mr. President, all of the issues need a thorough review. We should be extremely concerned about creating additional layers of costs. Product liability cases are already the most expensive cases to defend because of the defense costs in product liability cases.

Defense costs in product liability cases specifically are 70 cents for every dollar paid in claims, which is twice the level in defense costs in medical malpractice cases and seven times the defense costs in personal injury auto cases. I fear that this amendment could drive those out-of-control costs even higher.

For all these reasons, I think we need to be careful and cautious in this area. As I said at the outset, in the end I hope I can support the initiative that the Senator from Wisconsin has begun with this amendment, but I cannot do so today.

I want to hear from the Judicial Conference. I want to see some of the questions I have raised examined further. In the meantime, we need to get on with the consideration and passage of S. 687. And for that reason, I urge my colleagues to vote to table this amendment.

I thank the Chair.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Wisconsin is recognized.

Mr. KOHL. Mr. President, I ask unanimous consent for 10 minutes equally divided on this bill if it is OK with Senator ROCKEFELLER.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ROCKEFELLER. Mr. President, there is no objection on both sides. We will be happy to do that.

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

Mr. KOHL. I thank the Senator.

I yield 3 minutes to Senator SPECTER and 3 minutes to Senator METZENBAUM, and then I will conclude.

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

Mr. SPECTER. Mr. President, I understand the controversial nature of the amendment by the distinguished Senator from Wisconsin, but I believe it is a good amendment.

In the course of litigation there are frequently settlements made which do contain underlying facts which are very important for public disclosure in the public interest.

With respect to the interest of the litigants, it is obviously of a much narrower scope. A plaintiff, understandably, through counsel is concerned about getting what he or she considers to be an appropriate sum of money, and the defendant is concerned about the amount of the award in that case or the amount of the settlement but is also concerned about the ramifications of the facts which may be disclosed on other matters which may be in litigation or potentially in litigation or might bring other lawsuits.

On questions of public safety concerning defective products, it is my view that very frequently the interest of society in having the facts subject to disclosure outweighs the interest of the private litigants to bring an end to their particular lawsuit and definitely outweighs the interest of the defendant in having that information shielded from public disclosure.

This amendment vests in the court the discretion to balance what is in the public interest against what the private concerns are. I believe that there can be realistic and reasonable confidence in the discretion of the Federal courts on this matter.

We have seen with disclosures about what is happening in the tobacco industry, evidence which should have been in the public domain a long time ago, and there are items which come to public attention on product safety which go far beyond the import of the specific case. So the public interest in knowing what defects are with particular products is very, very important.

We have had the examples of all-terrain vehicles which are causing tremendous injury, and if more information were available, that could be cut back upon. The judicial system has a broader range of concern than the interest of the specific litigants involved.

Although there is a great deal more to be said, I just asked for 2 minutes from my colleague from Wisconsin. This statement briefly constitutes why I think this is a sound amendment. So I intend to support it.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, I yield 5 minutes to the Senator from Utah.

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

Mr. HATCH. Mr. President, I rise to voice my strong objection to Senator KOHL's amendment on protective orders and confidentiality agreements.

While I respect Senator KOHL's efforts to address this issue, his amendment is procedurally premature. In fact, both the Department of Justice and the Administrative Conference have raised the same procedural concerns that form the basis of my objection to this amendment.

Under the Rules Enabling Act's rulemaking procedures, any proposed changes to the Federal rules must be circulated to the bench, bar, and public for comments and suggestions. These rules were designed to bring about a more open and public debate on potential Federal rule changes. Moreover, it ensures the rule changes are based on thoroughly debated and studied recommendations.

Procedurally, the Judicial Conference's committee of rules and practice is currently studying the issue of protective orders and confidentiality agreements. As we speak, the Federal Judicial Center, at the request of the Administrative Conference, is conducting empirical studies of selected Federal district courts to verify a preliminary determination by the conference that there is no need to modify the Federal rules.

In my view, we should defer our judgment of the proposed rule change until the Administrative Conference completes its study and makes an informed policy recommendation.

In his recent statement before the Subcommittee on the Courts, Judge Higginbotham, chair of the advisory committee, asked Congress not to undermine the integrity of the Rules Enabling Act and to respect the partnership established between the courts and Congress. More specifically, in his testimony, Judge Higginbotham asked Congress to withhold legislative action until the conference has completed its study and made appropriate recommendations based on thorough research and completed study.

I concur with Judge Higginbotham's views. Congress should respect the Courts and protect the sound working arrangement established between Congress and the courts. There is simply no urgency to act on this proposed amendment, and prudence dictates that we delay consideration of this issue until we are more fully informed.

The Judicial Conference's advisory committee on civil rules has taken the necessary steps to amend rule 26(c). The advisory committee, acting by the authority delegated to it by Congress in the Rules Enabling Act (28 U.S.C. 2072), has undertaken empirical studies, held public hearings, and drafted a proposed amendment to rule 26(c).

Their recommendations have been circulated to over 10,000 individuals and organizations for comment and criticism. Members of the bench, the bar, and the public have provided their insight to the committee. Further, the advisory committee is expected to complete its study and dispose of the proposed amendment to rule 26(c) in only 3 short months.

In my view, the preferred process for amending the Federal rules, a process we sanctioned and established, is functioning well and should be allowed to run its course. Ultimately, if Congress disagrees with the rule changes proposed by the Administrative Conference, then the rule can be returned to the advisory committee for further review or we may offer legislation to remedy the perceived deficiencies. In any case, we should give strong deference to the insights and judgments of the Administrative Conference, the advisory committee, the bench, the bar, and the public, all of whom participated in the process established by the Rules Enabling Act.

Legislative action by the Senate to correct the perceived deficiencies of rule 26(c), before the advisory committee's completes it's study of the rule, offends the spirit of the Rules Enabling Act. The Rules Enabling Act should not be undermined by direct legislative action that ignores and bypasses the Judicial Conference, the bar, and the public.

The Department of Justice has also requested that Congress defer action on protective order legislation until the Department has completed its pending study of and makes a recommendation concerning protective orders in the context of a comprehensive civil justice reform study, which includes an investigation into the deficiencies of rule 26(c). In addition, the Department has requested that the Senate allow the advisory committee to complete its study of protective orders and confidentiality agreements. I support the Department's recommendations in this matter.

I also have several substantive concerns with Senator KOHL'S amendment which I am compelled to outline. I am concerned with a provision in the Kohl amendment that requires a Federal

judge to make a "particularized findings of fact" before a protective order to restrict the disclosure of information obtained through discovery or to restrict access to court records can be entered by the court. Likewise, I am concerned that after the entry of a final judgment, a separate order must be entered by the judge which finds that sealing records would not restrict the disclosure of information that is relevant to the protection of the public's health and safety. While laudable in its aims, the Kohl amendment is fundamentally flawed.

Currently, under Federal Rules of Civil Procedure 26(c), protective orders are permitted for "good cause shown" and do not require a particularized finding. Current law also permits the entry of a "consent order" on the basis of the parties' agreement, with the courts approval. Furthermore, courts are free to modify or dissolve protective orders. The Kohl amendment represents a misguided effort to correct alleged deficiencies in rule 26(c) of the Federal Rules of Civil Procedure.

Rule 26(c) currently permits a court to enter protective orders and to seal documents to protect trade secrets, privileged communications, and other classes of information from public disclosure following discovery. These protective orders allow the court and parties to concentrate on settling their real differences, rather than wasting time and money on ancillary discovery issues.

The Kohl amendment also adversely and substantially affects a private citizen's right of privacy. Under our Federal rules, litigants are allowed broad discovery of extremely private and personal information, including financial records or diaries. Intimate information one would never believe could reach the public domain. While this private information may be necessary for the defense or prosecution of a particular civil case, your confidential secrets will now all become public information. And this is true even if you prevail in the underlying case.

Supporters of the Kohl amendment offer anecdotal evidence to support their argument that rule 26(c) operates to conceal information affecting public health and safety. In response, the Kohl amendment seeks rigidly to prohibit courts from entering into any rule 26(c) protective orders, unless they first make "particularized findings of fact that such an order would not restrict the disclosure of information which is relevant to the protection of "public health."

As such, the Kohl amendment is overly broad and is certainly not limited to "a discrete subset of lawsuits filed in Federal court," as characterized by some supporters. Cases involving discovered information sweep the continuum of lawsuits filed in Federal court.

Relevant information will surface not only in products liability and medical malpractice lawsuits, but in every conceivable situation—for example, suits involving energy, natural resources, land use, hostile environment, toxic torts environmental contamination, contracts, intellectual property, shareholder derivative, and complex commercial claims. Such potentially broad application requires that we be extremely cautious in our approach, something the advisory committee was purposefully designed to accomplish.

Moreover, the Kohl amendment affects not only the procedural concerns of the Federal rules, but also substantive rights and remedies arising under privilege law, copyright law, and trade secret law. The full substantive effect of the Kohl amendment is still unknown. The amendment may also needlessly undermine multidistrict litigation policies which currently permit "blanket" protective orders in the interest of efficient case management.

This amendment will also further burden judges with discovery hearings and aggravate the congestion of our courts. Under the provisions in this amendment, every protective order will require a particularized finding of nonrelevance to public health and safety. If this standard were applied, litigation will multiply at great cost to our scarce judicial resources. To complicate matters, a second hearing and findings is required by the court after the entry of a final judgment.

It is unthinkable for this body to impose a new obligation on our already overburdened Federal judges. Litigants already wait too long for their day in court. The cost to taxpayers for these additional hearings and related activities would be staggering and cannot be justified.

I am not opposed to correcting deficiencies in rule 26(c), if they exist. I, too, want to protect the public interest by encouraging disclosure of information essential to our public's health and safety. I disagree, however, with the Senator KOHL's approach and timing.

In sum, the proposed Kohl standard is simply premature and unworkable. It will require judges to conduct complicated factual inquiries, straining our limited and precious judicial resources, with little or no change to existing standards. Our current approach offers the courts wide discretion to determine whether good cause is shown for the entry of a protective order. Our current system has fairly balanced the broader public interest in health and safety against the legitimate need of litigants and our citizens for confidentiality.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KOHL. Mr. President, how much time do we have remaining?

The ACTING PRESIDENT pro tempore. Five minutes.

Mr. KOHL. I yield 3 minutes to Senator METZENBAUM.

The ACTING PRESIDENT pro tempore. The Senator is recognized.

Mr. METZENBAUM. I thank the Senator from Wisconsin.

Mr. President, I have heard some absurd arguments in my time in the U.S. Senate, but some I have heard this morning are really pretty hard to accept and understand.

We should not accept the amendment, the argument is made, because it is a good amendment but we ought to take some more time to study it or maybe the Judicial Conference ought to have an opportunity to take a look at it.

We are talking about an amendment that has to do with life and death of the people of this country. What the manufacturers are asking is to keep those records closed, sealed, so that nobody can know what their perfidy was, what their negligence was, what their intentional acts were, and they want that information sealed in a case that they have lost.

This amendment is about preventing information in lawsuits that affects public health and safety from being concealed, shielded from public scrutiny by court-sanctioned secrecy agreements or gag orders.

How can we possibly vote against this amendment? These secrecy arrangements prevent the public and regulatory agencies from learning about hazardous products and action to avoid further deaths and injuries from those products.

I suspect that many of my colleagues were unaware and perhaps shocked to learn of this widespread practice in the courts. As Gerry Spence, a renowned courtroom attorney, testified:

> In the course of over forty years in the courtroom I have never been able to settle a case unless the terms of the settlement and the facts surrounding it were kept secret.

Kept secret from whom? Kept secret from the American people so they may not learn about the kinds of faults and the kinds of actions that have been taken by manufacturers that have caused tremendous injury or death itself.

Whenever plaintiffs get access to damaging documents, the defense strategy is to close up the record, to seal the record. It is like a noose around the plaintiff's head—they cannot afford to pass up the premium settlement offer for secrecy and bear the expense and risk of trial, so they settle and agree to close the record.

Secrecy agreements and gag orders have prevented the public from gaining access to vital information about threats from defective heart valves, pharmaceuticals, breast implants, and automobiles. This has led to needless deaths, injuries, and illnesses.

I ask every one of my colleagues to imagine how they would feel about

court secrecy if they had a family member killed or severely injured by a defective product, only to learn afterward that other victims had come before, that disclosure of the defect had been prevented by secrecy orders and secrecy agreements, and that the tragedy could have been avoided had you only known the facts ant the information that had been covered up.

Mr. President, this should be a no-brainer for us. Every one of us in this body ought to vote for it.

The only argument I hear against it is in some way it may jeopardize passage of the underlying bill. That is not a sufficient reason to vote against a quality amendment of this type.

How can we allow companies to pursue litigation strategies that permit heart valves to continue being implanted in patients while their life-threatening defects are kept secret?

Many of these secrecy agreements even prohibit plaintiffs from disclosing critical health and safety information to Federal and State regulators charged with ensuring the safety of the particular products. That is absured.

Mr. President, court secrecy keeps critical information from the public and from regulators charged with ensuring the public's safety. The upshot is that consumers cannot make wise choices, regulators cannot do their job, respect for the judiciary is undermined, and lives are senselessly lost. If we change anything in our legal system, it should be this insidious practice of keeping vital health and safety information out of the public's reach.

I would like to ask my colleagues to ask themselves why it is that the industries that support the product liability bill are claiming that passage of this amendment would kill the bill. Why would an amendment whose sole purpose is to prevent senseless injuries and deaths be so unpalatable to proponents of this bill?

Why would the industry groups pushing this bill object to this?

It is because if they could not keep evidence of their defective products secret, they will have to spend more money taking defective products off the market and compensating consumers injured by those products. It is that simple. But the manufacturers would not dare tell Senators the truth about why they oppose the Kohl amendment, because they would look like cold-blooded profit maximizers. Instead, they say the amendment would kill the bill. Just remember: That is their pocketbook talking.

I urge my colleagues to support the Kohl amendment to eliminate secrecy arrangements that undermine public health and safety.

The PRESIDING OFFICER (Ms. MOSELY-BRAUN). Who yields time?

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. How much time is remaining to the opponents?

The PRESIDING OFFICER. Four minutes and 50 seconds.

Mr. ROCKEFELLER. Madam President, I yield to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Madam President, during his remarks on this amendment, the distinguished senior Senator from Alabama, I believe, covered at least some of the reasons for a number of the supporters of the amendment, not including its primary sponsor, for being for the amendment. He spoke not so much to the merits of this particular proposal but of this proposal as a way to see to it that the overall bill did not pass. He spoke most particularly about the impact of punitive damages in cases of this nature. He spoke to the FDA and he spoke to the Federal Aviation Administration defending the present system.

We have already had an extensive debate in this body on the impact of product liability litigation and, for that matter, punitive damages on the private aviation manufacturing industry in this country. Nothing could be more clear than the fact that that enterprise has, for all practical purposes, been destroyed. In a 10-year period, the production of piston-driven private aircraft declined by some 90 percent; employment in the field declined by the same amount; several of the companies engaged in that business have gone out of business entirely; others have reported that the defense of this kind of litigation costs an average of $500,000 per case. Even in connection with one of the manufacturers when the manufacturer had never lost a product liability case, those costs were imposed upon him.

And the Senator from Ohio says, quoting a trial lawyer, that that trial lawyer would never be able to settle a case without an order of privacy, an order withholding the results of discovery in such a case.

Well, what does that mean? Does that mean that there will be less litigation or more? Does that mean that more cases will be settled or fewer?

Obviously, it means that fewer cases will be settled. If, in fact, all of the evidence is going to become public in any event, the defendant may just as well carry the case on as far as the defendant possibly can, adding to the costs to plaintiffs, adding to the amount of most contingent fee arrangements. So that where now we have 70 or 75 percent of all of the costs of product liability litigation going to other than the plaintiff, other than the victim, perhaps we can drive that up to 80 or 85 percent by making every one of these cases go to trial.

That would be the result of the adoption of this amendment—fewer settlements, more expenses, both to defendants and to plaintiffs, and less money getting through to victims of actual negligence or actual misconduct on the part of manufacturers.

It seems to me that the arguments of the Senators from Ohio and Alabama have been the best reason to turn down this amendment, as well as valid reasons to pass the bill overall. What they are asking us to do is to spend more money on litigation to discourage the settlement of lawsuits, rather than the opposite, which is clearly the goal of the overwhelming majority of the American people.

Madam President, I am finished and I suspect we are prepared to yield back the remainder of our time.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Madam President, I yield back the remainder of our time.

The PRESIDING OFFICER. The Senator from Wisconsin has 1½ minutes.

Mr. KOHL. Madam President, in closing, I want to point out that the Consumer Product Safety Commission is supportive of this amendment. It has been indicated that they are not supportive. They are supportive of this amendment.

I think it is very clear from our discussion this morning that there is a very serious problem with court secrecy. The opponents, for the most part, have said let us put it off; let us not decide it now; let us wait. There is no reason to wait.

I support S. 687, and to support S. 687 is consistent with supporting the intent of this amendment. This is an amendment that is in the public interest, and that will be met with approval by the great, great majority of all the American people.

We have a responsibility to them to put the public interest here where it belongs, not only first, but along with private interests. And that is what this balancing requirement of the amendment will do. It requires judges to balance the public interest with private interests before they allow a court secrecy arrangement to be put through.

So I think this is a very good amendment, and I urge the Senate to adopt this amendment.

Mr. ROCKEFELLER. Has all time expired on both sides?

The PRESIDING OFFICER. All time has almost expired. There are 16 seconds left—20 seconds left.

Mr. KOHL. I yield the remainder of my time.

The PRESIDING OFFICER. All time has expired.

Mr. ROCKEFELLER. On behalf of the Senator from Washington [Mr. GORTON] and myself, I move to table the Kohl amendment. Madam President, I 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. The question is on agreeing to the motion to table the Kohl amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 168 Leg.]

YEAS—51

Bennett	Faircloth	McCain
Bond	Glenn	McConnell
Boren	Gorton	Murkowski
Brown	Gramm	Nickles
Burns	Grassley	Nunn
Byrd	Gregg	Pell
Chafee	Hatch	Pressler
Coats	Helms	Pryor
Cochran	Hutchison	Robb
Coverdell	Jeffords	Rockefeller
Craig	Kassebaum	Roth
Danforth	Kempthorne	Sasser
Dodd	Lieberman	Smith
Dole	Lott	Stevens
Domenici	Lugar	Thurmond
Dorgan	Mack	Wallop
Durenberger	Mathews	Warner

NAYS—49

Akaka	Feinstein	Mikulski
Baucus	Ford	Mitchell
Biden	Graham	Moseley-Braun
Bingaman	Harkin	Moynihan
Boxer	Hatfield	Murray
Bradley	Heflin	Packwood
Breaux	Hollings	Reid
Bryan	Inouye	Riegle
Bumpers	Johnston	Sarbanes
Campbell	Kennedy	Shelby
Cohen	Kerrey	Simon
Conrad	Kerry	Simpson
D'Amato	Kohl	Specter
Daschle	Lautenberg	Wellstone
DeConcini	Leahy	Wofford
Exon	Levin	
Feingold	Metzenbaum	

So the motion to lay on the table the amendment (No. 1930) was agreed to.

Mr. DODD. Madam President, I move to reconsider the vote.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I would yield to the distinguished manager of the legislation, the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank the Presiding Officer.

Madam President, I think what has happened in this vote is that the Senate has expressed itself with great sincerity and intensity that they want to see secrecy in the judicial process begin to disappear, and whereas the opponents of the amendment won, I think the argument of the proponents may have won. I congratulate Senator HERB KOHL. I would ask that the judiciary hear what the Senate has today said, that secrecy and the judicial process are not comfortably intertwined.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I am just going to take a few minutes, if I could, to share some general thoughts on the legislation before us.

Let me at the outset commend our colleague from West Virginia for his leadership on this issue, along with my colleague from Connecticut, Senator LIEBERMAN and Senators DANFORTH and GORTON who have also been instrumental in crafting this legislation.

Madam President, I rise in strong support of the Product Liability Fairness Act. The balanced reforms in this measure would help restore fairness to the product liability system in our country. It would help injured people get the help that they need when they need it and put an end to the game of Russian roulette that our product liability system has become.

Madam President, it is very clear that our current product liability system does not work. People can argue about how to fix it, but it is broken and it needs to be fixed. If you ask the American people, they will put their fingers on the core of the problem. The results you obtain in a product liability case depend primarily on your ability to pay for a good lawyer. That is how the system works today. That is true whether you are a consumer, injured by an unsafe product, or a business person trying to defend yourself against an unjustified lawsuit.

The statistics confirm what our constituents are telling us. Under the present system injured citizens must wait years for compensation. For example, a recent study by the General Accounting Office found that it takes 5 years for victims with the average dollar loss to receive compensation.

The delays in the present system can and do lead to inadequate compensation. Many seriously injured victims who lack the resources to pay for their medical bills and support their families cannot afford to wait the 5 years for payment; they have no choice but to settle, and in many cases to settle for inadequate amounts.

The problem, Madam President, of inadequate compensation is well documented. This is not speculation. One study found that people with economic losses between $100,000 and $200,000 recovered an average of 150 percent of their losses, while those with losses of more than $1 million, arguably the more serious claims, recovered only 39 percent of their losses. Other studies confirm that victims with less severe injuries are vastly overcompensated while victims with major injuries are significantly undercompensated. If that is not a system that is broken, I do not know what is.

It is clear, Madam President, that the present system is not serving the needs of our injured citizens. At the same time, it is not serving the needs of American businesses.

Many businesses are reluctant to introduce new products because when they look at their potential liability what they see staring back at them are the different and distinct laws of 55 States and territories. This uncertainty is particularly difficult for small businesses which cannot afford the huge legal costs of the present system. And these are not legal costs that fall only on unscrupulous manufacturers. Many companies have run up enormous legal bills only to be vindicated by the courts.

If an American business is afraid to innovate or is forced to defer investment on research and development, is that business the only one to suffer? Of course not, Madam President. If American businesses are unable to bring innovative products to the marketplace or forced to take helpful products off the market, we all lose.

The search for an AIDS vaccine is a very good example of what we are talking about. At least one company, Biogen from Massachusetts, terminated its investment in an AIDS vaccine because of product liability fears.

Madam President, this is not just one company complaining. Dr. Jonas Salk has stated that, if he develops an AIDS vaccine, he doubts that an American manufacturer would actually market it.

But this problem is not limited to particular products. The current product liability system threatens entire industries. The contraceptive industry is one example. A 1990 report issued by the National Research Council and the Institute of Medicine concluded that "Product liability litigation has contributed significantly to the climate of disincentives for the development of contraceptive products."

The American Medical Association has documented this problem:

> In the early 1970s, there were 13 pharmaceutical companies actively pursuing research in contraception and fertility. Now, only one U.S. company conducts contraceptive and fertility research.

Is our country well-served by a system that prevents contraceptives, and other critical medical products, from coming to the market? Who benefits from that result? I would suggest then no one benefits, and that is why we can and must do better.

A STEP FORWARD

And with passage of the Product Liability Fairness Act, we will do better. This legislation may not solve all of the problems in the product liability system, but it will improve that system for everyone—for the injured people who need fast and fair compensation, for consumers who need quality products to choose from, for those American businesses who are at the cutting edge of international competition, and for workers who depend on a

strong economy to support their families.

The moderate reforms in this measure will reduce the abuses in the current system without eliminating solid protections for those who are victimized by defective or dangerous products.

UNIFORM SYSTEM

Let me highlight some of the key provisions of this legislation. First, this measure will provide a more uniform system of product liability. By adding more certainty to the system, the excessive costs in the present system will come down.

This improvement is one of the reasons why the National Governors Association testified in support of product liability reform. The association has said:

> The United States needs a single, predictable set of product liability rules. The adoption of a Federal uniform product liability code would eliminate unnecessary cost, delay, and confusion in resolving product liability cases.

ALTERNATIVE DISPUTE RESOLUTION

The provisions in the bill that encourage fair settlements and the use of alternative dispute resolution will also help reduce the excessive costs in the current system. Currently, too much money goes to transaction costs—primarily lawyers fees—and not enough goes to victims.

A 1993 survey of the Association of Manufacturing Technology found that every 100 claims filed against its members cost a total of $10.2 million. Out of that total, the victims received only $2.3 million, with the rest of the money going to legal fees and other costs. Clearly, we need to implement a better system in which the money goes to those who need it—injured people.

BALANCED APPROACH

Most importantly, and I cannot emphasize this enough, the moderate reforms in this bill offer a balanced approach to the needs of both consumers and businesses. Consumers will benefit, for example, from a statute of limitations provision that preserves a claim until 2 years after the consumer should have discovered the harm and the cause, not when the harm occurred, which is the law in some States, but when they should have discovered it. That is a great advantage to consumers.

In many cases, injured people are not sure what caused their injuries, and by the time they figure it out, they have often lost their ability to sue. This legislation will provide relief for people in such situations and allow them adequate time to bring a lawsuit.

Businesses will also benefit from this legislation. For example, in order to recover punitive damages, the plaintiff will have to prove, by clear and convincing evidence, that the harm was caused by the defendant's "conscious, flagrant indifference to the safety of those persons who might be harmed by a product." This provision will allow defendants to have a clear understanding of when they may be subject to this quasicriminal penalty. At the same time, the bill does not institute arbitrary caps or limits that would restrict the rights of plaintiffs.

Many States have caps on punitive damages, but this bill does not.

Under this measure, defendants will have an absolute defense if the plaintiff was under the influence of intoxicating alcohol or illegal drugs and the condition was more than 50 percent responsible for the plaintiff's injuries. This provision, it seems to me, is nothing more than common sense.

PRODUCT SELLERS

Furthermore, product sellers would only be liable for their own negligence or failure to comply with an express warranty. This provision would help product sellers who are not at fault get out of cases before running up huge legal bills. But as an added protection for injured people, this rule would not apply if the manufacturer could not be brought into court or if the claimant would be unable to enforce a judgment against the manufacturer.

The provisions I have outlined demonstrate the balance this legislation strikes between consumers and businesses. In the final analysis, the reforms in the bill should strengthen the product liability system for everyone.

Of course, some of my colleagues are opposed to this measure. While I hope to respond to some of their arguments more extensively during debate, let me briefly address some of their claims.

A NATIONAL SOLUTION FOR A NATIONAL PROBLEM

First, some of my colleagues argue that this bill would undermine long-established principles of federalism and interfere with State liability standards. But I see an important rationale for Federal standards in this area: More than 70 percent of all products are sold beyond the borders of the State in which they are manufactured.

There was a time when the products that were sold were sold only or almost exclusively within the State that they were manufactured. Today, that is no longer the case.

Inconsistent State laws are a real burden for manufacturers, who are sometimes required to meet different standards in each different State and territory. Additionally, these inconsistent State laws encourage forum-shopping.

Because of the different laws, some people shop all over the country as to where to bring their lawsuit. That is not intelligent. That is not wise. That undermines the system. At the same time, Federal intervention into a specific area of liability is certainly nothing new.

For example, Congress has adopted Federal tort plans under the Jones Act for certain maritime accidents, and under the Federal Employers Liability Act which relates to railroad accidents.

Opponents of this legislation, Madam President, have also argued that there is no litigation explosion and that, therefore, there is no need for this legislation at all. There are conflicting statistics about how many product liability cases are filed each year and the amount of money involved. But there is no doubt, Madam President, whatsoever, that there are thousands of product liability cases involving billions of dollars filed annually in this country.

Clearly, there are enough cases and dollars to warrant making the system more fair and efficient. But to debate whether there has been a litigation explosion I think misses the critical question of whether injured people are being treated fairly under the present system. As I suggested previously, they are not being treated fairly, and this act would improve the system immeasurably.

Although there are disagreements about this legislation, I find it tremendously encouraging that we are at least having the opportunity to debate this bill. This is one of the first opportunities we have had to debate litigation reform. Senator DANFORTH and I, going back almost 10 years ago, offered legislation in this area. It never moved beyond committee. We never had the chance to deal with it. I point out that one of those involved in helping us draft the legislation was the dean of Yale Law School, Guido Calabresi, one of the great experts on tort law. Unfortunately, we were not able to get much done then.

At least today we are debating and discussing this issue. I am hopeful that this evening we will vote to invoke cloture and move forward on this measure.

With this bill, we can implement much-needed reform. The only question is whether or not a minority—and that is what it is in this body—will prevent us from completing action on this legislation. This is a critically important issue involving the rights and responsibilities of injured people, of workers, of American business and industry, and we ought to treat it with the seriousness it deserves.

I urge my colleagues to allow this debate to go forward and to give this body the opportunity to vote up or down on whether or not they think that product liability reform is necessary.

In closing, I encourage my colleagues to offer constructive amendments that will improve the bill. Let us debate the real issues and find solutions to the real problems in our product liability system. In my view, this legislation, with its balanced approach to reform, will improve the product liability system for everyone. I urge my colleagues to support it.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California [Mrs. BOXER] is recognized.

Mrs. BOXER. Madam President, I want to add my voice to those who oppose this bill, the Product Liability Fairness Act. I do not think it is fair. I do think it is about product liability. I want to point out why I not only think it is unfair, but also it is dangerous. I think it is dangerous for people in this country, particularly the women, in its present form. I also have to say the bill could have been improved by the Kohl amendment. But this Senate voted to keep settlement agreements secret—unbelievably, the Senate voted to keep settlement agreements secret.

I happen to know of some cases where there have been terrible products on the market. There were toys, for example, where a child was injured or paralyzed using them. But the agreement could never come to light, and that product stayed on the market, and who knows if other children are becoming paralyzed. But this body could not even vote for that amendment. They do not want to endanger the Product Liability Fairness Act.

I will tell you that it is bad medicine for the people of this country; it is bad for the women of this Nation. I agree that we must help our businesses keep costs down. I work with the businesses of California to make sure that they can compete, to make sure that they have incentives to win in this new global economy. But I do not believe we should pass a law that looks at the corporate bottom line only, and not at the bottom line of the people of this country who could be harmed.

I do not think we should ever sell off the rights of victims, who are too often women, whose lives have been torn apart by dangerous drugs and medical devices. I can tell you—and I will in this speech, I hope, effectively—that we are not just talking about theoretical issues here; we are talking about living, breathing people—Americans who have been harmed.

For the victims, the price tag on this legislation is far too high. Make no mistake about it. This bill, in my opinion, is not about reform; it is about putting the women of this country in a powerless position, powerless to fight against the horrible outcomes that have resulted from misrepresentations and broken promises.

I certainly do not accuse any of those colleagues who support this bill of doing this intentionally. But that is what this bill does. It is about making women and their offspring the guinea pigs of our future by giving a legal shield to those who should be held responsible for mistakes. This bill would do this by shielding manufacturers of dangerous drugs and medical devices from punitive damages, even in cases of recklessness and indifference to society. All these companies need to do to make them immune from these kinds of damages is get an FDA approval.

Madam President, this is a terrible mistake. In our society, the threat of punitive damages helps keep dangerous products off the market. If we turn around and shield these health product wrongdoers from liability for punitive damages, we will be helping to tear down our system's safeguards against danger of the most frightening kind.

Madam President, we are going to hear a lot of talk on both sides of this issue. But I think history speaks for itself. Let us remember DES, Copper-7 IUD's, and high-estrogen contraceptives. Maybe the men in this body do not remember them as well as the women do, but I think we ought to focus on those particular products which have wreaked havoc on the women of this Nation. They all had something in common: The FDA let those products onto the market.

There are those who will argue that, well, in those days, the FDA really did not approve the way they approve today. I agree that the approval process has gotten better. But let me tell you, mistakes have happened in the past when we thought there was a good approval process, and they will happen in the future.

In fact, Madam President, a GAO report examined data about drugs approved by the FDA between 1976 and 1985 and found that over 50 percent of them had serious postapproval risks that could lead to hospitalization, severe or permanent disability, or even death.

I do not think you need a law degree to know that 10 or 20 years from now, we will look back and think that our system was not perfect even today.

And in 50 years people will look back and say, gee, we thought we had it down right, but we did not. We will continue to see faces on the wall of history of people tragically, often fatally harmed by a whole list of drugs and medical devices that we incorrectly believed were safe.

Just yesterday Hazel O'Leary, the head of the Department of Energy, released documents that showed what this Government did to these people of this country without them knowing they were exposed to radiation. They thought everything was fine. Oh, it was the Department of Energy. It was the Federal Government. And pregnant women were exposed to radiation.

What is the connection I am making? The connection is that in this bill we give companies an FDA excuse. And the point I am making is this is government of, by, and for the people, but it is not perfect. This Government lied to its own people in order to do experiments. Who is to say there will not be a bureaucrat somewhere in the FDA who could be bought someday now or in the future and that approval is given to a product that maims? Oh, it is an FDA excuse, the company says.

Now most manufacturers try to do the right thing. We have some wonderful lifesaving products in our country. I support these companies. I support their research. I think the thing we need to do is expand research. But when it comes to safety, let us not leave the women of this country exposed.

Let me talk about my experience. For 10 years I was over in the House of Representatives, and the last few I was the chairman of the subcommittee that oversaw the FAA. Now in this bill there is an FAA exemption, also, a Federal Aviation Administration exemption given.

I have to tell you there were many times in my research that I accused the FAA of being a little too cozy with the industry. And when it came to safety that was true. If you look at the configuration of where exit doors are on planes in this country, you will see in comparison to foreign countries we do not do enough for safety. We do not leave enough room for people to escape a plane.

I will be darned if I am going to give a company an FAA excuse so that in case of a crash or a problem they can say, well, we did this the right way.

(Mr. CAMPBELL assumed the chair.)

Mrs. BOXER. I do not think that our Government is infallible, Mr. President, and I do not think it ever will be infallible. What I find amazing is a lot of my colleagues here who are always critical of the Government, particularly my friends on the other side of the aisle, are willing to trust the FDA and the FAA in this fashion and let companies hide behind that shield. I find that rather amazing.

In 1993, a GAO study found the FAA is not equipped to keep pace with new technologies and that its engineers are undertrained. If we allow an imperfect FDA and FAA process to serve as an absolute shield for manufacturers, what governmental entity will be next that we will put up as a shield?

I have a list here, Mr. President, of all the agencies in the Federal Government that have regulatory functions. I will not read them all.

Mr. President, one of them is the Nuclear Regulatory Commission. Maybe we ought to give a shield for that. Another is the Occupational Safety and Health Administration. That would probably come next. And pretty soon I will tell you we are going to be setting up the situation where all the companies have to do is cozy up to these bureaucrats, get a signoff on their product or plant, and duck behind that shield if there is a problem in the future. This to me is a slippery slope that we should not step onto.

When lives are at stake, we need to look for ways to increase, not decrease,

our safeguards against flagrant misconduct. We cannot allow ever, in my opinion, the FDA to be a substitute for our jury system, or the FAA, or any other regulatory agency.

I think women will be disproportionately harmed by this bill, also because it has a provision barring joint liability for noneconomic damages. The doctrine of joint and several liability says that when more than one defendant is responsible for an injury but they all cannot contribute to the award, the plaintiff, the injured party, is allowed to recover fully from the remaining wrongdoers.

We are not talking about defendants who played a small or insignificant role in the damage. We are talking about companies whose actions alone were, at the very least, an essential factor in causing the injury.

The remaining responsible companies do not want to pick up the tab for the others who have either fled the country or declared bankruptcy or are in some other way judgment-proof. I ask my colleagues: Why should it be the injured party, the victim, who is forced to subsidize the wrongdoer?

Noneconomic damages help reimburse victims for the pain and suffering they experience when they are disfigured or lose their fertility. We have learned from our past tragic experiences that these damages are particularly important to women. And let me explain why I view this bill as harmful to women.

We all know that the economic status of women is not as high as men. According to 1993 data from the U.S. Department of Labor, a women still earns only 77 cents for every dollar earned by a man. Women make up 52 percent of the population, but there are 10 million more men working in this country than women.

By eliminating punitive damages in certain cases, we are increasing the vulnerability of women to dangerous products. We must always work to ensure equal justice under the law, regardless of earning capacity, professional status or gender.

Let us think for a minute about real people right here. Think about what happened to the women who trusted products like DES, silicone breast implants, Dalkon shield, and Copper-7 IUD's. This is what happened to them: Infertility, miscarriage, cancer, and disfigurement. Now you will hear a lot of talk on the Senate floor about legal theory. Let us talk about miscarriage, infertility, cancer, disfigurement. These injuries may not always carry a quantifiable economic price tag in a lawyer's mind or in the court.

They may not even result in any lost wages if the individual, say, works part time and is able to continue with that work. But that does not mean that they do not take a tremendous toll on the women, on the quality of their lives and the lives of the people around them.

We value families in this country—we certainly say we do. Imagine the pain and loss to a woman or a man who, because of a company's mistake, can never experience the joy of a child.

Mr. President, it is estimated that 5.3 million American men and women in this country are infertile—a full 10 percent of the population. Some of them became infertile because of dangerous products. I know if we asked them, they would tell us just how devastating it is. Maybe it is not considered an economic loss but it is, nonetheless, a devastating loss.

So as we debate this bill, I believe that we must listen to the real casualties of this bill: The victims—real people with lives worth protecting.

Mr. President, I do have about 4 more minutes I see my colleagues are standing and I just want to inform them 4 more minutes to wind down my conclusion.

Mr. President, I think the supporters of this bill should meet the real victims behind this issue.

They should meet Martha Cody of Santa Barbara, CA. At age 34, Martha was forced to have a hysterectomy. In Los Angeles, CA, Sherry Weinman lives with the knowledge that she is infertile. Then there's Patti Negri, of Hollywood, CA. Not only will this 37-year-old woman never have children, but she developed osteoporosis at the young age of 30.

Their injuries were caused by DES—DES, a drug that was placed on the market with the approval of the FDA. This bill will tell DES victims across America that the FDA premarket approval process, however inadequate, should excuse the manufacturers of drugs like DES from paying punitive damages.

I think the supporters of this bill should meet Sybil Goldrich of Los Angeles, CA. She now has chronic illness, tumors in her uterus and ovaries, and has lost her reproductive capacity. And all of this because, after having bilateral mastectomies for breast cancer, she received a silicone-gel breast implant.

Or Peggy Oglosby, a California resident who also had breast cancer and after receiving silicone implants, her life and her health has been dramatically altered. She has lupus, problems with her motor and sensory nerves, arthritis and she ultimately had to have major reconstructive spinal surgery. She wrote to me:

> Every day I am in extreme pain. My muscles form large painful knots, my joints are stiff, swollen and painful. I have debilitating headaches, severe back and neck aches. I have rashes all over my body. I get so hot I feel like my body will catch on fire. I cannot begin to tell you how difficult it is for me to try and prepare a simple meal, do a little laundry or any other normal everyday thing * * * My lifestyle and my husband's have been dramatically altered.

And then there's Brenda McLaughlin, a silicone breast implant victim from San Francisco, CA, who wrote to me and asked me to do the following. She said: "Please look at the human side of this issue."

"Look at the human side of this issue," she says.

If we pass this bill in its current form, we are turning away from the human side of this issue.

I ask my colleagues to honor these victims and do the right thing.

For too long the women of America have not been paid attention to. They do blood pressure experiments, but not on our blood pressure. They look into heart disease, but not at our hearts. Finally, we are paying attention to women's issues.

This bill would take us back in the other direction. I think the time has come to stand up for the women of this country and say that we count, too.

Because, if we do not, I will tell you, my colleagues, somewhere down the road at a community meeting when you meet one of these women, or in a hospital when you meet one of these women, or even a classroom when you meet one of the kids of one of these women, you will regret—you will regret—that you put into law an FDA shield. It is wrong and I hope we will beat this bill back.

I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, I would like you to give some thought about the facts of a case that could come under this bill.

Two planes collide in the air, both of them built within the last year. Plane A is not defective. Plane B is clearly defective, clearly at fault. Some of the parts from plane B fall on Yankee Stadium, injure people, and destroy a section of the stands.

Plane A does not come under this bill in the suit. The owner of Yankee Stadium, which loses 500 or 600 seats and cannot have spectators in it, does not come under this bill.

This bill has a specific exclusion for businesses. It has an exclusion that the provisions do not apply to businesses.

Section 4:

> A civil action brought against a manufacturer or product seller for loss of damage to a product itself or for commercial loss is not subject to this Act and shall be governed by applicable commercial or contract law.

Pennzoil-Texaco, one of the largest verdicts ever rendered, $11 billion, was not a personal injury suit. It was a suit for commercial loss.

Commercial loss extends to replacement of the aircraft, replacement of the parts of the aircraft, loss of business of plane A, and loss of profits. It applies to the owner of the Yankee Stadium that loses a section of its grandstands where spectators cannot come.

This law does not control relative to that.

Now that is not fair. What is good for the goose is good for the gander and what is good for the gander is good for the goose.

Well, one of the people in plane B has bought a life insurance policy, paid for it for 30 years, and has a health insurance policy on which he has paid the premiums for 30 years. He is injured and goes to the hospital, stays a month, and incurs a $100,000 hospital bill. His life insurance policy, which he had paid for all of the time, is $200,000.

He ends up with a verdict of $500,000. Under this bill, under certain circumstances, his $500,000 verdict is reduced by the $200,000 life insurance that he has paid for over the years. It is further reduced by the $100,000 hospital bill that was paid from his health insurer because he lived 4 weeks before he died.

Now, somebody says, "How in the world could that happen?" The language in this bill provides for that.

The definition of collateral benefits includes any life insurance, any health insurance, any accident insurance or plan, wage or salary continuation plan, or disability income or replacement service insurance, result of participating in any prepaid medical plan or health maintenance organization.

There is a provision in the bill that says that if the defendant makes an offer of settlement and the claimant receives less, then any collateral benefit—which includes that life insurance policy and that health insurance policy—is deducted from the award.

And so it could well be that, instead of the $500,000 judgment that he gets, he finds it reduced by $200,000 of his own personal life insurance and $100,000 that had been paid out from his own health insurance company.

And the court has to do this, not the jury. It is after the verdict that the court makes this reduction under the language that is in this bill. And the injured party ends up with $200,000.

Now, with language like that in S. 687, how in the world did somebody have the audacity to call this the Product Liability Fairness Act?

Let us look at the fairness issue. We mentioned two things already. Is it fair that under this bill a seller of a product can impliedly warrant that product for an improper and dangerous use and not be found liable?

For example, if a consumer asked to purchase a product for use that the seller knows is improper and dangerous, unless the seller expressly verbalizes or says orally that the product is in fact safe for that use, the seller cannot be held liable. That is the issue of implied warranty. The product seller has to expressly say it. The law is that products are supposed to be put on the market in a fit and proper condition for the use for which they are intended.

Let us look at some of the other aspects of this bill. The proponents changed the law in regards to punitive damages, which has been standard over the years, from willful or wanton. They changed the standard and put in language for a superheightened standard of "conscious, flagrant indifference" to safety. Conscious and flagrant—far more than what has been the standard. Had Exxon been confronted by the big business protections of S. 687—that is this bill—they would have faced no punitive damages in the *Exxon Valdez* case where the punitive damages were awarded for reckless conduct.

Is it fair that a big drug company that markets a product that is horribly dangerous and injures many, many people should be granted immunity from punitive damages simply because the product was approved by a Federal bureaucracy? That immunity applies if the defendant has information or knowledge that the product was dangerous but the information was not required under some technical regulations drawn up by a bureaucrat who never dreamed such rules would lead to immunity for a drug company.

Let me point out the GAO study relative to the FDA approval. GAO recently issued a report on this issue which contains some alarming statistics:

> Of the 198 drugs approved by the FDA between 1976 and 1985 for which data was available, 102, or 51.5 percent, had serious postapproval risk as evidenced by label changing or withdrawal from the market. The serious postapproval risks are adverse reactions that could lead to hospitalization, increasing the length of hospitalization, and very possibly severe or permanent disability, or death.

I quote from the GAO study at page 3, which was issued, "FDA Drug Review, Postapproval Risk, 1976 to 1985," in April 1990.

Let us look, also, in regards to the FAA approval that is required. It also gives a complete defense. Additionally, there are real questions about the effectiveness of FAA safety inspection procedures. GAO, in a report released on November 13, 1989, is extremely critical of this system, noting that "inadequate oversight of the inspection program resulted from, one, FAA headquarters management being unaware that its inspection policies were not always followed by local FAA staff; and, second, inaccurate reporting to Congress of FAA's achievement."

The effects of this inadequate inspection system on the defects in the aircraft were recently recognized by the chairman of Cesna Aircraft, who stated that, "With tougher airworthiness requirements implemented aggressively by FAA, and with type-specific flight standards, I believe it is realistic to reduce the level of accidents by at least 50 percent."

If even the aircraft manufacturers believe there is room for a 50 percent improvement from FAA, it would not be appropriate to leave FAA as the only line of defense for the safety of the flying public.

On machines, we get into this issue of the statute of repose. Howard Falk, a member of the board of directors of the National Machine Tool Builders Association, testified that over 50 percent of the claims filed against machine tool builders involved machines over 25 years of age.

As we review each and every provision of this bill, it is clearly written for an advantage for certain manufacturers and not for the advantage of an injured person.

There is another provision in this bill that causes me a great deal of concern and raises the fairness issue. On page 26 of the bill, there is this statement:

> The employee shall not make any settlement with or accept any payment from the manufacturer or product seller without the written consent of the employer, and no release to or agreement with the manufacturer or the product seller shall be valid or enforceable for any purpose without such consent.

This provision deals with workers' compensation.

> However, the preceding sentence shall not apply if the employer, the workers' compensation insurer of the employer, is made whole from all benefits paid in workers' compensation benefits.

"Made whole" is 100 percent. Suppose a claimant feels there is a chance he will lose. And there are figures that have come out recently in a study that show that just slightly over 50 percent of all plaintiffs in lawsuits that are tried are victorious. So, therefore, he says, "I want to settle my case. I am willing to settle for 50 cents on the dollar." But an injured worker has to get his employer's consent, which is really his insurance company and the workers' compensation insurance company. And they say, "No, we are not going to take 50 cents on the dollar. Under this law, under this products liability fairness law, we are entitled to 100 percent."

Sometimes the insurance company who represents the defendant and the insurance company who represents the plaintiff can be the same, and they could use this language about failure to give consent in such a manner as to present hurdles and obstacles for plaintiff to go over. That is a very dangerous and very unfair provision that is in this particular bill.

There are other provisions which relate to the question of fairness. In my judgment, the provision dealing with the joint and several liability on noneconomic issues is very unfair. I thought Senator BOXER hit it very good. Her speech was very much to the point on it. But just say "disfigurement." Disfigurement is a noneconomic loss. In a clear case of liability, why is it that a severely disfigured claimant has to figure out which of

several defendants is supposed to be recovered against? The defendants themselves ought to have the responsibility to determine and apportion damages among themselves, and contributions among joint tort feasors are recognized in a number of States, and this can be worked out, rather than putting the burden on the woman who is disfigured or the woman who is deprived of being able to have a child. That responsibility, when there is clear liability, ought not to require that the injured party has to figure out the proportion of liability between four, five, or six defendants. The defendants themselves can apportion that. They have understandings and agreements relative to these matters. But this puts an awful burden on the woman who is in a situation where she cannot bear a child in the future as a result of injury for which she bears no responsibility.

Children are also adversely affected by the bill's provision regarding noneconomic damages, because there is no standard by which you can measure their wages. A 10-year-old child who is made completely a vegetable, who does not have the ability to earn in regard to the future, how much wages would the person have? That child might have been a doctor. Maybe, on the other hand, that child might have been the executive of a large company. But there is no standard by which a court could measure their compensable damages.

Now, to me that is very unfair. The elderly, who are entitled to spend the last years, the sunset years of their life, in some peace, would also be the ones affected by the provisions of this section in the bill because their loss would be a noneconomic loss.

Now, the question is that certainly one ought not to have to bear the risk caused by potential bankrupt defendants and to bear the burden of apportioning the damages among the various defendants. Let the defendant themselves, and their insurance companies, have that responsibility.

This bill is one of the most unfair bills that I have ever seen. As it is written, the fine print has so many clauses which are designed to save the insurance company money. That is basically what it is. The title of S. 687 is certainly a misnomer.

I go back to the phrase what is good for the goose is good for the gander. Why does the bill exclude all commercial loss and all business defendants? They do not come under this proposed law. They do not want to be saddled with its obstacles and hurdles. They do not want to be saddled with the fine print that is contained herein and the provisions that are there. Therefore, they exclude themselves.

What is good for the goose is good for the gander. That lone provision convinces me that the word "fairness" is a misnomer and it ought to be the Product Liability Unfairness Act that the proponents are proposing in this case.

Mr. President, I think if a person reads this bill, or has staff read this bill, and sees the unfairness that comes out of all of this, it becomes apparent that this bill ought to be defeated, and that cloture ought not to be allowed in this case. S. 687 needs to go back to the drawing board.

Now, I think over the years the States have done a pretty good job. When I came here in the years of the Carter administration, the business community was afraid—and I agreed with them—that there was a big movement to have a federalized workmen's compensation law, and business interests always told me that anytime you get a Federal cure, it turns out to be a Federal plague.

Well, they come up here with this. I do not know what may happen in the future in regard to a plague, but after this bill were to become effective they may well come back and seek to liberalize it far more. But this area of the law ought to be left to the States, as it has for over 200 years. This is a strictly unfair bill. I urge my colleagues, when the vote comes up on cloture, to vote against cloture.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington [Mr. GORTON] is recognized.

Mr. GORTON. I thank the Chair.

Mr. President, the distinguished junior Senator from California might well be surprised at the degree of agreement with many of the points that she made across party lines and across the line of division over this bill.

Much of what she said about the right of people to make recoveries when they are injured by the negligent or purposeful action of others is extremely sound policy. Much of it, however, has already been anticipated over the course not just of the 2 years of this Congress, but the 12 or 14 years during which product liability litigation has been discussed in the Commerce Committee. Therefore, many of the serious cases and examples which she brought up in her speech would be unaffected, for all practical purposes, by this legislation.

When you get right down to it, legislative provisions on product liability, which were extremely expansive in the early years of the discussion of this subject, which to a certain extent federalized the laws relating to negligence and strict liability, which included many additional defenses, have in many cases been removed from this proposal, which now covers perhaps three or four major subjects. None of the opponents to this legislation, to the best of my knowledge, have objected to those provisions in the bill which deal with expedited settlements, which attempt to see to it that peaceful and prompt resolution of controversies is encouraged rather than discouraged.

None of the opponents of this bill, to the best of my knowledge, object to those elements in the bill which actually extend or preserve rights of injured parties, like a statute of limitations which becomes national in nature and which is based not on the date of the injury but the date on which the injured party should have known in due and reasonable course that he or she in fact was injured by the product in question.

Note that the substance of the bill, from the point of view of the way in which litigation is conducted and the way in which claims are dealt with, really comes down to two matters of considerable substance, one having to do with what is called joint and several liability and the other having to do with punitive damages.

It was, of course, to those two basic provisions in this act that most of the remarks of the Senator from California were directed. In this case, I hope that I can explain both to her and to our colleagues once again what we have attempted to explain as sponsors of this bill over an extended period of time.

Obviously, in any society, there are a number of competing interests. One vitally important interest is that courts be open to people who have claims. I cannot even say in that case legitimate claims, because that is what is the function of the Court to determine. Courts have to be very widely open to all kinds of claims, the legitimacy of which is to be determined during the course of proceedings by an impartial tribunal.

At the same time, of course, we have a wide range of other societal goals which we seek, and among those goals, of course, is seeing to it that a society is encouraged to change and to develop for the better.

Perhaps one of the elements in which we can have the greatest degree of pride as Americans is the fact that for a century or more we have led the world in industrial innovation, in a wide range of fields, with great competition from others, perhaps, in a number of those areas, but nonetheless remaining always on the cutting edge of technology.

Perhaps even more significant as we look at American leadership is the leadership of American companies in the development of new drugs for the treatment of certain kinds of diseases or conditions and the development of medical devices. And so the Senator from California has attacked particularly those elements in this bill which limit punitive damages in cases of items approved for aircraft by the Federal Aviation Administration and various kinds of medical devices and drugs which have been approved for their safety and effectiveness by the Food and Drug Administration.

It is, however, totally incorrect to say that either one of those defenses provides an "absolute shield"—and in using those two words, I am using two words which were presented to us by the Senator from California—from liability for negligence, or for that matter for a purposeful use of a product which in fact is harmful rather than helpful.

The defense which is presented to manufacturers and to researchers and developers under the so-called FDA and FAA defenses is a defense against punitive damages. It is a defense against punitive damages. It is not a defense and is totally irrelevant to the actual damages which an individual has suffered and can prove to the satisfaction of a court or the jury.

It is absolutely no defense whatsoever to noneconomic damages, the kind of damages to which the Senator from California mentioned and so eloquently testified. Each of those is unaffected by the FDA or the FAA defense. Only punitive damages are covered by this bill in that connection.

In that connection, Mr. President, I can speak with a background different from most other Senators. I was admitted to the bar, practiced law in, and was attorney general of a State which does not allow punitive damages at all in the great bulk of civil cases. There are four or five such States in the United States as a part of our experiment in the law. I do not believe that the citizens of my State and that other handful of States are without recourse. They bring lawsuits as far as I can tell just as frequently as the citizens of other States in connection with these high-profile items to which the Senator has testified. They get most cases settled. They win those cases before juries and before courts just as often as do others. Whatever impact there is on the manufacturers driving them toward safety by litigation is as present in the State of Washington as it is elsewhere.

There are very serious questions raised. I suspect that most academics in the field of justice and the law have serious reservations about the appropriateness of punitive damages in a civil justice system because of course one court in one State can impose them, another court in another State can impose them. Companies can be subjected for exactly the same products in multiple verdicts under our civil justice system. There are many, as is the case in many other countries, which seriously question whether they play or should play any role in our civil justice system at all.

We do not deal with that question of whether they should be present at all. In this bill we simply say that if a developer, if a company, has gone through the entire process which is laid out by the Government of the United States, in these two instances, matters which come before the Food and Drug Administration for its approval on the basis of safety and effectiveness, or to the Federal Aviation Administration for safety in connection with aircraft, that if the company has revealed everything relevant to the particular item for which it seeks approval, if it has held nothing back before or after the license—in other words, if it has operated within the frame of reference of all of the knowledge that it has available to it and has that approval—then it ought not to be subject to a single or a multiplicity of punitive damage judgments well after the fact, after something else has been learned or a jury has been persuaded of some other matter.

It would seem to me, Mr. President, that is a matter of simple justice. If we have a system—of course the system will not be entirely perfect. But if we have a system under which we require companies to go through the various hoops before they can market something, and if they do it and if they do it honestly, ought they not at least be preserved from punitive damage settlements? Just as a matter of abstract justice, it would seem to me that should be the case.

The Senator from California said, "Oh, you know, we don't trust Government. Government can make mistakes." Of course it can. Someone could pay off someone in the FDA. Well, there is a specific section here which takes that out of the exemption from punitive damages for bribery or payoff which seems highly unlikely in any event. But the company does not need to have gone so far as to have bribed someone to pull itself out of this prohibition against punitive damages. It simply needs to have withheld something. It simply needs to have acted in any way that was not appropriate at the time. It simply needs to have withheld knowledge that it had before or after that licensing.

This exemption from punitive damages fails, whatever law of a particular State at the present time. But there is a more important matter than even this narrow question of abstract justice. That has to do with the impact on people as investors, on research and development, divisions of our major companies or of our small startup companies and the like. What do we want to do? We say in our tax laws that research and development is important and is absolutely vital. We want people to engage in it. We have not conquered quite obviously all of the physical, mental, and otherwise ills of human beings in this world. We want the kind of research and development and product promotion that will in fact help people.

In instance after instance, for all practical purposes to a hundred percent of the instances, we are told by the companies which are engaged in this business that they are stopping research into certain fields. They are stopping the development of items that they researched and thought might work and could even get licensed because they simply are not willing to risk the entire future of their companies on a new product, even after it has been licensed by the Food and Drug Administration—risk in the case of a small company, absolute bankruptcy from count one of these judgments, and in the case of larger companies, grave and serious risks to their own future. Many large companies have found after the fact that they have been seriously penalized by the kind of litigation system that we have at the present time.

So this is not free, Mr. President. Obviously, if there were no other impact on society, I suppose we ought to allow unlimited damages in litigation. But when we have a situation in which many people who are suffering from incurable conditions today might very well be helped in the future were we to encourage companies to work in this area, to come up with some kind of pure or ameliorative situation for people in trouble, are we going to say because 99 out of 100 people would be helped that 1 out of 100 would be hurt; or 9 to 1 that we are going to allow not only all of the profits coming out of this research and development to be wiped out but more, and a company wiped out because a jury dealing with one individual in one instance after the fact determines that a huge punitive damage award is appropriate?

We at least have to recognize the fact that one idea is being laid up against another, and we do not simply have to take the word of people that we are not going to engage in this kind of research and development in the future. It has happened, and it is happening today. There are groups that have told us that we have stopped looking into a cure for AIDS because the risks under the present system are simply too great. No one will invest in that kind of research, because the risks are too great. This is the price that will be paid; this is the price that is being paid today by the unlimited nature of the present system, particularly in regard to punitive damages. That is a very high price, a price being paid by the very people whom the Senator from California says she is defending in this case.

If you look at an individual situation, you must also—I think more importantly—look at the situation of our entire society. Do we want to continue to tie the hands of those people who will invest in this, those physicians and researchers who will work toward cures of our multiplicity of ills in this world in order to protect the right for very, very good and skilled lawyers to persuade a particular jury in a particular case to award a huge punitive damages award? I think not. The proponents of this bill think not.

The proponents of this bill think society will be benefited by encouraging this kind of research and development. We think we defend the very people for whom the Senator from California purports this to be better than the present system of law does. We do have this weighing process in which we must engage if we are not simply to choke off and to bring to an end the kind of research and development we wish.

Perhaps to an even greater extent, we can see this in connection with the Federal Aviation Administration. Here we know what happened. We do not have to talk about any kind of theory; we know what has happened. We know that the present product liability laws in this country—the litigation in this country—have, for all practical purposes, destroyed that portion of our industry which builds propeller-driven and other small aircraft for the private market. It has simply destroyed it. There has been a 90-percent reduction in the number of aircraft produced, and up to half of the cost of the handful of aircraft still being produced is going to the cost of product liability. Lawsuits are being brought 20 and 30 years after the production of a particular item.

I gave an example, outside this approval area, of a manufacturer of logging and timber equipment in my own State in a very depressed area, which is defending lawsuits for equipment produced and installed 30 years ago, and in which the cost of defending product liability litigation, without ever having a verdict entered against it, are infinitely greater than the taxes that it pays for public purposes in the United States. Well, they are now out of business. This is just a huge cost of doing business.

In the case of the private aircraft companies, they are out of business in large measure because of the present system of litigation. Is that desirable? No. One of them reported to us that it has never lost a product liability case; yet, they keep coming up against them, and they cost $500,000 each to defend. That company says, "why should we be in this business anymore? We ought to go into something where you do not get sued all the time." Is that desirable that we should have no industry for building small aircraft in the United States? Of course, it is not desirable. Yet, it is what the Senator from Alabama wants to continue, and it is what the Senator from South Carolina wants to continue, and it is what the Senator from California wishes to continue. That is punitive damages, or it slopped over a little bit in the joint and several liability.

In the case of joint and several liability, the general common law rule has been that when more than one person or entity is at fault, the winner, the plaintiff, the victim, can collect the entire verdict against any one of them, rather than to have to divide it in proportion to the fault. That may have worked 30 or 40 years ago when I first became a lawyer when we had a doctrine called contributory negligence. That means if you and I were in an accident and I was 90 percent responsible and you were 10 percent responsible, you could not recover anything from me because some small fault was attributed to you. But that doctrine has long since disappeared. We now, through our juries and court systems, distribute the amount of fault in any particular connection and distribute the liability accordingly—except that we do not distribute the final money liability accordingly. Even the one which is 10 percent at fault in that connection, if he, she, or it were the only one who were financially responsible, would have to pay 100 percent of the damages.

Again, is that just? It seems very unlikely to be just. Obviously, justice would require a contribution related proportionately to the degree of fault to those who caused the injury in the first place.

Again, the Senator from California brings up, principally in this joint and several liability argument, a number of medical devices and the adverse impact they have caused, in reality, against many women. She omits to say that we have taken this proposal directly from the laws of the State of California, laws of her own State. This was a law not passed by a male-dominated legislature. This was a law passed by the people of California in a referendum or an initiative because of what the entire population of that State saw to be the tremendously damaging impact of the previous law on employment, on justice, and on the entire administration of law in the State of California.

But the real point is that this change in joint and several liability would, for all practical purposes, be totally unrelated to the cases about which the Senator from California speaks, because the fault was in the manufacture of the item. It is the manufacturer who is the defendant, and it is the manufacturer, for all practical purposes, who is 100 percent at fault; and the manufacturer, of course, in these cases will not be judgment proof. If you sue the manufacturer of the Dalkon shield, a termination and abolition of joint and several liability for noneconomic damages is not going to affect the liability of that manufacturer one whit. It has far more to do with items other than those. They were not good examples, because the recovery for noneconomic damages will not be significantly affected by the change of the joint and several liability rule. But where there are a multitude of people or organizations that are responsible, a change will take place. What is the change? The change just says: You are responsible for the share of damages you actually caused. What is wrong with that? That seems to me to be clear and obvious justice.

It is this joint and several liability rule, at the present time, which inhibits the development of new products totally outside of the FDA and the FAA provisions. In fact, it is the joint and several liability rule which is most significant to most manufacturers, who obviously do not come under either of those excesses for punitive damages. They are frustrated, and rightly frustrated, with the fact that they will be found 10 percent responsible or 1 percent responsible, but are the only deep pocket, so therefore they will be held to a very, very substantial verdict.

The present system hurts jobs in the United States, hurts research and development in the United States, and hurts product promotion and development in the United States. In the machine tool industry, where seven times as much money is spent on defending product liability litigation as on research and development, we see graphically what happens to the American economy by the present system.

This bill itself is only going to change that figure slightly. It will make it better and will leave a little bit more to research and development and will do better. But this is not a radical change in the law. It is not what the great bulk of the business community would like to have in this field by any stretch of the imagination. But over a period of a dozen years or more, it has been worked and stretched and has reached the point where it seems to be what is important, where it is balanced, and where it does do some things.

This Senator himself, as part of earlier bills, at least on one occasion voted against a products liability bill because he felt it was unbalanced. In this case, however, I feel that we do have an appropriate balance here. I think that all of the examples that were brought up by the Senator from California will be essentially unaffected by the bill, but that, by prohibiting the use of punitive damages only in cases where a company has done everything it can to assure safety and has gotten a Federal license for it, to say to companies that they are only responsible for the amount of damages they did will be encouraging to our economy and encouraging to the administration of justice.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I am only going to take 2 or 3 minutes to respond.

I talked about this bill making women and their offspring the guinea pigs of our future by giving a legal shield to those who should be held responsible for their mistakes.

I further said that this bill would do this by shielding manufacturers of dangerous drugs and medical devices from

punitive damages, even in cases of conscious or flagrant recklessness and indifference to society. All these companies need to do to make them immune from these kinds of damages is get an FDA approval.

I stand by those comments. That is what this bill does. It creates an FDA excuse. And I would like to tell the Senator from Washington that the legislature in California rejected very firmly the FDA kind of excuse. It is making women guinea pigs. And if the Senator from Washington believes that we have to weigh between the company and the victims, I will tell you where this Senator from California comes out, because I think our most sacred obligation is to all the people—all the people—the people who could get hurt, because I have seen them in hospitals, I have seen them in my community meetings, and I see what happens to their families and to their lives. I have seen the DES victims. I have seen women who are infertile because of products that won FDA approval.

I further say to the Senator who says, "Well, the Senator from California," meaning me, "said that if there was bribery and it was proven, then in fact you could go and get punitive damages." Fine. I am very happy it is in the bill, although the Senator from Washington says, well, he cannot imagine it would happen. Then why is it in the bill? You put it in the bill. I assume some of you think it could happen.

But the fact is you do not always have a chance to prove bribery. And what is bribery? Has the Senator from Washington ever heard of the revolving door? I call that bribery.

I sat on the Armed Services Committee. I cannot tell you how many procurement officials work with companies in behalf of the Government and, boom, they were over working for those very same companies. Payoff. Payoff. Could you prove it? Could you put them in jail? Maybe. Maybe not. Probably not most of the time. When you are sitting across from a company man or woman and you have the power to regulate them and there is a wink and a nod of, gee, when are you retiring, Mr. Smith? Maybe you cannot prove bribery. I am saying it is the human condition. And I at least am not going to stand by quietly and see us give a legal shield to companies who in fact could be guilty but with a wink and a nod got an approval from some bureaucrat.

And that is just what this does, and it makes me sick, considering what I have seen of the victims. And I read about some of those victims in my prepared statement.

I also would like to print in the RECORD at this time a letter from Martin Delaney, founding director of Project Inform, one of the leading AIDS organizations, and I quote from the letter:

Last week as a member of the NIAID AIDS Research Advisory Committee, I voted against initiating widescale human testing of two proposed vaccines for AIDS products * * *. Liability issues never once entered the discussion.

Let me repeat. "Liability issues never once entered the discussion." That is not the reason that the AIDS vaccine is being held up.

At the end of the letter, he says:

Product liability concerns are not presently an obstacle to such [AIDS] testing.

Mr. President, I ask unanimous consent that this letter be printed in the RECORD as well as an article from the Washington Post headlined, "NIH Delays Full-Scale Testing of Potential AIDS Vaccine."

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

To whom it may concern: Some groups have suggested that product liability laws are the principal reason we don't yet have a vaccine for AIDS. In response, they suggest that greatly relaxing such laws would result in quick or immediate marketing approval of such a vaccine. This is simply not the case. The principal reason that we don't yet have an approved AIDS vaccine is that no such vaccine has demonstrated the ability to protect humans against the normal routes of infection by HIV, the virus which causes AIDS, and no vaccine has yet been proven to be completely safe. No vaccine has yet reached the stage of testing where product liability issues are even a significant concern.

Last week, as a member of the NIAID AIDS Research Advisory Committee, I voted against initiating widescale human testing of two proposed vaccines for AIDS, products of Genentech and Biocene, a division of Chiron Corporation. Liability issues never once entered the discussion. Instead, the committee voted against approval of wide scale testing primarily because the vaccines hadn't shown sufficient evidence of efficacy in initial trials, and secondarily because some safety questions remain, principally the question of whether such a vaccine might accelerate the course of disease in someone who became infected despite vaccination. Because these concerns remain unanswered, and because of the financial and human resources costs of the proposed trials, it was felt that the public interest would be best served by waiting for the availability of additional promising vaccine candidates which might be tested comparatively. These two vaccines, despite their weaknesses, are the products in the most advanced stage of testing and development for AIDS. Questions of safety and efficacy are thus larger still for any other vaccine candidates, which have not yet had even the level of human testing of these two.

There are many possible ways to build a vaccine for AIDs and I am in no position to argue that one approach is inherently better than another. Only a graduated, step-by-step testing process can determine which is the safest and most effective approach. Product liability concerns are not presently an obstacle to such testing, which must precede any marketing approval of a vaccine. Regardless of product liability concerns, the availability of a vaccine for AIDS is many years away.

MARTIN DELANEY,
Founding Director, Project Inform.

[From the Washington Post, June 18, 1994]

NIH DELAYS FULL-SCALE TESTING OF POTENTIAL AIDS VACCINE

(By David Brown)

The National Institutes of Health yesterday decided to put off sponsoring a full-scale AIDS vaccine trial until more promising vaccines are developed or the two versions now ready for testing show more laboratory evidence that they are likely to work.

As a result, vaccine testing in thousands of high-risk people almost certainly will not occur for at least two years. By then, entirely different strategies for immunization could compete head-to-head, something that would not be possible if the nearly identical "candidate" vaccine were tested now.

The advisory committee of the National Institute of Allergy and Infectious Diseases (NIAID) reached the decision after an eight-hour public meeting yesterday. The recommendation was passed on to Anthony S. Fauci, the institute's director, who immediately accepted it. NIAID oversees virtually all of NIH's clinical studies of AIDS.

The decision will erode the lead that two biotechnology companies, Genentech and Biocine, have in the race to be the first to develop an effective vaccine to prevent infection by the human immunodeficiency virus (HIV). The 28-member advisory panel concluded there was neither compelling scientific evidence nor sufficient enthusiasm in high-risk communities where volunteers would be recruited, to justify a trial now.

In a sea change from their familiar role of urging early testing of AIDS drugs, several AIDS activists advised against starting a large vaccine trial until there is greater scientific consensus that the candidates are very strong.

"Once we go down this road with a mediocre product . . . we may never have the chance to recruit a large number of people again," said Martin E. Delaney of Project Inform in San Francisco, a member of the advisory committee. He said much of the AIDS-ravaged gay community is discouraged by poor results of AIDS treatment drugs, and is much less likely to volunteer for clinical experimentation now than in the past.

"We have only one chance to test a vaccine in a large randomized trial, and this is not that chance," he said.

At a news conference after the meeting, however, Fauci emphasized the decision was essentially to delay testing the two vaccines, not to reject them as worthless.

"It is clear that the recommendation of the [advisory] group is not that there should be an abandonment of this concept [of immune protection that Genentech and Biocine have developed]," he said.

Both vaccines employ a protein from the virus's shell, or "envelope," to stimulate an uninfected person's immune defenses against HIV. Those defenses are antibodies—biochemicals that specifically target the virus—and a class of white blood cells that attacks and kills cells the virus invades immediately after infection.

The protein in the vaccine, called gp120, is made by genetic engineering techniques and is incapable of causing HIV infection itself. It is like the crystal of a watch. The watch's works—in this case, the reproductive machinery of the virus—form no part of the vaccine.

Numerous other vaccines are now in development. Some involve splicing HIV genes into another carrier ("vector") virus, such as vaccinia, which is the one used for smallpox vaccination. Replication of the vector then releases large amounts of harmless HIV protein into the body. Some scientists believe

this strategy more closely resembles the real mechanism of HIV invasion, and will elicit a more robust defense.

Several panel members said they felt that a large trial testing a vector vaccine against an envelope vaccine would be a better use of time and money than a large trial testing only two envelope vaccines.

The two gp120 products have been used in small studies that allowed researchers to test their safety and to run numerous blood tests on volunteers to determine immune-system effects.

Those studies have shown that gp120 can stimulate a person to make antibodies and can cause proliferation of certain types of white blood cells. In laboratory experiments, however, those antibodies have not been able to prevent infection of cells by "wild" HIV virus.

Seven chimpanzees who were given the vaccines subsequently resisted infection when HIV was injected into their bloodstreams. Company representatives pointed to these experiments as proof of their products' promise. Many panel members, however, were unsure how much could be extrapolated from such a small sample of animals—and from a species known to respond very differently from human beings.

The largest of the gp120 studies done so far enrolled several hundred people at high risk for HIV infection because of their sexual practices or drug use. During the study, three persons—none of whom had gotten the full course of three shots—developed HIV infection through known routes of exposure. This did not prove that the vaccines were useless, but only that a single dose of them was not protective.

Numerous members of the advisory panel said that before moving to a larger trial, information should be learned about these "breakthrough" cases: what subtype of virus caused them; what their tests of immunity showed; and how their infections progressed.

The panel considered two possible trials it could have recommended for starting later this year. One would have required 9,000 high-risk volunteers, divided equally into three groups who would receive one of the two vaccines or placebo. It would have had the power to determine with a high degree of certainty whether a vaccine's effectiveness was 50 percent or greater. Such a study would take 3½ years to run, at a cost of up to $18 million a year.

The other option, enrolling 4,500 people, could reliably identify a useful vaccine only if it was protective 70 percent of the time. There seemed to be little confidence among panel members the gp120 candidates would perform that well. They concluded such a study (with a price tag as high as $9 million a year for two years) was not worth the money.

A recent survey of a community network of potential vaccine trial volunteers, set up under NIH auspices, showed that only 36 percent of gay men and injection drug users were "very willing" to participate in a vaccine trial.

Mrs. BOXER. Mr. President, in this article there is not a mention of liability law. He just cannot get enough candidates.

So I think it is very important that we not use faulty arguments here as we debate this, that we be honest about what the facts really are.

In closing my brief remarks here right now, I just want to say that the issues that are raised by the Senator from Washington surrounding my remarks were not correct, that I know the difference between punitive damages and compensatory damages very well, and we know punitive damages because of their very existence have put the fear of God into some folks. And that is important so that we do not have women walking around who cannot have babies and damaged human beings, because if the Senator from Washington weighs it another way, I have to tell him I weigh it the other way. I am here to speak for those people.

I yield the floor.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I thank the Chair.

I want to respond briefly to the Senator from California and then propose introducing an amendment.

The Senator is correct and this bill, like so many others, has been an educational process for so many of the Members of the Senate as to the difference between economic and noneconomic damages and compensatory damages and punitive damages.

But I think it is very important to focus on what punitive damages are because it is punitive damages for which a higher standard is being set by this bill, and, remember, the punitive damages might be looked at as something that comes after a lot else that precedes.

You have economic damages, which is to say that a person who is injured allegedly as a result of a defective product, gets all their out-of-pocket bills taken care of, not just medical bills, but lost wages, and all the rest. Then comes noneconomic damages, which are the so-called pain and suffering, a very broad category itself, subject to criticism for misuse, but not affected by the bill, and then on top of that comes punitive damages, which are basically a judgment by court or jury that we are going to punish the wrongdoer.

And it is that punitive side of it that has been subject to abuse, not just abuse, as has been suggested by opponents of the bill, but as a deterrent to negligence by producers. I mean, gee, the producers already have, hopefully, their own self-regard to avoid negligent behavior, their own ethical standards. But assume that happens. They then have the fear, not of paying out-of-pocket expenses to injured plaintiffs, but this broad and open category of pain and suffering.

And what has happened is that the abuse of the punitive damages element of awards in these cases has been one of the ways in which, frankly, the process has held up defendants. I mean held up, not in delay, but held up as at the point of a gun to settle cases for much more than they are worth just to avoid the enormous litigation expenses and the fear of the unknown that a jury will come along and award enormous punitive damages.

And, remember, the issue at point here is the FDA. Do we say to a company that goes through the process of FDA approval, multiyear process—7, 8 years, I believe, on the average—that if you do that and your product is found to have caused an injury, you are still subject to all these other elements of damage, economic, noneconomic? But is it really fair to say to a company that has gone through the FDA process that you can still be punished for what the law describes as a conscious and flagrant disregard of the public safety? I do not think so.

So we are all being educated, but that is the essence of what we are about.

AMENDMENT NO. 1938

(Purpose: To make negligent entrustment actions not subject to the act's provisions)

Mr. LIEBERMAN. Mr. President, I have given a copy of an amendment I am about to propose to Senator HOLLINGS. I am hopeful that we can have agreement on it. I intend to introduce the amendment on behalf of myself, Senator ROCKEFELLER, and Senator GORTON. We consider it to be technical, but a necessary clarification of the bill.

The idea of this amendment is to make it abundantly clear that this bill, the product liability bill, has absolutely no impact, not intended or unintentional, on an area of the law called negligent entrustment. Again, we are all going back to law school.

This area of law is completely distinct from product liability. It is the intention of the sponsors of the bill that this area of the law be left totally to the States and it is the intention of this amendment to make that clear.

Now, why even the need to make it clear? Well, questions were raised, as this bill, S. 687, was coming to the floor, from some surprising places about the bill's alleged affect on the ability to sue through the concept of negligent entrustment against certain categories of businesses, including particularly gun sellers, or what are called dram shops, which has to do with the liability of those who negligently sell alcohol to people.

These questions may have been encouraged by opponents of the bill; certainly they were raised by opponents of the underlying bill.

But the point that this amendment intends to make clear is it is not what the bill is about. The amendment clarifies two points.

First, that the bill does not make any change in State laws that apply to gun sellers who negligently sell guns to criminals, minors, or other people not allowed to buy guns. It is far away from our intention, but this specifically makes it clear. The bill passes no

opinion on these laws and certainly has no affect on those laws.

Second, this amendment would ensure that the bill does not affect so-called dram shop laws that exist in many States, which hold the owners of businesses that sell alcoholic beverages responsible for accidents that are caused by selling that alcohol to people who the seller should have known were intoxicated or become so intoxicated that they are a danger to others.

With this amendment, I ask unanimous consent to enter into the RECORD copies of several letters from the sponsors of S. 687, the Product Liability Fairness Act, to organizations that have raised questions about these issues.

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

U.S. SENATE,
Washington, DC, June 27, 1994.

REBECCA A. BROWN,
Mothers Against Drunk Driving, Irving, TX.

DEAR MS. BROWN: We are writing to respond to your letter of June 22 regarding S. 687, the Product Liability Fairness Act. You stated correctly that it is not the intent of the legislation to preempt state dram shop laws. We strongly disagree with your analysis of the bill when you concluded that it does preempt such laws.

Dram shop laws are used by claimants who allege that a bartender and/or tavern provided alcohol to an individual that was drunk, and that drunk individual caused the harm that is the subject of the litigation. In such cases, the claimant alleges that the harm was caused by providing the alcohol to the individual. The harm was not caused by the product because the claimant would never allege nor be able to prove that the product was defectively designed or manufactured or that there was a failure to warn of the risks associated with the product or breach of a warranty—the bases for a product liability suit. As you pointed out in your letter, S. 687 covers only claims ". . . for harm caused by a product." Dram shop laws are outside the scope of S. 687.

As strong supporters of highway safety and anti-drunk driving initiatives, we would oppose any attempt to hinder ongoing efforts in this area. Although we disagree with your legal analysis, we intend to offer an amendment to S. 687 to clarify that the bill does not preempt dram shop laws. Attached is a copy of the amendment. Upon reviewing this proposal, we request that you contact our colleagues again to indicate that your concerns have been satisfied and that you withdraw your opposition to consideration of S. 687.

We appreciate the opportunity to work with you to clarify this matter.

JOHN D. ROCKEFELLER IV,
U.S. Senator.
SLADE GORTON,
U.S. Senator.
JOSEPH I. LIEBERMAN,
U.S. Senator.

U.S. SENATE,
Washington, DC, June 10, 1994.

Mr. JOSH SUGARMANN,
Executive Director, Violence Policy Center, Washington, DC.

DEAR MR. SUGARMANN: We were quite surprised to read that you believe S.687 would somehow frustrate lawsuits against gun dealers who sell to minors through intermediaries. We are quite mystified as to how you reached your conclusions. To the best of our knowledge, no one has ever raised this argument before, not even the Consumers Union which has submitted testimony with respect to this bill in the past.

Upon review of the bill, we simply do not see how you could interpret this legislation to arrive at the conclusion you reach. Moreover, the cause of action you appear to describe, one for negligent entrustment, is not normally considered to be within the realm of product liability law. The most reasonable construction of the bill is that it does not affect suits such as the one you describe. S.687 will not frustrate lawsuits against gun dealers who sell to minors through intermediaries.

We are also very disappointed with the manner in which you chose to raise your concerns. You did not attempt to contact us, or any members of our staffs prior to making these claims. We suspect that this issue is one that can be easily cleared up, if that is your goal. We invite you to contact our staffs to discuss this matter further.

Sincerely,

JOHN D. ROCKEFELLER IV.
JOSEPH I. LIEBERMAN.
JOHN C. DANFORTH.
SLADE GORTON.
CHRISTOPHER J. DODD.

U.S. SENATE,
Washington, DC, June 10, 1994.

Ms. KRISTIN RAND,
Counsel, Consumers Union, Washington, DC.

DEAR MS. RAND: We were quite surprised to read that you believe S. 687 would somehow frustrate lawsuits against gun dealers who sell to minors through intermediaries. We are quite mystified as to how you reached your conclusions. You have never raised this in previous testimony with respect to this bill, and, to the best of our knowledge, neither has anyone else.

Upon review of the bill, we simply do not see how you could interpret this legislation to arrive at the conclusion you reach. Moreover, the cause of action you appear to describe, one for negligent entrustment, is not normally considered to be within the realm of product liability law. The most reasonable construction of the bill is that it does not affect suits such as the one you describe. S. 687 will not frustrate lawsuits against gun dealers who sell to minors through intermediaries.

We are also very disappointed with the manner in which you chose to raise your concerns. You did not attempt to contact us, or any members of our staffs prior to making these claims. We suspect that this issue is one that can be easily cleared up, if that is your goal. We invite you to contact our staffs to discuss this matter further.

Sincerely,

JOHN D. ROCKEFELLER IV.
JOSEPH I. LIEBERMAN.
JOHN C. DANFORTH.
SLADE GORTON.
CHRISTOPHER J. DODD.

Mr. LIEBERMAN. I thank the Chair. These letters provide very clear answers clarifying, as this amendment does, that the so-called area of negligent entrustment is not affected by this bill.

Mr. President, it is unfortunate that these concerns have been raised. The truth is that we could have saved people a lot of time and worry if those who were worried had come to the sponsors to express their concerns. But, in any case, this amendment is intended to put these concerns to rest.

Mr. President, at this time, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from Connecticut.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN], for himself, Mr. ROCKEFELLER and Mr. GORTON, proposes an amendment numbered 1938.

Mr. LIEBERMAN. 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 8, line 20, after the period insert the following: "A civil action for negligent entrustment is not subject to this Act and shall be governed by applicable State law. For purposes of the preceding sentence, the term "negligent entrustment" means causes of action under applicable State law that subject product sellers to liability for their failure to meet the applicable standard of care under State law in selling a product to a person who, because of his youth, inexperience, or otherwise, is likely to handle the product in a manner to cause harm to himself or others.

Mr. LIEBERMAN. I thank the Chair.

The PRESIDING OFFICER. Who seeks recognition?

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you, Mr. President.

I am prepared to file an amendment in the second degree to the amendment offered by the Senator from Connecticut on the grounds, in the first instance, that this amendment does nothing; that it is ineffectual.

I appreciate the sincerity of the approach by the Senator from Connecticut, but, at the same time, it seems to me that national issues pertaining to health, and particularly women's health. As eloquently stated by the junior Senator from California, those issues are entirely too important to allow for a masquerade to be approved by this body. And this amendment, without a second-degree, I believe would be such a masquerade.

Let me talk for a moment about why the amendment in the first instance causes a problem. This amendment and the underlying legislation does nothing to remove what we call—Mr. President, I understand the Senator from Connecticut wants to discuss this amendment, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum is noted.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the call of the quorum be suspended.

The PRESIDING OFFICER. Is there objection?

Ms. MOSELEY-BRAUN. There is objection.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue the call of the roll.

The legislative clerk resumed the call of the roll.

Ms. MOSELEY-BRAUN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. MOSELEY-BRAUN. Mr. President, the Senator from Connecticut has just advised that this is another amendment and not the one regarding specifically the FDA.

So, while I would take this moment to discuss the substance of the amendment of the FDA excuse and to pick up where the junior Senator from California left off, my remarks however are intended to that part of the bill and not to the part of the bill relating to the amendment just filed by the Senator from Connecticut.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I wonder if my friend and colleague from Illinois would withhold a minute so I might move adoption of this amendment, unless there is objection.

Mr. HEFLIN. I think we are going to have some discussion of the amendment.

Mr. LIEBERMAN. There is some clear indication of that from the Senator from Alabama.

I withhold that and yield back to the Senator from Illinois.

Ms. MOSELEY-BRAUN. I thank the Senator from Connecticut for his graciousness.

I would like to pick up, however, with regard to a couple of points raised by the junior Senator from California.

First, with regard to the whole notion in this legislation of an FDA excuse, I would point out to my colleagues that this represents one of the first times that we will have provided absolute insulation from responsibility by the actions of an administrative agency.

In short, by the decisionmaking or not, as the case may be, of nameless bureaucrats at the FDA, an individual will be shielded, or a company, more to the point, will be shielded from responsibility for punitive damages which affect women's health. Those damages, of course, can, in many instances, be death, can be life threatening, can be the end of reproductive opportunities, can be the kind of situations and the particular situations as raised by the Senator from California.

I would point out further that the FDA excuse here provides for this insulation from responsibility in a context which the agency itself is not capable of handling.

In the first instance, the agency approval process, which we all know has been convoluted over time, is not adequate to the task of actually researching, analyzing, and understanding the particulars with regard to products which may cause damages. In fact, if anything, of all of the Federal agencies that we have authorized to have some regulatory authority, the FDA stands in this case singularly unprepared and incapable of providing the kind of protection for women's health that other agencies have.

Specifically, the FDA does not have subpoena authority. We have looked.

I will submit for the RECORD, Mr. President, a list of agencies in the Federal Government that have subpoena authority, which ranges from the administrative law judges, Advisory Commission on the Conferences in Ocean Shipping, all the way through the Department of Agriculture, Department of Commerce, Departments of Energy, Health and Human Services, Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, National Transportation Safety Board, Department of the Treasury, Environmental Protection Agency, Farm Credit Administration, FCC, Federal Deposit Insurance Corporation, Federal Election Commission, Federal Energy Regulator Commission, Federal Home Loan Bank Board, et cetera, et cetera—through the Veterans' Administration.

I would point out the FDA is nowhere in this allowed to subpoena documents and information that may go to the adequacy for marketing of products which can be as dangerous as the Dalkon shield, as DES, as silicon breast implants, as the Copper-7 IUD, which we know has caused huge damage to any number of people.

In fact, I would point out on this list of Federal agency subpoena authority, the Department of Agriculture can subpoena information regarding watermelon research, can subpoena information regarding egg research and promotion, and yet this legislation would preclude the FDA—the Food and Drug Administration—from subpoenaing information regarding the Dalkon shield, the IUD, Copper-7 IUD, or other devices, medical devices which have been shown to be inimical to women's health.

In that regard the absence of subpoena authority detracts from the capacity of this agency to do the job that this legislation suggests it can and should do.

Further, it is not only the absence of subpoena authority, but we have had discussions with the FDA—there is no question but there is inadequate staff to do the kind of thorough job that would give the kind of protection that this legislation calls on it to give. In fact, if anything, one of the frightening things about this legislation—and I believe the reason for the remarks by the Senator from California—is we are essentially ducking responsibility here, saying let the bureaucrats decide whether these products are safe or not. And in so doing, saying we are going to let the bureaucrats decide in a context in which they cannot even themselves ask for the information. And what is even worse about this legislation, it says if the bureaucrats decide based on information submitted by the manufacturer of these harmful products, that is fine by us.

It seems to me that is an inadequate standard for the protection of women's health particularly. That is an inadequate standard with regard to life-threatening drugs and medical devices.

I point out further in the discussion of punitive damages that it is important the Members of this body understand the fundamental use and the reason that we have such things—that we have punitive damages, that we have damage awards that go beyond just the basic compensatory damages, compensating someone for what has actually happened here.

Tort law—bottom line—is never value free. It relates to the values affecting the individual as well as the society as a whole. Over time, it has always been the case that punitive damages in tort law related specifically to providing protections for the public interest, as a way of giving something more, giving something extra.

I would say to the Presiding Officer, there is a term in Louisiana called "lagniappe." That means something extra. The reason for the something extra with punitive damages is precisely to say: This is society's interest here that has been violated. This interest goes beyond the interests of the individual who is specifically hurt. We want to make certain you get the message loud and clear that compensation requires compensation for the public. And that punitive damages will be awarded as a way of stopping future harmful action from occurring.

In the law books, what is called black letter law, describing punitive damages—I would like to give this description:

> Something more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage, such as a spirit of malice or a fraudulent or evil motive on the part of the defendant. Mere negligence is not enough, even though it is so extreme in degree as to be characterized as gross.

So punitive damages go to those instances where manufacturers, for example, in this instance, have taken a step that is in flagrant disregard, not only of the rights and interests of the individual, but of society as a whole.

I point out to my colleagues we have example after example of specific medical devices that were marketed precisely to vulnerable populations. The Copper-7 IUD was marketed in spite of the fact that there was already evidence that it affected negatively a specific population. It was targeted and marketed specifically to that population.

It seems to me the company that did that ought to be held to account, not only for its harm to the young women who themselves would be rendered incapable of having children, not only with regard to their medical bills and the specifics of their case, but also would be held to account to the public as a whole.

The Copper-7 IUD, I point out, did receive FDA approval. It was registered as a drug, not a medical device, because the trace amounts of copper in the product chemically interact with women's bodies. As a result, ultimately, it was shown the marketing of this product was causing real harm, that women suffered serious cases of infection, of loss of fertility, had to have surgery for the removal of organs. And that litigation went on and on, again because of a decision to market a product known to be harmful to the most vulnerable populations that would suffer their harm.

It seems to me that is exactly what punitive damages are calculated to address. The whole idea is to say you cannot do this to this individual, but more to the point, you should not do this in the future to the public at large. You have to have a level of responsibility and accountability.

I join my colleague's early remarks when he painted this in broad strokes and made the point about how important it is for us to have tort reform, that it is important for us to address job creation issues, and the like. But I urge my colleagues not to lose sight of the fact that this is not just a theoretical, abstract debate. This is not just a matter of the law and legalisms in the heaven of legal theory. This is something that applies specifically to women's bodies, applies specifically to the health and safety of the American people.

And as we address the balance of interests and the balance of rights, we must never lose sight of what is in the public interest. And we must, therefore, take those steps to make certain there is accountability, there is certainty, and there is responsibility in the law.

The FDA excuse removes that accountability. It removes that responsibility. And effectively it shields and insulates egregious conduct from the reach of the law, from the reach of punitive damages, from the reach of those who would want to see society's interests, as well as the interests of individuals, protected.

So I will address this point again later. The amendment of the Senator from Connecticut is on another point altogether, and I do not know whether he wants to call for a vote on that now.

Again I point out the most important thing about this document is not all the agencies that are named but the fact that the FDA is not named on here. The FDA does not have subpoena authority with regard to devices such as the Copper-7 IUD, such as the Dalkon shield, Accutane, high estrogen contraceptives, and any number of other drugs and instrumentalities that affect women's health.

I congratulate the Senator from California for her eloquent statement in behalf of women's health and the issues involved here and suggest to my colleagues we have a balancing to do here. I do understand the motivation. But at the same time we are dealing with peoples' lives and the safety and health of the American people, and I hope we do not rush to judgment here and avoid standard principles of law and avoid allowing the law to fill its highest purpose, which is the protection of public safety and the public order.

I ask unanimous consent to have printed in the RECORD this three-page document, "Federal Agency Subpoena Authority."

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

FEDERAL AGENCY SUBPOENA AUTHORITY

Administrative Law Judges.

Advisory Commission on Conferences in Ocean Shipping.

Corporation of Foreign Securities Holders.

Commission on Civil Rights.

Commodities Futures Trading Commission.

Department of Agriculture: Grain standards; Pesticide control; Perishable commodities; Tobacco inspection; Nonbasic commodities; General provisions, seeds; Cotton research and promotion; Potato research and promotion; Egg research and promotion; Beef research and promotion; Wheat research; Floral research and information; Dairy promotion; Port promotion; Watermelon research; Protection of horses; Endangered species; Interagency cooperation.

Department of Commerce: China Trade Act; Weather modification; Licensing of remote sensing systems; Endangered species; interagency cooperation; Fishery conservation; Antarctic conservation enforcement; Control of illegally taken fish and wildlife; Northern pacific halibut; Civil penalties.

Department of Energy: Gather energy information; Environmental protection and control; Energy conservation; Standards for consumer products.

Department of Health and Human Services: Appeals of cost; Reimbursement providers by providers of medical services.

Department of Housing and Urban Development: Real estate settlement procedures; Interstate land sales; Enforcement of fair housing laws; Enforcement manufactured home construction and safety standards.

Department of the Interior: Archaeological resources; Endangered species; Interagency cooperation; Antarctic conservation enforcement; Control of illegally taken fish and wildlife; Surface mining control; Oil and gas royalty; District land offices; Virgin Islands.

Department of Justice: Restraint of trade; Drug abuse prevention; Report on African National Congress; False claims investigations.

Department of Justice, Immigration and Naturalization Service: Enforcement of immigration laws; Enforcement of alien employment laws; Enforcement of prohibition against unfair immigration-related employment practices; Investigation of petitions for naturalization; Arbitration of commercial disputes.

Department of Labor: Relief from injury cased by import competition; Enforcement of Occupational Safety and Health Law (OSHA); Protection of migrant and seasonal workers; Mine safety and health (MSHA); Worker's compensation benefits.

Department of State: Accountability Review Board; Commission on Security and Cooperation in Europe; United Nations economic and communications sanctions; Foreign Claims Settlement Commission vesting and liquidation of Bulgarian, Hungarian, and Rumanian property international claims.

Department of Transportation: Automobile safety; Bumper standards; Consumer information; Odometer requirements; Automobile fuel economy standards; Regulation of deepwater ports; Outer Continental Shelf; Investigation of use and necessity for block-signal systems for railway systems; Safety appliances; Rail transportation unification and coordination projects.

National Transportation Safety Board: Airports and landing areas; Commercial space launch.

Department of the Treasury: Antarctic conservation enforcement; Smuggling of controlled substances.

Environmental Protection Agency: Automobile fuel economy; Toxic substance control; Pollution control; Noise pollution regulations; Enforcement of solid waste disposal laws and regulations; Enforcement of underground storage tank standards; Air pollution prevention; Air pollution control; Fuel and fuel additives; Investigation of employment effects of air pollution control; Enforcement of Superfund.

Farm Credit Administration.

Federal Communication Commission.

Federal Deposit Insurance Corp.

Federal Election Commission.

Federal Energy Regulatory Commission: Federal regulation and development of power; General investigatory power to monitor programs; Regulation of energy matters.

Federal Home Loan Bank Board.

Federal Labor Relations Authority.

Federal Maritime Commission.

Federal Reserve System.

Federal Savings and Loan Insurance Corp.

Federal Services Impasse Panel.

Federal Trade Commission: Investigation of unfair or deceptive practices affecting commerce.

Foreign Claims Settlement Commission.

General Accounting Office.

International Monetary Fund.

International Trade Commission.

Interstate Commerce Commission.

Judicial Conference of the U.S.

Judicial Councils of the Circuits.

Merit Systems Protection Board.

National Commission on Electronic Fund Transfers.

National Credit Union Administration.

National Guard.

National Labor Relations Board.

National Mediation Board.

National Oceanic and Atmospheric Administration.

National Science Foundation.
Nuclear Regulatory Commission.
Office of Technology Assessment.
Office of Personnel Management.
Pension Benefit Guarantee Corporation.
Railroad Retirement Board.
Securities Exchange Commission: Regulation of securities market industry; Regulation of the bond marketing industry; Regulation of securities exchanges; Enforcement of Public Utility Holding Company Act; Enforcement of Investment Company and Adviser's Act of 1940.
Small Business Administration: Aiding small business; Licensing of small business investment companies; Monitoring of small business investment company program.
Veterans' Administration.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I wish to speak on the bill. It is my understanding that we were going to recess at 12:30.

The PRESIDING OFFICER. The Senator is correct. Under the previous order, 12:30 was the recess time.

Mr. GRASSLEY. I ask unanimous consent that we extend it for 20 minutes. I would ask unanimous consent that I have 10 minutes and Senator WOFFORD have 10 minutes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Iowa? The Chair hears none, and it is so ordered.

The Senator from Iowa is recognized for 10 minutes.

Mr. GRASSLEY. Mr. President, will the Chair please advise me when I have used 5 minutes because I have two subjects I wish to speak on, and I do not want to use all my time.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. GRASSLEY. Mr. President, widespread problems exist in our system of product liability. Our laws governing this important subject are not consistent.

The process for compensating victims is very slow and expensive. Because of the expense, more than half of the money designed to compensate victims instead goes to lawyers on both sides. Some beneficial products are never developed because of fear of liability.

Today, the product liability system operates as a lottery. The claimants win a windfall occasionally, but at a cost to everybody else. The litigation costs are passed on to consumers as a hidden tax on everything they buy. And the possibility of a windfall serves to encourage additional, less meritorious cases to be brought, which add further cost to the system.

The Product Liability Fairness Act is a step we need to take to begin to reduce the chaos of the current system of product liability. It is a balanced bill. And it will help restore the ability of American businesses to compete in the marketplace because our competitors have established uniform rules in their countries.

The bill will help consumers in more ways than reducing the hidden product liability tax. It will enable them to receive their compensation faster than under the current system. Expedited settlements will be encouraged. If a defendant refuses the claimant's settlement offer, and the claimant obtains more at trial than the offer, then the defendant will pay the claimant's reasonable attorney fees up to $50,000. If the claimant rejects the defendant's settlement offer and then recovers nothing at trial, he faces no penalty.

The bill also will encourage speedier and cheaper resolution of product liability claims through voluntary, nonbinding alternative dispute resolution. If the defendant unreasonably refuses to participate in ADR, it will be liable for the claimant's attorney fees if the defendant loses. The claimant faces no penalty for declining ADR.

Consumers benefit from other provisions in the bill as well. The discovery rule for the statute of limitations will apply. And the bill contains no damages caps and no exception for inherently dangerous products.

One of the most important reasons for the unpredictable nature of product liability law today is varying standards for the award of punitive damages. Punitive damages do not compensate claimants for their injuries. Standards for imposing punitive damages vary widely, although the bill before us adopts the plurality rule.

We may hear that setting substantive standards for punitive damages is unnecessary in light of the Supreme Court's decision last Friday in Honda Motor Co. versus Oberg. Because judges are now required under the due process clause to review punitive damage awards for arbitrariness, we may be told that there is no need for legislation to insure fairness in this area. That is not true.

The Supreme Court's ruling did not dictate any standard for the imposition of punitive damages. The absence of uniformity prevailing before the Honda decision still remains.

The Court did make a point relevant to this bill on the issue of burden of proof.

Under the State law applied in the Honda case, punitive damages can be awarded only if the claimant proves "by clear and convincing evidence" that the defendant exhibited strong disregard for the health, safety, and welfare of others. The majority opinion called the clear and convincing requirement "an important check against unwarranted imposition of punitive damages."

The bill before us would adopt both of these standards on a nationwide basis.

Punitive damages face few of our foreign competitors. Only in America do juries award punitive damages. Only in America can claimants receive damages for pain and suffering. And only in America does joint and several liability exist.

Our competitors enjoy uniform rules on product liability. Our own manufacturing companies and their employees deserve certainty in the law as well. The bill will ensure greater uniformity than now exists. All State and Federal courts within a region will be required to follow the Federal court of appeals in the area. This provision will quickly produce uniformity.

Moreover, it is constitutional. Congress has the power to pass this legislation under the commerce clause. Since Congress could divest State courts from hearing any cases under this statute, it can certainly require that State courts follow rules of decision established by the courts of appeals.

Mr. President, the American people deserve protection from injury, but they also deserve to keep the system that compensates for injury working fairly and efficiently. Today, that system performs badly by every measure for everyone except the lawyers for the parties.

S. 687 provides the first measure of relief to injured persons who now obtain justice too late or not at all, to businesses who are deterred from manufacturing products beneficial to society, and to consumers who pay more than necessary for those products. I urge my colleagues to vote for cloture and for the bill.

DOUBLE STANDARD IN NAVAL INVESTIGATIVE AND JUSTICE SYSTEM

Mr. GRASSLEY. Mr. President, I would like to speak briefly about a double standard that seems to be operating full bore within the naval investigative and justice systems.

The basis for my remarks today is an article that appeared on the front page of the Washington Post on June 15. The article was written by Mr. Barton Gellman and is entitled "Court Says Navy Brass Shielded Official's Son."

The information in the article was drawn from court documents.

The main document is an opinion by the U.S. Navy-Marine Corps Court of Military Review in Washington, DC. It was issued on June 13, 1994.

Mr. President, I ask unanimous consent to place the article in the RECORD.

The double standard works this way. It's very simple.

The big boys with political pull break all the rules and get rewarded for it. The little guys way down the line with no pull get hammered.

We saw the double standard in the Tailhook scandal. We saw it in the Naval Academy cheating scandal.

We saw it in the investigation of the explosion on the battleship *Iowa*. We saw it in the A-12 stealth bomber fiasco. And now we see it all over again in the case of Yeoman H. Lawrence Garrett IV.

The double standard in military justice has been around for a long time,

but it is very hard to set a handle on it. When we are able to identify and document it, like in the Garrett case, we in Congress should stamp it out.

While Yeoman Garrett was at the bottom of the chain of command, he had high-level political connections. His father was the Secretary of the Navy, H. Lawrence Garrett III.

According to court documents, Yeoman Garrett admitted to repeated marijuana use, credit card fraud, theft, and lying under oath to investigators.

These crimes were committed in 1991-92, while his father was Secretary of the Navy. His father helped him skate.

A number of senior naval officers intervened in the investigation to protect the Secretary's son. These persons included Vice Adm. Jeremy Boorda, then Chief of Naval Personnel and now Chief of Naval Operations; and Rear Adm. DuVal M. Williams, commander of the Naval Investigative Service Command.

The court documents clearly indicate that Admiral Williams—the head Navy investigator—interfered and even obstructed the investigation.

But two more junior officers played a central role in the operation to shield Garrett. They did the dirty deed. These persons are Capt. Carlson M. LeGrand and Commander Peter Fagan. These two individuals, I am sure, were eager to please the Secretary.

Captain LeGrand and Commander Fagan were the political engineers. They designed the fix.

They rigged the review, and Yeoman Garrett got extremely lenient treatment.

Yeoman Garrett was restricted to the base for 30 days and fined $880 for crimes that normally bring hard jail time of up to 23 years.

Garrett's co-conspirator in the operation, Yeoman Seaman Apprentice Chad E. Kelly, by comparison, got hammered. They threw the book at him. Yeoman Kelly got 2 years in jail, a dishonorable discharge, and a $14,000 fine.

The Garrett caper fits the mold perfectly. It's a pattern of behavior that is repeated over and over again.

The big boys engage in abuse of power and political misconduct. They manipulate the system to their own advantage. They do the dirty work and get rewarded for it.

Captain LeGrand and Commander Fagan were rewarded handsomely for their faithful service. Both received important promotions earlier this year.

LeGrand was promoted in March 1994 to the rank of rear admiral. He is now Deputy Judge Advocate General of the Navy and commander of the Naval Legal Service Command. Fagan was promoted to the rank of captain at about the same time. He is in charge of the southwest division of Naval Legal Service Command.

LeGrand and Fagan were promoted in 1994.

The alleged misconduct occurred in 1991 or 1992.

Mr. President, there is a question that needs answering:

Was the Navy aware of the allegations against LeGrand and Fagan when these two officers were recommended for promotions and those nominations were sent to the Senate for confirmation? Was anyone aware of the alleged misconduct when these promotions were approved?

Mr. President, I would like the Navy to give me an answer to the questions.

This is another sad story about abuse of power and political misconduct at the highest levels of the Navy.

There is one standard of conduct for the brass with political muscle. There is another standard for enlisted men and junior officers who have none.

The leadership is setting a bad example. The double standard sends the wrong signal to the men and women serving in the Navy.

So long as the double standard is allowed to operate, it will have a corrosive effect on morale and discipline in the Navy.

Those at the top cannot break all the rules and then expect those at the bottom to follow them when the going gets tough.

I ask unanimous consent to place this story from the Washington Post in the RECORD.

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

[From the Washington Post, June 15, 1994]

COURT SAYS NAVY BRASS SHIELDED OFFICIAL'S SON: LENIENT TREATMENT IS LATEST BLIGHT ON SYSTEM

(By Barton Gellman)

A criminal case against the son of the Bush administration's Navy secretary was "infected throughout by senior naval officers" who acted improperly to protect him and "dispose of an awkward situation," according to a senior military appellate court.

The 26-page opinion by the Navy-Marine Corps Court of Military Review, issued Monday and made public yesterday, described a systematic attempt by the Navy chain of command to shield Yeoman H. Lawrence Garrett IV after he admitted to marijuana use and credit card fraud in 1991 and lying under oath in 1992.

The three-judge panel said Garrett received "extremely lenient" treatment on charges for which "any other sailor in the U.S. Navy" would have been court-martialed. Garrett was restricted to base for 30 days and fined $880. One of his collaborators in the credit card scheme received a two-year prison sentence, a bad conduct discharge and $14,000 in revoked pay.

The court's rebuke comes as another black mark on a naval justice system that repeatedly has been found wanting in cases involving suspects with rank or influence. Two of those singled out in the opinion, former Navy secretary H. Lawrence Garrett III and retired Rear Adm. Duvall M. Williams, former chief of the Naval Investigative Service (NIS), already had been forced out in part for failing to hold senior officers accountable in the Tailhook sexual abuse scandal.

Some of those criticized by the court in the Garrett case remain in important posts. Among them is Adm. Jeremy M. Boorda, then chief of naval personnel and now the Navy's top-ranking admiral, who granted the younger Garrett an unusual transfer to Washington at his father's behest.

Two officers who played far more central roles in shielding the sailor, according to the court, have since risen to the top of the Navy justice system. Rear Adm. Carlson M. LeGrand—who chose to try Garrett in a "captain's mast," a private administrative hearing reserved for minor infractions—is now chief of the Naval Legal Service Command. Capt. Peter Fagan, who was legal adviser to the Navy secretary, is about to become southwest regional chief of that command.

The court found that Fagan helped arrange for an extraordinary telephone call to the younger Garrett from his mother, the Navy secretary's wife, which interrupted a polygraphed interrogation and effectively ended it. At the senior Garrett's request, the court found Fagan also gave legal advice to the younger man and warned him about "NIS interrogation techniques."

The senior Garrett denied in a telephone interview that he asked Boorda to transfer his son from San Diego, where the investigation was centered. He said he did not recall asking Fagan to advise his son and did not know his wife planned to interrupt his son's interrogation, but added he saw "nothing sinister" about either event.

"I scrupulously avoided any involvement," Garrett said.

Rear Adm. Kendell Pease, the Navy spokesman, declined last night to make "any speculative remarks" about the effect of the case on Fagan and LeGrand. Fagan said he did nothing for Garrett that he would not have done for any other sailor. LeGrand was traveling in Japan and could not be located to comment. Williams, who declined to discuss the substance of the case, said the court made its findings without "any semblance of due process."

Because Garrett was punished administratively, the court had no authority over his case. Its opinion was issued in the appeal of Yeoman Seaman Apprentice Chad E. Kelly, an acquaintance of Garrett who was convicted of credit card theft following the same investigation and stood trial at a general court-martial.

The court found that the "disparate treatment" resulted "solely from [Garrett's] status as the son of the secretary of the Navy."

"Not only is it uncommon, but it is extraordinary that a sailor could be found to have used marijuana repeatedly, to have stolen property using credit cards taken from a Navy mail room, to have received stolen property stolen by using these cards . . . and to have lied to NIS agents under oath and then be retained on active duty without being processed for discharge," the court wrote of the younger Garrett.

"Based on our experience, we state with confidence that, absent extraordinary circumstances, any other sailor in the U.S. Navy who faced such charges would have been tried by court-martial," it said.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Pennsylvania [Mr. WOFFORD] for 10 minutes.

THE HEALTH CARE CHALLENGE

Mr. WOFFORD. Mr. President, for months now this Congress has wrestled with the most difficult, and the most important, challenge of our time: how to extend to all Americans guaranteed, affordable, private health insurance that can't be taken away.

During that time up in Pennsylvania—and here in our Labor Committee mark-up—I have been pressing a simple test for health care reform: We should extend to all Americans the same kind of guaranteed coverage and choice of private health plans that members of Congress have arranged for themselves.

I find that this test has almost the same impact on people as the proposition I put to the people of Pennsylvania in 1991: that health care is a right, not a privilege; that if those accused of a crime have a right to a lawyer, then it is even more fundamental if your are sick to have the right to a doctor.

That proposition reached and ignited people, like a self-evident truth. Similarly, the proposition that Congress ought to secure for all Americans the kind of guaranteed coverage and choice of private health care plans that Congress arranged for itself also has the power of a self-evident truth.

This is not just another anti-Congress broadside. On the contrary, it is an affirmative, clarifying argument that helps cut through the fog of confusion that has been spread by those who want to block any effective health care reform.

Nor is this just a symbolic point: the Federal Employees Health Benefits Program is a fact. It is real. It is available to all members of Congress—and millions of Federal employees and their families. It provides an actual, existing working model of how a reformed private health insurance system could work.

Listen to what Congress gets. It is right in this booklet:

A choice of plans and options so that you can get the kind and amount of protection best suited to your personal and family health needs.

Guaranteed protection that cannot be canceled by the plan.

Coverage without medical examination or restrictions because of age, current health or preexisting medical conditions.

Everyone gets to choose for themselves from a menu of private health plans, from a full Blue Cross/Blue Shield choose-your-own-doctor plan to a lower cost HMO. The costs are reasonable. But members of Congress do not have to pay them all. Our employer contributes an average of 72 percent of the premiums and the employee pays the rest.

It is not government-run health care; it is a range of private health insurance options. It is not a one-size-fits-all system; it is a consumer choice system—more choice, in fact, than most Americans get from their employers today. That is, if they are lucky enough to have health insurance at work.

Now people here in Washington are having an abstract debate about whether universal coverage means 91 percent or 95 percent or 98 percent. Here is what I think it really means to people:

It means a guarantee that if you have a job, you also have health insurance. And if you lose a job, you will not lose your health insurance. If you change a job, you will not lose your health insurance. If you are on welfare and you take a job, you will not lose your health insurance. And if you retire early from a job, you will not have your promised health benefits become broken promises.

That is the practical meaning of universal coverage. It means filling the gaps that real people fall into every day in this country. These are gaps that any one of us in this body, who is not old enough for Medicare, might fall into if we lost our job—or that our children or parents might fall into at any time.

Many of us in the Senate and the House have reached beyond party labels to achieve bipartisan consensus on how to fill those gaps and we have made progress on a number of key points that will be critical to any reform plan.

At the same time, a minority of members in both Houses speak one way and act another when it comes to guaranteeing health coverage to all Americans. Some refuse even to discuss requiring employers to contribute to their workers' health insurance. Yet these same Members of Congress accept that same benefit from their own employers—the American people.

That is a simple fact the American people need to know: While a lot of Representatives and Senators are arguing that individuals and families ought to bear the entire burden of health care costs, those very Members of Congress are requiring the taxpayers—to pay about three-quarters of their health insurance.

Mr. President, I'm not one of them. Last week I announced that I'm returning the monthly contribution of $306.41 that the taxpayers make to my family's health insurance through the Federal Employees plan.

Each month I will continue to return that employer's share to the taxpayers and will pay the full monthly cost of my family's plan until we take action to extend the same kind of opportunities for affordable private health insurance for all Americans.

So I issue a challenge to those Members of Congress who don't think that employers should be asked to contribute anything to share the costs of their employees' health insurance: If you truly believe that, then practice what you preach.

Pledge to give back to the American taxpayers the money they contribute each month to your health insurance. Give it back. Pay your own premiums until we take action to guarantee affordable, private health insurance for the American people.

For me and any others who take this pledge, this is a symbolic act—a symbolic step. Over many years and many battles before I ever came to the Senate, I have found that sometimes we need to take symbolic action to spur us to change things in our country.

I propose this action today to put some more heat under our feet, so we do not rest content until we have completed action for universal private health insurance. I know some of my colleagues won't much appreciate this pressure.

They did not all appreciate it in 1991 when I said that it was wrong for Members of Congress to get free health care from the Capitol physician; that we should pay fair market rates for that kind of service. Now we do, and it is the right thing to do.

For some Members this would pose a hardship on their families. But let us think about the hardships of millions of American families who will continue to be forced to pay for their health insurance out of their own pockets or continue to go without insurance if some in Congress succeed in blocking real reform.

Let us think of the parents who already have to sit at the kitchen table at night trying to decide between paying for health insurance for themselves and their children or paying the mortgage. Think of the senior citizens who have to choose between food and the prescription drugs they need. Those are the people who sent us to Washington. They need our help—and they need it now.

Some in Congress have said it would not hurt them if we do nothing on health care reform this year. I can understand why. They are among the lucky ones with affordable health insurance guaranteed at their work.

But you who oppose employer's sharing the cost of health insurance, it is time to put your money where your mouth is. If you think American families should shoulder the burden of health care costs on their own, so should you and your families. Give back the share now paid by your employers, the American people.

Or, there is a better way—as our fictional TV friends Harry and Louise, of the Health Insurance Association of America TV ads, would put it.

Yes, there is a better challenge: Let us work together in these next months to extend to every American the kind of guaranteed, affordable coverage and choice of private health care plans that Members of Congress have arranged for themselves.

Meet that challenge, or give it back. That is the test being put to you. Let us pass that test, together.

The PRESIDING OFFICER. The Senator has consumed 8½ minutes.

Mr. WOFFORD. The Senator has finished his presentation.

The PRESIDING OFFICER. Does the Senator yield the remainder of his time?

Mr. WOFFORD. Yes.

RECESS UNTIL 2:15 P.M.

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

Thereupon, the Senate, at 12:50 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. KOHL].

PRODUCT LIABILITY FAIRNESS ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Chair recognizes the Senator from Washington [Mr. GORTON].

Mr. GORTON. Mr. President, one of the subjects discussed at some length this morning was joint and several liability and its impact or possible impact on claimants.

In this connection, again we can speak from actual practice rather than from theory because the provisions on joint and several liability in the bill follow a California law on that subject. That provision was enacted by the people of the State of California in 1986, 8 years ago, by a vote of more than 60 percent.

Since then, there has been no effort on the part of any major interest group to repeal the California law. In spite of that fact, opponents argue that the provision is antiwomen because their economic damages may be lower than those of men and, for that reason, women depend more on noneconomic or so-called pain and suffering damages.

There is no showing in 8 years in California, which is both a large State and a litigious one, that this is true. In general, pain and suffering damages are found by juries to be proportionate to noneconomic damages, so that if there is a limit on noneconomic damages, its effect can be greater on a male than on a female. The key point is there has been no demonstration that the California approach discriminates against either gender or group.

According to testimony given on S. 687 by Suzelle Smith, an experienced California trial attorney who represents both victims and defendants in appellate work, the California law has been of help to all claimants and helped reach a fair result.

Under prior California law, where there was full joint and several liability for both economic and noneconomic damages, juries understanding that fact and understanding that finding a defendant liable in a small degree could nonetheless result in their having imposed on them a huge verdict—that is to say, a defendant who is 5 percent at fault in a $1 million case having to pay the entire $1 million instead of $50,000—those juries tended to shy away from imposing liability at all in such situations.

Under the current system, where juries appreciate the defendant less at fault will not be responsible for paying an award totally disproportionate to his responsibility, liability is more likely to be found.

The California approach is also the approach of Nebraska, with the same results.

At this point, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Texas.

Mrs. HUTCHISON. Thank you, Mr. President, and I thank Senator HOLLINGS very much.

Mr. President, I rise today as a cosponsor and supporter of S. 687, the Product Liability Reform Act. Congress has considered product liability reform legislation for almost 15 years, a decade and a half of thorough hearings, careful analysis, negotiations, compromises, and refinements by both the House and the Senate.

During that time, the need for product liability has only increased. Courts have expanded the scope of product liability law, and the number of product liability cases has exploded.

There is a great deal of unpredictability in the tort system which stems from the varying product liability laws and court opinions in the different States.

It is important to keep in mind that when citizens in one State, such as my home State of Texas, are injured by products, they may bring a lawsuit in Texas and the court will apply Texas law. But Texas' product liability laws have a limited effect on the State's businesses, because Texas manufacturers sell over 51 percent of their products in other States and they are sued in those other States. They are subject to unpredictable rules in many of these States that really prevents manufacturers from assessing their liability risks and jeopardizes rational business planning.

I believe that the legislation before us today is the right bill at the right time. It is a balanced and modest approach that provides substantial predictability for manufacturers and claimants by carefully targeting several areas of product liability law that would most benefit from national uniformity. These reforms will succeed in breaking gridlock in our courts, administering swift and just compensation to victims, punishing negligent manufacturers while protecting those that are not, enhancing product innovation, and increasing U.S. competitiveness.

I firmly believe that product liability lawsuits are the only means for allocating responsibility of harm caused by unsafe products. Consumers must be able to rely upon the tort system to receive swift, suitable and predictable compensation for their injuries. My concern, however, is that the current system of legal accountability for injuries due to unsafe products does not benefit consumers and, far from making them whole, subjects claimants to interminable delay in receiving rightfully owed compensation. Furthermore, the system exacts unacceptable transaction costs from a claimant's recovery. Claimants in the unreformed product liability system find themselves playing a game of legal roulette where a few lucky ones win big and everyone else goes home worse off.

The General Accounting Office reports that the average product liability case takes 2½ years to move from filing to a court verdict. Furthermore, those with the most severe injuries wait the longest and receive the least compensation. More than 62 percent of the most severely injured claimants wait more than 3 years for payment. At the same time, it appears that less seriously injured claimants are substantially over-compensated for their losses while those with the most serious losses are under-compensated. One study indicates that a claimant with damages of $1,000 generally recovers 859 percent of their losses, while those who legitimately suffer losses of over $1 million received on average 15 percent of their losses.

Delay results in under-compensation of claimants, particularly those with serious injuries. These victims generally have inadequate resources to pay for their medical and rehabilitation expenses, and they are forced to settle for far less than their full losses in order to get some payment because they cannot afford to wait for their compensation. The alternative dispute settlement mechanism contained in this bill create incentives to quickly resolve disputes and provide appropriate compensation.

Our Nation's manufacturing sector—and thereby our international competitiveness—is also a big loser in an unreformed product liability system. The unpredictability, inefficiency and high cost of our tort system handicaps the U.S. industrial sector. The enormous costs that the tort system imposes on business without reform impedes the creation of jobs. In Texas alone, the current liability system cost the State of Texas over $89 billion and 79,000 jobs in 1988, according to a Baylor University study.

These costs hinder our powerful manufacturing sector's efforts to be the world leader in design, construction and marketing of the next generation

of high quality, high value-added products. Liability costs in the United States are 15 times greater than in Japan and 20 times greater than in Europe. Europeans have recognized the important impact of product liability reform on competitiveness and have implemented uniform product liability laws.

The expense of litigation claims and the high cost of liability insurance divert resources and research and productivity. Over the last 40 years, general liability insurance costs have increased at over four times the rate of growth of the national economy. A recent study found that between 1950 and 1988 liability insurance costs increased from $1.7 to $75 billion. Product manufacturers in some cases have witnessed as much as a 1,500 percent increase in their liability insurance costs.

These costs have consequences. They are either passed on to the consumer, where companies find themselves unable to pass them on, they are a leading reason for business failure. This is particularly true of small businesses, especially those involved in advanced technology—in other words, the innovators and job creators.

General consumers also lose in the legal lottery that is our product liability system. They ultimately pay for the cost of liability insurance, big ticket legal awards and—possibly most importantly—for forgone life-saving devices and procedures which never teach them because of unacceptable product liability costs.

According to the Rand Institute, product liability can "substantially decrease incentives to innovate in product areas for which large liability costs seem plausible or financial disaster from liability is believed to be even a slight possibility." In other words, innovation is being held hostage to the possibility of product liability claims. This is particularly prevalent and disturbing in the development of medical technologies.

A recent report by the American Medical Association states that innovative new products are not being developed or are being withheld from the market because of liability concerns or inability to obtain adequate insurance.

Rational business decisions to refrain from innovation or remove important medical devices from the market due to liability costs have a profound human cost. Recently, Mark Reilly and his 9-year-old son Thomas traveled from Houston to appear before a Senate subcommittee at a hearing on the impact of the product liability system on health care. Mr. Reilly told the subcommittee that an unreformed product liability system will result in the destruction of thousands of lives which are dependent on implanted medical devices in order to live. Thomas Reilly depends on a shunt tube, made of a pliable plastic material called silastic, to drain fluid buildup from his brain. Thomas will rely on this miraculous technology for the rest of his life, yet his parents are concerned that the biomaterial used in this device may not be readily available in the future. Stories similar to Thomas—involving pace makers, mechanical heart valves, bone and joint implants, vaccines and other miracles of modern medicine—are repeated thousands of times every day in this country.

I would like to say in closing that I have heard several of my colleagues raise concerns that this legislation disadvantages women claimants. In particular, there is concern about section 203(b), which provides that manufacturers of drugs or medical devices that have been approved by the Food and Drug Administration shall not be subject to punitive damages in product liability litigation, except under certain conditions. The provision does not apply if FDA approval was achieved as a result of bribery or if any relevant information required to be submitted was withheld before or after approval. The defense only applies if the manufacturer has complied fully with FDA requirements after the product is approved.

Opponents have stated that this provision will shield numerous products used by women, such as the Dalkon shield, DES, and silicone gel breast implants, from punitive damages. To the contrary, none of these products would benefit from the FDA defense because they have not been approved by the FDA. This provision will not provide a defense to punitive damages for those manufacturers who have not complied fully with FDA requirements. Furthermore, this legislation does not in any way impede a woman claimant's award of economic and noneconomic damages. In fact, the liberal discovery rule contained in this bill benefits female plaintiffs in such cases.

Manufacturers of products like silicone gel breast implants and other medical devices used by women will continue to have strong incentives to avoid placing defective products on the market because they will remain fully liable for all harm.

Furthermore, this provision provides additional powerful incentives for manufacturers to comply with FDA regulatory requirements and it improves the likelihood that FDA can effectively police dangerous drugs and devices. It effectively strengthens FDA's regulation of these products.

Mr. President, I believe we can and should enact uniform product liability legislation. I do not take legislation to preempt State law lightly. Neither does the National Governors Association and they, too, support this legislation because they are on the frontline and they see the harmful effects to the businesses and consumers in their States of not doing this. This legislation will benefit consumers, injured parties, and manufacturers that act in a responsible manner.

I am supporting S. 687 and I urge my colleagues to join me in voting for cloture.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina, [Mr. HOLLINGS].

AMENDMENT NO. 1940 TO AMENDMENT NO. 1938

(Purpose: To provide for product liability insurance reporting)

Mr. HOLLINGS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 1940 to amendment No. 1938.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the amendment, add the following new section:

SEC. . PRODUCT LIABILITY INSURANCE REPORTING.

(a) REPORT TO CONGRESS.—The Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall provide to the Congress before June 30 of each year after the date of enactment of this Act a report analyzing the impact of this Act on insurers which issue product liability insurance either separately or in conjunction with other insurance; and on self-insurers, captive insurers, and risk retention groups.

(b) COLLECTION OF DATA.—To carry out the purposes of this section, the Secretary shall collect from each insurer all data considered necessary by the Secretary to present and analyze fully the impact of this Act on such insurers.

(c) REGULATIONS.—Within 120 days after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to implement the purposes, and carry out the provisions, of this section. Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Such regulations shall—

(1) require the reporting of information sufficiently comprehensive to make possible a full evaluation of the impact of this Act on such insurers;

(2) specify the information to be provided by such insurers and the format of such information, taking into account methods to minimize the paperwork and cost burdens on such insurers and the Federal Government; and

(3) provide, to the maximum extent practicable, that such information is obtained from existing sources, including, but not limited to, State insurance commissioners, recognized insurance statistical agencies, the Administrative Office of the United States Courts, and the National Center for State Courts.

(d) SUBPOENA.—The Secretary may subpoena witnesses and records related to the report required under this section from anyplace in the United States. If a witness disobeys such a subpoena, the Secretary may

petition any district court of the United States to enforce such subpoena. The court may punish a refusal to obey an order of the court to comply with such a subpoena as a contempt of court.

Mr. HOLLINGS. Mr. President, this amendment, for my colleagues' information, requires that the Secretary of Commerce annually report the effect of this particular legislation on insurance rates. We have had study after study, and invariably, whether you cite the Rand Corp. study or the GAO report, they complain, "We cannot get the information. We do not have the information." I can tell you firsthand, as the chairman of the Commerce Committee that has considered this over the past 17 years, that we have not been able to get the information.

One way to get the information is to federalize insurance. I happen to be an old States rights Senator and I have always favored the States regulating. However, I now see changes with the fiscal responsibility provisions as introduced by the distinguished Senator from Ohio on this side of the Capitol, or several bills on the House side, to abolish the McCarran-Ferguson exemption for the fixing of rates and in federalizing insurance. Now we have Members in the health reform debate saying look, we are not going to get a health care bill but we are going to get insurance reform.

Now, to return more specifically to the amendment at hand, we have tried and tried to achieve this objective, to the frustration of none other than the distinguished author of the bill, Senator ROCKEFELLER of West Virginia.

In the 99th Congress, Senator ROCKEFELLER did two things. With the distinguished Senator from Illinois, Senator SIMON and the distinguished Senator from West Virginia, Senator ROCKEFELLER introduced a bill, S. 2497, the Insurance Trends Forecasting Act of 1986. The two Senators jointly introduced the bill and also they introduced the amendment at the time that we considered product liability. I hope Senator ROCKEFELLER will accept my current amendment because I put it up as a second-degree amendment to Senator LIEBERMAN's. I am prepared to vote for Senator LIEBERMAN's amendment. I am not trying to frustrate Senator LIEBERMAN's amendment at all, but I think it can be strengthened with this provision, as is stated by none other than Senator ROCKEFELLER to myself. Let me read what Senator ROCKEFELLER stated at a Commerce Committee markup on product liability on June 26, 1986.

Mr. Chairman, to enact tort reform without a means to measure what its impact might be on insurance and insurance rates would not do the job. One of the goals that has often been stated for product liability reform is to increase the affordability of liability insurance. Yet the way this bill stands at this moment, we will have no idea today, 5 years from today, 10 years from today, what the impact of this legislation will be on insurance practices.

So as a result of that motion made by him as an amendment, he had gotten together with the distinguished Senator from Kentucky, Senator FORD who is very knowledgeable on this score. They had worked to make sure that the amendment was not burdensome or extra costly or would not impede business in any way. None of us wanted to do that. We simply wanted to correlate the statistics as best we could. Then at the end of each year, we would have an idea of exactly what was going on.

Some information is already reported. It is available at the Insurance Statistical Agency for insurance companies and the courts, although it is not in a report form routinely made available to the Government. In those cases, the Commerce Department, of course, would just collect the data and put it together in a useful form for the Congress. However, there is crucial data that is not currently available, such as information about claims for companies that are self-insured, the use of captive insurers, or risk retention groups—categories encompassing some 30 percent of the cost average in product liability.

This amendment is not intended to frustrate the intent of this bill. It has nothing to do with the Food and Drug Administration. It has nothing to do with, for example, what they entitle the "negligent entrustment provisions," in which area Senator LIEBERMAN wants to make sure that the State laws apply. It has nothing to do with the alternative dispute resolution procedures. It has nothing to do with the settlement provisions. It just says overall, let us report these facts and figures so we will all know. We keep talking on the floor as though we were experts, when we will all have to agree on both sides of this measure that we are totally inexpert.

We heard from the National Federation of Independent Businesses, when somebody brought up the fact that these proposed data collection requirements might be a detriment to small business. This is what NFIB said.

Data are used by both sides to make their respective cases. Different assumptions and subjective economic views are interwoven in the respective analyses, but neither seems to have an overwhelming credibility in providing objective data. We know that in our competitive economy there must be a connection for insurance firms between their costs of providing coverage and the amount they charge for the premium. The National Federation of Independent Businesses believes that the opposing parties in this debate will not be able to resolve their statistical differences. And in order to resolve this debate on the effect of tort reform on premiums, we need to have better data and objective analysis of that data. That is the rationale for the National Federation of Independent Businesses' support for data collection by the Commerce Department.

I could at random present scare pictures. I do not mind people making a profit.

We have right here, for example, one report of what we call the Insurance Information Institute. In an update as of May of this year, they report that for 1992 net after-tax income was $5.8 billion. But in 1993 net income went up to $18.5 billion, for a 219-percent improvement of business; 1993 over 1992.

We know they are doing good. We know it is not any major expense. But we need to have a correlation. They talk about the difficulty of lawyers in 50 States bringing 50 different causes of action. They do not complain, Mr. President, about filing their policies. I have been involved in this field for many decades. As Governor of South Carolina, I reformed the insurance department. I put in a blue ribbon commission. The vice president of one of the best and largest banks volunteered to serve as chairman. We veritably cleaned up insurance in my own State.

That has not occurred in all 50 States, and we need that nationally in my opinion. With the so-called insurance reform on the health end and fiscal responsibility on another end, the fixing of prices under McCarran-Ferguson, we keep nibbling around and around. Likewise, we willingly federalize a wide variety of crimes. But we will not federalize product liability.

They will not give the distinguished Presiding Officer the information that he sought on a very balanced amendment to try to cut out the shield of secrecy surrounding judges—judges who are quite impressed, of course, by the insurance lawyers.

Now comes another amendment. It is their own Rockefeller amendment brought back to life. And, of course, I would expect perhaps the distinguished Senator from West Virginia would want to accept this amendment because it is word for word his amendment that at one time was unanimously approved by the Commerce Committee. That is why I worded it exactly as he worded it, exactly as it was worked out on both sides with the interest that it not be a detraction or financial burden or otherwise. I bring it up now for no other reason than to find accurate information so we can make sound policy. I bring it up now with the support of the National Federation of Independent Businesses.

I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alabama [Mr. HEFLIN].

Mr. HEFLIN. I had some questions of Senator LIEBERMAN on his amendment.

Senator LIEBERMAN is the author of the amendment. I really need to ask him some questions to clarify some matters.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes Senator GORTON.

Mr. GORTON. If the distinguished Senator from Alabama would state what his questions are, I will attempt to find the Senator from Connecticut and attempt to determine answers to them and give those answers as promptly as possible.

Mr. HEFLIN. Basically, as I understand the Lieberman amendment, it says:

A civil action for negligent entrustment is not subject to this Act and shall be governed by applicable State law. For purposes of the preceding sentence, the term "negligent entrustment" means causes of action under applicable State law that subject product sellers to liability for their failure to meet the applicable standard of care under State law in selling a product to a person who, because of his youth, inexperience, or otherwise, is likely to handle the product in a manner to cause harm to himself or others.

Now, it is my understanding this was largely directed toward the dram act. The dram act is almost universally adopted in the States where a tavernkeeper or a seller of alcoholic beverages sells whiskey or beer or wine or whatever it might be to a person who is obviously intoxicated and that person who is obviously intoxicated goes out and he causes harm to himself or to others such as in driving an automobile. Or, on the other hand, the dram act in some of the States is to the effect that the keeper of a tavern sells it to a person under age, where it is a violation of the law to sell to a person under the age such as 18 years, and that therefore that develops into harm that is caused, and that therefore this negligent entrustment amendment that Senator LIEBERMAN has, as I understand it, is an attempt to reinstate—or if the bill were to pass, to allow it to say you go by the State law relative to this and that this bill would not preempt that.

Now, the Mothers Against Drunk Driving have expressed serious opposition to this bill, and part of it is on the basis of this dram act and the preemption that would take place relative to that matter which I have mentioned.

There are other aspects pertaining to this that I am sure the Mothers Against Drunk Driving oppose such as the provision on 50 percent of the harm being caused relative to a person from intoxication or drugs, which I think is wrong in the way that they have written this. And I think that Mothers Against Drunk Driving will, regardless of this, continue to oppose the bill.

But I have some other questions. This language is very poorly drafted, at least in my judgment, and it was directed in some way towards not to allow the Federal law to apply in certain cases such as those per se cases where a person by automatically selling it—you do not have to prove their incapacity or negligence involved in it—might not go far enough.

But it also has, in my trying to read this—and this is why I wish to ask Senator LIEBERMAN—it has the language here that "negligent entrustment for this section means causes of action under applicable State law that subject product sellers to liability for their failure to meet the applicable standards of care under State law in selling a product to a person who because of his youth, inexperience, or otherwise"—it does not say "intoxication." It just says "otherwise." I wish to be sure that, No. 1, it includes intoxication and the dram act because it does not talk about incapacity or intoxication. It speaks of youth and inexperience or otherwise.

Now, I do not know what he intends to mean by "otherwise." But the language also appears to me, as it is drafted, to go beyond. Suppose he sells a product which is cigarettes to someone who, because of his youth—maybe there is a law that you cannot sell cigarettes in a State below a certain level, that because of his youth he is likely to handle the product in a manner to cause harm to himself or to others.

I think on the one hand this language does not go far enough. Then on the other hand, I think it goes to the extent that it is far beyond what it was intended and is subject to that interpretation.

Let us use another example. He sells a product which is gasoline. The filling station operator or the service station operator sells gasoline to someone who is underage—youth—and is likely to handle the product in a manner to cause harm to himself or to others. Does this mean that negligent entrustment is to be extended under some applicable State law to mean by this to include a lot of people that may and may not be—I would think that the selling of gasoline by a filling station operator could well be since it is an underage person—underage to drive beyond 16 under the applicable State law? I just raise some question.

Maybe Senator LIEBERMAN can help me answer some of these questions. It seems to me that it is not broad enough to cover the dram laws. But the other hand it is too broad in regard to other possibilities.

Mr. GORTON. Mr. President, will the Senator yield?

Mr. HEFLIN. Yes.

Mr. GORTON. In behalf of Senator LIEBERMAN, Senator ROCKEFELLER, and myself, I should like to answer the question of the distinguished Senator from Alabama, and make a proposal.

First, it is the position of the sponsors, the proponents, of this bill that the bill does not affect causes of action for negligent entrustment under State law at all in its present form. We are quite convinced that is the case. But legitimate questions have been raised on that subject, particularly by the authors of the first-degree amendment which was offered this morning in response to that request on their part.

Since this morning, in connection with one of the questions which the Senator from Alabama has asked, they have asked us to make a further clarification which we are willing to do. But let me answer the second set of questions of the Senator from Alabama before I get back to that.

His question perhaps does not go far enough because maybe it does not cover what we have called dram shot laws. On the other hand, perhaps it goes too far, and he brings up the question of the sale of cigarettes to a minor, or the sale of gasoline to a minor. But if the distinguished Senator from Alabama would simply look at the first sentence of the first-degree amendment, it says a "civil action for negligent entrustment is not subject to this act and shall be governed by applicable State law."

Nothing could be clearer than the fact that it does not create new substantive Federal law. There is not the remotest possibility that it could be applied in the way the Senator guesses to cigarettes or to gasoline or the like unless some State passes a negligent entrustment statute to that effect. And, of course, if the State passes such a statute, the State ought to be allowed to pass such a statute.

So the second concern of the Senator that somehow or another this causes an extension of current law is an appropriate concern to raise. But there is no possibility under this clear language that it could. This just says negligent entrustment is not a subject of this act at all, one way or another, either for restricting or for expanding such State laws. States can conclude those as they will.

As I said, we think very clearly a dram shot law is a negligent entrustment law. But we have an additional sentence here which reads as follows. I will read it to the Senator. That would go ahead of the proposed first-degree amendment which reads:

A civil action seeking recovery under a dram shot law, or a statute for seeking a recovery from the seller of alcohol products, based on the theory of common law negligence where the seller of the product knew or reasonably should have known that the person receiving the alcohol was intoxicated or not of legal age to purchase the product is not subject to this act.

There was an additional request of the Mothers Against Drunk Drivers.

Mr. HEFLIN. You read a little fast. You have it written down.

Mr. GORTON. We will get the Senator a copy of it.

As I say, this came in after the Lieberman first-degree amendment, and then there was prepared and submitted a request by Mothers Against Drunk Driving.

I think it totally answers that. We think the present amendment takes care of the issue. But certainly this additional sentence does so.

We will hand a copy of it to the Senator in a moment. I will simply ask

unanimous consent that the first-degree amendment read in the fashion that I have read to the Senator.

The next two sentences, the two sentences of the Lieberman amendment as they stand, would remain unchanged and are identical to what has been requested of us by Mothers Against Drunk Drivers.

Mr. HEFLIN. In response to what the Senator said, let me say this: You say it is not a civil action, and negligent entrustment is not subject to this act.

Other than the dram act, the cause of action of negligent entrustment is not generally—other than the dram act—is not legislatively creative. It has been created by common law in a State, and it can vary from one to the other. But it seems to me that what you are doing here is defining negligent entrustment, and for States to mean causes of action. Then you say under the applicable State law, that subjects, product sellers are liable for their failure to meet the applicable standard of care under the State law in selling a product. This is in selling a product. This is in a definition that you are giving to the States in selling a product to a person who because of his youth, inexperience and otherwise is likely to handle the product in a manner to cause harm to himself or others.

That is a confusion that could be possibly clarified with better language. But in my judgment there is the possibility of having—through legislative enactments—judicial determinations of what is negligent entrustment, and that negligent entrustment therefore is being guided by this language that is here.

Maybe the Senator, the author of the amendment, might clarify that. I do not know whether he was here when I raised the issue that this would be a situation in which a product—we will say gasoline—is sold to a person who is underage or inexperienced. That would be an awful hard thing for a filling station operator to determine whether or not the person is inexperienced by driving up and buying gasoline for a car at a pump; is likely to handle the matter in a manner to cause harm to himself or otherwise.

So I raise this issue of tobacco being sold as likely to cause harm.

I just had not seen this other language that is clarifying. I want to look at this a little bit further. But on the one hand, it appears to me maybe you did not go far enough and maybe this clarifies it in regard to the dram acts. I have read it. But I have not fully comprehended, on the other hand, whether it goes far beyond what was intended but may include others. That is a problem that I am having with this.

Mr. LIEBERMAN. Mr. President, in response to the Senator from Alabama, the Senator from Washington as I have heard the debate has answered as I would have the intention—

Let me step back a little bit. As I believe the Senator knows, in the underlying bill, S. 687, there is a limitation on liability for sellers of products. If you run a hardware store, for instance, and you sell a hammer that is defective because of negligent manufacture, even though you had no way of knowing it, had nothing to do with the manufacturer, you can actually be held liable. We attempt to limit or exclude that liability where the seller, the owner of the hardware store, has no reason, in any exercise of reasonable care, to have known that the item was negligent. The liability should be on the manufacturer.

Some concerns were raised that inadvertently, unintentionally, that section may excuse other sellers from other kinds of liability under State law. For instance, some said: What about the liability of a seller of a gun, who breaks the law by selling it to a minor, or the dram shop action which puts some liability on an owner of a bar or liquor store for selling to a person that showed signs of being inebriated already.

Of course, those two situations, the gun selling and the alcohol selling, were totally out of the contemplation of those of us who fashioned S. 687. This amendment was intended to reassure everybody. That is not the intention at all. It is more directly to say that State law remains as it is. We do not mean to interrupt it in this whole host of other areas.

As always, legislative drafting is probably more an art than it is a science. I want to do two things: One, to assure my friend from Alabama that our intention is as stated; and, two, I will be glad to work with him to clarify that, and I hope that the clarifying amendment that the Senator from Washington shared with him will reassure him.

(Mrs. FEINSTEIN assumed the chair.)

Mr. GORTON. Madam President, simply to reiterate the points made by the Senator from Connecticut, this is not just a matter of intent. This is a matter of plain language. The plain language of the Lieberman amendment does not create and cannot possibly be construed to create a cause of action. It preserves State law, whether that State law comes from statute or from common law, or from a combination of the two. In the parade of horribles or examples the Senator from Alabama has set out, if some say the legislature wants to pass such a law, it is not going to be affected by this amendment one way or another. The State retains that right. If no State passed one to this point, I am not sure there is any real likelihood that it will do so.

But the Lieberman amendment itself preserves causes of action; it does not create causes of action. I do not think in any reasonable way it can be construed to do so. So as soon as the Senator from Alabama has had a chance to look at the new first sentence, which is on dram shop laws alone, I will ask unanimous consent that it be included in the first-degree amendment. Before we do that, I should like to speak briefly to the second-degree amendment of the Senator from South Carolina.

The Senator from South Carolina may very well have done so in his opening statement, but I point out that some time ago in committee, the Senator from Washington voted for the provision which the Senator from South Carolina has proposed here. The Senator from Washington does not think that it is of an overwhelming degree of use, but we are, as managers, I think prepared to accept the second-degree amendment.

I want to, in my own book here, go through not so much objections as concerns, and simply to ask the Senator from South Carolina whether or not he has reflected on those concerns in the way in which he has drafted the amendment. If he has, that is fine. As I have said, the bottom line is that we are prepared to accept the amendment.

Mr. HOLLINGS. In response to the distinguished Senator's question, the answer is yes. It certainly does not have any real difference with respect to those who are always concerned about too much reporting, bureaucracy, and impossible tasks, and those kinds of things, layering on requirements, regulations. In fact, you and I voted for it when we were trying to deregulate everything at that particular time. This was worked out, as I pointed out, by the distinguished Senator from Kentucky and Senator ROCKEFELLER, and some of us debated back and forth and had other ideas, refinements, and burdens, and I told the staff to let us take the amendment forward so there would be no misunderstanding. We have it completely across the board—independent business and other organizations. The answer is yes, I have taken into consideration all of those concerns and never changed a word.

Mr. GORTON. Let me go through the very specifics on it, if I can. If the Senator from South Carolina would be good enough to grace the RECORD with his answers, we can go forward. The four points that were raised as reservations, rather than as objections to the bill, were, first, that originally it came up when we were dealing with a product liability bill that actually had damage caps on it which already certainly would have reduced insurance costs. I would like the Senator's response to that question.

The second, he really already answered, and that was the question about just more reports and more paperwork that nobody ever looks at. The Senator has said he thinks this would be valuable paperwork that people would look at.

I guess the other consideration, the fact of simply getting reports from insurance companies falls a long way from determining the costs of product liability litigation, because, of course, many businesses self insure, and others are part of risk retention groups and reserves that often are going way, way out into the future, and reserves reported this year may not have much relationship to ultimate costs. If the Senator could comment on each of those, this Senator would appreciate it.

Mr. HOLLINGS. This is directed at 30 percent of the business. We debated this. And so the claims for companies that are self-insured and the use of captive insurance, the risk retention groups, the three categories, accomplish 30 percent of the product liability coverage. That information is needed, and that is the idea to try to get that. The companies do not have that information. Others do.

Some States have attempted to collect this data, but it has not been collected in a consistent fashion or analyzed in the way that a sound understanding of the product liability system could be gained from it. So the secretary would gather that information in the most cost-effective way. The relative data is not collected anywhere in a coherent fashion, and this amendment would require that the complete package of data be available in one report.

That is the whole idea. I think that would satisfy the distinguished Senator's concern.

Mr. GORTON. Pardon me. Did the Senator address the Senator from Washington with a question?

Mr. HOLLINGS. I think I have answered the Senator's question. The risk retention groups, self-insurer groups, comprise 30 percent. Some States do get that information, but they do not do it in a consistent fashion. Others States do not. The secretary would not only get it from all, but would put it into one document so we could all look at its effects.

Mr. GORTON. From the perspective of this Senator at least, the answers of my distinguished chairman are adequate answers. We are prepared to accept the second-degree amendment.

I would like to ask unanimous consent to modify our first-degree amendment in the method that I outlined.

Mr. HOLLINGS. It suits me on the modification. I listened to the dialog between the distinguished Senator from Alabama and the distinguished Senator from Washington. The distinguished Senator from Alabama is not here.

Mr. GORTON. Yes, he is.

Mr. HOLLINGS. Then the Senator has my approval, and I would join in his request. But let us see what the Senator from Alabama says. But it is now my amendment accepted in the second degree.

Mr. GORTON. I simply want to get the answer to that question and then I will accept it.

Will the Senator from Alabama accept the unanimous-consent to modify the first-degree amendment?

Mr. HEFLIN. Under the dram acts in some States, it covers straw men where you have straw people who go in and attempt to buy for someone else.

This is sometimes true in regards to guns and there have been cases. For example, in a case a Virginia jury found Guns Unlimited of Norfolk liable for $100,000 in damages for selling a 9-millimeter MAC assault pistol to a 15-year-old under a straw purchaser. The teen used the gun on a shooting rampage at a private school in which he killed one teacher and wounded another. The award was made to the husband of the murdered teacher. That is the example there.

The per se aspect of it in some States has it where with the Senator's language you would have to show that he knew or should have reasonably known the person receiving the alcohol was intoxicated and not of legal age; in other words, that he was not of legal age; that the burden to find out whether he was of legal age or was not of legal age should be placed upon the seller of alcoholic beverages.

I am not sure that this covers enough on this thing. My opinion is that the Senator has offered to work on it. Maybe we could do some work in regard to Senator LIEBERMAN and see if we could work out some language on this.

I think overall what the Senator is trying to do is admirable and what we want to do, and I certainly agree with the Mothers Against Drunk Drivers that this sort of thing ought to be done. But I am just feeling that the language here is inadequate to accomplish the purpose, and then in some instances I am still worried about the situation that this may extend and go to filling station operators, go to tobacco salesmen, and others who are involved in such as this.

If the Senator wants to withdraw his amendment—and we can get together later and work on it—I would be glad to do that. I think we could work something out on it because the concept is good, but I am fearful that the language does not accomplish it.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Washington.

Mr. GORTON. Mr. President, I am informed informally by the Parliamentarian that as the sponsor I have a right to modify the first-degree amendment.

I ask unanimous consent for it. I do not mean by doing it in that way to say that that necessarily means that the Senator from Alabama has to be for it. I would just like to perfect it under these sets of circumstances.

I have listened to the objections of the Senator from Alabama. I do not think we can do this in a clearer fashion.

What I would really like to do, because there are many important matters in this bill to be discussed, I would like to accept the second-degree amendment of the Senator from South Carolina; I would like to modify and have accepted the first-degree amendment of this Senator and go on with other subjects.

In any event, I am prepared right now to have a vote and to accept the second-degree amendment of the Senator from South Carolina. I will then just exercise my right to modify the first-degree amendment.

Mr. HEFLIN. Is it not right now the offer made with Senator LIEBERMAN that we get together and work this thing out?

Mr. GORTON. If there is something else we can do——

Mr. HEFLIN. When I file the language, I would like to modify it in the manner in which it covers the intent of what we are trying to achieve here and not to be as broad as wherever it is. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. GORTON. There is not that much to object to. I said I am willing to accept the second-degree amendment of the Senator from South Carolina and then exercise my right to modify the first-degree amendment; that is, not to pass the first-degree amendment. I do not want to pass it.

Mr. HEFLIN. I object to him modifying his first-degree amendment.

The PRESIDING OFFICER. The Chair will state the offeror of the first-degree amendment still retains his right to offer a modification to his amendment.

Mr. GORTON. Does that right exist even after the second-degree amendment has been accepted?

The PRESIDING OFFICER. Once the second-amendment is agreed to, the offeror would no longer have the right to modify.

Mr. GORTON. Then I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

Mr. HEFLIN. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will call the roll.

The bill clerk continued to call the roll.

Mr. ROCKEFELLER. 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. ROCKEFELLER. Mr. President, I ask unanimous consent that the cloture vote scheduled to occur at 7 p.m.

this evening occur at 6 p.m. and Senators have until the time of the vote to file second-degree amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The vote will occur at 6 p.m.

Who yields time or who seeks recognition?

The Senator from Connecticut.

AMENDMENT NO. 1938, AS MODIFIED

Mr. LIEBERMAN. Mr. President, as the initial offerer of the underlying amendment being considered, I send language to the desk to modify that amendment.

The PRESIDING OFFICER. The Senator has that right and the amendment will be so modified.

The amendment, as modified, is as follows:

On page 8, line 20, after the period insert the following: "A civil action for negligent entrustment is not subject to this Act and shall be governed by applicable State law. For purposes of the preceding sentence, the term "negligent entrustment" means causes of action under applicable State law that subject product sellers to liability for their failure to meet the applicable standard of care under State law in selling a product to a person who, because of his youth, inexperience, or otherwise, is likely to handle the product in a manner to cause harm to himself or others.

Mr. LIEBERMAN. I thank the Chair.

The modification is exactly the one described by the Senator from Washington. It is to clarify the intention of the law.

This modification was particularly suggested to us by the Mothers Against Drunk Driving group and obviously is aimed at clarifying the sections of the underlying bill that limit the liability of sellers of alcohol, and that they in no way affect State law which puts liability on the sellers of alcohol who act negligently.

AMENDMENT NO. 1940

Mr. LIEBERMAN. Mr. President, if there is no further debate, I ask for the adoption of the second-degree amendment, which I believe is the first in order.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. I think the thing is not drafted properly, but maybe in the meantime we can do some work on it and see what we can come up with.

I know that Senator LIEBERMAN has offered to work and see what we can do, so I am not going to object at this time. I will let it go ahead. But I would like to see if we cannot come up with the result that was intended and that you want to accomplish by this. I have some real questions.

I think it also opens up an area that is subject to judicial interpretation of what negligent entrustment is. I think this language restricts or, on the other hand, opens up the concept of negligent entrustment. But, anyway, at this time I do not have any objection.

Mr. LIEBERMAN. Mr. President, I appreciate the consent of the Senator from Alabama. I look forward to working with him as the process goes on to see if we can further clarify this to his satisfaction.

I would then restate my request to agree to the second-degree amendment offered by the Senator from South Carolina.

The PRESIDING OFFICER. Is there further debate on the Hollings amendment, amendment No. 1940? If not, the question is on agreeing to the amendment.

The amendment (No. 1940) was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LIEBERMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1938, AS MODIFIED, AS AMENDED

Mr. LIEBERMAN. Mr. President, I would then ask for the adoption of the underlying amendment, as amended.

The PRESIDING OFFICER. Is there further debate on the amendment offered by the Senator from Connecticut, amendment No. 1938, as modified and amended?

If not, the question is on agreeing to the amendment, as modified, as amended.

The amendment (No. 1938), as modified, as amended, was agreed to.

Mr. LIEBERMAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

Mr. LIEBERMAN. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to call the roll.

The bill clerk continued to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. GORTON. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to call the roll.

The bill clerk continued to call the roll.

Several Senators addressed the Chair.

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

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

Several Senators addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Washington object?

Mr. GORTON. No, the Senator from Washington seeks recognition.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, I do not want to speak long on this matter right here, but there was an interesting article by Robert Kuttner that appeared in the Washington Post on June 24, 1994. He says,

According to promoters of "reform," product liability cases cost American business $100 billion a year. The actual figure, according to the National Association of Insurance Commissioners, is about $4 billion. That includes all insurance premiums paid by business to cover possible damages, all actual damages collected by injured consumers and all legal fees.

To put that figure in perspective, $4 billion is less than what Americans spend annually on dog food. It is one-fifth of one percent of retail sales. It is less than corporations spend suing each other for commercial infringements.

Supposedly, runaway juries are increasingly siding with consumers. In fact, according to a new authoritative study by Jury Verdict Research of Horsham, Pa., the proportion of personal injury cases won by plaintiffs dropped from 63 percent in 1989 to 52 percent in 1992. The average damage award has hardly changed.

Supposedly, too, such cases are clogging the courts. In reality, according to the Conference of Chief Justices (of state courts), product liability suits are just three-tenths of one percent of all civil cases.

There have been those who try to say that America has 70 percent of the world's lawyers, but the fact is the United States has only 9 percent of the world's lawyers.

A handful of lawyers do reap large windfalls from a small number of spectacular damage awards. We might want to limit the percentage that lawyers can take as fees. But to achieve that reform, it is not necessary to undermine the citizen's right to collect damages for an injury he or she received.

The contingent fee system has allowed people, who have not been otherwise able to recover, to have access to the civil justice system. I think this issue must be looked at very carefully. Quoting further from an article by Mr. Robert Kuttner, he says:

Some of the most infamous injuries inflicted on consumers were exposed and remedied mainly through lawsuits, not regulatory action. These included the Dalkon Shield, a contraceptive which rendered thousands of women infertile; the Pinto's exploding gas tank; the high absorbency tampons linked to toxic-shock syndrome; the damage to workers exposed to asbestos, and innumerable lesser-known cases.

Foes of regulation say the common law is superior to government intervention. But,

hypocritically, when juries impose damage awards, the same critics want Congress to change the rules—hence this bill.

I ask unanimous consent this article by Robert Kuttner, appearing in the Washington Post of June 24, be printed in its entirety in the RECORD and I yield the floor.

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

PHONY LITIGATION CRISIS

(By Robert Kuttner)

One of the epic corporate public relations ploys of our time is now pending before the U.S. Senate. And it could well succeed.

This is the crusade by organized business to make it harder for citizens to win damages when they are maimed by dangerous products or by negligent doctors.

This crusade calls itself "product liability reform" or "tort reform." Under the common law, a tort is a wrongful act that allows a plaintiff to sue for damages.

For more than a decade, America's biggest businesses have painted a lurid picture of an overlawyered, overlitigated economy. Supposedly, an explosion of lawsuits has rendered American industry less competitive, has lined the pockets of trial lawyers and has inflated health costs.

Since the early 1980s the business lobbies have been promoting legislation—this year's version is called the "Product Liability Fairness Act"—to make it harder for people to collect damages. The highly technical bill would preempt a number of long-standing principles of common law.

But this supposed crisis in product-liability cases is based on several trumped-up claims.

According to promoters of "reform," product liability cases cost American business $100 billion a year. The actual figure, according to the National Association of Insurance Commissioners, is about $4 billion. That includes all insurance premiums paid by business to cover possible damages, all actual damages collected by injured consumers and all legal fees.

To put that figure in perspective, $4 billion is less than what Americans spend annually on dog food. It is one-fifth of one percent of retail sales. It is less than corporations spend suing each other for commercial infringements. As for medical malpractice, damage awards account for half of one percent of U.S. health outlays.

Supposedly, runaway juries are increasingly siding with consumers. In fact, according to a new authoritative study by Jury Verdict Research of Horsham, Pa., the proportion of personal injury cases won by plaintiffs dropped from 63 percent in 1989 to 52 percent in 1992. The average damage award has hardly changed.

Supposedly, too, such cases are clogging the courts. In reality, according to the Conference of Chief Justices (of state courts), product liability suits are just three-tenths of one percent of all civil cases.

Former vice president Dan Quayle is a highly visible spokesman for this crusade. In his speech to the 1992 Republican National Convention, he railed against trial lawyers, darkly insinuating that liberals and Democrats supported consumer protection laws because they were bankrolled by trial lawyers.

In an overheated speech to the American Bar Association, Quayle asked rhetorically whether America really needed "70 percent of the world's lawyers." No, Dan, we don't. But the fact is, the United States has 9 percent of the world's lawyers.

A handful of lawyers do reap large windfalls from a small number of spectacular damage awards. We might want to limit the percentage that lawyers can take as fees. But to achieve that reform, it's not necessary to undermine the citizen's right to collect damages.

Proponents also argue that it's neither necessary nor fair to expose industry to expensive litigation, since citizens are already protected by regulation. Don't the Food and Drug Administration and the Consumer Product Safety Commission provide adequate seals of approval?

Consumer regulation doubtless prevents a lot of injuries and deaths. But regulatory agencies are not clairvoyant. And the limitations on their budgets and powers are often the result of lobbying by the same industries that oppose consumer litigation.

Some of the most infamous injuries inflicted on consumers were exposed and remedied mainly through lawsuits, not regulatory action. These included the Dalkon Shield, a contraceptive which rendered thousands of women infertile; the Pinto's exploding gas tank; the high absorbency tampons linked to toxic-shock syndrome; the damage to workers exposed to asbestos, and innumerable lesser-known cases. The crusade to limit corporate liability is especially ill-timed, given what we are belatedly learning about the tobacco companies.

Foes of regulation say the common law is superior to government intervention. But, hypocritically, when juries impose damage awards, the same critics want Congress to change the rules—hence this bill.

The Senate is closely divided on this bill. A vote could come as early as Tuesday. It's all too understandable why large businesses would want to evade responsibility for the injuries they inflict. Its harder to understand why a majority of the Senate would go along.

The PRESIDING OFFICER. Has the Senator from Alabama yielded the floor?

Mr. HEFLIN. Yes.

AMENDMENT NO. 1941

(Purpose: To regulate interstate commerce by providing for a uniform product liability law, and for other purposes)

Mr. GORTON. Mr. President, I send an amendment to the desk on behalf of Senators LIEBERMAN and FEINSTEIN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself, Mr. LIEBERMAN and Mrs. FEINSTEIN, proposes an amendment numbered 1941.

Mr. GORTON. 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 19, beginning with line 7, strike out through line 16 on page 20 and insert the following:

(b) LIMITATION CONCERNING CERTAIN DRUGS AND MEDICAL DEVICES.—

(1) A manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(h)) which caused the claimant's harm has not engaged in conduct manifesting conscious, flagrant indifference to the safety of those persons who might be harmed by the product, and shall not be subject to an award of punitive damages pursuant to this section, where—

(A) such drug or device was subject to premarket approval by the Food and Drug Administration pursuant to section 505 (as amended by the New Drug Amendments of 1962, P.L. 87-781), 506, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 356, 357, 360b, or 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262) with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging of labeling of such drug or device, and such drug or device was actually approved by the Food and Drug Administration; or

(B) the drug or device is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(2) The provisions of paragraph (1) shall not apply in any case in which the claimant proves by a preponderance of evidence that—

(A)(i) the defendant, before or after premarket approval of a drug or device, failed to submit or misrepresented to the Food and Drug Administration or any other agency or official of the Federal government required information, including required information regarding any death or other adverse experience associated with use of the drug or device, and (ii) the information that defendant failed to submit or misrepresented is material and relevant to the performance of such drug or device and is causally related to the harm which the claimant allegedly suffered; or

(B) the defendant made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval of such drug or device; or

(C) the Food and Drug Administration has determined in a formal administrative proceeding (by a final order not subject to further review) or a court has determined in an action brought by the United States (by a final judgment not subject to further review) that the drug or device failed to conform to conditions of the Food and Drug Administration for approval (except for changes permitted without prior approval under applicable law, including Food and Drug Administration regulations), and such failure is causally related to the harm which the claimant allegedly suffered.

(3) The provisions of paragraph (1) shall not apply with respect to a claim for punitive damages based on a defect in manufacturing which causes the drug or device to depart from its intended design.

AMENDMENT NO. 1942 TO AMENDMENT NO. 1941

(Purpose: To regulate interstate commerce by providing for a uniform product liability law, and for other purposes)

Mr. ROCKEFELLER. Mr. President, on behalf of Senator FEINSTEIN I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is the amendment in the second degree?

Mr. ROCKEFELLER. That is correct.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia [Mr. ROCKEFELLER] for Mrs. FEINSTEIN, proposes an amendment numbered 1942 to amendment No. 1941.

Mr. ROCKEFELLER. 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:

Insert in the appropriate place:

(a) Any corporation, or person who is a manager with respect to a product, facility, equipment, or process, is guilty of a criminal offense punishable by imprisonment for a term not exceeding three years or by a fine not exceeding twenty-five thousand dollars both ($25,000), or by both that fine and imprisonment; but if the defendant is a corporation the fine shall not exceed one million dollars ($1,000,000), if that corporation or person does all of the following:

(1) Has actual knowledge of a serious concealed danger that is subject to the regulatory authority of a state or federal agency and is associated with that product or a component of that product or business practice.

(2) Knowingly fails during the period ending 15 days after the actual knowledge is acquired, or if there is imminent risk of great bodily harm or death, immediately, to do both of the following.

(A) Inform the appropriate government agency in writing, unless the corporation or manager has actual knowledge that the division has been so informed.

Where the concealed danger reported pursuant to this paragraph is subject to the regulatory authority of an agency other than the agency to which it was reported, it shall be the responsibility of the agency which has received the information, within 24 hours of receipt of the information, to telephonically notify the appropriate government agency of the hazard, and promptly forward any written notification received.

(B) Warn its affected employees in writing, unless the corporation or manager has actual knowledge that the employees have been so warned.

The requirement for disclosure is not applicable if the hazard is abated within the time prescribed for reporting, unless the appropriate regulatory agency nonetheless requires disclosure by regulation.

Where the appropriate government agency was not notified, but the corporation or manager reasonably and in good faith believed that they were complying with the notification requirements of this section by notifying another government agency, as listed in paragraph (8), no penalties shall apply.

(b) As used in this section:

(1) "Manager" means a person having both of the following:

(A) Management authority in or as a business entity.

(B) Significant responsibility for any aspect of a business which includes actual authority for the safety of a product or business practice or for the conduct of research or testing in connection with a product or business practice.

(2) "Product" means an article of trade or commerce or other item of merchandise which is a tangible or an intangible good, and includes services.

(3) "Actual knowledge," used with respect to a seriously concealed danger, means has information that would convince a reasonable person in the circumstances in which the manager is situated that the serious concealed danger exists.

(4) "Serious concealed danger," used with respect to a product or business practice, means that the normal or reasonably foreseeable use of, or the exposure of an individual to, the product or business practice creates a substantial probability of death, great bodily harm, or serious exposure to an individual, and the danger is not readily apparent to an individual who is likely to be exposed.

(5) "Great bodily harm" means a significant or substantial physical injury.

(6) "Serious exposure" mans any exposure to a hazardous substance, when the exposure occurs as a result of an incident or exposure over time and to a degree or in an amount sufficient to create a substantial probability that death or great bodily harm in the future would result from the exposure.

(7) "Warn its affected employees" means give sufficient description of the serious concealed danger to all individuals working for or in the business entity who are likely to be subject to the serious concealed danger in the course of the work to make those individuals aware of that danger.

(8) "Appropriate government agency" means any state or federal agency, including but not limited to those on the following list, that has regulatory authority with respect to the product or business practice and serious concealed dangers of the sort discovered:

(A) The U.S. Department of Health and Human Services.

(B) The U.S. Department of Agriculture.

(C) The U.S. Consumer Product Safety Commission.

(D) The United States Food and Drug Administration.

(E) The United States Environmental Protection Agency.

(F) The National Highway Traffic Safety Administration.

(G) The Federal Trade Commission.

(H) The Nuclear Regulatory Commission.

(I) The Federal Aviation Administration.

(J) The Federal Mine Safety and Health Review Commission.

(C) Notification received pursuant to and in compliance with this section shall not be used against any manager in any criminal case, except in a prosecution for perjury or for giving a false statement.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I would like to explain what the second-degree amendment does and then touch on the first-degree amendment and then also touch on the bill, if I may.

What this amendment does is impose criminal liability on corporations and their managers for knowingly concealing serious dangers about consumer product defects from regulatory authorities. It would establish a criminal offense punishable by 3 years in prison and/or a $25,000 fine or up to $1 million for corporations.

Second, it would require corporations to notify the appropriate Government agency of any serious concealed danger within 15 days of having knowledge of it.

A classic example of how ineffective current laws are in deterring corporate crimes related to product safety is the now-infamous Ford Pinto case. I ask unanimous consent at the appropriate place to have printed in the RECORD the entire Ford Motor Co. internal memo entitled, "Fatalities Associated With Crash-Induced Fuel Leakage and Fires."

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

(See exhibit 1.)

Mrs. FEINSTEIN. Mr. President, the Pinto had a serious design defect. If the car was hit from behind by another car traveling 20 miles per hour or more, the gas tank would rupture. Ford Motor Co. knew of this defect as early as 1971. It had filmed crash tests showing the test dummy being bathed in gasoline.

The company chose to conceal this defect because a coverup would save the company millions of dollars. Ford calculated that it would cost the company $11 per vehicle, or about $137 million, to recall and repair all of its defective Pinto's. If Ford did nothing, waiting for people to die or become injured, and then paid the necessary legal fees and settlements it estimated its costs at only $50 million. Ford based its decisions solely on cost, without respect for community values, the law, or human life.

According to a 1985 report by a George Washington University professor, roughly two-thirds of America's 500 largest companies were involved to some extent in illegal activities over the prior 10 years. California has already taken a lead on this important issue. The legislation that is introduced here today is very similar to legislation now in place in California since 1990.

AMENDMENT NO. 1941

Mrs. FEINSTEIN. If I may, on the first-degree amendment, Mr. President. There has been much confusion and alarm about whether section 203 could potentially immunize manufacturers of some products of the past and the future, such as DES, the Dalkon Shield, IUD's, silicone gel breast implants. This amendment's most important feature and would clarify that confusion by setting out more specifically the regulatory compliance required of drug and medical device manufacturers in order for the FDA defense to be available.

First, it amends section 203 by setting out what is meant by premarket approval, citing the relevant FDA statutory provisions as improved by the new drug amendments in 1962, medical device amendments in 1976, and further improved by FDA regulations in 1985.

Among other requirements, this revamped and rigorous process would require that the manufacturer demonstrate by substantial evidence that its product is both safe and effective, and to submit adverse reaction reports to the FDA within 15 days of the initial receipt of the information, and to report any significant increase in the frequency of such adverse reactions.

Unlike the FDA, which approved DES, the current premarket approval

process requires the FDA to determine affirmatively that the product is safe and effective, and can be marketed.

Prior to 1962, the FDA only required that the manufacturer submit information on the safety of a product, and if the FDA did not otherwise notify the company, 60 days later they could proceed to the market.

This bill makes it clear that manufacturers cannot sit back after approval, especially if their products are causing serious injury or death. They cannot act in disregard of the public health and then raise in court that they received FDA premarket approval as a defense. Rather, they must continuously report in a timely and complete way in order to receive the benefit of the FDA defense.

Section 203, the FDA defense, as revised by this amendment, can be invoked only where the drug or device manufacturer abided by all the reporting requirements, submitted in a timely manner, any information about adverse reactions both before and after approval. And I stress that. Frankly, Mr. President, I would strongly support giving subpoena rights to the FDA in order to compel manufacturers to fulfill these requirements.

Let me comment for a moment on the bill itself.

I would like to read into the RECORD on behalf of California advocates of this product liability bill the following statement:

The current unpredictable State-by-State system of product liability laws is a problem for all of California citizens. There are several reasons for this fact. First, most States have no statutory law on key issues. The rules are constantly changing through retroactive decisions made by judges. This uncertainty of product liability rules makes future liability risks difficult to predict and contributes to the high cost of liability insurance and higher prices of products. California consumers pay for the cost of these unreasonable and unstable rules in other States.

Second, when California manufacturers drop product lines or close plants because of product liability problems in other States, jobs are at risk for California workers.

Third, California manufacturers whose products are sold primarily in the United States are operating in a matrix of 51 sets of ever-changing and conflicting rules, and this puts them at a disadvantage in competing with foreign manufacturers. Their European and Australian counterparts do not face the same confusion and uncertainty at home because the European Economic Community and Australia have already adopted a directive which implements uniform product liability laws.

So we are at a disadvantage competitively because of the unevenness of product liability laws throughout the United States.

In order for a product liability statute to fully benefit California manufacturers and consumers, balanced product liability rules must exist on a uniform basis through the States.

This bill imposes a 2-year statute of limitations from the time the injury and its cause are discovered for a plaintiff to bring a lawsuit. This is a year longer than that provided under California's statute of limitations. An injured person would have the opportunity to bring suit up to 2 years after they discover the injury or the illness, such as cancer, and the cause, such as asbestos.

It would impose a 25-year statute of repose—an outer time limit—on litigation involving workplace capital goods.

It would eliminate product seller's liability for a manufacturer's error unless the seller modified the product or provided additional warranties. Why should a seller for a boxed product be liable for that product when in fact it is the manufacturer that has put it together and boxed it?

Fourth, it preserves a plaintiff's power to sue one defendant, theoretically the deep pocket, for the full amount of the economic damages but eliminates such joint and several liability for noneconomic damages. Therefore, one becomes responsible, according to one's degree of fault for the harm. This applies only to noneconomic damages.

It would encourage settlements by alternative dispute resolution by penalizing parties that refuse to settle or negotiate and then do worse at trial. That helps, I believe, a plaintiff rather than hinders that plaintiff.

It bars recovery of a plaintiff who is more than 50 percent responsible for causing the accident due to intoxication from alcohol or any drug.

In my opinion, the above-mentioned provisions of this bill are helpful to California consumers and product users, as well as to those who, unfortunately, become disabled as a result of a faulty product.

With reference to the FDA provisions, I must say, I will vote for this section. I will also vote for a motion to strike the entire section. It is clear to me that this section is not clear. I believe that the amendment that I have submitted clearly documents the responsibilities that a manufacturer would have to meet by clarifying what is meant by "premarket approval," by citing relevant provisions of the Food, Drug and Cosmetic Act, and clarify those circumstances when a medical device or drug manufacturer would lose protection from punitive damages where that manufacturer fails to fulfill the relevant reporting requirements.

In addition to clarification, I spoke earlier on our amendment, which adds a provision that withdraws any protection against punitive damages for any drug or device which the FDA has determined has failed to conform with the FDA's conditions or approval. And it narrows the scope of the protection by excluding actions based on manufacturing defects and assembly line error rather than defects in designs or warnings.

It also excludes from the scope of the FDA defense provisions, drugs approved prior to the passage of the more rigorous premarket approval process for drugs and medical devices.

Further, it clarifies that devices allowed on the market, because they were substantially equivalent to the devices that were on the market when Congress enacted medical device regulation in 1976, cannot be considered to have received premarket approval. This would clearly exclude the Dalkon shield, silicone gel breast implants, and super absorbency tampons from the scope of the protection.

I urge adoption of these amendments.

I thank you, Mr. President.

I yield the floor.

EXHIBIT L

FATALITIES ASSOCIATED WITH CRASH INDUCED FUEL LEAKAGE AND FIRES

(By E.S. Grush and C.S. Saunby)

PURPOSE AND BACKGROUND

The NHTSA has issued Notice 2 of Docket 70-20 and Notice 1 of Docket 73-20, both regarding fuel system integrity. In this study, information has been developed concerning two of the issues raised in the Notices: the frequency of fire-related fatalities and the distribution and likelihood of fuel spillage by impact direction and type.

CONCLUSION

The NHTSA estimate of 2000 to 3500 fatalities yearly in fire-involved motor vehicle crashes appears to overstate the seriousness of the fire problem. Examination of in-depth accident data sources indicates that most fatalities in fire-accompanied crashes die from injuries not associated with the fire itself. Thus the National Safety Council estimate of 600 to 700 fire deaths each year is probably more appropriate than the higher NHTSA figure.

The actual number of fuel leakage incidents is relatively evenly distributed into four basic crash types: frontal, side, rear, and rollover. However, the likelihood of a given crash resulting in fuel spillage is much higher for rear impacts (26 percent with spillage in the sample studied) than for other crash types, such as frontals (3.5 percent spillage).

The cost of implementing the rollover portion of the amended Standard has been calculated to be almost three times the expected benefit, even using very favorable benefit assumptions. The yearly benefits of compliance were estimated at just under $50 million, with an associated customer cost of $137 million. Analyses of other portions of the proposed regulation would also be expected to yield poor benefit-to-cost ratios.

TABLE 1.—DISTRIBUTION AND LIKELIHOOD BY IMPACT TYPE OF IMPACT-INDUCED FUEL SPILLAGE FOR PASSENGER CARS IN RURAL INJURY-PRODUCING ACCIDENTS

Impact direction	Number of fuel leaks	Percent of fuel leaks	Likelihood of fuel leak by percent
Front	33	25.8	35/933=3.5
Side, front half of car	8	6.2	8/169=4.7
Side, rear half of car	23	18.0	23/160=14.8
Rear	37	28.9	37/140=26.4
Rollover	27	21.1	27/333=8.1
Total	128	100.0	128/1735=7.3

Source.—Calspan report No. VJ-2839-K, dated April, 1970.

Note.—Accident cases in this file are significantly biased toward high severity collisions; they are all rural, and to qualify for filing, an injury had to occur. But injuries are not nearly so frequent in rear-end crashes, in general. As a result, the proportion of fuel leaks in rear-end crashes reported here, 29%, cannot be the nationwide average. Rather, in 29% of rural rear-end collisions sufficiently severe to cause an injury, fuel leaks occur.

The proportion of fuel leaks which occur in rollovers is indicated in Table 1 to be slightly less than one-fourth.[1] If this proposition is applied to the fire numbers themselves, the consequences of fire in rollovers can be estimated as 180 deaths, 180 non-fatal injuries, and 2100 other fire crashes. These values are predicated upon two postulations: rollover fuel leaks result in fire just as often as other fuel leaks, and rollover fires are just as likely to result in burns as other fires.

BENEFITS AND COSTS RELATING TO FUEL LEAKAGE ASSOCAITED WITH THE STATIC ROLLOVER TEST PORTION OF FMVSS 208

Benefits:

Savings—180 burn deaths, 180 serious burn injuries, 2100 burned vehicles.

Unit Cost—$200,000 per death, $67,000 per injury, $700 per vehicle.

Total Benefit—180x ($200,000) +180x ($76,000) +2100x ($700) = $49.5 million.

Costs:

Sales—11 million cars, 1.5 million light trucks.

Unit Cost—$11 per car, $11 per truck.

Total Cost—11,000,000x ($11) +1,500,000x ($11) = $137 million.

This analysis assumes that all these fires and the resultant casualties can be eliminated entirely through compliance with the rollover requirement. In addition, it is assumed that vehicle modifications designed to ensure compliance with non-rollover portions of the Standard will not reduce at all the number of rollover fires. The extent to which either of these assumptions is not completely accurate represents a measure of the extent to which benefits derived here are overestimates of the true values.

To compare the benefits of eliminating the consequences of these rollover fires with the requisite costs, the benefits and costs must be expressed in terms of some common measure. The measure typically chosen is dollars; this requires, then, converting the casualty losses to this metric. The casualty to dollars conversion factors used in this study were the societal cost values prepared by the NHTSA (6). These values are generally higher than similarly-defined costs from other sources, and their use does not signify that Ford accepts or concurs in the values. Rather, the NHTSA figures are used only to be consistent with the attempt not to understate the relevant benefits.

The NHTSA has calculated a value of $200,000 for each fatality. While the major portion of this amount relates to lost future wages, the total also includes some consideration for property damage. The NHTSA average loss for all injuries was about $7,000. Burn injuries which do occur tend to be quite serious, however, as discussed above. Thus a higher value of $67,000, which is the NHTSA estimate of partial disability injuries, was used for each of the 180 non-fatal burn injuries. The $700 property damage per vehicle is the NHTSA estimate of vehicle property damage costs in non-disabling injury crashes.

COSTS

The Retail Price Equivalent (the customer sticker price with no provision for Ford profit) of vehicle modifications necessary to assure compliance with the static rollover portion of the proposed Standard has been determined by Ford to be an average of $11 per passenger car and $11 per light truck. While these are Ford costs, they have been applied across the industry in this analysis. Total yearly sales estimates of 11 million passenger cars and 1.5 million light trucks (under 6,000 lbs GVW) were used in conjunction with the unit cost determinations.

BENEFIT AND COST COMPARISON

The total benefit is shown in Table 3 to be just under $50 million, while the associated cost is $137 million. Thus the cost is almost three times the benefits, even using a number of highly favorable benefit assumptions. As better estimates of the parameters used in the benefit analysis become available, they could be inserted into the general analysis framework. It does not appear likely, however, that such alternate estimates could lead to the substantial benefit estimate increase which would be required to make compliance with the rollover requirement cost effective.

BENEFITS AND COSTS FOR OTHER IMPACT MODES

The analysis discussed above concerns only rollover consequences and costs. Similar analysis for other impact modes would be expected to yield comparable results, with the implementation costs far outweighing the expected benefits.

E.S. GRUSH,
Impact Factors.
C.S. SAUNBY,
Impact Factors.

Concurred By:
J.D. Hromi, Principal Staff Engineer.
R.B. MacLean, Impact Factors Manager.

[1] That is, the 21.1% associated with rollovers from Table 2. In this and subsequent calculations, figures have been rounded upward. In that way, not only are the statistical assumptions in a conservative direction, but also the arithmetic.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, the distinguished Senator from California has eloquently explained the rationale behind her second-degree amendment. This Senator intends to support it. I would like to speak briefly on the first-degree amendment and the general subject matter of the so-called FDA events.

The Feinstein-Lieberman amendment—that is to say, the underlying first-degree amendment here—clarifies exactly what is meant by premarket approval. The amendment adds language specifically to exclude from the scope of section 203(b) drugs such as DES that were allowed on the market before the passage of the new drug amendments of 1962. The amendment also makes clear that class 3 medical devices that are allowed on the market because they are substantially equivalent to the devices that were on the market when Congress enacted the medical device regulation in 1976 cannot be considered to have received premarket approval.

The Feinstein-Lieberman amendment clearly excludes the DES, Dalkon shield, silicon gel breast implants, and super absorbency tampons from the scope of section 203(b). The Feinstein-Lieberman amendment further clarifies that a manufacturer will remove any protection against punitive damages if the manufacturer fails to submit information required by the FDA, and that information is material and relevant to the performance of the drug or device and causally related to the claimant's harm. This change makes absolutely clear that there is no requirement for claimants to show that a manufacturer actually knew it should have supplied the information to the FDA.

The Feinstein-Lieberman amendment also adds a provision that withdraws any protection against punitive damages for any drug or device for which the FDA has determined that the drug or device failed to conform with FDA conditions for approval.

Finally, the Feinstein-Lieberman amendment narrows the scope of section 203(b) to exclude actions based on manufacturing defects rather than defects in designs or warnings. This change conforms to the scope of section 203(b) to the types of issues considered by FDA in approving a new drug for service.

In other words, Mr. President, these amendments made clear many of the objections which have been raised on the emotional level to this bill which were not intended to be covered by this bill and now are explicitly excluded from it by the Feinstein-Lieberman amendment.

I think it is very, very important to make a number of points about the overall bill. S. 687 does not change any of the bases for compensatory liabilities that exist under current law. Under S. 687 existing State law continues to define whether a drug or medical device is defectively designed, defectively manufactured, or has sufficient warnings. If the manufacturer of a drug or medical device can be successfully sued today, it can be successfully sued after the enactment of S. 687.

S. 687 does not affect recovery of noneconomic damages like pain and suffering in the vast majority of drug and medical device product liability cases. In that vast majority only one entity, the manufacturer, was allegedly responsible for the claimant's harm and only one entity is sued. When the judgment is against only one defendant and only one defendant is responsible for causing the harm, joint and several liability as a concept is inapplicable and irrelevant.

S. 687's punitive damages provisions do not shield manufacturers of products that did not actually receive formal FDA premarket approval unless the product was generally recognized as safe and effective.

S. 687 does not provide any punitive damage protection to manufacturers who do not submit required information to the FDA where such information was relevant and material to the claimant's harm—products, as I have already said, which allegedly withheld

information, DES, Dalkon shield, silicon breast implant, Bjork-Shiley heart valve, CR catheters, Copper-7 IUD.

Moreover, S. 687 does not allow manufacturers to sit back after approval even when their products are causing serious injury or death. FDA regulations require medical device manufacturers to report any death or serious injury within 15 working days and drug manufacturers to report any death or serious, unexpected, and adverse reactions within 15 working days. And in order to continue to qualify for the defense against punitive damages, manufacturers must continue to adhere to FDA requirements to supply this information.

But, fundamentally, when we get beyond these details, the real question here is whether or not S. 687 will enhance the health of the American people, male and female combined, or undercut particularly with respect to the FDA defense. It is the position of those of us who are sponsors of this bill that it will clearly enhance the health of the American people because it will encourage in a way in which it has discouraged research and development of new and improved drugs, medical devices, and other forms of treatment.

Only if we were to adopt the proposition that medical science has reached its ultimate and final goal that there is nothing more to be discovered would it be appropriate to continue the current status of the law. The current status of the law may give to a tiny handful of plaintiffs—and not at all, incidentally, to their lawyers—windfall verdicts, lottery-type verdicts of huge amounts of money for punitive damages to that tiny handful. But a continuation of the present state of the law will penalize untold thousands and millions of people who will not benefit from the development of new drugs and new devices because the developers and researchers simply do not believe it worthwhile to subject themselves to the lottery of our present court system.

So in this case, a vote for the FDA exemption for the bill is a vote for a continued development in the health and protection of the American people.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the Chair.

I rise to support both the second-degree amendment offered by my friend and colleague from California and the first-degree amendment which she and I have proposed together.

These are both attempts to clarify and, if I may say so, reassure those who may be concerned about the intention or in this case more likely the impact the various sections of this underlying bill, and particularly section 203 which makes clear that manufacturers of drugs and medical devices who have their products go through the full FDA premarket approval—that means they have to be approved by FDA before they can go out on the market and be sold—or whose products are generally recognized as safe and effective.

That is not just general language. That is specific from the statute, and it has a particular and rather precise and demanding meaning. In fact, I believe that not even aspirin at this point has formally been classified under the statute as generally recognized as safe and effective.

So it is a tough standard. Those who have passed those hurdles will not be held to have engaged in conscious, flagrant indifference to public safety which is the standard in the bill for not being liable for punitive damages. To me, this is obvious and self-evident—that, if you go through the entire FDA process to get a drug or a medical device approved, you cannot be guilty of conscious, flagrant indifference to public safety.

It is possible that there still may be negligence, but not negligence deserving of punishment, punitive damages; and that is what section 203 will protect—not only the manufacturers of medical devices and of drugs, which we depend on, as the Senator from Washington has made clear, for improving health, but it will protect the rest of us who pay—let us not kid ourselves—the costs of these product liability settlements and verdicts in increased costs of the products we buy.

I know there is a lot of concern about the impact of 203, this FDA provision, and I understand the sincerity of the concern. But I do think two things: One is that most of it, respectfully, does not relate to the literal wording of section 203 of the underlying bill. And, two, in the amendment that I have the privilege to cosponsor with the Senator from California, there is clarification. There is, in some cases, modification to make it clear to people who are concerned about cases such as the Dalkon Shield and the breast implants that this provision 203, the superabsorbency of tampons—this provision in 203 will not prohibit and would not have prohibited lawsuits, claims, and recovery, because those products would not fall within the rather strict requirements of this provision.

Mr. President, in evaluating section 203(b) and whether it is proconsumer or not, I think it is important to remember or to point out what I suppose is obvious, but what we sometimes take for granted, which is that drugs and medical devices are intended to heal us or improve the standard of living and the quality of life of a person with a disease or medical condition. New drugs and medical devices present tremendous benefits for us. In fact, some of the most remarkable, miraculous discoveries of our age have to do with drugs that have limited or cured illness, and medical devices that have allowed people to continue to live who would have either been severely constricted in their life or died at an earlier time.

The fact is, though, that new drugs and devices also do carry some degree of risk. Many are dangerous if taken in the wrong quantities, for instance, or at the wrong time. Drugs and devices that are thoroughly tested in clinical trials may have problems that do not serve us in truly detectable numbers until they have been put on the market. So to weigh those risks from the benefits availability from a new treatment, Congress established the Food and Drug Administration and gave it the responsibility of attempting to strike that balance, based on available scientific evidence.

The FDA approval process involves very difficult scientific judgments. In fact, the length of the process—an average of 9 years—for new drugs, reflects the seriousness of these decisions.

Mr. President, I want to give you an example of the life-saving, life-enhancing benefits of these products. In doing so, I want to point out that lives and livelihoods are at stake when a manufacturer, or the FDA, denies patients access to potentially beneficial life-saving or life-enhancing treatments—in the case of a manufacturer, by refusing to produce something that will be good for people. At a recent hearing of the Governmental Affairs Subcommittee that I am privileged to chair, Mark Reily of Houston, father of a 9-year-old boy with hydrocephalus—water on the brain, as we know it—testified. Mark Reily's son Thomas was with him, an adorable 9-year-old, and he is alive today, his father testified, because of a small rubber shunt that has been placed in his head, allowing the fluid to drain out of his brain into his stomach. Without that shunt, Thomas Reily would slip into a coma and probably die. His father, Mark, came before the subcommittee because he learned that fear of product liability claims has led the supplier of the rubber that goes into that shunt to decide to stop selling the rubber for use in medical implants.

Some of the opponents of S. 687, having heard of this case, have said that some people may have a reaction to the rubber used in the shunts. Of course, that is not surprising because there are lots of people around the country who have allergies or other sensitivities to any specific products. But the point here is, in striking a balance, that simply because some people may have a reaction to these shunts, does not mean the product is unsafe or defective when compared with its benefits. I am sure that the vast majority of parents of hydrocephalic children would be willing to take the risk that there might be some reaction to the rubber in the shunt in return for the ability of their

child to live a normal life. That is the type of cost and benefit analysis that we have established the FDA to perform.

Unfortunately, the costs imposed on manufacturers are not evenhanded. A manufacturer cannot get sued, for example, if it fails to invest in the development of a new AIDS vaccine. But the people who might have been saved if that manufacturer had worked to develop that vaccine have lost as surely as if they had been given a vaccine that did not work.

So what I am saying is that our liability system overemphasizes costs of injury, as constructed, but underemphasizes the benefits of new treatments, and it is to strike a balance to lessen the bias against developing new cures and treatments. And section 203(b) tells manufacturers that if you go through this regulatory process in good faith and comply with all of the FDA's rules, you are not going to be deemed to have engaged in a conscious, flagrant indifference to safety, and therefore you are not going to be subject to punitive damages. If there is negligence, you are still going to be subject to paying any out-of-pocket costs, health care, lost wages, et cetera, et cetera, and you will be subject to paying the relatively unlimited element of noneconomic damages. That is what a jury, for instance, would determine is the pain and suffering caused by your negligence. So you are not going to get away scot-free. But at least for going through this 9-year process, you should be saved from punitive damage.

Mr. President, last October the Rand Institute for Civil Justice released a study of product liability and the economic impact of pharmaceuticals and medical devices in our current law. They similarly recommended in that study that FDA compliance be a complete defense to product liability actions.

I think the Rand study, which is an independent study, is particularly relevant to the debate today because its findings directly respond to some of the concerns of the opponents of section 203(b).

Some of the opponents argue that 203(b) should be stricken because punitive damages are essential to ensuring that drugs and medical devices are safely designed and adequately tested.

But Rand concluded that "liability induced changes in the chemical compositions of drugs are likely to be the exception, not the rule" and "It is doubtful that product liability often leads firms to test drugs or extensively regulated devices more than already required by the FDA * * *."

Second, those who are concerned about section 203, the FDA provision, deny that product liability has any effect on the development of beneficial new drugs and treatments.

However, Rand concluded, "liability is likely to deter development efforts for socially valuable products whose profit potential is viewed as more limited." That is in some of the cases, and two examples they give are contraceptives and vaccines. That is where the profit potential may be less. When comparing that to the risk of liability lawsuits, they decide not to go ahead.

Then, third, some of the opponents, those who are concerned about this section 203 argue that the reason defective drugs or devices are sometimes put on the market is that FDA is too lax in its approval process. But here again Rand concluded that "for drugs and extensively regulated devices, it seems that safety shortfalls are most often attributable to failure to comply with FDA regulations rather than inefficiently low FDA safety standards."

(Mrs. BOXER assumed the chair.)

Mr. LIEBERMAN. Madam President, the requirement of actual approval under a premarket approval system excludes many products, and I do want to stress here, for example, that DES and all other drugs that went on the market prior to 1962 did not receive actual approval by the FDA. Therefore, as the amendment which the Senator from California and I have introduced makes clear, lawsuits related to DES will not be affected at all by this legislation.

Likewise, Dalkon shield and silicone gel breast inplants first went on the market prior to enactment of medical device regulation in 1976. Because they were already on the market, they were exempt from that new law unless and until FDA took action to require demonstration of safety and efficacy.

Similarly, premarket approval under the medical device laws is only required for class 3 medical devices that are not exempted. Class 1 and 2 medical devices do not receive premarket approval prior to marketing.

Put plainly, DES, Dalkon shield, silicone gel breast implants, and super absorbency tampons are not covered and, therefore, not affected by section 203(b). I repeat, the rights of parties injured by any of these devices and treatments are not limited one iota by this bill.

Madam President, the underlying amendment that the Senator from California and I put in is meant to clarify all of this. We have added, for instance, a provision that makes it clear by narrowing the scope of section 302(b) to exclude actions based on manufacturing defects rather than defects in design or warnings. That conforms to the scope of section 203(b) to the types of issues considered by FDA in approving a new drug or a device.

The amendment in the second degree offered by the senior Senator from California I think similarly acts to reassure people about what will happen, hereby adopting in substantial part on a national level a law that is in effect in California. It says that those who are responsible for concealing a known product defect are subject to criminal penalties. Someone who has actual knowledge of a serious concealed danger that is subject to the regulatory authority of the FDA or FAA, which are the two agencies covered by section 203 and associated with that product or a component of that product or business practice, is subject to substantial criminal penalties, as they ought to be.

So, Madam President, I state, in conclusion, that 203(b) to me seems fair. In fact, it seems self-evident. It will not deny rights to sue to anyone, most assuredly not those concerned about some of the most controversial and discussed claims that I have mentioned, such as the DES and Dalkon shield.

But even for everything else, even for drugs that do get approved by FDA, there is no limitation on the right to sue for economic damages. There is no limitation on the right to sue for pain and suffering. The only limitation is to ask for damages that are essentially punishment, and those are damages that too often escalate the cost of litigation, that force manufacturers to settle rather than going to trial, and that often force manufacturers not to begin to develop drugs or medical devices in the first place that we and our families want and need for our well-being.

As Mark Reily wants with his 9-year-old son, Tom, from Houston, the suppliers of raw materials for the shunt in Tom Reily's heart, for defibrilators that keep people alive, pacemakers, for jaw implants, for hip replacements, for the whole range of miraculous developments of our age, the raw material suppliers have told the manufacturers after 2 more years, we cannot afford to give you this stuff; we do not make enough money on it to justify what it costs us.

Du Pont has supplied a nickel's worth of Teflon for a jaw implant, supplied it according to the specifications of the manufacturer. A lot of suits were filed by people who felt that that jaw implant was negligently put together. A lot of people sued du Pont because it is the so-called deep pocket. They spent by their statement to our subcommittee $8 million a year for the last 3 years, won every one but 1 case out of 250. But it is because of that relating $24 million to a nickel that they made for every piece of Teflon in that jaw implant that they simply said in the exercise of reasonable judgment we cannot afford to do this anymore.

I could tell more and more stories. One woman who heads a medical device company losing the supply of material. I believe in that case it was a heart valve, which has a polyester fabric around it that is used that keeps so many people alive these days, again notified that the supplier no longer will supply the polyester fabric. She went

to look abroad and found 15 manufacturers of polyester fabric willing to sell her until they found out that this was going to be on the market of America and, therefore, subject to American product liability law, and every one of them said they will do it.

So, we all have visions in our mind when we think of the change involved here, and I say this respectfully, but the vision in my mind is of a 9-year-old Thomas Reily who, as his dad says, wants to make sure when this rubberized shunt wears out and it is time to replace it that there is a material supplier who will have supplied that small piece of rubber to the manufacturer of the shunt to keep 9-year-old Thomas alive.

I hope that our colleagues will look clearly at all sides of what is involved here, and I hope that they will accept the underlying amendment in the second degree as matters of reassurance of the intention and the effect of this bill. I think it is really good for consumers and most assuredly good for public health.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Madam President.

I know my colleague from North Dakota is standing here and I am going to be relatively brief.

Madam President, it has been kind of an interesting experience for me because I do not like to vote against cloture.

I do not think I have voted against cloture—probably very few times have I voted against cloture since I have been here in the Senate.

I made it clear to all groups, organizations, and people that have been involved in this issue that I simply, on substance, respectfully disagree with some of my colleagues, my colleagues from West Virginia and Connecticut. But the issue for me was more on the cloture vote. So what I ended up having to do, so many phone calls were coming in, was just simply to say to people, "Just don't call. I mean, just please step back from me and let me make this decision within myself," which I think is the way we ultimately should make that decision.

On the one hand, you listen to all sorts of people. You are not arrogant, especially to people from your own State, but ultimately you have to decide what is the right vote, the right thing to do.

Madam President, I guess that what I have done and will continue to do in the Senate is set a very stringent test on these cloture votes. I will not vote against cloture unless I believe that the particular proposal will have a truly egregious effect on people, on people's lives.

I have reached a conclusion that this product liability reform will do so. I feel, in all due respect to my colleagues, that one of the only access points we have for corporate accountability in this country, given, in part, the history of the 1980's, is that citizens, ordinary people, consumers, can seek redress of grievances in the court. I really think it is one of the very few access points we have.

Second, I really feel like this "reform"—and put that in quotes; and it is just a profound and honest disagreement with colleagues—ends up sticking it to victims. I really think it is very bad for consumers. I think this bill is profoundly mistaken and that the small percentage of people who are able to go to the courts really in many ways have less representation.

Finally, on the preemption of States, I just think this legislation puts a national cap on safety.

And so, I reach very different conclusions from my colleagues. What I have really been focusing on more is this cloture vote. I just do not like to see people over and over and over again voting against cloture. I do not like the filibuster. I think, therefore, all of us have to have a very stringent test that has to be met when we vote on this. Then I think we have to be accountable for our votes.

Very few times have I voted against cloture. I doubt whether there will be very many times I will in the future. But on this particular reform initiative, I have decided today—I said to Judge HEFLIN earlier today that I finally decided that I was going to vote against cloture. I did on this piece of legislation before. We did not even have any debate at all. I think it is important we have this debate.

I was seriously considering not voting against cloture, but I have heard the debate. I have heard what my colleagues have had to say. And to my own mind, this particular reform would have really serious negative effects on people that I feel it is my responsibility to represent. That is my honest view.

We need more corporate accountability, not less. We need more support for victims, not less. And we certainly do not need to have some kind of a national cap on States which preempts States from moving forward with even stronger measures.

So I am going to vote against cloture.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, this is an interesting debate. And, as is often the case with very significant issues, it seems to me the facts would lead to a conclusion somewhere in the middle of the various positions taken in this Chamber.

I would like to briefly describe my thoughts about some of these matters.

In the Commerce Committee, on which I serve, we reported out this piece of legislation last fall. I voted to report it out of the Commerce Committee and said at the time to my friend, Senator ROCKEFELLER, that I wanted to advance this general issue, although I had some difficulty with the bill. I said that I had great difficulty with section 203 of the bill, which sets up a test with respect to punitive damage awards and FDA and FAA approval. I said I would vote to advance this bill out of the Commerce Committee but, unless we are able to resolve section 203, I will not vote to advance it further. I said that I would vote against cloture, and would offer an amendment, to strike section 203. Well, that is where we are.

The fact is, Madam President, we have too many lawyers and too many lawsuits in this country. We have folks around here who say, "Well, now, this is just people exercising their rights."

Yes, people ought to be able to exercise their rights. But the fact is, we are training too many lawyers and we are choking this country full of lawsuits.

But while we, I think, should find ways to create alternative dispute resolutions and back away from some of these suits if we can, I do not think we ought to do anything, as the Senator from Minnesota said, that would injure the rights of those in this country who are aggrieved and who want to seek redress in the courts. They have a constitutional right to do that, and we ought to do nothing in this Chamber to injure that right.

I would like to speak just for a moment about the section of the bill that gives me great difficulty, section 203. Section 203 of this bill sets up a new test. It says that those who are marketing pharmaceutical drugs or medical devices, if they get approval for their drug or their device from the FDA, then they are shielded from punitive damage awards.

What this still does is it sets up a shield and it says, if you are a manufacturer and you got yourself FDA approval, you are set; you are not going to get hit with a punitive damage suit, because we have created another step that someone is going to have to jump up on top of in order to seek punitive damages. They have done the same with the FAA approval.

Let me stay with the FDA issue just for a few minutes.

Examples are legion of products and medical devices approved by the FDA that have come to the market with approval and are later found to be very, very troublesome and ultimately recalled from the market.

Some of those examples have been mentioned on the floor of the Senate. I could mention others. The silicone breast implants, the Copper-7 IUD's, Albuteral, the Bjork-Shiley heart valve, Zomax, Versed, Accutane. We will have a debate about a number of these things in greater detail.

But my point is simply that for someone to say that the FDA is capable of, by approving a drug, creating a test that says this drug will cause no harm, they do not understand, apparently, what is going on at the FDA.

In fact, the FDA has indicated in published reports that they do not have the capability of determining whether someone is submitting information to them that is complete, that is accurate, that contains all of the information. They do not have that capability.

I just think it makes no sense at all in this piece of legislation to create a new test, a new barrier that says to someone out there who has been injured, "We are going to build a little higher fence for you to get over at some point in order to seek to redress your rights."

For that reason, I am going to offer, with my colleague, Senator MOSELEY-BRAUN, an amendment that is very simple. It strikes the FDA and FAA defense provisions in section 203. If that amendment is successful, I intend to vote for this bill. Why? Because I think there is merit in this legislation. There is not merit in this legislation if it advances with this section in it, and I will not support it.

Now, I want to say in a gentle way that the amendment we are now debating should not be construed by anyone to improve this section, section 203, sufficient that they think that they have corrected all the mistakes. It does not and it will not.

And if this amendment is agreed to, and if we are not able to strip section 203, I do not intend to vote for this legislation. And until we resolve this section, I do not intend to vote to invoke cloture.

We will, I expect, have a lengthy debate in the remaining hours today and perhaps in the morning, about this specific section, why it is there, what exactly does it do. Some will assert that it does nowhere near the harm that I and others would allege. We would assert that this is a terrible, terrible way to legislate, by establishing, just ad hominem today, that the FDA is now capable of deciding that this drug is fine and is going to cause no ill effects, and they have seen all the information and they can assert—sufficient to abrogate the potential future rights of some consumer out there—that they have done all the investigative work necessary.

Do you know the FDA does not even have subpoena power? I can describe who does. It is a long list but the FDA does not. This is an organization that is not capable—nowhere near capable of doing the investigative research to be capable of saying to us, yes, we have done all there is to do and we can assert this medical device, this drug meets all the tests. And we are not going to find out later it does not.

When those who are opposed to the position Senator MOSELEY-BRAUN and I are taking on this amendment—when those who are opposed cite all of these examples—and they do repeatedly—silicone breast implants, or DES, the list goes on and on—they make our case. All of them at one time or another were approved by the FDA—all of them. It simply demonstrates again that this is not the agency we should establish as being capable of setting up this standard. Or, in effect an agency in which we will create a shield beyond which it is going to make it more difficult for a consumer who was injured to move.

So we will, I think in the next hour or so, or tomorrow morning—when appropriate—offer our amendment to strike section 203. But I did want to alert my colleagues that no one should believe if we vote for the underlying amendment, we have done anything to improve or anything to polish, in a significant way, the problems that exist in this section of the bill. We have not. We can pass it right now by voice vote, I guess—if that was the course on the Senate floor—but it would not mean anything as far as I am concerned. It does nothing to resolve the abiding problems that exist as long as this section is in the law.

I think it is very important that we have a full and complete debate on what does this section mean. What does it mean to people out there who in the future may find injury to themselves or to those they love as a result of using a medical device or a drug? And then they try to seek redress from the courts—what does it mean to them? What kind of impediment? What kind of shield? What kind of additional barrier does this impose to those in the American public who find themselves in that circumstance?

Madam President, I will yield the floor but I again want to reemphasize, this amendment is not about stripping section 203. This amendment is about tinkering with 203 and making a few adjustments. I have no quarrel with those who want to tinker with it. But we can tinker from now until the end of 1998 and it is not going to change section 203. This is a bad proposal and ought to be stripped from this bill. When it is stripped from the bill I will support the bill because I think there is merit to the bill beyond this. If it is not stripped from the bill I intend to vote against cloture and I intend to vote against the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I am pleased to follow on the words of the Senator from North Dakota because I rise to express some serious criticism toward this second-degree amendment as well, and really the entire piece of legislation, which I do not think will have its essential character changed by this attempted second-degree amendment. I am opposed to S. 687. I think it is a bill which is neither fair nor necessary.

The proponents of the bill have declared that it will actually benefit consumers and the victims of product liability accidents. I just do not think this is credible at all that this is a bill that benefits consumers. Every major consumer group in the United States opposes it. So do groups which represent the working people of our Nation, groups like the AFL-CIO, and organizations that represent our country's elderly such as the AARP.

For me there are several reasons why I oppose the bill. One reason is that I do not think we should overturn the work of our State legislatures and courts by enacting a quick fix Federal legislative response to an area of law that I still think is best kept in the hands of State policymakers and courts. These are the same hands that have handled these issues for over two centuries.

I do not think the importance of States' rights in this area can be overstated. This area of tort law is best left in the domain of the courts and the State legislatures which can best react to the changing circumstances which dominate tort law in a more fluid manner.

Here we cannot help but go back to the famous words of Justice Brandeis, in his oft-quoted dissenting opinion in the *State of New State Ice Cream Co.* v. *Lieberman*. The Justice said:

> To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the Federal system that a single courageous State may, if its citizens choose, serve as a laboratory, and, try novel social and economic experiments without risk to the rest of the country.

In my view, Madam President, this is one the National Conference of State Legislatures, the American Bar Association, the Conference of Chief Justices of the States, and at least 100 law professors throughout our Nation's law schools, also oppose this measure.

Why should we preempt the States in this area of the law? The proponents of the bill say the number of product liability lawsuits and the ensuing damage awards handed out by juries have dramatically risen. They have gotten out of hand, wreaking havoc on America's ability to compete globally and develop innovative products. The proponents of this bill also claim the cost for insurance for American businesses has actually skyrocketed as a result of the so-called litigation explosion involving product liability lawsuits.

As we have heard mentioned on the floor earlier today these arguments have sort of changed over time. I think they have served merely as the justifications du jour in order to rationalize the need for and promote the passage of this bill.

I may not have been a Member of this distinguished body during the last few debates on this subject but I did serve in one of the State legislatures that this bill is designed to circumvent. I was serving there during several of these debates. One opportunity I had in that capacity was to defeat one of the chief proponents of this legislation in order to serve here in the U.S. Senate. So I am not exactly completely new to this debate or the arguments that are made in favor of this kind of law.

Supporters of Federal tort reform have stated that America's competitive edge is at stake. Yet the recently completed OTA study on the competitiveness of U.S. manufacturers did not even include the creation of Federal product liability law in its recommendations for Government activities to address the competitiveness problem. Instead, the OTA listed a number of recommendations. They said we should lower the cost of capital; improve the quality of human resources through education and the quality of the work force. They said we should improve the diffusion of manufacturing technology out to small- and medium-sized businesses. And they also suggested providing Government funding for risky but promising long-term research and development. But they did not recommend—despite all of this attention to the issue of competitiveness—none of them recommended the need for Federal product liability legislation of this kind.

Madam President, also a Rand Corp. study found that only a small percentage of U.S. manufacturers are even named as defendants in product liability litigation. In 1986, for example, only 0.9, less than 1 percent of all manufacturing concerns in the United States were even named as defendants in product liability lawsuits.

The proponents of Federal tort reform have also claimed that product liability litigation has made the cost of business insurance completely unaffordable. Yet the evidence has shown the lack of affordable and adequate business insurance for business is not due to these lawsuits. It is the result of the insurance companies' own underwriting practices.

As for the litigation explosion that we always hear about and the claims that jurors and juries are running amok, recent data suggest that the current system is actually balancing the competing interests of victims and consumers with those of manufacturers.

Let me read a headline from a very recent article printed in the New York Times. It reads, "U.S. Juries Grow Tougher on Plaintiffs in Lawsuits." According to this article, juries nationwide have become markedly tougher. This conclusion was based on research conducted by the legal publishing firm Jury Verdict Research, which found that during the 3-year period from 1989 to 1992, plaintiffs have prevailed 11 percent less frequently in all forms of personal injury cases. The data compiled for product liability cases showed that a plaintiff's chance of winning a trial has dropped 18 percent, over that 3-year period.

Madam President, these findings support other studies which have questioned the assertion of a product liability litigation crisis. The most recent review of statistics from the Federal courts, which was conducted at our own University of Wisconsin Law School in Madison by Prof. Mark Galanter, found that if you remove the asbestos cases from the analysis the number of product liability cases in the Federal courts has declined in the last 5 years. And it has declined dramatically. It has declined from 8,268 cases in 1985 to only 4,992 cases in 1991. That is a huge, 40 percent decrease in these kinds of cases.

At the State court level, the National Center for State Courts recently published updated statistics from State courts that reviewed civil court filings in 13 different general jurisdiction State court systems from 1984 to 1989, and they concluded that the most dramatic increases in the civil caseload tended to be for real property rights cases or contract cases—not tort cases, the subject of this bill, but real property rights cases or contract cases. These same studies showed that tort filings make up less than 1 percent of all cases filed in State courts and less than 10 percent of most States' civil caseloads, and since product liability actions are only a subset of all tort cases, these cases that this bill tries to address make up an even smaller fraction of the total.

What all of this says, Madam President, is that the advocates of this legislation have failed to make the case for the need for this bill on any grounds. After listening to the debate so far, I think it is safe to say that the proponents of the bill have not met the clear and convincing evidentiary standard that they would impose on all 50 States in order to prove punitive damages. They could not meet their own standard. In fact, I do not think they even come close.

I find it especially troubling that the proponents of this bill would override our Nation's tort law system, a system which has taken our Nation's State courts and legislatures over two centuries to develop. The present system in which victims of accidents resulting from defective products are able to seek redress may not be perfect, no system can be or ever will be, but some of this bill's quick fix, draconian measures remind me of someone trying to fix a wristwatch with a sledgehammer and a pickax.

The best illustration of this, Madam President, is the most egregious section of the bill, section 203(B), which would potentially harm all consumers and women in particular by shielding manufacturers of drugs and medical devices from liability for punitive damages as long as the products have been approved by the FDA and there was not fraud involved. I think this is a horrible provision. I recognize that this second-degree amendment at least purports to address it. I have not had a chance to thoroughly review the pending amendment, which the proponents contend would clarify 203(B), but it would not, in my view, shield manufacturers of dangerous products such as DES, Dalkon shields, and silicone gel breast implants, from punitive damage liability.

That is the claim. However, after reading through it for the first time, I would have to say that the only thing it really clarifies, in fact makes clearer, is that section 203(B) is still very flawed even with this change and is unacceptable.

The underlying amendment still relies on the FDA as a safety shield. The underlying amendment—the second-degree amendment would still place the evidentiary burden on the victim or the claimant to prove that the manufacturer has not engaged in "conduct manifesting conscious, flagrant indifference to the safety of those persons who might be harmed by the product."

That is still an extremely difficult standard, and I do not think it changes the essential dangerous character of 203(B).

The flaws and dangers contained in this provision have been discussed and demonstrated throughout this debate. I think it is clear by now, Madam President, that the FDA simply is not equipped to adequately protect the public. It is underfunded. It is understaffed. We all know that many Government requirements are outdated and do not adequately protect the public health and often do not reflect the most up-to-date, scientific knowledge. For me, Government regulations only function as a minimum standard of conduct. They should not give a manufacturer a license to market a product that it knows to be unsafe or defective.

No example better illustrates the inadequacies of Government regulations than the FDA's failure for over 20 years to protect women from the dangers of silicone gel breast implants. And no example better exemplifies the critical role that punitive damages play in protecting the public. The FDA allowed Dow Corning to sell these silicone gel breast implants in spite of mounting evidence that the devices could cause serious illnesses and even death. The availability of the implants was only curtailed after one victim was awarded over $6 million in punitive damages because of what one court described as Dow Corning's "despicable conduct."

Yet this bill, S. 687, would immunize manufacturers of such products as long

as the product met premarket approval. One only has to be reminded of the FDA's history and the countless horror stories resulting from the harm that was inflicted on women by such products as the Dalkon shield intrauterine device, DES, and the Copper-7 intrauterine contraceptive device, to realize the dangers involved in this provision.

The bill would also eliminate joint and several liability for noneconomic damages.

Section 206 of the bill states in general that in any civil action subject to this act the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

The rest of the provision elaborates on that. What does this mean? What can be some of the consequences for consumers and victims of defective products if this provision is made the law of the entire country?

Madam President, the elimination of joint and several liability for noneconomic damages such as pain and suffering would simply result in many individuals receiving less than their full damages whenever wrongdoers are immune from suit whether it be for insolvency, being uninsured, underinsured or for whatever reason not subject to a court's jurisdiction.

The joint and several liability doctrine applies to situations where there are multiple wrongdoers who act in concert to cause an injury to a victim, and they cause an injury that cannot be easily divided among them in a logical fashion. If multiple parties are jointly and severally liable, the victim still has the possibility of recovering in full from many of the wrongdoers.

This doctrine was developed to help ensure that victims injured by more than one wrongdoer would still receive the full and fair compensation they deserve. S. 687 would restrict the rights of individuals to obtain perfectly legitimate damages by shifting to the victim the risk of undercompensation.

Now, what exactly are noneconomic losses? S. 687 currently defines them as a subjective nonmonetary loss resulting from harm including but not limited to pain, suffering, inconvenience, mental suffering, emotional distress, loss of societal companionship, loss of consortium, injury to reputation, and humiliation. The term does not include economic loss.

Madam President, whose rights will be restricted by eliminating joint and several liability for these types of losses? Unfortunately, it would the rights of the most seriously injured victim who often relies on pain and suffering damages, people like quadriplegics, persons suffering from brain damage, burn victims. These are the people whose rights would be most restricted.

Studies indicate that the seriously injured victims often recover less than their out-of-pocket expenses in product liability cases, and eliminating joint and several liability for these victims would further reduce their recovery. Moreover, poor individuals who are injured by defective products generally pay for their cost of litigation out of the awards they receive. By reducing the amount the poor can recover, the elimination of joint and several liability for pain and suffering damages would decrease their potential access to the court.

Also, Madam President, excluding noneconomic damages from the joint and several liability protections is also disturbing in that reproductive harm such as loss of fertility is considered a noneconomic loss and therefore those kinds of injuries would not be protected, would not be compensable under the joint and several liability doctrine if this bill, this bill before us, is enacted into law.

It is not as if joint and several liability has broad and unwarranted impact. A recent study of verdicts handed down by juries in my home State of Wisconsin found that of 834 verdicts rendered in the 2-year period study, only 1.5 percent, or 13 verdicts, were affected by the Wisconsin rule of joint and several liability. Again, if we really examine the facts, if we really see what the statistics show about the litigation in this area, we see there is really no need for this form of reform that is being proposed today.

Madam President, I would like to share in my concluding remarks one real-life example which can better sum up the problems with doing away with joint and several liability than anything I could concoct. This tragedy involved a young woman, age 15, from Beloit, WI, a city just a few miles south of where I grew up in Rock County, WI.

This young woman was, unfortunately, riding in the back seat of a Gremlin, a car which was made at the time by American Motors Corp. And she was in the car at the time when a drunken driver struck the Gremlin from behind and the Gremlin burst into flames burning and maiming this young woman and killing another passenger.

The young woman suffered severe scars on her face, chest, arms, and legs, and has stubs for all but one finger. She has had several operations to attempt to repair the hands, eyelids and nose.

The problem with the design of the Gremlin, the jury was told and shown, was that its fuel system was dangerously defective. The young woman's attorney successfully demonstrated that the Gremlin's fuel system filler neck included a rubber hose that American Motors ran through the car's interior and was separated from the gasoline hose only by a plastic plate. This particular crash cut the hose and sprayed gasoline inside the car, which subsequently ignited.

Despite this dangerous design flaw, the jury apportioned liability by finding the drunken driver 67 percent negligent, American Motors 30 percent negligent, and the victim 3 percent negligent. I have been told that this type of apportionment is typical when an accident involves a drunken driver, even though the primary injuries—the burns—were the result of the flawed design of the fuel system. In other words, just like the horror stories involving the Pinto gasoline tank design which we know all too well, the Gremlin's fuel system design were the but for cause of the primary injuries. Without that, this woman would not have been injured. Now what does this mean to a victim of such a tragic accident?

First of all, this particular jury awarded $787,170 of damages to the victim, a large proportion of it in the form of pain and suffering noneconomic damages. Unfortunately, the drunken driver was forced to file bankruptcy and became insolvent. Factoring in the above liability apportionment, that means that the young woman would have received a total award of $236,151 and she would have received roughly $158,222, that is if she could have retained an attorney, which would be unlikely since the attorney's one-third contingency fee would be $77,930, roughly half of what it cost her attorney to try the case.

You see, we have to discuss the cost of preparing the case. The attorney handling the case has stated that it cost roughly $150,000 to prepare and try the case, with expenses including hiring expert witnesses and buying three cars, one of which was cut apart to show the jury the defective fuel system.

Now some of those damages were for medical expenses and economic losses, but you get the picture. This young woman who suffered irreparable physical harm, would not be able to recover her entire damages from a defendant which designed such a fuel system which was a primary cause of her injuries under the provisions contained if this bill passes.

I would like to conclude my remarks by urging my colleagues to oppose S. 687 and to vote against involving cloture this evening. Make no mistake about it, this bill is inherently flawed and will have a detrimental impact on the health of and the ability of victims of accidents involving defective products. If we are so inclined as a body to rush into enacting such sweeping changes to our current tort law system, cannot we at least wait until we fix and shape up our Nation's ailing health care system, so at the very least, we can be assured that the victims of accidents will have a better opportunity to have their medical needs met? Voting against cloture would

allow us to first take up health care before we override our State legislatures and jury system and embark on such a drastic remedy. I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Madam President, I will only speak briefly here about the provisions in this amendment, the Lieberman-Feinstein amendment.

In my judgment, this is a worse amendment than the one that was in the original bill. It is designed to make some exceptions in punitive damages. Punitive damages are not recoverable if there is premarket approval by the Food and Drug Administration. Then it has in the original bill a section that says the provisions of that "shall not apply in any case in which the claimant proves by preponderance of the evidence," and then it lists (a) and (b). There is nothing in the existing bill as it was and as it is, and subject before this amendment might be adopted, that says that the FDA can withdraw the premarket approval for failure to comply or for other reasons.

Now we see (c) is added. What does (c) require in order to say that you will not be subject to this provision on premarket approval? It says that the FDA must go through what? That the FDA, where it could have withdrawn its premarket approval and said that it does no longer fit, now the Food and Drug Administration has to go through a formal administrative procedure by a final order not subject to further review, or on the other hand, that a court has determined in an action brought by who? Brought by the U.S. Government by a final judgment not subject to further review that the drug or device fails to conform to conditions of the Food and Drug Administration for approval.

That makes it more difficult to get around this matter pertaining to exclusion from punitive damage on premarket approval.

Then we look at section (d). There are three provisions therein. The provisions of paragraph 1 shall not apply with respect to a claim for punitive damages based on a defect in manufacturing which causes the drug or device to depart from its intended design.

You look over in definition, and they use "as opposed to manufacturing formulation." Then they speak of the words "formula and design."

This appears to me to mean that you get a drug—this would not apply to a device, but this would apply to a drug that is manufactured—there are not many drugs that are manufactured, but rather they are formulated—and departs from their intended design or formula. The way that word is written and the way this language is written, it would have a very plausible interpretation; that it does not apply to a drug unless the drug is manufactured and unless the drug departs from its intended design. If it departs from its formula, it does not mean anything.

The other change that is involved in this deals with required information. It changed a little bit here, but they put obstacles in the language.

It is required information, if it "fails to submit"—I think the original language was "to withhold." I do not know whether there is a difference between "failure to submit" and "to withhold," but there may be. For some reason, they wanted to put that in there—"required information." We must rely on FDA regulations to require all the necessary data and information. And then they put two other hurdles in it—that the information that the defendant failed to submit or misrepresented is material and relevant. And then there is the additional hurdle that they must be causally related to the harm.

(Mrs. FEINSTEIN assumed the chair.)

Mr. HEFLIN. This amendment does nothing, really, to cure the fundamental problems of the provision. This amendment unquestionably reduces the incentive of manufacturers to make safe products when all the evidence shows that there are too few incentives.

Second, this amendment returns a greater number of difficult hurdles that a plaintiff must overcome. The effect is to ensure that a plaintiff will never get punitive damages. Here are the hurdles: First, they must show that there is a "conscious, flagrant indifference to safety," which is an extremely high hurdle, a lot more than wantonness or willfulness or recklessness. Second, it shows that the defendant will not turn over the required information, or will fail to submit the required information, and only required information. It further shows that that information was relevant and shows that the information was material and shows that failure to turn over that information caused the harm.

I do not think this is a fix. This, in my judgment, ends up with the fact that now, under this, there are hurdles that must be complied with relative to FDA withdrawing its premarket approval. They have to go through administrative procedure, or else the United States—the United States will not beat anybody except the FDA. They have to file a lawsuit before they can withdraw their premarket clearance. In my judgment, this is making it tougher than it was.

The people who are drafting this—and there is nobody in the Senate here, and I do not believe the staff members of the Senate are doing it, but there are outside people—who have motives involved in the way they select the language, in trying to put loopholes or have a facade that has an appearance of fixing a problem when, in reality, they are making it much more difficult to get around that premarket clearance exception to punitive damage.

Madam President, I ask unanimous consent that Bruce Leahy, of Senator WELLSTONE's staff, be allowed the privileges of the floor.

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

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY] is recognized.

Mr. KERRY. Madam President, the Senator from Alabama, who we fondly refer to as "the Judge" around here, is referred to as the Judge because he has made these decisions and has sat in a court of high consequence and understands the implications of the words in these kinds of amendments and this kind of legislation, perhaps better than most, and certainly as well as any in the U.S. Senate. The fears that he has expressed, the real dangers that are contained in the current definitions, should not be dismissed cavalierly by any Member of the Senate.

I might say that I was greatly attracted to the notion that I wanted to vote for some kind of reform, and all of us, I think, are affected by the notion that if we can make companies more competitive, we obviously want to do so if we can reduce overhead, reduce costs. And if we can impact the effect of other forces on business expenditures, we want to try to do so. But I think we also want to try to do so reasonably and fairly, and we also have a responsibility to try to measure what the impact is on the vast array of citizens who are not necessarily represented in the same way that some of those in the amendment described by the Senator from Alabama are.

I promised the Senator from West Virginia, who has been absolutely tenacious and open and extraordinarily decent in his efforts to try to work a compromise and come up with good legislation, that I would look hard at the changes he had made this year in an effort to try to see if we were indeed embracing a fair approach to the notion of compromise with respect to our uniform desires to reduce that nut on business and to try to impact competitiveness.

So I looked at this bill hard and met with folks on both sides of the fence. I have concluded that despite an inherent notion which agrees with the premise that insurance is too expensive and that there is a certain restraint on startup companies because of the cost of insurance for some particular product—there is, and I accept that. But I do not accept the leap that automatically suggests that because that is true, this legislation is the remedy or a fair remedy. There is a distinction between those two parting points. While we may be able to agree on the definition that there may be some problem

out there, the question is: Is this legislation the way to address that problem?

Some of my colleagues have talked about McCarran-Ferguson and problems of insurance regulation, and I think we really have to measure what the industry itself said about this legislation and its impact. I personally, after looking at this issue again, remain unconvinced that this legislation, which focuses solely on national standards concerning certain aspects of product liability laws, is an adequate answer to the problem. I ask my colleagues to question whether we ought to be considering legislation that tries to solve the problem by focusing only on the cost of litigation, without in any way requiring insurers to step up to bat and measure up with any reform or with any requirements to lower the cost of insurance to small business.

In testimony before the Commerce Committee, which the distinguished Senator from South Carolina chairs—and I think he shares this view—the insurance industry stated to the members of that committee, in no uncertain terms, that this legislation will not provide businesses with cheaper rates.

Madam President, if that is true, what are we doing here? If the insurance industry itself has the audacity to come in and say, "Even if you pass this, it is not going to result in a broad-based rate cut," then we have a problem.

Let me quote the American Insurance Association:

> The bill is likely to have little or no beneficial impact on the frequency or severity of product liability claims. * * * And it is not likely to reduce insurance claims or improve the insurance market.

There goes your competitiveness argument right out the window, because if the bill does not reduce liability claims or costs, it becomes very hard to argue that it is going to improve the competitiveness of startups and for small and high-tech businesses.

As J. Robert Hunter, the president of the National Insurance Consumer Organization testified before the Commerce Committee "Make no mistake about it, if insurance costs and availability are not improved, competitiveness is not affected."

So, Madam President, competitiveness is not affected. Insurance rates will not go down. What are we doing here?

The GAO testified that this legislation will not even reduce transaction costs—that is for the cost of litigation—for businesses. In fact, and I quote the GAO:

> For cases that are litigated, the procedural features of the tort system would not be changed by the bill. * * * If the alternative dispute resolution mechanisms are not binding, then they add to rather than substitute for litigation. If that happened—

I quote them.

costs would actually increase.

So what you are looking at here is the prospect you do not do anything for competitiveness, you do not, in fact, reduce the costs, but you may, in fact, add to the costs because you are adding a dispute resolution component which will add to the costs of liability litigation.

Now, in addition to that, Madam President, this legislation has serious flaws because it does not accomplish what it, in fact, sets out to do.

First, it only creates selective Federal preemption, without creating what is called Federal jurisdiction. That means that the State courts will have to interpret the new law in the State court system, and for years the result is going to be appeal after appeal after appeal, uncertainty, and different applications of the law in different States—which are the very consequences that this law tries to avoid. This law says we are going to have this great federalization and it somehow is going to create uniformity.

I read a newspaper article the other day—I think it was by Robert Samuelson, who talked about the uniformity, but the fact is it is going to be interpreted State court by State court not a Federal cause of action created.

Second, this has been much talked about. It creates a defense that is almost an absolute defense, as to the FDA and FAA approval. Senator HOLLINGS has spoken to this eloquently and accurately, and he said:

> In effect, this section makes the FDA and the FAA the first and last line of defense against manufacturer misconduct that is harmful to consumers. These agencies were never created to function in this manner, and there are numerous examples of their inability to afford this kind of protection to consumers.

It is hard for me to believe, given the problems we have had with the FDA and the questions that have arisen about the FAA approvals, that we are willingly going to turn over to them an exemption at a defense that would prohibit consumers on their potential for mistake. With all of the business that they have coming in front of them, we are somehow going to trust them to look at every nook and cranny and make a decision that could forever bar someone with the one exception that they created, and I will look at the one exception in a minute.

Third, rather than creating the uniformity among the States that I just talked about, this legislation is believed by the Conference of Chief Justices of the States to be actually likely to actually disrupt settled tort law, because the bill creates a Federal rule to be interpreted by the State courts, without creating a Federal cause of action to go with it. That means that every State's supreme court will wind up having to interpret a new and untested set of rules in 50 different ways, with unpredictable, chaotic, and unstable results.

As the chief judge of the Supreme Court of Arizona testified last year on behalf of the Conference of Chief Justices concerning this very legislation:

> If the primary goal of this legislation is to provide consistency and uniformity in tort litigation, we are concerned that its effect will be the opposite. Preempting each State's existing tort law in favor of broad Federal product liability law will create additional complexities and unpredictability for tort litigation in both State and Federal courts, while depriving victims of defective products of carefully reasoned principles and procedures already developed at the State level.

I might add I continually hear companies say: Wait a minute. We do not know which State law to really follow.

That is a lot of bunk, because any company that is prepared to sell nationally follows the strictest law. It is very simple. And that law has been defined. So if you are a company expecting to sell abroad or expecting to sell to the Nation's 50 States you take the strictest law and you go with that knowing that you are then immune to the possibility of suit in the rest of the courts of this country.

So this is just a lot of folderol to suggest that they do not know what to do. They have known what to do, and they have sold products for years.

We read this argument recently by Robert Samuelson that the bill would create uniformity, or one rule nationally. But I would say to you instead each court is going to be required to interpret the law at the trial level; each appellate court would have to interpret those rulings, and ultimately a series of cases would have to go up to the U.S. Supreme Court to achieve the national standard that is falsely being promised in this bill itself.

While creating new procedural uncertainties at the State level, the bill will also downgrade the rights of injured consumers by reducing the financial incentives for manufacturers to produce safe products. Madam President, you just cannot avoid that reality.

The Ford Pinto, the Dalkon Shield, flammable baby pajamas, and most recently, the silicone breast implant, are each cases in which businesses marketed products that lead to products liability litigation, precisely because the products were not safe. In the case of several of these products, the manufacturers had developed information which was withheld from the public demonstrating those products to be unsafe.

Under this bill, manufacturers of dangerous drugs and medical devices are shielded from punitive damages if they are subject to premarket approval by the FDA with respect to the safety of the formulation or performance of the drug or device. Obviously, in cases where the FDA makes a mistake, what have we done? A victim who has actually been injured is not able to sue for

punitive damages against the manufacturer unless that victim can show that the manufacturer withheld information from the FDA.

I mean, we are about to take poor old average citizens of this country who is subject to these goods being thrust at them through advertising and tell them they will have no recourse unless they can prove some elusive standard similar to the standard we public officials have to prove about libel and defamation, the malice, and that is about how tough the standard is about to be made. You have to show that they withheld the information and otherwise nothing punitive.

I believe, Madam President, that before we adopt that kind of a broad, Federal preemption of State law in an area that is not regulated by the Federal Government, which is a very important point, we are about to preempt but we are preempting in an area where there is no Federal regulation of insurance, we ought to ask ourselves, is there really a crisis that mandates we take this enormous preemption step?

Again, I went and looked at this. People kept coming at me and saying product liability, product liability, product liability, product liability; you have to do something about it. So I went and looked, because I believed the hype.

I found that out of 10 million civil litigation cases filed a year in the United States, obviously an overly litigious society, less than 60,000 of those cases or less than six-tenths of 1 percent are products liability cases. And the number of such cases is already declining by 36 percent overall from 1985 through 1991, excluding the asbestos claims which I know nobody wants to deprive someone from compensation for.

So, already cases in which punitive damages are awarded, Madam President, are rare. Professor Michael Rustad, Associate Professor of Law at Suffolk University Law School, in a 1991 study found only 353 cases nationwide in which punitive damages were awarded in products liability cases from 1965 through 1990—a 25-year period, or an average of 14 cases in the entire United States of America per year.

And while punitive damages were awarded at this 14 cases a year rate—14 cases a year—an average of 29,000 Americans were killed in connection with the use of consumer products, and an additional 33 million Americans were injured by those products. Fourteen cases per year adjudicated against the companies, 29,000 people killed.

So it is clear that punitive damages hardly reflect the crisis in America. They are a rare occurrence as is, without the changes that this bill would put into place.

What troubles me, Madam President, in the case of this bill is that hype has really replaced reality. The proponents of this bill have exaggerated the cost to business of the current system and they minimize the risk of changing this system in terms of the consumer.

Last week, in the Washington Post, Robert Kuttner wrote an article in which he pointed out that the promoters of this bill frequently cite a figure of $100 billion a year cost to businesses when in fact the actual figure, according to the National Association of Insurance Commissioners—who finally, now for years this debate has raged on and only last year did we finally get a figure that honestly reflected what the payout is. Is it $100 billion? Nope. Is it $50 billion? Nope. Is it $25 billion? Nope. The cost is $4 billion.

So, I want to respectfully suggest, Madam President, that the arguments on the floor and the hype that has surrounded the bill does not do justice to the fairness that we ought to seek in a remedy.

I agreed earlier that costs are high. I think we ought to try to find a way to mitigate some of those costs for start-up businesses.

The Presiding Officer, the Senator from Massachusetts, and the Senator from South Carolina all have high tech companies and we all understand how difficult it is for biotech to be able to start some new products. We ought to try to find pool-risk ways of dealing with the costs of insurance. We ought to deal with this overhead. But we do not have to take a one-sided effort to deny people the redress within the court system, established and working over years and now proven not to be extraordinarily expensive, and somehow lopsided against those folks without a fair balance of what might be better said of reforms also involving the insurance companies themselves.

It has in fact been astonishing to me to hear from the junior Senator from Texas and others who want to suggest that victims of unsafe or defective products are actually going to be helped by this legislation. I do not know of one consumer organization supporting the bill.

Among those who are openly working against it are the Consumer Federation of America, the Consumers Union, the American Council of the Blind, Environmental Action, the National Consumers League, and the National Women's Health Network.

And you can look at some of the folks who are pushing hard for this change, on the other hand: The Union Carbide Co., which wound up paying $400 million for the Bhopal disaster in India; the fact that they wiped out the inhabitants of the neighborhood of the plant that they had in India. They would love to have this. The Exxon Corp., which was negligent to the tune of billions in the *Exxon Valdez* disaster, they are pushing for it. The Ford Motor Co., which designed the defective gas tanks that caused the car to explode when hit from behind at speeds as low as 21 miles per hour, they like this bill. Procter & Gamble, which manufactured tampons found to have lead to the death of women who died of toxic shock syndrome, they are pushing for it. RJR Nabisco, Brown & Williamson, Philip Morris, and every other major cigarette manufacturer, and many others companies with a direct interest, they are supporting this bill. And, obviously, I suppose you cannot blame them for doing that.

But we ought to be responsible.

When it comes to legislation that is being supported by people who still advocate that smoking does not cause cancer, I worry about their arguments and I worry about their credibility.

So I hope that, if anything, the debate of the last hour has shown that we are really not ready to proceed forward on this legislation. We ought to sort through the hype and we ought to try to find a balance in this legislation so that we can reduce the cost to those who deserve to have it reduced but so that we do not expose a whole new generation to the eradication of the tort system that has proven itself both effective and important.

I think for that reason that we are well served not to close out the debate after a few hours on as an important subject such as this.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Madam President, on the only rollcall vote that was taken on this issue, the distinguished Senator from Wisconsin lost by the narrowest margin, 51 to 49. He has expressed a desire to revisit that issue in a milder fashion and has, as I understand, prepared and is seeking wide approval for a sense-of-the-Senate resolution on the subject of court records to seek to do this.

I just wanted to announce, from what I have seen of it, I think it would be acceptable, and it comes to us within a relatively short period of time before the 6 o'clock vote on cloture, I am going to ask unanimous consent to temporarily lay aside the current two amendments and give the Senator from Wisconsin a couple of minutes to present his ideas.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Washington?

Mr. HOLLINGS. Reserving the right to object.

Mr. GORTON. I am not making a request.

The PRESIDING OFFICER. There is no request being made.

The Senator from New Jersey.

Mr. LAUTENBERG. I thank you, Madam President.

I just wanted to take a few minutes to discuss the procedure by which we are considering this legislation.

Madam President, I have been anxious, as I think some others have been, to offer a couple of amendments. Unfortunately, I have not had the opportunity to do so. Instead, the debate has been filled up with pending amendments and with further discussion about the bill. It has been frustrating.

However, I do want to at least discuss one of the amendments that I intend to offer, if given the opportunity—and of course much of that depends on what finally happens with the cloture vote. It is a proposal that I think belongs in any discussion of product liability.

What I plan to do, given the opportunity, is to offer an amendment under which any person who provides a firearm to a disqualified individual would be liable for all damages caused by the discharge of the firearm by the recipient if bodily injury or death results. By "disqualified individuals" I mean individuals to whom it is unlawful to provide a firearm either under current law, or under the Senate-passed crime bill that includes felons, juveniles, drug addicts, and people with mental problems, among others.

Liability would extend only to those who know, or have reasonable cause to believe that the person to whom they are transferring the gun is on this prohibited list of gun possessors.

Madam President, the proposal is similar to shop laws which were discussed earlier today. Those are State laws that hold a tavern owner or cafe owner responsible if he or she serves someone liquor beyond their capacity to drive safely and they have an accident. That liability passes back onto the seller or the purveyor of the alcohol. What I am proposing is not much different.

The goal is to minimize the number of transfers of guns to those who should not have them. We have seen too often where people with a wink of an eye or turning of a head permit someone to have a gun who they know is not allowed to receive the gun. And, of course, the other goal is to compensate victims.

So, Madam President, depending on how the 6 o'clock vote turns out, if the bill is still open to amendment after that, whether it is this evening or tomorrow, I hope to offer my gun transfer amendment. I just wanted to alert my colleagues that I would like to be able to offer this amendment. I talked to the proponents of the bill as well as the opponents of the bill. This has little to do with a calculation as to whether the bill is going to be successful in passing the body or not. But it is something I believe should be there.

At a later time, perhaps, if there is amendment opportunity still available, there is something in the area of tobacco I would like to discuss as well. But we will leave that for a later moment.

I thank my good friend and colleague from South Carolina, who deferred after waiting a long time for the floor, to give me these few minutes.

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

Mr. HOLLINGS. Madam President, we have been waiting. I was delighted to yield, always, to my distinguished colleague from New Jersey.

There is so much to be said to clarify the record and put things in proper perspective. Once again this afternoon, Madam President, we veritably heard the cry of Dick, the butcher, in Henry VI. "The first thing we do, let's kill all the lawyers."

That has been the sentiment of Vice President Danny Quayle and his Competitiveness Council. There are some who still believe, yes, "The first thing we do, let's kill all the lawyers."

The truth of the matter is that this cry was by Dick the butcher as a follower of Jack Cade, the demagog who was trying to overthrow the government in Henry VI. The demagog realized that the best way to take over the government and destroy individual freedoms was to first get rid of the lawyers. So that is a high compliment, Madam President.

The United States of America, from its very beginning, most of its first 16 Presidents were lawyers:

> Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God. I know not what course others may take, but for me, give me liberty or give me death.

That was, of course, the cry from a Virginia lawyer, Patrick Henry.

Again, Thomas Jefferson, the lawyer, sat there as he drew up and fathered our Declaration of Independence:

> We find these truths to be self-evident, that all men are created equal.

James Madison, the best of all those lawyers, wrote in the Federalist Papers—and I will never forget it because it is so pertinent today:

> But what is government itself but the greatest of all reflections on human nature? If men were angels, no Government would be necessary. If angels were to govern men, neither external nor internal controls on Government would be necessary.
>
> In framing a government which is to be administered by men over men * * * first you must enable the Government to control the governed; and in the next place, oblige it to control itself.

Now, expenditurewise, today we are totally out of control. We spend $1 billion a day that we do not take in, which I have called not just interest costs but interest taxes. We are in a juxtaposition whereby everybody is against taxes but everybody is willingly raising taxes $1 billion a day. That is exactly where we are because we failed to heed the admonition of one of the lawyer greats and fathers of our country, James Madison.

You can see Abraham Lincoln, the lawyer, putting his pen on the Emancipation Proclamation, and lawyer Franklin Delano Roosevelt, in the darkest days of the depression saying, "The only thing we have to fear is fear itself."

Thurgood Marshall in the fifties. I can see him in December 1952, before the U.S. Supreme Court, putting meaning to "All men are created equal," demanding that there be no discrimination or denial of due process because of race, religion, sex or previous condition of servitude.

You can come right on down through history. So why now the disparaging comments about lawyers? Madam President, I think you can go right to the most recent issue of the Harvard Business Review. In that Harvard Business Review is an article about alternative dispute resolution—exactly what we are discussing right now—why it does not work and why it does.

The article notes how lawyers on both sides in a particular alternative dispute resolution began taking depositions, though they were careful not to use that word.

> One observer characterized the two sides as driven by false litigiousness, arrogance and greed, and charges of attorney misconduct flew back and forth almost daily. Eventually the judge ruled against company A, which, then did what? Promptly asked an appeals court to overturn the decision.

After that, both companies began to litigate in earnest. They are still fighting today and the list of suits and countersuits grows longer every day. Company B is estimated to have laid out as much as $25 million a year to pursue its claims.

Imagine setting $25 million aside. That is the trouble in this town. I have not met anybody who tried a law case in their life. They are all jury fixers and we in Congress are the jury. Permit me to read further from the article:

> Few senior corporate managers are willing to forego a chance to win a courtroom trial. CEO's want to be able to take the other guy to the cleaners, if they believe they are in the right, and they are going to bet the ranch if they have to. Often the case itself becomes less important than the principle involved. In the struggle between the electronics giants, for instance, the chief legal counsel for company A declared, "if the other side continues its strategy of copying, I am going to continue the strategy of suing."

Yesterday I went down the long list of the corporate judgments—one corporation suing another. Not product liability, not product liability punitive damages, but showing the corporate case, for example, of Pennzoil against Texaco for some $10.2 billion. Other cases that we cited: $350 million punitive damages; $400 million punitive damages; $70 million punitive damages. Yes, there is a problem with lawyers, and we are seeing it in this particular piece of legislation.

This particular piece of legislation is now being submitted as if they are really concerned about the plaintiff

and the money not getting to the injured party. Now come on, come on; let us get off that nonsense. No one believes that.

You know who opposes their bill? Those hired for the plaintiffs, the trial lawyers of America. They are absolutely in opposition to it. Do you not think they know about the welfare, the injury, the damage, and the needed assistance and relief for their clients? The Trial Lawyers Association has seen through this sham. I heard the distinguished Senator from Illinois earlier today talk about the masquerade. I began thinking of "Phantom of the Opera." Well, their masquerade is being exposed.

Here, Madam President, is a list of those who oppose this bill: The AFL-CIO; the Alliance for Justice; Consumers Union; Environmental Action; the National Consumers League; the National Insurance Consumers Organization.

I ask unanimous consent that the list of organizations and individuals, and also a list of consumers for civil justice—both of these lists—be printed in the RECORD.

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

LIST OF ORGANIZATIONS AND INDIVIDUALS OPPOSED TO FEDERAL PRODUCT LIABILITY LEGISLATION

AFL-CIO, Alliance for Justice, American Association of Retired Persons, American Bar Association, American Council of the Blind, American Lung Association, American Public Health Association, Americans for Democratic Action, Asbestos Victims' Education and Information, Asbestos Victims of America, Brown Lung Association, California PIRG, Citizen Action, Colorado PIRG, Conference of Chief Justices, Connecticut PIRG, Consumer Federation of America, Consumers Union, Dalkon Shield Claimants' Committee, DES Action USA.

Disability Rights and Education Fund, Environmental Action, Florida PIRG, Friends of the Earth, Illinois PIRG, Maryland PIRG, Massachusetts PIRG, Michigan Citizens Lobby, Minnesota PIRG, National Association for Public Health Policy, National Campaign Against Toxic Hazards, National Coalition Against the Misuse of Pesticides, National Conference of State Legislatures, National Consumers League, National Insurance Consumers Organization, National Spinal Cord Injury Association, National Women's Health Network, New Jersey Citizen Action, New Jersey PIRG, New Mexico PIRG.

Oregon State PIRG, Pennsylvania PIRG, PIRG in Michigan, Public Citizen, Public Voice for Food and Health Policy, Ralph Nader, Service Employees International Union, Local 82, Sierra Club, Trauma Foundation, United Auto Workers, United States Public Interest Research Group, United Steel Workers, Vermont PIRG, Washington PIRG, White Lung Association, Wisconsin PIRG.

CONSUMERS FOR CIVIL JUSTICE

NJ Environmental Federation, NAACP, NOW—National Organization of Women, Industrial Union Council, Black Issues Convention, NJ Citizen Action, New Jersey Environmental Lobby (NJEL), IUE, AFL-CIO, United Auto Workers (UAW—Region 9), NJ Hemophilia Foundation, Central Jersey Spinal Cord Injury Assn., NJ White Lung, Central Labor Union—AFL-CIO, Communications Workers of America (CWA—AFL-CIO), CHILD—Cape May, Amalgamated Transit Union, American Littoral Society, Arthur Kill Watershed Association, Aspira, Inc. of New Jersey, Association to Improve Benefits.

Bayonne Citizens for Clean Air, Bergen Labor Council, AFL-CIO, Bergen Save the Watershed Action Network (SWAN), Boilermaker's Local 28, Center for Visual Arts, Chemical Workers Association, Clean Ocean Action (COA), Coalition Against Toxics—Camden County, Columbian Federation, Committee of Internists and Residents, Concerned Citizens of Union County, Concerned Citizens of Wayne, Copeland Surveying, Inc., Cornucopia Network of New Jersey, Council of N.J. State College Locals—AFT, Creative Risk Services, Inc., CWA Local 1032, CWA Local 1081, DES Action—New Jersey, Edison Wetlands Association.

Environmental Response Network—Atlantic County, Grassroots Environmental Coalition (GREO), Hospital Professionals & Allied Employees, Hudson Labor Council, IBEW Local 1032, Implant Victim Action Committee, International Association of Machinists, International Federation of Professional Technical Employees, Ironbound Committee Against Toxic Waste, Local 8-149—OCAW, Local 262, Retail, Wholesale Dept. Store Union—United Food & Commercial Workers, Local 617 Service Employees International Union, Machinist Union Local 914, Mercer Environmental Coalition, Middlesex County Environmental Coalition, Monmouth County Citizens for Clean Air, Monmouth County Friends of Clearwater, N.J. Coalition of Labor Union Women, Network for Environmental & Economic Responsibility at United Church of Christ, New Jersey Right to Know and Act Coalition.

Newark Teachers Union, NJ Coalition of Occupational Safety & Health, NJ PIRG, Ocean County Citizens for Clean Water, People United for a Klean Environment—Burlington, Peoples Medical Society, PHILOPOSH, Pompton Lakes Against Pollution, Princeton Area Committee of NJEF, Public Citizen, Rain Forest Relief, Rutgers AAUP, Sheetmetal Workers Local Union 27, Sierra Club, NJ Chapter, Skylands Clean, Teamsters Local 945, The Command Trust, East Coast Connection Silicone Breast Implant Support Group, TMJ Association, United Labor Agency, United Passaic Organization (UPO), United Transportation Union Local 60, Utility Co-Workers' Association, VOCCAL—Oakland, WATER—Vineland.

Mr. HOLLINGS. Madam President, why is it, if this bill supposedly is going to help consumers, that every major consumer organization in this country is opposed to it? Yet they have the unmitigated gall to stand here and say they are worried about plaintiffs, that not enough money is coming to the injured parties. Masquerade, masquerade.

There are over 100 law professors that have testified in hearings as a body in opposition to this. The Conference of Chief Justices opposes it.

Now, they talk and beat down the amendment of the Senator from Wisconsin against secrecy, saying, "Oh, the Conference of Chief Justices oppose this amendment." But the same Conference of Chief Justices, as well as the National Conference of State Legislatures oppose the bill itself. Every women's group is opposed to this particular bill. Every health group is opposed to this bill. The National Association of States Attorneys General is opposed to it. The American Bar Association testified against the bill.

The first thing we do is kill all of the lawyers—the corporate lawyers working for manufacturers. It is they who manufactured this particular product liability bill. That is what this bill is. This bill is a case of product liability, if any ever was.

Why do I say that? Madam President, you can go right to the bill itself, because we have been in it a long time and we have always said: If you want uniformity, just put in there, and state: "There is hereby created a Federal cause of action."

Do you know what they say? Specifically, on page 11, they say: There is not hereby produced a Federal cause of action. They absolutely, in the 17 years, in the 20 bills and in some 50 hearings on the Senate and House side, admonished if you want uniformity, if you do not want to come to these 50 States to try your cases, and so forth, then put in there just one line, "a Federal cause of action is hereby created," and preempt the State courts. Put down your rules, we have the Federal Rules of Civil Procedure and we will just move forward from there.

That is not what they want. They do not want the federalization of insurance, and they do not want this bill to apply to manufacturers. They claim to be so concerned about injured parties, about the fact that plaintiffs and injured people are waiting 5 years to get their money, but do not let this bill pertain to manufacturers.

They absolutely have a clause in here that there shall not be a Federal cause of action, and they have a clause in here that it shall not refer to the manufacturer who gets a faulty piece of equipment. Those manufacturers can get punitive damages, strict liability, none of this settlement disposition and hurdles that the injured victims have to go through in this discombobulation, none of that; it does not apply to them, Madam President.

This is not just to get rid of the FDA provision. You can see by the tenor of my presentation this afternoon at this late hour that they are trying to make deals, that all you have to do is get rid of the FDA provision and you have a good bill. I have not referred to the FDA. I am referring to the general thrust of this travesty that we have here. You might call it the insurance obstacle course bill, if there ever was a legal obstacle course built, because they knew what they were doing. They have been at it now 17 years, and they very cleverly got this thing together.

They complain about going to the 50 States, but they go to the 50 States

with respect to insurance. These big companies will have 100 different kinds of policies. They do not mind going to California and going to the California Insurance Commission and filing those policies and having lawyers to file those documents. It is the same when they come to the State of South Carolina. They do not mind going with their lawyers and filing all their policies. They just do not want the lawyers to defend the injured parties. That is what they want to do. They say they want uniformity, but they do not.

Now, what happens with that particular approach is they set down various words of art and restrictions to be interpreted in the 50 States, all the way up to their State supreme courts and then over to the U.S. Supreme Court, all in the context of eliminating legal costs, litigation, motions, and delays.

They start off on a big bog-down. As a trial lawyer, I can tell you right now, if the injured party comes into my office and says, "I want you to represent me," I say, "Wait a minute. That Rockefeller bill passed and you are already injured, and I will tell you why."

I will elicit this understanding from the client and say, "Look, I don't know how they are going to rule, but I can tell you if you have a serious case under this procedure and it is going up on appeal, I have to take care of all these costs; I have to go through discovery, interrogatories. I don't get any fee from you. It is a contingent basis. Yes, they will stretch me out 2, 3 years, that kind of thing." And what will happen?

Well, if you are a young lady with a medical injury, for one thing, joint and several liability. Yes, yes; joint and several liability for economic losses, but not for noneconomic. The Dalkon-Shield-injured woman, the breast-implant-injured woman comes in and I say, "Well, you know, you don't have any economic loss here. The noneconomic loss, I have an additional burden here. I have to severally prove everything. Not joint and several for the economic, but for the noneconomic, there is a different degree of culpability and a more difficult trial."

Then with respect to punitive damages, because we want them to stop making these things and not injure other women, I say, "I have to prove not regular carelessness and recklessness, but I have to prove a conscious, flagrant indifference to safety." A conscious, flagrant indifference to safety. And I have to prove that by clear and convincing evidence. You have to veritably prove that the fellow just set a boobytrap and caught them, if it was a conscious, clear and flagrant indifference to safety.

Now, that again produces the long trial and limits the prospect of being compensated properly. It also reduces the prospect of a verdict that would deter injury to others.

But then I get to the real purpose, and that is settlement. I do not see how they can say it in good conscience that this is going to expedite settlements. Here is how they expedite.

First the lawyer on the other side, in a serious case, is going to make a motion to dismiss, and when he is ruled against he is going to appeal that. That will give him quite a bit, a few months. Then after that he is going to make an offer, within 60 days after the final ruling on that because, you see, they are sitting up in their mahogany office with the big oriental rug and everybody running around doing the things for them, and they get paid willy-nilly. It does not make any difference. They go down to the club to eat lunch, and they come back and there is no sweat there. Their family is taken care of. But the trial lawyer, he is taking on all of this burden here.

And after that, they make that offer now and let us say the client says yes, but I hear under the law that what you do is, if you get more than what you offered, you really can get attorney's fees added on. I say, yes, you can get attorney's fees, but they have a limit on that of $50,000.

And to those who have never been in law cases lasting 2 or 3 years, the fees, taking care of the costs, the deposition costs and everything else of that kind, in that contingency contract, many, many times will exceed the $50,000 in a serious injury case, I can tell you that right now. You would have $50,000 in the case before you even got it on appeal. But that is the limit there, and then if you think you are going to get it, it says provided, however, that should be set off by the contingency contract that you have with your client.

Now, that really chills this lawyer because what it says to me, under the ethics of the bar, I have to inform my client that here is the offer but if you get $1 more, you better get more than $1 more because I can tell you right now, I have lost my fee and we have a substantially less verdict than any settlement offer ever made. And it begins to put me and my client—he says, wait a minute, we have our contingency contract. But then I have to explain it to him three times to make it clear, and finally you have the lawyer sort of adversely against his own client.

But if he gets less than that settlement offer, if he gets less than the settlement offer, there is no limit and it goes against all of those particular collateral benefits or costs that he would be entitled to. And as explained by the distinguished Senator from Alabama, an injured party as we describe here with a breast implant or whatever it was, that had health insurance, they would have $100,000 already in cost on that particular injury, I can tell you that now, and you have been paying for it out of your health insurance. And then if it is real serious and the individual dies and you had a $200,000 life insurance, you paid all your life not to be injured and have to win a case to find out that your life insurance is gone.

They are for the injured party, they say. Come on. I am reading the law, and they cannot contest it. I will give them chapter and verse and the page number and the line number. But it takes away that $200,000 pot. It takes away that $100,000 health insurance.

Then, even if you get that agreed, they have moved the employer into all settlements. Now, you would think that was just a helpful thing, but the employers have workman's comp, and they pay workman's comp premiums. And if an offer is made, the other side tells the employer: Here is the offer, and we have enough in the offer to take care of your particular costs that you have paid under workman's comp. And they do not get anything. You are not going to get anything on workman's comp, whatever. And you better bring pressure on your employee to settle this case. And then all of a sudden in addition with this particular bill, 687—I am not just talking about the FDA provision. I am talking about these things that they bragged about and have yet to be exposed. But this hurdle here says you have not only the lawyer in a juxtaposition with his client, you have employer against employee. And they know how to work it. They know how to work it.

Now, that is exactly why they talk about this is a good bill and a fairness bill. This has been really fashioned in the most tricky fashion that you have ever seen. It says, "Provided, however, it is not going to apply to the manufacturer." It says, further, we shall not federalize this. And it says if you do engage in these settlement offer shenanigans and you get a verdict more than the settlement offer, you do not get a verdict more because you have to take away your contingency contract with the lawyer that you have and all of a sudden unhire him, fire him. It is like these insurance policies that we had down in South Carolina when I was Governor. For example, there was Capital Life, and they wanted a new slogan for the new Life, and we came up with: "Capital Life will surely pay if the small print on the back doesn't take it away."

Now, Madam President, we have learned how to read these bills and do not come forward here and start telling us that they are not lawyers and they cannot read these things. Here is what Chief Justice Stanley G. Feldman said on the claim of uniformity——

Mr. ROCKEFELLER. Will the Senator yield? I just point to the Senator that——

Mr. HOLLINGS. I know, and I have been here all day long trying to say these things, exactly right.

Mr. ROCKEFELLER. Will the Senator yield for 2 minutes?

Mr. HOLLINGS. Yes.

Mr. ROCKEFELLER. We have only 2 minutes remaining.

Mr. HOLLINGS. All right. I will just read what Chief Justice Stanley Feldman said:

> If the primary goal of this legislation is to provide consistency and uniformity in tort litigation, we are concerned that its effect will be the opposite.

Preempting each State's existing tort law in favor of a broad Federal tort liability law will create additional complexity and unpredictability for tort litigation in both products of carefully reasoned principles and procedures already developed at the State level. The critical experience of State courts with the long process of interpretation and consistency on major points of product liability law tells us that Federal legislation is not the answer. A legal thicket is inevitable and the burden of untangling it, if it can be untangled at all, will lie only with the Supreme Court of the United States, a court which many experts feel is not only overburdened but also incapable of maintaining adequate uniformity in existing Federal law as it is variously interpreted by the 13 U.S. court of appeals. Enactment of 687 would alter in one stroke the fundamental federalism inherent in this country's tort law. It is a radical departure from our current legal regime and is neither justified by experience nor wise as a matter of policy.

I ask unanimous consent that the distinguished author of the bill be recognized for 2 minutes.

Mr. ROCKEFELLER. I am profoundly grateful to the Senator from South Carolina.

The PRESIDING OFFICER. Is there objection? There being no objection, the Senator from West Virginia is recognized for 2 minutes.

Mr. ROCKEFELLER. In the time remaining before the cloture vote, Madam President, I would like to remind my colleagues that we have heard a great deal of talk today and that what we come back to is the basic fact that the average person in this country who is injured, who has a mangled hand or has some other kind of injury which prevents him or her from going to work or feeding their family or taking care of their affairs, has to wait 3, or 4, 5 years before they get a single nickel of compensation.

The Product Liability Fairness Act is an attempt through alternative dispute resolution and expedited settlement procedures to speed compensation to the victim. We must change the present system where the lawyers both on the plaintiff's and the defendant's side make much more money as they drag out legal procedures than the victims finally receive 4 or 5 years later.

Our bill expedites the process so that victims for once are taken into consideration in product liability tort reform. We think this is a fair bill and a balanced bill. We understand very well the tactics that are being used. We would have preferred much more time to discuss this, but we would hope that our colleagues would vote for cloture.

I would yield to the Senator from the State of Washington.

Mr. GORTON. Madam President, I hope that the Senators in the Chamber will listen to this, although it is 6 o'clock.

I ask unanimous consent that I be allowed to set aside the pending amendments and send up and have passed without debate a sense-of-the-Senate resolution on behalf of the Senator from Wisconsin [Mr. KOHL], which I have discussed earlier. It is simply a sense-of-the-Senate resolution on the subject of his amendment this morning.

Mr. HEFLIN. I object. I would like to have an opportunity to read it and see it. We maybe will have something else to come along later in regard to that same issue.

The PRESIDING OFFICER. Objection is heard.

Ms. MIKULSKI. Madam President, I rise today because I am tired of gridlock; that's why I am voting for cloture. I believe it is time for a national debate on product liability. Now is the time to improve or not improve the bill. The bill should stand or fall on its own.

I am for cloture, majority rule, and ending gridlock.

That is my position on health reform, that is my position on banning assault weapons, and that is my position on product liability.

Despite my vote for cloture, though, I am reserving judgment on the final passage of the Product Liability Reform Act. I hope that the current bill can be improved. There will be many amendments to this bill that I want to review. When we have a final bill, then I will make a decision on final passage.

For example, I have deep concerns about the so-called FDA defense, and the short statute of limitations. In addition, I would like a clarification of the statute of repose.

Mr. President, FDA-approved products are not always safe, and the makers of those products are not always free from blame. There are women who cannot have children because the Copper-7 IUD made them sterile. There are families who lost loved ones because of a faulty heart valve that the FDA approved.

It was never intended that FDA approval would mean a full investigation. The FDA does not have the resources to be the FBI on medical devices and drugs. That is why it doesn't make any sense to let FDA approval be a shield used by companies against injured consumers.

I am committed to improving the health care system in this country, and especially dedicated to making sure that women and other often overlooked groups get the health care and protection they deserve.

Our goal should be to protect unsuspecting users of drug and medical devices. Regulatory agencies have a responsibility to accomplish this goal, but if they fail to do so the courts have a responsibility as well. And responsibility is at the heart of this debate.

On the other hand, as this issue moves forward, I believe there are arguments in favor of technology, competition, and jobs. Responsible businesses should be able to cut unnecessary liability costs so they can use those dollars not to fight lawsuits, but to create jobs.

In addition, I acknowledge the validity of the argument in favor of uniformity across the 50 States. Case law based on State law was fine in the 1950's when the United States was the world's dominant manufacturer. But, Madam President, the world has changed. Now we are competing with other powers globally. And about 70 percent of manufactured products are sold outside the State where they are made.

I am looking for a balance. I do not want to stymie innovation and new technologies; I also do not want to have untried, unreliable products. This is exactly the robust debate I believe we should engage in. So I will vote for cloture, and I look forward to a thoughtful, reasoned debate on these important issues.

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 6 p.m. having arrived, under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Calendar No. 409, S. 687, a bill to regulate interstate commerce by providing for a uniform product liability law:

Jay Rockefeller, J. Lieberman, John Glenn, Claiborne Pell, Bob Kerrey, J.J. Exon, Harlan Mathews, Slade Gorton, Orrin G. Hatch, Strom Thurmond, Daniel Coats, Judd Gregg, Dirk Kempthorne, Pete V. Domenici, Larry Pressler, Kay Bailey Hutchison, Frank H. Murkowski.

VOTE

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

The question is, Is it the sense of the Senate that the debate on S. 687, the product liability fairness bill, shall be brought to a close?

The yeas and nays are automatic under the rule, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. METZENBAUM. Mr. President, on this vote I have a pair with the distinguished Senator from Arizona [Mr. DECONCINI]. If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. FORD. I announce that on this vote, the Senator from Arizona [Mr. DECONCINI] is paired with the Senator from Ohio [Mr. METZENBAUM].

If present and voting, the Senator from Arizona would vote "aye" and the Senator from Ohio would vote "nay."

The PRESIDING OFFICER (Mr. MATHEWS). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 54, nays 44, as follows:

[Rollcall Vote No. 169 Leg.]

YEAS—54

Bennett	Glenn	McCain
Bond	Gorton	McConnell
Boren	Gramm	Mikulski
Brown	Grassley	Murkowski
Burns	Gregg	Nickles
Byrd	Hatch	Nunn
Chafee	Hatfield	Packwood
Coats	Helms	Pell
Coverdell	Hutchison	Pressler
Craig	Jeffords	Pryor
Danforth	Kassebaum	Riegle
Daschle	Kempthorne	Robb
Dodd	Kohl	Rockefeller
Dole	Lieberman	Sasser
Domenici	Lott	Smith
Durenberger	Lugar	Stevens
Exon	Mack	Wallop
Faircloth	Mathews	Warner

NAYS—44

Akaka	Feingold	Mitchell
Baucus	Feinstein	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Graham	Murray
Boxer	Harkin	Reid
Bradley	Heflin	Roth
Breaux	Hollings	Sarbanes
Bryan	Inouye	Shelby
Bumpers	Johnston	Simon
Campbell	Kennedy	Simpson
Cochran	Kerrey	Specter
Cohen	Kerry	Thurmond
Conrad	Lautenberg	Wellstone
D'Amato	Leahy	Wofford
Dorgan	Levin	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Metzenbaum

NOT VOTING—1

DeConcini

The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative the motion is rejected.

The majority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WOFFORD addressed the Chair.

Mr. FORD. Mr. President, I will have to object to taking off the quorum call.

The PRESIDING OFFICER. Objection is noted. The clerk will call the roll.

Mr. FORD. I apologize.

The legislative clerk continued with the call of 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.

AMENDMENT NO. 1930

Mr. CHAFEE. Mr. President, I am intrigued by the amendment offered by the Senator from Wisconsin, but I will not be supporting his amendment today.

I am hesitant for Congress to move forward with this amendment for two reasons. As my colleagues know, there already is in place a process by which the rules may be changed; and this process involves a recommendation by the U.S. Judicial Conference, and approval by the U.S. Supreme Court. This process is in place because we have decided that we should give due deference to the Conference to determine how best the courts may serve the American public.

Now, Congress may certainly go ahead and propose changes absent a recommendation from the Conference. But I would note also that in this matter, even the administration has asked us to hold off until they have determined what they view as the best course of action.

Thus, in the absence of a clear recommendation from either the Judicial Conference or the administration, both of which could and should provide some guidance on this matter, I am not comfortable moving forward with this amendment.

I do feel, however, that this is an issue that needs to be pursued, and I hope the Judicial Conference and the administration will move expeditiously to come up with appropriate recommendations. This is not a matter that should be delayed.

DISASTROUS EFFECTS OF PRODUCT LIABILITY REFORM

Mr. GRAHAM. Mr. President, today, I met Ms. Marlo Mahne, a Floridian whose story speaks volumes about the reasons the product liability bill we are considering today should be defeated.

Ms. Mahne was horribly burned in a 1985 automobile accident in Fort Pierce, FL. She was able to reach a settlement with the manufacturer of the car in which she was a passenger. If S. 687 had been law in 1985, the settlement she reached would never have been possible, Ms. Mahne says. Further, if it is enacted now, it will prevent people who suffer similar tragedies in the future from recovering the damages to which they are entitled.

Mr. President, I have a statement here by Marlo Mahne which describes her experience in her own words. I ask that it be included in the RECORD and offer it as another of the many reasons this unwise legislation should be rejected by the Senate.

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

STATEMENT OF MARLO MAHNE, JUNE 27, 1994

My name is Marlo Mahne. In 1985, when I was fifteen years old, the 1967 Ford Mustang in which I was a passenger was struck from behind. This is the same car that President Clinton owns and drives. Because the fuel tank in the Mustang was defective, it ruptured and the car burst into flames.

I had 3rd and 4th degree burns over 70 percent of my body. Nearly all of my scalp was burned off. My ears and fingers were burned off. My lips and nose have been reconstructed. I am blind in one eye.

My initial stay in the hospital lasted 4 months, and I was in and out over the next 18 months. Altogether I have had 118 major plastic surgeries and procedures, and I could have 20 or 30 more.

I sued the Ford Motor Company, and in 1991 my case was settled out of court. Before then Ford did everything to avoid the blame for what happened to me. Fortunately at the time, Ford didn't have S. 687 to hide behind.

Ford said the underinsured driver of the Mustang and the uninsured driver of the bullet car were at fault and should bear equal responsibility. But those people didn't design a defective fuel tank, ignore the defect, and put it on the road.

You have in your packet an excerpt from the deposition of Harold MacDonald, who was the vice president of Ford's engineering research. Mr. MacDonald acknowledged that the Mustang's fuel tank repeatedly ruptured in Ford's own tests, but Ford did not act to correct the defect.

If it weren't for Ford, I might have walked away from the crash. Instead, I will be a dependent person probably for the rest of my life. The only thing that prevents me from being a burden to taxpayers is the settlement I finally secured from Ford. Now, because of S. 687, that is at risk for future victims of defective products.

Although I am prohibited by a secrecy order from discussing the settlement of my case and some of the details, I can tell you that if Senate Bill 687 had been the law, it would have shielded Ford from full responsibility for what the company did to me.

Economic damages for me were modest at the time of the crash because I was too young to work and my medical bills were paid by the Shriners. The non-economic damages I sought would have been greatly reduced if S. 687 had been the law because there were three possible defendants: two drivers and Ford.

Under S. 687, even though I would not have been burned if the gas tank wasn't defective, Ford could claim it was responsible for only one-third of my non-economic damages, such as pain and suffering, which for me has been everything. I don't think this is fair.

I am not an attorney, but as you might imagine, I've learned a lot about the law since I was burned by Ford. I thank God that I was able to have my case heard and that the law today isn't designed to save money for manufacturers but rather to pay for the harm caused the consumer. S. 687 would take all that away from someone like me.

Mr. DURENBERGER. Mr. President, I rise today in strong support of the Product Liability Fairness Act. I would like to thank my colleagues Senators ROCKEFELLER, LIEBERMAN, DODD, GORTON, and DANFORTH for their leadership in bringing this legislation to the floor.

I am proud to join them in cosponsoring this important legislation.

I believe strongly that S. 687 will bring both cost-savings and consumer safety to our current product liability system—fairly and effectively.

S. 687 will reduce costs to consumers, stimulate product innovation, promote U.S. competitiveness and, at the same time, ensure that consumers have access to more safe and effective products.

A NATIONAL PROBLEM IN NEED OF A NATIONAL SOLUTION

Our Nation's product liability system is broken. It is badly broken, and it is a problem which calls for us to respond with a national solution. The current system does not fairly protect the injured, stifles the development of innovative products, and harms U.S. competitiveness.

About 70 percent of manufactured products are sold outside the State in which they are made. The current patchwork system of State-by-State product liability legislation poses a burden to interstate commerce and encourages forum shopping.

In fact, the National Governors' Association [NGA] has continually urged Congress to enact uniform product liability law. In a letter last year to President Clinton, the NGA wrote: "Clearly, a national product liability code would greatly enhance the effectiveness of interstate commerce."

S. 687 WILL MAKE PRODUCT LIABILITY LAWS MORE FAIR TO INJURED CONSUMERS

Several recent studies have found that people who are severely injured by products are compensated for only a small fraction of their economic losses. Those studies found that claimants' recoveries for losses exceeding $1 million are less than 39 percent. In contrast, those with minor injuries recover a windfall of nearly five times their losses.

A 1989 GAO study found that product cases take about 3 years to resolve, and even longer if there is an appeal. Because larger claims generally take longer to resolve than small claims, severely injured victims must wait years to receive compensation. These delays force those who are most severely injured to settle for inadequate amounts.

Moreover, the cost of bringing a product liability lawsuit is outrageously high. A 1986 study by the Rand Institute for Civil Justice found that the annual transaction costs of the tort system exceed the compensation awarded to injured persons. A 1993 survey by the Association of Manufacturing Technology found that the lion's share of the costs associated with defending a product liability lawsuit go to attorneys' fees, subrogation, and court costs. Less than one-quarter of the total transaction costs associated with a product liability defense actually go to the injured party. This is clearly unacceptable.

THE PRODUCT LIABILITY SYSTEM IMPOSES EXCESSIVE COSTS WHICH ARE HARMFUL TO U.S. COMPETITIVENESS

Excessive product liability costs have resulted in significant market share loss for some U.S. companies. The U.S. machine tool industry, for example, has lost more than 20 percent of its domestic market share to foreign competitors whose liability costs are lower and far more predictable.

Jobs have been lost in the United States as companies shift production abroad to take advantage of less stringent product liability laws. Innovative products made and marketed abroad are lost to U.S. consumers.

The fear of product liability has also diminished investment in basic scientific research. Malcolm Skolnick, a lawyer and professor of biophysics at the University of Texas testified before the Commerce Committee that:

> Scientific inquiry is stifled. Ideas in areas where litigation has occurred will not receive support for exploration and development. Producers fearful of possible suits will discourage additional investigation which can be used against them in future claims.

THE PRODUCT LIABILITY SYSTEM DISCOURAGES INNOVATION AND ADVANCEMENTS IN MEDICAL PRODUCTS

Perhaps the most critical reason I became involved in this issue is that the excessive costs of the current product liability system harm consumers and patients by discouraging innovation and development of lifesaving and cost-saving medical products.

Jim Vincent, chairman and CEO of Biogen, told the Senate Commerce Committee that he has decided not to pursue research into the development of an AIDS vaccine because of the current product liability system. One company that is attempting to develop an AIDS vaccine told the Commerce Committee that it was forced to delay important clinical trials because of liability concerns.

The research supports this anecdotal evidence. The Office of Technology Assessment found that the fear of potential liability is a serious barrier to research, testing, and marketing of vaccines. OTA recommends action by the Federal Government.

Excessive product liability costs have also forced manufacturers to withdraw even successful products from the market. For example, in 1983, Merrell Dow withdrew Benediction, an anti-nausea drug for pregnant women, because the cost of litigation arising out of use of the drug far exceeded revenue. The FDA and the health care professionals believe the product is safe; yet there is no comparable drug on the market. This, too, is unacceptable. Americans want new and better products that will improve their lives. They do not want to travel to other countries to illegally obtain drugs not approved in the United States, yet that happens on a regular basis. Part of this problem relates to the slow FDA approval process, but product liability weighs heavily here as well.

BIOMATERIALS SHORTAGE THREATENS ACCESS TO MEDICAL PRODUCTS

Mr. President, I also want to speak briefly on behalf of the amendment that will be offered by my colleague from Connecticut and is based on a bill we introduced last week: the Biomaterials Access Assurance Act of 1994.

This amendment, in my opinion, represents a significant step forward in reducing the costs of medical devices. It would reform our product liability laws to assure raw material suppliers that they will not be held liable unless there is real evidence that they were responsible for the product defect.

Our current product liability system makes it much too easy to bring lawsuits against raw materials suppliers, and too costly for those suppliers to defend themselves even when they ultimately win. Unless we include protections for raw material suppliers in this legislation, those who make many of the lifesaving medical devices that we take for granted today may no longer be able to purchase the raw materials and components necessary to produce their products.

Notwithstanding the fact that raw materials and component parts suppliers do not design, produce or test medical implants and devices, they have been sued in cases alleging inadequate design and testing of permanently implanted medical devices, testing of those devices, and warnings related to those devices. And even though these suppliers have almost never been held liable in these lawsuits, the cost of litigation far exceeds the total potential sales of raw materials and component parts to the medical device industry. As a result, many suppliers have simply stopped supplying raw materials and component parts to medical device manufacturers.

We in Congress must not allow the 7.4 million people who literally owe their lives and the quality of their lives to medical devices—and the countless others who will depend on medical devices in the years to come—to become casualties of our outmoded product liability system.

I urge the support of my colleagues for the Lieberman-Durenberger amendment.

FDA PROVISION

Mr. President, concerns have been raised by some of my colleagues in recent days about section 203(b) of this bill, which provides that manufacturers of drugs or medical devices that have been approved by the Food and Drug Administration [FDA] shall not generally be subject to punitive damages in product liability litigation.

In my view, Mr. President, it is unfortunate that this provision has drawn such negative responses. I believe that section 203(b) is the most important

provision of the Product Liability Fairness Act. And I strongly urge my colleagues: If we are ever going to be able to get a handle on runaway health care costs, we must reject attempts to strike this provision from the bill before us today.

I believe that a good deal of my colleagues' skepticism is due to a fundamental misunderstanding of the FDA's approval process and of the provisions of this bill.

First of all, it is important to point out that this provision applies only to punitive damages. Plaintiffs harmed by an FDA-approved drug or medical device will still be able to get the full range of compensatory damages, including all past and future out-of-pocket expenses such as medical bills, rehabilitation costs, lost wages, diminished earning capacity, costs of providing household or child care services. S. 687 also places no limits on noneconomic damages such as pain and suffering or loss of companionship.

Second, the FDA approval process is extremely rigorous, and involves very difficult scientific judgments. The FDA does not take its role in approving drugs and devices lightly. In fact, the average length of approval for new drugs is 9 years, which, in my judgment, is far too long and in itself stifles innovation.

Moreover, section 203(b) applies only to those manufacturers who have complied fully with the FDA requirements after a product is approved. And, it does not apply if FDA approval was achieved as a result of bribery or if any relevant information required to be submitted was withheld from the FDA.

Finally, Mr. President, I would like to address several misstatements of fact that have been made over the last few weeks.

Some have said that products such as Dalkon shield, DES, and silicone gel breast implants, demonstrate that this provision will shield manufacturers of dangerous products from legal liability. The fact, however, is that none of these products has ever been approved by the FDA as safe and effective. Under S. 687, only those products that have been approved by FDA qualify for protection.

Opponents of this measure also argue that it will allow manufacturers to get away with putting unsafe products on the market. However, manufacturers will continue to have strong incentives to put safe products on the market because they will be fully liable for all harm—and compensatory damages alone can bankrupt a company.

CONCLUSION

Mr. President, it is not often that I find myself in total agreement with my colleagues Senator ROCKEFELLER, Senator DODD, and Senator PELL, as well as Senator GRAMM, Senator HELMS, and Senator FAIRCLOTH on any one issue. I am grateful particularly to the persistence of Senator ROCKEFELLER to pursue this legislation as aggressively as he has. This legislation should not be controversial, yet it is perceived to be a threat by those lawyers who greatly benefit from successful law suits including large punitive damages. Our goal here today should be to protect Americans who suffer from use of defective products as well as to provide new and better choices for our citizens. This bill meets those goals.

There is broad bipartisan support which exists across the entire political perspective on this issue. The legislation is carefully balanced and deserves our support.

At this point, I would like to submit for the RECORD a description of the FDA's reporting requirements for drugs and medical devices.

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

FOOD AND DRUG ADMINISTRATION [FDA]—FEDERAL REPORT REQUIREMENTS ON DRUGS AND MEDICAL DEVICES

DRUGS (21 CFR 314.80)

Manufacturers are required to keep records relating to production methods for a drug and its safety and effectiveness once a new drug is approved. In general, companies must report to FDA every 3 months during the first year, every 6 months during the second year, and once a year after the first two years.

All serious and unexpected adverse drug experiences must be reported to FDA within 15 working days under the title of a 15-day Alert Report. Adverse drug experiences that are not both serious and unexpected need only be reported at quarterly intervals for the first three years, and then annually.

The company shall maintain, for a period of ten years, records of all adverse drug experiences including raw data and any correspondence relating to adverse experiences.

All adverse reaction reports are available under Freedom of Information Act (FOIA) requests.

MEDICAL DEVICES (21 CFR 803)

FDA requires device manufacturers or importers to report to FDA whenever the manufacturer or importer receives or otherwise becomes aware of any information that reasonably suggests that one of its marketed devices:

(1) may have caused or contributed to a death or serious injury; or

(2) have malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to occur.

Report requirements by manufacturers (21 CFR 803.24)

Manufacturers and importers must submit such reports to the FDA whenever they receive or otherwise become aware of any information: oral or written; in a medical or scientific literature, published or unpublished; or through a manufacturer's own research, testing evaluation, serving or maintenance of one of its devices.

Such reports must be made by telephone as soon as possible, but no later than within 5 calendar days of the initial receipt of information, and followed by a written report to FDA within 15 working days of the initial receipt of information.

Public availability of reports (21 CFR 803.9)

Any report, including any FDA record of a telephone report, submitted under the provisions is available for public disclosure.

Recordkeeping requirements (21 CFR 803.31)

Manufacturers are required to keep records for the life of the device or two years, whichever is greater.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, following the vote on cloture, I convened a meeting in my office of several Senators who are involved directly in this matter, both proponents and opponents of the legislation, and we discussed the best way in which to proceed. Following that discussion I made a decision which I will now announce and which I believe all of the Senators involved concur in.

Following my remarks, Senator GORTON will be recognized to withdraw his amendment.

Following that, Senator DORGAN will be recognized to offer an amendment. That will be the pending amendment. And there will be no vote on that amendment prior to the cloture vote, which will occur at 10 a.m. tomorrow. So, therefore, I can now announce there will be no further rollcall votes this evening. Both staffs may notify Senators of that fact. The next vote will be the cloture vote at 10 o'clock tomorrow morning and then, depending upon the outcome of that vote—how we proceed thereafter will be dependent upon the outcome of that vote.

There will be debate this evening on the Dorgan amendment, after it is offered, for so long as Senators wish to address that subject. But there will be no recorded votes.

I would like to know, before we proceed—I am going to ask Senators GORTON and ROCKEFELLER, and Senator HEFLIN, if I may have the attention of the Senator from Alabama—I will ask Senators if I have correctly stated the understanding which we have just reached with respect to our present proceeding?

Mr. GORTON. You have.

Mr. HEFLIN. I understand there will be no votes, even on the Dorgan-Moseley-Braun amendment, before the cloture vote. The next vote will be cloture?

Mr. MITCHELL. That is correct.

Mr. ROCKEFELLER. Will the majority leader yield? Will this arrangement contemplate an hour of discussion prior to the 10 o'clock cloture vote?

Mr. MITCHELL. Under the rules there would ordinarily be a cloture vote 1 hour after the Senate convenes. We have now set the cloture vote, by unanimous consent, and I inquire of the parties—I will inquire of Senator ROCKEFELLER and Senator HEFLIN, and Senator HOLLINGS, whether they wish to have that further debate tomorrow morning or whatever time is convenient for my colleagues?

Mr. ROCKEFELLER. The Senator would prefer it.

Mr. HEFLIN. We would have no objection, after morning business.

Mr. MITCHELL. I ask the staff, in preparing for the close of business this evening, that the order be prepared in such a way that the Senate will come into session—at least return to this matter at 9 a.m., and have a vote at 10 a.m., and that hour will be equally divided in the usual form between the two sides, under the control of Senator ROCKEFELLER in favor, the proponents, and Senator HEFLIN will control the time in behalf of the opponents. Senator ROCKEFELLER or his designee or Senator HEFLIN or his designee will control the time.

Mr. LAUTENBERG. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. LAUTENBERG. I am sorry I missed some part of the discussion. Is it the intention to stay in session now and deal with the bill?

Mr. MITCHELL. For debate only. Senator GORTON is going to withdraw his amendment. Senator DORGAN is going to offer an amendment and that will be the subject of debate only. The next vote will be on cloture at 10 a.m. tomorrow.

Mr. LAUTENBERG. Is it the intent of the managers to permit amendments beyond that which have been discussed to be offered this evening?

Mr. MITCHELL. The opponents have indicated they will not permit a vote on the Dorgan amendment. No discussion occurred with other possible amendments. That would, of course, require Senator DORGAN's amendment be set aside. And that would require unanimous consent, including his. There was no discussion of that in our meeting. I expect the Senator from New Jersey, if he wants to do that, would have to inquire of the Senators involved.

Mr. LAUTENBERG. I thank the majority leader.

Mr. MITCHELL. Mr. President, if it is agreeable then—and I take the remarks of the Senators to indicate that it is agreeable—I repeat, there will be no further rollcall votes this evening. The next rollcall vote will be at 10 a.m. tomorrow on cloture on the bill.

I thank my colleagues for that cooperation and I yield the floor.

AMENDMENT NO. 1941

Mrs. KASSEBAUM. Mr. President, I was wondering if the distinguished Senator from Connecticut might be willing to answer a few questions with respect to the impact of S. 687 on suits against manufacturers of drugs and medical devices. While many of these points have been mentioned in this debate, I would appreciate further clarification.

First, as I understand it, the statute of limitations provisions of S. 687 will ensure that individuals who may be exposed to a harmful product will not lose their right to sue before they reasonably could have known both that they were injured and that the product may have caused their harm. This in essence means that in a number of States, S. 687 will make it easier, not harder to sue drug and medical device companies.

Mr. LIEBERMAN. The Senator from Kansas is correct. Section 204 provides a uniform statute of limitations of 2 years from the date a claimant knew or should have known both of the injury and its cause. It will have exactly the effect you outlined.

Mrs. KASSEBAUM. There have been many accusations that the so-called FDA provisions of this bill would prevent persons who are injured by FDA approved drugs and medical devices from seeking compensation from manufacturers. As I read section 203(b), however, it applies only to claims for punitive damages, not to claims for compensatory damages, so that claimants will still be able to sue under State law for any compensatory damages, just as they do now.

Mr. ROCKEFELLER. Again the Senator from Kansas is correct. Section 203(b) has no impact on claims for compensatory damages such as lost wages, medical costs, costs of replacement services or pain and suffering.

Mrs. KASSEBAUM. I know the Senator has said this before, but it is my understanding from reviewing this legislation that the so-called FDA provision does not cover DES, Dalkon Shields, silicone gel breast implants, or super-absorbency tampons. Am I correct?

Mr. LIEBERMAN. The Senator is correct. Section 203(b) only provides "good actor" protection against punitive damages if the product is subject to pre-market approval by the FDA and is actually approved. Pre-market approval is a very specific concept under our food and drug laws. As the Senator, the ranking member of the Committee on Labor and Human Resources, knows, when DES was first marketed and prior to 1962, new drugs could be placed on the market without any formal action by FDA. At that time, all a company had to do was file information with FDA indicating that a product was safe, and if FDA did not respond within 60 days, the manufacturer could go ahead and market it. This type of system is pre-market notification, not pre-market approval. A drug could also be placed on the market at that time if it was "generally recognized as safe."

In 1962, Congress changed the drug laws completely. After 1962, new drugs could not be placed on the market until FDA actually approved the new drug application, unless the drug was found to be "generally recognized as safe and effective." These are the two tests we use in section 203(b) with respect to drugs: was the drug actually approved under a new drug application, or was it generally recognized as safe and effective. DES was never generally recognized as safe and effective, and it was never actually approved under a post-1962 drug application. Thus, DES is not covered under section 203(b).

A similar analysis applies with respect to Dalkon Shields and breast implants. Both of those products were placed on the market prior to enactment of the Medical Devices Amendments of 1976. Dalkon Shields were marketed entirely prior to 1976, so they could never have received FDA approval. Silicone gel breast implants were grandfathered because they were already on the market in 1976. Grandfathered devices did not need to receive pre-market approval. Thus, neither Dalkon Shields nor silicone gel breast implants are covered by the FDA/punitive damages provisions.

Super-absorbency tampons are class II medical devices, and hence are not subject to pre-market approval by FDA. Thus, they are not covered by section 203(b) either.

Mrs. KASSEBAUM. I notice that a number of the horror stories cited by opponents of S. 687 are cases in which claimants regularly assert that the manufacturer failed to submit required information to the FDA. One such case involved a copper-7 IUD. In another recently publicized case, a manufacturer of cardiac catheters, C.R. Bard, was found to have engaged in criminal withholding of information from the FDA. As I read S. 687, it provides no punitive damages protection for manufacturers who have failed to abide by their FDA duties and who have been sued because of a resulting injury.

Mr. LIEBERMAN. The Senator is again correct. In every horror story of which I am aware, claimants have alleged that the manufacturer did not supply required information to the FDA.

Mrs. KASSEBAUM. I have one other question. Opponents of this legislation have been claiming that the provision making liability for noneconomic losses several rather than joint hurts women because they cannot recover fully for reproductive injuries in drug and medical device cases. From what I am told, however, joint liability is rarely an issue in drug and medical device cases. Before joint liability can be an issue, there must be two people who helped cause the harm. In drug and device cases, however, the only party that caused the harm is the manufacturer. Thus, joint liability cannot be an issue in those cases.

Mr. LIEBERMAN. Again the Senator is correct. Joint liability is simply not an issue in most drug and medical device cases. Interestingly enough, in DES and other market share liability cases, in which there are often several defendants, courts have refused to make liability joint. Courts have viewed joint liability as inconsistent with market share liability.

Mrs. KASSEBAUM. Based on what I know about the provisions of S. 687 governing punitive damages for FDA approved products and several liability for noneconomic harm, I simply do not believe that S. 687 is antiwoman. In fact, passage of S. 687 could substantially help women. The Institute of Medicine has recommended enactment of an FDA compliance defense as a means of lowering one of the significant barriers to the development of new contraceptives. By encouraging research, development and innovation in the health field, S. 687 could help to spur the development of products to diagnose and treat osteoporosis, breast cancer, and cervical cancer.

I believe the provisions of S. 687 granting "good actor" protection against punitive damages to manufacturers who comply fully with FDA requirements will have an extremely positive effect on the public health. I urge my colleagues not to strike section 203(b), and to vote to support cloture on this bill.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I withdraw the first-degree amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

So the amendment (No. 1941) was withdrawn.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 1895

(Purpose: To eliminate provisions limiting punitive damages concerning certain drugs and medical devices and certain aircraft and components)

Mr. DORGAN. Mr. President, I send an amendment to the desk. It is amendment No. 1895. The amendment is offered on behalf of myself, Senator MOSELEY-BRAUN, Senator MIKULSKI, Senator RIEGLE, and Senator FEINSTEIN.

The PRESIDING OFFICER. The clerk will report amendment No. 1895.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for himself, Ms. MOSELEY-BRAUN, Ms. MIKULSKI, Mr. RIEGLE, and Mrs. FEINSTEIN, proposes an amendment numbered 1895.

The amendment is as follows:

On page 19, beginning with line 7, strike out all through line 6 on page 22.

Mr. DORGAN. Mr. President, I will be brief, and then I would like to call on my colleague, Senator MOSELEY-BRAUN, who has worked with me in recent weeks in preparing this amendment. This is a very short amendment and a very simple amendment. It is substantial in its consequences but, nonetheless, simple.

It simply strips from this bill that the Senate is now considering the provision, section 203, that establishes a test for manufacturers with respect to punitive damage awards and FDA and PAA approval. And that test is that if the FDA or FAA has approved their products, then there is developed a shield behind which it is much more difficult to seek punitive damages from the manufacturer. In other words, it establishes a protection for manufacturers if the Federal agency, in this case the FDA or FAA, has approved the product.

I have said before—I will be very brief now because I spoke earlier—I said it is legion to review the products that have been approved in good faith by the FDA that later proved to be very troublesome products: The Dalkon shield, DES, silicon breast implants, and a range of areas. I have gone through a list of drugs and medical devices. I will not repeat them.

But it is clear that the FDA has not been capable, nor should we expect it to be capable, of approving a range of drugs and a range of medical devices, to say that we have the staff, we have the capability, we have the investigative power—of saying when we approve this, we understand it does no harm and we represent that to be the case and we will construct from that a shield to protect manufacturers against punitive damages.

The Senator from Illinois, Senator MOSELEY-BRAUN, and I feel strongly that this is a terrible provision in this bill and it must be eliminated.

If we eliminate this provision in this bill, I said on the floor previously and I will say again that I will support this piece of legislation. But this provision in this bill is very troublesome and, in my judgment, should not advance.

Mr. GORTON. Will the Senator from North Dakota yield for just a moment?

Mr. DORGAN. I will be happy to yield to the Senator from Washington.

Mr. GORTON. Mr. President, as the Senator from North Dakota well knows, this Senator, as one of the primary sponsors of the bill, disagrees with his friend's characterization of the FDA defense against punitive damages under certain circumstances and has spoken vehemently over an extended period of time in favor of just that provision.

As this Senator has assured his friend from North Dakota privately, in order to get a bill through with which the Senator from North Dakota and the Senator from Washington agree, leaving this portion of it aside, this Senator is, in fact, going to vote in favor of the amendment proposed by the Senators from North Dakota and Illinois and will undertake to persuade as many of his colleagues on this side of the aisle to follow his lead as is possible; that he feels a very large number of them, or a very substantial number of them will do so.

The Senator from Washington makes that assurance because it is quite evident now that opponents to the bill will prevent the amendment proposed by the Senator from North Dakota from coming for a vote before tomorrow's cloture vote. But I simply want the two Senators who are sponsoring this amendment to know that whatever my view on the merits, I will vote with them and I will undertake to secure a sufficient number of votes from this side to assure, as much as can ever be assured, that they will, in fact, be victorious.

Mr. DORGAN. Mr. President, I appreciate the Senator's comments. It has been some months since we marked this bill up in the Commerce Committee and moved it forward. During those months, Senator MOSELEY-BRAUN and I have worked on this issue because we have felt very concerned about this.

This is a sea change of sorts, when he says he will support this amendment. Our dilemma at the moment, of course, is we are told we may not get a vote on this amendment prior to the next cloture vote, and we will have to talk some about that. I hope that is not the case, but some suggest they do not want to vote on this and will continue talking about it.

Having gone through this a few minutes ago, let me at this point suspend; and my colleague from Illinois, Senator MOSELEY-BRAUN, I think, can state this better than can I. Let me yield the floor, Mr. President, so that my colleague, who has worked very hard on this over the last months, may speak to it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, there is an old expression that says that those who love the law or sausages should not watch either of them being made. I daresay that is the situation with which we are confronted with regard to the pending amendment and with regard to produce liability reform in general.

Let me say at the outset, Mr. President, that I have voted against cloture primarily because I was concerned about problems with this legislation and convinced that the problems in this legislation, particularly the problems related to the FDA and FAA excuse, did not overcome the merits of the legislation.

The merits of the legislation include the fact that I believe we really do need to have some national standards in the area of product liability. Without rational standards, people are sent pillar to post to defend actions with different standards and different rules. I do believe that there has been abuse with the operation of our tort law in this country.

That argument has been raised by manufacturers who say that shipping their products is made more expensive by operation of the tort laws in our country. And there has been a great deal of discussion about the larger impact that product liability laws have

on the competitiveness and stability of businesses in this country.

What Senator DORGAN and I have specifically tried to address is one narrow portion of this bill, in an effort to make the legislation a better bill, in an effort to address the specific issues that concern the rights of victims, of little people, who may not be heard otherwise. While the battle over product liability law is largely a battle of the network giants, a battle of big-picture issues and huge interests, Senator DORGAN and I have tried to take steps to protect the forgotten consumer.

The pending amendment relates specifically to the health and safety of those who may be injured by defective drugs and medical devices that are approved by the FDA or by aircraft components approved by the FAA.

S. 687 provides what we call the FDA excuse. I know the Senator from Washington disagrees with my characterization. But essentially what it says is that a person cannot get punitive damages for a defective medical device, such as an IUD or silicon breast implant; or a defective medical drug, so long as that device or drug had received premarket approval from the FDA, so long as the FDA said the device was OK. That turns tort law, as we have always known it, on its head, and establishes an administrative agency as a gatekeeper to decide what damages might otherwise be allowed in the law.

We know from experience that FDA is understaffed, overworked, and does not have the capacity to do the kind of analysis, to do the kind of research, to actually guarantee that the public will not be subjected to unreasonably dangerous drugs or medical devices.

So this FDA excuse will have the effect of shifting responsibility from the manufacturers of the defective products to the Government. That struck Senator DORGAN and me as being inappropriate; that this shifting of responsibility was not what S. 687 intended to do and that it was not what the proponents of this legislation wanted to do; and that it was entirely inappropriate, in fact, to place with an administrative agency in this level of control over the rights of victims of defective medical devices and products.

Happily, I think, the managers of this legislation have agreed with Senator DORGAN and me with regard to the FDA excuse. They have agreed that our amendment, which simply strikes those portions of the bill relating to the FDA and FAA excuse, should be adopted.

So the whole section of the bill relating to what we call the FDA excuse would be stricken, taken out of the bill, by virtue of this amendment.

I would like to add, having worked on the amendment for a number of months now, Senator DORGAN and I have now been joined by three additional cosponsors—Senators REIGLE, MIKULSKI, and FEINSTEIN—because it really is a good idea. It is a good idea for protecting people, and by that I mean the ordinary people, not the big money interests, not the big giants, but the folks who actually might suffer an injury from an FDA or FAA approved product.

Well, that may sound straightforward, Madam President, but the problem is that our amendment addresses the merits and not the procedure. And so here we are in a situation in which we have achieved consensus on both sides of the aisle that striking the FDA and FAA excuse provisions of the bill is the right thing to do. The managers of the bill say it is the right thing to do; Senator DORGAN and I, our three cosponsors say it is the right thing to do; everybody believes this is a meritorious proposal, one that really will take a positive step to make this bill a better bill. We have consensus on that. But we are now stymied by the procedure relating to this legislation.

Now, there are those who say that this legislation has been around for 14 years now, a long time before I got here or Senator DORGAN got here or I daresay any number of Senators arrived in this body. This legislation has very long teeth, indeed, not to mention legs.

But the fact is this is the first time we have been able to raise this issue of the FDA and FAA excuse, and I think Senator DORGAN and I have raised it responsibly. I think we have raised it in a way that was not calculated to make controversy but, rather, to reach consensus. And were, in fact, able to reach consensus. However, unfortunately, it does not now appear that we will be able to have a vote on this amendment before there is a vote on cloture on the underlying bill as a whole. So this meritorious proposal is being held hostage to the larger questions relating to this legislation. That is unfortunate, but that is the legislative process. That is the way things go in the legislative process. I hope to have the support of my colleagues to vote in support of the amendment that has been offered by Senator DORGAN and I if we do, in fact, get a chance to vote on it. If we do get a chance to vote for it, I hope we are able to make this bill a better bill and a bill of which this Senate can approve.

I yield.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mrs. MURRAY). The Senator from North Dakota.

Mr. DORGAN. Madam President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DORGAN. I yield the floor.

Mr. ROCKEFELLER. Will the Senator yield?

Mr. DORGAN. I would be pleased to yield.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Madam President, first of all, I wish to say I know that the Senator from North Dakota wants to get home, because he has family obligations, and I do not think we are going to do much more tonight unless the Senator himself wishes further discussion. I will be available for so long as people want.

But I would like to repeat what Senator GORTON said, that the FDA/FAA amendment had a lot of merit. On the other hand, we have not been able to discuss this bill for 13 years because it has been filibustered by the same people who are apparently going to filibuster it through tomorrow and cloture.

Now, if we get cloture, then we will have a vote, and I think if we have a vote, we will prevail. And we will prevail with a bill, as the Senator from Illinois has said, that is a much improved bill.

I very strongly, proudly and happily join with the Senator from North Dakota and the Senator from Illinois in deleting this provision because I think for the overall public purposes of what we are doing, it does make it a stronger bill. I would therefore encourage my colleagues, as they think tonight and tomorrow, that although in the legislative process filibustering is a useful technique, particularly as used in the civil rights era, and it has been used from time to time since then. But this is really a full-fledged filibuster that we are talking about now. And I think that those who oppose this will simply not stop talking unless we can get cloture tomorrow. If we can get cloture tomorrow, I think we can pass a bill which will not have the FDA/FAA part. And then I will myself say to the Senator from North Dakota and the Senator from Illinois that it is true the FDA is not perfect, and it is true that they may not have enough people, and these are things that now we do not have to worry about because that is no longer a part of the bill.

So I would urge my colleagues to prayerfully consider their cloture vote tomorrow, that I hope they would vote for cloture because we now have a substantially different bill and I think a substantially better bill. I hope they would consider that, and that when they come to vote tomorrow they will understand this is a major adjustment in the bill and that cloture will prevail.

I thank particularly my colleague from North Dakota and also from Illinois because they have been professional, calm, reasonable, and just good in the way they have handled this whole situation. I wish to thank them.

With that, I would yield the floor.

Mr. DORGAN. Madam President, as I understand it, there is an hour of debate tomorrow morning before the cloture vote, and I think it would be useful to come back to the subject and continue in some additional detail on section 203. I know the Senator from Illinois would like to do that, and I would as well.

I appreciate the comments of the Senator from West Virginia. As he knows, this is not a new discussion. This discussion occurred the same day this amendment passed the Senate Commerce Committee, and we are now some months later at the very point of contention: what about this section?

I appreciate the likelihood at this point that we may get beyond this and strip this away. We do have a situation where a cloture vote is scheduled for 10, and it appears we will not be able to deal with this amendment before the cloture vote, so we are going to have to discuss that. But in any event I think we have made some progress for those of us who believe that this amendment must leave this piece of legislation, and if it does that we would support advancing the legislation.

Madam President, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Let us make the record clear. The distinguished Senator from Illinois used the proper word this morning, "masquerade." The masquerade continues.

I intend to vote for the amendment to strike because any time I can get any section of this bill out; it is that bad, it is that much a travesty, I am going to support getting it out. But the masquerade does continue when you come in and say you want uniformity but then put a sentence that this shall not constitute a Federal cause of action, sending you to the 50 several jurisdictions—all these words of art when you talk about in the proof of punitive damage the conscious, flagrant disregard of safety, and it has to be proved by clear and convincing. When you say to a seriously injured female under these drug cases you do not have any economic loss—yes, you can get a small verdict for the economic loss, but for the pain and suffering and the noneconomic, we have to get to the proof of several liability on each one of the several parties—you have given me quite a task of interrogatories, various discoveries and so on.

Then when you come to settlement, the so-called settlement is a misnomer if there ever was one because there is an offer made and under rule 68 a continuing offer made. So the corporate counsel sits up there and he measures just where he is continually bringing pressure with the employer of the injured person.

You see, there can be no settlement unless the employer is notified and joins in. Of course, the insurance company for the manufacturer gets in touch with that employer, and, says, "Here is what we will offer. There is enough money here to take care of your workmen's compensation, and what you paid for salaries while the injured party was home sick," and otherwise, and, says, "We can take care of that, and you had better tell the injured party the sentence so we can get your money."

So you bring not only the corporate counsel against you. You bring, by gosh, the employer against you. Then if you happen to get a little bit, $1 more, you are in trouble because the $1 more cancels out the contingency contract. There is a cap on so-called attorney's fees. That has already been eaten up in the contract itself. The contract itself was discontinued. But on the other hand, if you get less, I can tell you here and now what happens. All your collateral benefits are assessed against your particular verdict, and if you had a health insurance policy that is taking care of your hospitalization and medical costs, that is fine business. But that is not what you paid for to be injured. You are the winner. You have won in the one case and you proved to all 12 jurors the burden has been on you, and it has been a clear and convincing burden.

You come around, and even a several burden, and you have done all of these things after 2 years. Then they take away, let us say $100,000, and the insurance costs that you put out there. Otherwise, if you had life insurance, and there is a loss of life involved in the case, I can tell you exactly what happens. All of that has gone. Of course you have been paying premiums for 30 or 40 years, like all of us have, to protect yourself with life insurance, not to become a winner in a lawsuit and a damage suit. But the winner then becomes the loser. Because you won, they cancel out all of your insurance benefits. You have to assess that against your verdict.

So it is nice to be so condescending and tell everybody how wise you are—and each Senator has his or her own needs.

But I can tell you here and now that will get rid of this abomination. This bill is calculatedly bad. If they have you down the side road of the FDA, and still getting this bad bill passed, then we have not done our job for the injured parties in America here tonight, or tomorrow morning.

So I want everybody to get to look at the bill in its entirety. It has been very difficult to discuss the entire measure. I refute the idea of filibustering. You cannot come in and say we filibuster and discussed the case but we never discussed the case. I mean, come on. Which way do you want it? The fact of the matter is we have discussed, discussed, and discussed again this particular bill in different forms. It still is what the Chief Justices' Association, every consumer organization, the attorneys general, legislatures, American Bar Association, every woman's health group has come out against this measure.

That is why it has not passed in these years. It has not been the trial lawyers, and it has not been filibustered. It has been a very, very bad bill. The States are not coming to Washington and saying federalize this thing and give us half a haircut with a part federalized and a part not federalized. They have said leave us alone.

Here is a great moment for those who always wanted to, by gosh, defer to the States' responsibilities. There is no crisis in litigation costs, availability of insurance, and otherwise. They come now with this gimmick. It has been a gimmick. It continues to be one. It is a bad gimmick. It is a travesty on the injured parties in America.

I hope we can still vote cloture and continue to work against this bill.

I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

MORNING BUSINESS

Mr. ROCKEFELLER. Madam President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 3 minutes each.

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

MARSHALL COUNTY, AL RETIRED SENIOR VOLUNTEER PROGRAM: PREPARING FOR THE FUTURE

Mr. HEFLIN. Mr. President, today I rise to commend the Marshall County, Alabama Retired Senior Volunteer Program, known as RSVP, for an outstanding achievement. The Corporation for National and Community Service recently selected RSVP for a summer of safety project grant. The Marshall County volunteer project is 1 of only 17 to receive the grant and the only rural recipient in the entire Nation.

The members of RSVP care about their community and want to improve their children's futures. Crime prevention will be the focus of the group's work this summer. The Marshall County Program has created a plan to fight crime by promoting literacy and self-esteem in its local young people. Their project pairs low-income children with senior citizens for one-on-one interaction and reading time. Although the children are the main beneficiaries of this project, it is sure to bring pleasure to many seniors as well.

My praise for the Marshall County RSVP also extends to its work in vital areas such as rape prevention, substance abuse prevention, and fire preparedness, to name only a few. The

group reaches the community through seminars, games for children, and public safety initiatives.

I am pleased to congratulate the fine people who have worked diligently to make the Marshall County Retired Senior Volunteer Program such a success. Their contributions are truly worthy and deserving of this national service grant.

IS CONGRESS IRRESPONSIBLE? YOU BE THE JUDGE OF THAT

Mr. HELMS. Mr. President, anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

So, when you hear a politician or an editor or a commentator declare that "Reagan ran up the Federal debt" or that "Bush ran it up," bear in mind that it was, and is, the constitutional duty and responsibility of Congress to control Federal spending. Congress has failed miserably in that task for about 50 years.

The fiscal irresponsibility of Congress has created a Federal debt which stood at $4,601,447,421,459.43 as of the close of business yesterday, Monday, June 27. Averaged out, every man, woman, and child in America owes a share of this massive debt, and that per capita share is $17,649.61.

ADM. STANLEY ARTHUR, U.S. NAVY

Mr. INOUYE. Mr. President, I rise today to discuss the loss of a great leader. On Friday of last week, it was announced by the Navy that Adm. Stanley Arthur was withdrawing his name from nomination to the position of commander in chief Pacific, commonly referred to as CINCPAC.

Mr. President, I was distressed to learn of the admiral's decision because, in my dealings with him over the years, I have found him to be a man of great wisdom, fairness and integrity.

Admiral Arthur received his commission from Naval ROTC at Miami of Ohio University in 1957, after earning his bachelor of science degree in aeronautics. During his career he served aboard the U.S.S. *Bennington*, and commanded the U.S.S. *San Jose* and the carrier the *Coral Sea*. During the Vietnam war he flew more than 500 combat missions as an A-4 pilot, earning the Legion of Merit with combat "V", 11 Distinguished Flying Crosses, 4 Air Medals for Individuals Action, 47 Strike/Flight Air Medals and a Navy Commendation Medal with combat "V". During the Persian Gulf war, he commanded the U.S. 7th Fleet, directing the combat operations of more than 96,000 Marine and Navy personnel.

Admiral Arthur rose through the ranks pinning on his fourth star in 1992 and beginning his tenure as the Vice Chief of Naval Operations. It is here that the admiral made the tough decisions for which he is being criticized.

The admiral, because of his vast aviation experience, was asked to personally review the case of an individual who accused a superior of sexual harassment and who now argues that her complaint caused her to be flunked out of flight school. The admiral examined all the facts in the case, was fully supportive of the individual's harassment complaint, but concluded that she failed in flight school because of her skills, not because of her charges. Because of his involvement, some in the press and in public life decided to make a political issue of this case.

Reading the headlines, one gets the impression that Admiral Arthur was guilty of sexual harassment. That is not the case. Nor was the admiral responsible for the initial discipline that ultimately saw the resignation of the individual charged with sexual harassment. What Admiral Arthur did, and what he takes responsibility for, is that, upon reviewing all the facts, he determined that the woman who failed flight school did so because of her failure to meet well founded requirements for qualification—based on her training record. The Navy and the DOD Inspectors General reviewed the case and, independently, came to the same conclusion. Both agreed with Admiral Arthur's judgment. However, the facts of the incident do not seem to matter.

Have we come to this—where the facts no longer matter, where appearances and imagery rule, where symbolism and symbolic value drive out realism and truth? Mr. President, we all decry sexual harassment. We were all appalled by the Navy's Tailhook scandal. But, we have to stop this cycle of character assassination by insinuation. Enough is enough.

Admiral Arthur has served this country loyally and in good standing for 37 years. He was nominated by the President to serve as commander in chief of all Pacific forces because he demonstrated leadership, dedication to duty, fairness and good judgment. He has withdrawn his name because he saw himself as an impediment to progress. Admiral Arthur realized that the Navy which he has served tirelessly was continuing to be tainted as the service of sexual discrimination and harassment because of his nomination. This is not fair, this is not right.

I believe it is the country's loss that Admiral Arthur will not be serving as CINCPAC. Based on his long career, I have every confidence that he would have served impeccably in that role.

TRIBUTE TO JOHN R. O'CONNOR

Mr. LIEBERMAN. Mr. President, I rise today to pay tribute to the newest U.S. Marshal for the District of Connecticut, John R. O'Connor.

On Monday, John O'Connor fulfilled a uniquely American Dream when he was sworn in as U.S. Marshal by U.S. District Court Judge Jose Cabranes. That dream was born in the hearts of people like Susanne Reynolds O'Connor, John's mother, who came to America from Ireland in search of a better life for her children. Susanne and John P. O'Connor, John's father, instilled in him a great respect for this country and its laws and people. As a result, John O'Connor's life has been devoted to public service.

For 27 years, John O'Connor served with distinction in the New Haven Police Department holding the ranks of sergeant, lieutenant, captain and commanding officer of the patrol, detective and internal affairs divisions. During this time, he received over 20 commendations from the board of police commissioners for outstanding police work. John O'Connor's exemplary service has also been recognized by the Federal Bureau of Investigation and the Connecticut State Police.

Prior to his work as a police officer, John O'Connor served our country as a member of the U.S. Army and in the Connecticut National Guard Active Reserve. And throughout his life, John has served his community in ways above and beyond the call of duty, spending countless hours of his spare time working with organizations devoted to the betterment of young people. He helped organize the Dixwell Community Basketball Tournament, served on the boards of the New Haven Boys and Girls Club and St. Mary's Girls High School, and chaired the New Haven Register Basketball Classic, which brought together urban and suburban teams for sport as well as conferences on college preparation and the dangers of drug and alcohol abuse.

John O'Connor, a resident of West Haven, CN, has also been an active participant in events celebrating his Irish heritage. He served as grand marshal of the Greater New Haven St. Patrick's Day Parade, and was recognized by the West Haven Irish-American Club as man of the year.

His years of experience, leadership and public service will serve John O'Connor and our State well as he exercises his duties as U.S. Marshal. As someone who has known John and his good works for many years, I was honored to join with my distinguished colleague, Senator CHRISTOPHER J. DODD, in recommending his name to President Bill Clinton last year, and I was especially grateful that the President agreed with our recommendation and formally nominate John O'Connor for U.S. Marshal.

Mr. President, I rise to salute John O'Connor and wish him well in the performance of his new duties. I also wish to recognize John's family, including

his wife, Barbara Abate O'Connor; his daughters, Debbie and Lisa; his sisters, Susanne Bowery and her husband Joseph, and Joan Weber and her husband Paul; his brother, Frank O'Connor and his wife Lynn; and his many nieces and nephews. All of us are proud of John O'Connor and what he has accomplished.

TIME IS RIPE FOR A MIDDLE EASTERN SECURITY FRAMEWORK

Mr. DECONCINI. Mr. President, since 1990, the cochairman of the Helsinki Commission, STENY HOYER, and I have advocated creation of a CSCE-like process in the Middle East. The historic agreement between Israel and the PLO last September has made the possibility of such a scheme more real than ever before. And while there are no guarantees a CSCME process could resolve all complex and explosive issues in the region, we now stand at an historic juncture where long-absent political will may suddenly exist, and for the first time, nations in the region appear at least willing to engage in dialog. In this climate, a regional negotiating framework could foster additional confidence-building measures. And it is these little initial steps, Mr. President, which I surely believe are necessary to inspire the trust and contacts between people needed to progress on tougher issues in the future.

Mr. President, I want to emphasize the need to aggressively pursue all avenues which will promote peace and stability in the Middle East. The opportunity we are confronted with is rare and should not be squandered. And we are all too well aware of the extremist forces working to sabotage the peace process at every turn.

Mr. President, I would like to share a recent op-ed by Cochairman HOYER on the CSCME process published in the Washington Times. The piece offers some persuasive arguments for our Government's involvement in promoting CSCME, and I hope that this body will support such efforts. For surely, as a CSCME is in the best interests of all regional participants, it will also safeguard our own best interests.

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

[From the Washington Times, June 21, 1994]

A NEW FRAMEWORK FOR PROGRESS IN THE MIDDLE EAST

(By Steny H. Hoyer)

The mutual recognition agreement last September between Israel and the Palestine Liberation Organization marked a historic step forward toward peace in the Middle East.

Since then, Palestinians and Israelis working together to meet the critical initial needs of coexistence have fundamentally altered the politics of the Middle East. The possibility of a broader security framework has finally become a reality. An opportunity exists for the states of the Middle East to engage in a process in which old hatreds and passions can be rechanneled into constructive dialogues between states and peoples; by which barriers to trade, travel and communication can be discussed and removed; and within which regional stability can be established.

Since the end of the Persian Gulf war in 1991, I, along with Senator Dennis DeConcini, have suggested that a Conference on Security and Cooperation in the Middle East (CSCME), modeled on the Conference on Security and Cooperation in Europe (CSCE), could make a significant and constructive contribution to that end. Today, the leaders of Israel, Turkey, and other Middle Eastern nations and our own administration have also determined that the time is right for a CSCME.

The CSCE—also known as the Helsinki process—was born with the signing of the Helsinki Final Act on Aug. 1, 1975, which set forth principles by which states would deal with each other and with their citizens. Despite its name, the Final Act marked the beginning of a remarkable political dialogue in a bitterly divided, postwar Europe. By providing for periodic follow-up meetings, the CSCE brought hostile states to the table over and over again to address the issues which separated them in the areas of military security, human rights and trade. The issues were divisive, the discussions contentious at times, but each state felt it had a stake in the process. Though some viewed the Final Act as a legitimation of the territorial and political arrangement of postwar Europe, others saw it as a means to overcome those very divisions.

For decades now the Middle East has been a region dominated by violence, its politics largely determined by the Israeli-Palestinian question. Few channels exist through which Middle Eastern states and their peoples can address region-wide issues. A Middle East security framework could encourage regional security through arms control, verification, confidence-building, and respect for human rights. The presence of a multilateral forum for discussion would provide an outlet for grievances and a framework for conflict resolution. States would need only be assured that participation would not prejudice their individual interests and that each state's security would be enhanced through participation in region-wide talks. For the United States and its allies, including Russia, CSCME could serve an important role in promoting democratic institutions, containing radical Islamic fundamentalism, stemming terrorism, curbing arms proliferation and securing peace and security in the region.

Of course, there are no guarantees that a CSCME could solve the complex and explosive problems confronting the Middle East. Meetings and documents can change nothing by themselves if the political will of the participating states is in question. But we are now at a historic juncture where long-absent political will may suddenly exist. We now have an agreement that has made the conditions for a long-term peace better than they have ever been before.

The Israeli-PLO accord sets the stage for launching a security framework, much like the agreement with respect to the two Germanies and their boundaries did for CSCE in the early 1970s. In such a climate, a CSCE-type process can bring strength in its persistence, in its determination to foster continued political will among its participating states and, just as important, among their citizens. These aspects of the CSCE—political dialogue and public participation—are critical in the Middle East.

Once implacable enemies, the PLO and Israel are attempting to live side by side in peace. At the White House signing last year, Prime Minister Yitzhak Rabin sadly noted that for many the "ceremony has come too late." But weary of the hate and revenge that have claimed so many lives, Israel and the PLO have, despite horrific violent acts by extremists, taken brave steps toward creating a new order in the Middle East.

The United States must remain engaged in the process and work with its allies to sustain these new efforts toward stability. The establishment of a Conference on Security and Cooperation in the Middle East would provide an opportunity to bring healing and reconciliation to a region badly in need of both.

TRIBUTE TO CAPT. STEPHEN HOWARD, U.S. NAVY

Mr. LUGAR. Mr. President, I rise today to pay tribute to an individual whose entire adult life has been devoted to service to his country.

Capt. Stephen Howard enlisted in the Navy in January 1958, and graduated from the Recruit Training Command, San Diego in March of that year. After a series of schools, he spent 4 years aboard ships as an enlisted man with the rank of electronic technician. In 1962, he was selected to attend Purdue University under the Navy Enlisted Scientific Education Program. Graduating in 1966, with bachelor's and master's degrees in electronic engineering, Captain Howard, now with an officer's rank, served aboard the USS *Wright* and later at the Naval Academy as an electronic engineering instructor.

Captain Howard's career took him to various assignments: Mare Island Naval Shipyard, the USS *Oriskany* [CV34], Japan, Moffett Field, Washington, DC, and San Diego. His present and last assignment began when he reported as commanding officer at the Naval Weapons Support Center in Crane, IN, in September 1991, from Mare Island, CA, where he served as commanding officer.

In January 1992, he became the first commander of the Crane Division of the Naval Warfare Center. The division resulted from the consolidation of the Naval Weapons Support Center and the Naval Ordinance Station in Louisville, KY.

His military decorations include the Meritorious Service Medal—three awards—the Meritorious Unit Commendation—two awards, the Good Conduct Medal—two awards, the National Defensive Medal—two awards, and Sea Service and Overseas Service Ribbons—two awards. He is a designated material professional and joint specialty officer. His professional associations include the Armed Forces Communications Electronics Association, the Institute of Electrical and Electronics Association, the Institute of Electrical and Electronic Engineers, the American Society of Naval Engineers, and

the U.S. Naval Institute. He is also a graduate of the Duke University Advanced Management Program.

During his 36 years of service in the U.S. Navy, Stephen Howard has risen from the rank of seaman apprentice to the rank of captain. He and his family have given dedicated service to their country, and for this we give thanks and say, "Well done."

UNITED NATIONS, DIVIDED WORLD: THE CHALLENGE OF SELECTIVE SECURITY

Mr. PELL. Mr. President, Adam Roberts, professor of international relations at Oxford University in England, recently provided a remarkably cogent analysis of the future of U.N. peacekeeping, with particular reference to the issues raised in Presidential Directive 25.

The Clinton administration unveiled its new policy on May 5, 1994, in a White House document entitled "Policy on Reforming Multilateral Peace Operations," which is basically the text of PD 25, but without some annexes. Professor Robert's analysis was presented at a Face-to-Face meeting at the Carnegie Endowment for International Peace in Washington on May 9.

While noting that there can be many criticisms of this U.S. policy, Professor Roberts states:

> I strongly agree with the overall approach, which is to view peacekeeping and other U.N. operations as a scarce resource. Such operations do indeed need to be used discriminately and supported judiciously, by states.

Professor Roberts expresses agreement with National Security Advisor Anthony Lake's "expression of caution" when the policy was announced, namely that "the reality is that we cannot often solve other people's problems; we can never build their nations for them."

Professor Roberts introduces the useful concept of selective security as a new version of the collective security goal that was the general objective of much of international security policy during the generation of the cold war. He makes clear that as the world changes, so our policies and goals must change to adapt to new realities.

Professor Roberts brings the perspective of a scholar and, as he put it, "a puzzled foreigner" to these subjects. He raises questions and adds historical and international considerations to what for us are issues of current responsibility and concern.

In San Francisco in 1945, I served with the staff of the commission responsible for drafting the U.N. Charter provisions on military cooperation for U.N. peacekeeping. I believe Professor Roberts' comments provide a timely and useful analysis of the issues facing those responsible for peacekeeping policies today.

To bring his comments to the attention of a wider audience, I ask unanimous consent that they be printed in the CONGRESSIONAL RECORD at this point.

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

UNITED NATIONS, DIVIDED WORLD: THE CHALLENGE OF "SELECTIVE SECURITY"

(By Adam Roberts)

My purpose here is to ask some basic questions about the United Nations, and to suggest that its security role is necessarily selective more than collective.

The questions are: What is the role of the United Nations in international relations in general, and in security matters in particular? And what are the special problems of US policy toward the UN, particularly in the aftermath of Presidential Directive 25?

Serious thinking about the UN's role, and about the US role within the UN, involves coming to terms with a tragic reality. With some reluctance, we must recognize that what the UN can offer is not a general system of "collective security", but something more limited, which might be termed "selective security".

The broad issue of "collective" versus "selective" security is reflected today in the sharp dilemmas posed by events in former Yugoslavia, in Rwanda and elsewhere. The international responses to these and other conflicts expose limitations in what the UN and its members can do. I do not have any simple solutions to offer in respect of these conflicts. The emphasis here on selectivity is intended to help understand why there are inevitably limitations in the UN's response to crises, not to argue that there should be no response, or to prescribe what form any response should take.

DIVIDED WORLD

Despite many elements of transnationalism, to most of which the United States has traditionally been deeply attached, the world we inhabit remains deeply and obstinately divided: not just into 184-plus sovereign states, but also into peoples with very different social norms and worldviews; and also into different communities whose bloody struggles, within as much as between states, have so often in history been a serious threat to international order.

In the USA, thanks to its revolutionary origins and commitment to universal values, there is a perennial belief that certain noble American ideals are, or ought to be, universal. There is also a tendency toward self-righteous distrust of evil and outdated power politics. This distrust leads the US into alternative periods of messianic zeal and isolationism. Foreigners can perhaps be forgiven if they are sometimes baffled by the American capacity to move in less than three years from the new world order to the clash of civilizations.

The special characteristics of the American world-view can lead to wildly inconsistent policies, not least towards the U.N. Sometimes Americans have seen the U.N. in a teleological light as a place where the values of democracy, human rights and world order can be advanced, and a huge range of problems tackled on a cooperative basis. At other times, other Americans, or perhaps even the same ones, have seen it as a place which is far too full of quarreling foreigners representing dubious regimes and causes.

THE ROLES OF THE UNITED NATIONS

We are at now a stage of retrenchment in American public attitudes to, and of administration policies, towards the U.N. This retrenchment could serve a useful purpose: there is indeed a need to focus attention not on lofty schemes to completely transform international relations (schemes which can easily be harmful in their effects), but on a more mundane and practical evaluation of what the U.N. can actually achieve.

On 5 May, the Clinton Administration's "Policy on Reforming Multilateral Peace Operations," which is virtually the text of Presidential Directive 25 less the various annexes, was at long last unveiled by the National Security Advisor, Anthony Lake. It is a document of which there can be many criticisms. However, I strongly agree with the overall approach, which is to view peacekeeping and other U.N. operations as a scarce resource. Such operations do indeed need to be used discriminately, and supported judiciously, by states. I also agree with Tony Lake's expression of caution in introducing this peacekeeping review: "The reality is that we cannot often solve other people's problems; we can never build their nations for them."

The common criticism of the document is the one that has been highlighted in articles in both the New York Times and the Washington Post: namely that it establishes criteria for participation in U.N. operations that are so stringent that no peacekeeping operations could be expected to get off the ground at all. This criticism does not stand up to a careful reading of the document itself. It is full of exception clauses such as: "These factors are an aid in decision-making; they do not by themselves constitute a prescriptive device."

A second and perhaps more justified criticism of the peacekeeping review might be that the attempt to develop very general criteria for involvement or non-involvement in particular crises only takes one a small way in the direction of effective policymaking. A reading of the document does not give much guidance on what U.S. policy should be towards Bosnia, or Haiti, or Rwanda. A checklist of criteria can never be a substitute for the qualities of wisdom and decisiveness which remain as much in demand as ever they were in the conduct of international politics.

A third criticism is that the traditional American concern over how operations can be ended, strongly reiterated in the review, actually makes serious strategic thinking about such crises more difficult: sometimes there has to be a willingness to stay the course if adversaries are to be faced down effectively, and if an operation is to have any chance of success. Some of the problems of both the U.S. and U.N. operations in Somalia since 1992 have flowed directly from the stated concern of the U.S. about getting out, and from the lack of clear long-term purpose in such key matters as cooperation with the factions, disarming the factions, and the degree of involvement in administration both centrally and locally.

Finally, there is relatively little guidance in the peacekeeping review about the way in which the U.N.'s role in international relations generally, or in security affairs in particular, is conceptualized. Here are fundamental tangles.

COLLECTIVE VERSUS SELECTIVE SECURITY

The United Nations is episodically forging a historically unique pattern of involvement—and sometimes non-involvement—in international security matters. The debates about U.N. actions in Rwanda, Haiti and Bosnia are just part of a long-term but uneasy development of a U.N. system which in

my view can only be called, depressingly, "selective security".

Since the peace negotiations in 1648 after the carnage of the Thirty Years War, there has been a succession of proposals for modifying the anarchic international system through the institution of "collective security". Such proposals, despite many differences, all envisage a system (whether regional or global) in which each state accepts that the security of one is the concern of all, and agrees to join in a collective response to aggression.

Paradoxically, the collapse of Soviet versions of economic collectivism contributed to a revival of international collectivism in the security field. From the late 1980s onward, there was much enthusiastic advocacy of alluring but imprecise concepts: global security, a new world order, an enlarged U.N. role in peace-keeping and peace-making. All of these contained elements of collective security doctrine. Whether because of a comforting belief that history was at last moving this way, or because of a pragmatic preoccupation with inching forwards as far as difficult circumstances allowed, advocates of such visions seldom specified exactly how collective security would work.

Past experience is that efforts at organizing collective security have floundered on the difficulty of dealing with some basic questions. These questions, in every single case, have a contemporary resonance:

Are all states protected by the system, whatever their type of government, political importance or natural wealth?

Are all boundaries to be defended, regardless of their historic legitimacy?

Does the system give a guarantee against all types of threat, including even civil war?

Are all states obliged to participate in every security action?

Does the burden of underwriting collective security fall disproportionately on a few major powers and alliances?

What is a fair balance between self-defence by victims and external support?

What decision-making procedures can reliably determine that an attack or threat requiring a response has occurred, and can decide what action is necessary?

The present inability to provide generally satisfactory global answers to these questions is what render a universal collective security system implausible. The experience of the post-Cold War era, as of earlier periods, suggests that efforts to develop such a system can only result in selective security.

Elements of selectivity are inherent in the U.N. Charter itself: the veto system prevent action against permanent members; the Security Council's mandatory powers depend on a threat to the peace, breech of the peace, or act of aggression; the Security Council is given considerable discretion; and much space is left for regional arrangements, as well as for individual and collective self-defense. In short, the genius of the Charter system is that it goes with, rather than against, the grain of the existing system of states.

The U.N. Security Council has been compelled by events to think more electively about involvement in crises. A Security Council Presidential Statement on Peacekeeping issued a few days ago lists a series of factors which must be taken into consideration when the establishment of a new peace-keeping operation is under consideration: they are not very different from the factors listed in Presidential Directive 25. The new U.S. mood of caution about U.N. operations is in fact quite widely shared. What we do not yet have—and what is inherently hard to produce—is a clear rationale for, or doctrine of, selective security.

THE UNITED STATES AND THE UNITED NATIONS

It may be very positive that the U.S. administration is retreating from a degree of rhetorical support for the U.N. to a more measured and in some respects businesslike approach. Most countries have in fact long pursued policies of limited and cautious support for the U.N. similar to what is now emerging as the new U.S. policy. In forty-nine years of existence of the U.N. not one single state has concluded an Article 43 agreement making troops available to the U.N. on a permanent basis.

Yet U.S. policy towards the U.N. faces fundamental dilemmas, of which I will outline only three:

1. Burden on Major Powers. To the extent that the U.N. is seen as attempting to manage a universal security system, a vast burden may be (or at least may be perceived as being) placed on leading states with a known capacity for military force projection.

2. "Damned if you do, damned if you don't." If the U.S. plays a leading role, as it did in Desert Storm, it risks being accused of leading the U.N. by the nose. Yet if it does not play such a role, it is accused of abandonment and irresponsibility.

3. The Constraints of Peacekeeping. There are genuine difficulties for the USA as a superpower if its forces are expected to participate in peacekeeping operations, whether under U.N. or other auspices. Such operations generally require compromises, and patience even in the face of violent assaults. They risk exposing U.S. forces to situations of frustration and even humiliation; and they seldom offer possibilities for the decisive military action associated with the U.S. way of war.

Against this background, three over-simple views, which might even be called serious vices, have emerged in discussions about the relation between the U.N. and member states, including the USA.

1. In many countries, including the USA, there is a tendency to blame the U.N. for failures which may in fact be failures of particular states. The U.S. tendency to blame the U.N. for all that went wrong in Somalia in 1993, when much that went wrong was initiated or agreed by the USA, is a notorious case in point. Sometimes the U.S. government seems to speak and act as if it had not voted for U.N. Security Council decisions, and did not have a veto over them.

2. States, especially the USA, too easily take a view of the U.N. as having imposed potentially infinite demands on them to take action. In fact, the demands for action come from states as much as from the U.N. and can be refused by them. (Meanwhile, in the U.N. Secretariat, an opposite view can be found: that the member states, especially the USA, have dumped an impossible series of problems on the U.N. which is only too conscious that its resources are very scarce and need to be husbanded.)

3. In much public discussion of the U.N. especially by U.N. supporters, there is a tendency to blame U.N. failures on lack of political will among member states. This is understandable, but it contributes little to the resolution of U.N. problems, and it masks many other issues bearing on decisions about U.N. involvements. It is inevitable that states will be highly selective about which countries they wish to get involved in, and that they will exhibit only limited willingness to supply and pay for forces. In this as in other respects, the U.N. has to work with, not against, the states system.

The strongest line of criticism of U.S. policy toward the U.N. and its crises is not that it puts U.S. interests first, but that it has been inconsistent on both broad issues of the U.N.'s place in international security, and on particular policy problems; that it has been unwilling to pay its assessed dues; that the U.N. has to some extent served its eternal function as a dumping ground, and a scapegoat for the failure of others to act.

FORMER YUGOSLAVIA

It has been my misfortune to study, at different periods of my life, the security problems of Yugoslavia, and the United Nations. If there are two matters which should in an ideal world have been kept firmly apart from each other, it is these two. Yet there is an old and fateful link.

In 1918–19 there was much heated discussion of the question of whether or not League membership would require heavy commitment in the Balkans. This discussion was especially intense in the United States, whose geographical isolation and strong anti-colonial traditions militated against accepting distant and debatable responsibilities. President Woodrow Wilson, in his passionate but doomed advocacy of the League, naturally denied that membership would involve the USA in endless policing of troubled regions. As he said in a speech in September 1919: "If you want to put out a fire in Utah you do not send to Oklahoma for the fire engine. If you want to put out a fire in the Balkans . . . you do not send to the United States for troops." The fear of involvement in the Balkans was among the factors that made the U.S. Senate oppose joining the League of Nations.

Thus already in this century the question of how to tackle conflict and threats of conflict, including in the Balkans, dealt a crippling blow to one attempt at global political organization—the League of Nations. Now, three-quarters of a century later, conflict in the same region as well as elsewhere has exposed critical weaknesses in the international community's efforts to maintain international order. The problems of communal and ethnic conflict pose a challenge to the United Nations, and also to regional institutions, every bit as serious as that which they posed to the League of Nations seventy-five years ago.

There are more similarities. The United States, then as now, had a particular tendency to reject foreign involvements if they threatened to entangle the U.S. in cynical and morally dubious old-fashioned power politics. U.S. policies over the Italian grab for Fiume after the First World War, and over Bosnia in 1993, were very similar—especially in the rejection of what are seen as unjustified land grabs. A comment in the Washington Post in early 1920 might have appeared last week: "Paris is puzzled about the stand of the United States in world affairs, and so is the United States."

As a puzzled foreigner, I will give you a frank series of views of former Yugoslavia. First, I disagree with anyone who asserts that the problem itself is essentially simple: it is not a straightforward case of aggression, but nor is it simply a civil war. It is a war of state formation in the wake of a collapsed mini-empire, and there is no simple solution. Second, I had doubts about the U.N. getting involved in a conflict which demands qualities the U.N. does not always display: ability to pursue a clear long-term goal, to think strategically, to respond quickly to changing circumstances, and to coordinate the actions of forces engaged in many different types of activity. Third, the U.N. involvement, for all its terrible faults, has

achieved some significant results, in reducing the risks of competitive national interventions, and in reducing the hideous consequences of siege warfare. Fourth, with the U.N. having made some progress, including in recent months under General Rose, the challenge now is built on that progress—a process in which the U.S. has a major part to play. Fifth, it remains entirely possible that, if NATO enforcement operations become more widespread in former Yugoslavia, UNPROFOR might have to be withdrawn from many or even all its exposed positions in Bosnia.

If some of these points seem contradictory, I could answer with Walt Whitman's "Song of Myself": "Do I contradict myself? Very well then I contradict myself." But what is much more important is the absolute inevitability of there being different views in the international community on this issue. Any policy, whether at the U.N. or elsewhere, has to be framed with that fundamental limitation in mind.

CONCLUSION

Peacekeeping and related activities under U.N. auspices are clearly in crisis. Against this background, there is considerable danger in present perceptions that selectiveness in the matter of peacekeeping consists in the drawing up of lists of criteria. There is even more danger in perceptions that selectiveness is being imposed on the U.N. by a semi-isolationist USA. A new demonology could grow from these perceptions, with U.N. failures to act being blamed exclusively on the USA.

The truth is that any international security system, including that over which the U.N. currently presides, is bound to be partial and selective in nature. The U.N. itself may be in process of recognizing this.

The term "selective security" can easily sound pejorative, especially if the principles of selection are in dispute and the procedures flawed. It is a description of a sobering reality, and is not in itself a doctrine or a slogan. There is unavoidable tension between the facts of selectivity and the U.N.'s (and indeed, in some ways, the USA's) commitment to universalism. Yet the debate about the U.N., about the policies of the U.S. toward it, and about the policies that might be needed on particularly urgent issues of the day, does not in reality revolve around a choice between U.N.-based collective security on the one hand, and a regression to an unmodified international anarchy on the other. The challenge is to strengthen the discrimination, discernment and judgment which are essential if the U.N. is to make the best of its inevitably selective security contribution.

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 12:06 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 1758. An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V–X of title 49, United States Code, "Transportation," and to make other technical improvements in the Code.

H.R. 3724. An Act to designate the United States courthouse located in Bridgeport, Connecticut, as the "Brien McMahon Federal Building."

H.R. 4568. An Act making supplemental appropriations for the Department of Housing and Urban Development for the fiscal year ending September 30, 1994, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore [Mr. BYRD].

At 2:15 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4576. An Act to designate the Federal building located at the northeast corner of the intersection of 14th Street and Independence Avenue, Southwest, in Washington, District of Columbia, as the "Jamie L. Whitten Federal Building".

H.R. 4596. An Act to designate the building located at 2200 North Highway 67 in Florissant, Missouri, for the period of time during which it houses operations of the United States Postal Service, as the "John L. Lawler, Jr. Post Office".

H.R. 4603. An Act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies programs for the fiscal year ending September 30, 1995, and making supplemental appropriations for these departments and agencies for the fiscal year ending September 30, 1994, and for other purposes.

H.R. 4635. An Act to extend the Export Administration Act of 1979.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 2559) to designate the Federal building located at 601 East 12th Street in Kansas City, MO, as the "Richard Bolling Federal Building."

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 4576. An Act to designate the Federal building located at the northeast corner of the intersection of 14th Street and Independence Avenue, Southwest, in Washington, District of Columbia, as the "Jamie L. Whitten Federal Building"; to the Committee on Environment and Public Works.

H.R. 4596. An Act to designate the building located at 2200 North Highway 67 in Florissant, Missouri, for the period of time during which it houses operations of the United States Postal Service, as the "John L. Lawler, Jr. Post Office"; to the Committee on Governmental Affairs.

H.R. 4603. An Act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies programs for the fiscal year ending September 30, 1995, and making supplemental appropriations for these departments and agencies for the fiscal year ending September 30, 1994, and for other purposes; to the Committee on Appropriations.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–554. A concurrent resolution adopted by the Legislature of the State of Delaware; to the Committee on the Judiciary.

"HOUSE CONCURRENT RESOLUTION 56

"*Be it resolved* by the House of Representatives of the 137th General Assembly of the State of Delaware, (the Senate concurring therein), that this body respectfully petitions the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an Amendment to the Constitution of the United States to provide that no federal tax shall be imposed for the period before the date of enactment of the tax.

"*Be it further resolved*, That this application by the General Assembly of the State of Delaware constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the legislatures of the several states have made similar applications pursuant to Article V, but if Congress proposes an Amendment to the Constitution identical in subject matter to that contained in this Resolution before January 1, 1998, this petition for a constitutional convention shall no longer be of any force or effect.

"*Be it further resolved*, That the Clerk of the House of Representatives is authorized and instructed to transmit a duly attested copy of this Resolution to the President and Secretary of the Senate of the United States Congress, the Speaker and Clerk of the House of Representatives of the United States Congress and to each member of the Delaware congressional delegation."

POM–555. A resolution adopted by the Senate of the Legislature of the State of Illinois; to the Committee on Foreign Relations.

"SENATE RESOLUTION 999

"Whereas, Secretary of State Warren Christopher in his June 14, 1993, address to the World Conference on Human Rights stated, "Violence and discrimination against women don't just victimize the individuals; they hold back whole societies by confining the human potential of half the population."; and

"Whereas, The U.N. Convention on the Elimination of all Forms of Discrimination Against Women is an important international human rights treaty; and

"Whereas, Over 122 countries have ratified this significant treaty; and

"Whereas, The United States is the only country in the Western Hemisphere that has not ratified this treaty: Therefore, be it

"*Resolved, by the Senate of the eighty-eighth General Assembly of the State of Illinois*, That we urge the Senate of the United States to ratify the U.N. Convention on the Elimination of all Forms of Discrimination Against Women; and be it further

"*Resolved*, That suitable copies of this preamble and resolution be sent to the President pro tempore of the United States Senate, U.S. Senator Carol Moseley-Braun, and U.S. Senator Paul Simon."

POM–556. A resolution adopted by the Legislature of the State of New Hampshire; to the Committee on Foreign Relations.

"HOUSE JOINT RESOLUTIONS

"Whereas, certain Native American remains were exhumed in the summer of 1821, by Dr. Peter P. Woodbury and Dr. Freeman Riddle, both of Bedford, New Hampshire, during an early exploration of Native American encampments on or near Cartagena Island in the Merrimack River; and

"Whereas, these remains of 2 males, one female, and possibly a child were in a remarkable state of preservation, in a seated position, facing downstream, accompanied by the equipment thought necessary for their journey to the next world including clothing, utensils, weapons, and tools; and

"Whereas, since there was no museum in this country interested in such archeological remains and material, Dr. Woodbury of Bedford sent them to the venerable Museum of Natural History in Paris, France for preservation and study; and

"Whereas, an inquiry in 1928 showed that the remains that Dr. Woodbury had given the museum were Indian remains, perhaps those of the great Chief Passaconaway, Sagamore of Penacook; and

"Whereas, the great Chief Passaconaway, Sagamore of Penacook, changed the traditional system of tribal government by forming a powerful confederation of 17 tribes which, along with the Iroquois Nation federation, provided a model for tribes and a national federation for mutual defense, which was admired and perhaps emulated by the founding fathers of these United States of America in establishing a federation of states and a federal government for the mutual preservation of life, liberty, and the pursuit of happiness; and

"Whereas, Chief Passaconaway, nearing his death in 1666 and having "communed with the Great Spirit both dreaming and awake," gave America's first recorded farewell address, in a stirring proclamation to his people, where he encouraged them to make peace with the English, which ensuing lasting peace benefited significantly both the Native Americans and the settlers of New England for many generations; and

"Whereas, Chief Passaconaway's family, including his daughter Weetamoo, son Wonalancet, and grandson Kancamagus, followed him, forming a legacy of family heritage rivaling that of these United States' founding fathers; and

"Whereas, the New Hampshire general court passed a law, RSA 227-C:8-g, requiring the remains of Native Americans to be removed from display and reinterred; and

"Whereas, the state of New Hampshire department of cultural affairs, division of historical resources, has established procedures and a council of interested parties to determine the appropriate means and place for such reinterments; and

"Whereas, these remains have been carefully preserved, studied and safe-guarded by the people of France for over a hundred years: Now, therefore, be it

"*Resolved by the Senate and House of Representatives in General Court convened,* That the general court of the state of New Hampshire urges the President and Congress to petition the nation of France to assist Native Americans, the United States of America, the people of New England, the people of the great state of New Hampshire, and the division of historical resources in implementing the return of certain Native American remains, which were delivered to the Museum of Natural History, Paris, France, during the 1820's, which would allow an honorable celebration and the return to Mother Earth of the remains of those conveyed, including those perhaps of the great Chief Passaconaway, Sagamore of Penacook; and

"That copies of this resolution, signed by the speaker of the house and the president of the senate, be forwarded by the house clerk to the President of the United States, to the Vice-President of the United States, the Speaker of the United States House of Representatives, and to each member of the New Hampshire Congressional delegation."

POM-557. A resolution adopted by the House of the Legislature of the State of Oklahoma; to the Committee on Foreign Relations.

"HOUSE RESOLUTION 1047

"Whereas, President Clinton has affirmed that his foreign policy regarding the deployment of United States military forces under the authority of the United Nations will bear little change from that of his predecessor; and

"Whereas, the constitutional role of the United States military is to protect the life, liberty and property of United States citizens and to defend our nation against insurrection or foreign invasion; and

"Whereas, the United States is an independent sovereign nation and not a tributary of the United Nations; and

"Whereas, there is no popular support for the establishment of a "new world order" or world sovereignty of any kind either under the United Nations or under any world body in any form of global government; and

"Whereas, global government would mean the destruction of our Constitution and corruption of the spirit of the Declaration of Independence, our freedom, and our way of life: Now, therefore, be it

"*Resolved by the House of Representatives of the 2nd Session of the 44th Oklahoma Legislature,* That the United States Congress is hereby memorialized to:

"1. Cease the appropriation of United States funds for any military activity not authorized by Congress;

"2. Cease engagement in any military activity under the authority of the United Nations or any world body;

"3. Cease the rendering of aid to any activity or engagement under the jurisdiction of the United Nations or any world body; and

"4. Cease any support for the establishment of a "new world order" or to any form of global government.

"That the United States Congress is hereby memorialized to refrain from taking any further steps toward the economic or political merger of the United States into a world body or any form of world government.

"That copies of this resolution be distributed to the Clerk of the United States House of Representatives, the Secretary of the United States Senate, and to each member of the Oklahoma Congressional Delegation."

POM-558. A resolution adopted by the General Assembly of the State of New Jersey; to the Committee on Foreign Relations.

"Whereas, Poland, Hungary, the Czech Republic and Slovakia have renounced Communism and created democratic systems of government based on a free-market economy; and

"Whereas, The economic and political instability in the former Soviet Union threatens the peace of these newly created democracies; and

"Whereas, The strong showing of the militant nationalist movement in the Russian parliamentary elections held in December has raised fears of an aggressive Russian expansion which victimized Eastern European countries in the past; and

"Whereas, The war which rages in the former Yugoslavia has caused untold suffering, and Europeans look to NATO as the best hope of deterring similar conflicts elsewhere; and

"Whereas, President Clinton has rejected isolationism, reaffirmed his commitment to the Atlantic partnership and stated that the best hope for world peace lies in a rebuilt NATO; and

"Whereas, Poland, Hungary, the Czech Republic and Slovakia have all expressed strong interest in joining NATO on an equal basis with the other 16 member nations; and

"Whereas, The emerging democracies among the former Warsaw Pact nations are still in danger of facist and Communist elements; and

"Whereas, President Clinton has proposed the Partnership for Peace—an association where non-members can participate with NATO members in joint military efforts—as an interim stage of membership for all former Warsaw Pact nations, including Russia; and

"Whereas, The former Warsaw Pact nations have earned the right of full NATO membership because of their struggle against Communism and their efforts to build free and democratic nations: Now, therefore, be it

"*Resolved by the General Assembly of the State of New Jersey:*

"1. This House respectfully memorializes the President and Congress of the United States to support the admission of former Warsaw Pact nations into NATO.

"2. A duly authenticated copy of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and every member of Congress elected from this State."

POM-559. A resolution adopted by the General Assembly of the State of New Jersey; to the Committee on Foreign Relations.

"ASSEMBLY RESOLUTION 16

"Whereas, it is clear that the regime of Fidel Castro is coming to an end and it is crucial that the United States maintain relations with the people of Cuba once his oppressive and dictatorial government has fallen; and

"Whereas, the people of Cuba will endure a difficult transition period from Castro's regime to a democratic state and will require humanitarian, developmental and economic assistance; and

"Whereas, in solidarity with the Cuban people, this nation should provide emergency relief assistance to a transition government and long-term assistance to a new democratic government; and

"Whereas, while the United States economic embargo on Cuba is being maintained and strengthened to protest Fidel Castro's consistent disregard for internationally accepted standards of human rights and democratic principles, the embargo should be lifted when the President determines that there exists a democratic government on that island; and

"Whereas, once a democratic government is in power, the United States should enter into negotiations for the return of the naval base at Guantanamo to Cuba or renegotiate the present agreement under mutually agreeable terms; and

"Whereas, the citizens of New Jersey and the United States endorse the right of self-determination of the Cuban people and will aid them in making the transition from dictatorship to democracy: Now, therefore, be it

"*Resolved, by the General Assembly of the State of New Jersey:*

"1. This House memorializes the United States Congress to pass H.R. 2758, the "Free and Independent Cuba Assistance Act of 1993."

"2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President of the United States Senate, the Speaker of the Home of Representatives and every member of Congress elected from this State."

POM-560. A resolution adopted by the Board of Supervisors of Culpeper County, VA relative to language; to the Committee on Governmental Affairs.

POM-561. A resolution adopted by the Legislature of Rockland County, NY, relative to Federal mandates; to the Committee on Governmental Affairs.

POM-562. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Governmental Affairs:

"HOUSE JOINT RESOLUTION 94-1035

"Whereas, the 10th Amendment to the Constitution of the United States reads as follows:

"'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'"; and

"Whereas, the 10th Amendment defines the total scope of federal power as being that specifically granted by the United States Constitution and no more; and

"Whereas, the scope of power defined by the 10th Amendment means that the federal government was created by the states specifically to be an agent of the states; and

"Whereas, today, in 1994, the states are demonstrably treated as agents of the federal government; and

"Whereas, numerous resolutions have been forwarded to the federal government by the Colorado General Assembly without any response or result from Congress or the federal government; and

"Whereas, many federal mandates are directly in violation of the 10th Amendment to the Constitution of the United States; and

"Whereas, the United States Supreme Court has ruled in *New York* v. *United States*, 112 S. Ct. 2408 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states; and

"Whereas, a number of proposals from previous administrations and some now pending from the present administration and from Congress may further violate the United States Constitution: Now, therefore, be it

"*Resolved by the House of Representatives of the Fifty-ninth General Assembly of the State of Colorado, the Senate concurring herein:*

"(1) That the State of Colorado hereby claims sovereignty under the 10th Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the United States Constitution.

"(2) That this serve as Notice and Demand to the federal government, as our agent, to cease and desist, effective immediately, mandates that are beyond the scope of its constitutionally delegated powers; and be it further

"*Resolved*, That copies of this Resolution be sent to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the Speaker of the House and the President of the Senate of each state's legislature of the United States of America, and Colorado's Congressional delegation."

POM-563. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Governmental Affairs.

"HOUSE JOINT RESOLUTION 94-1027

"Whereas, the Constitution of the United States envisions sovereign states and guarantees the states a republican form of government in which decisions are made by the elected representatives of the people; and

"Whereas, the state and local governments in Colorado are losing their power to act on behalf of their citizens, as the power of government is moving farther away from the people into the hands of federal agencies and officials who are not elected and who are unaware of the needs and concerns of Colorado and other states; and

"Whereas, with increasing and alarming frequency important decisions affecting the lives of Colorado citizens are being made by the federal government in the form of both funded and unfunded federal mandates imposed on the states; and

"Whereas, Congress fails to provide adequate means to implement many of the federal mandates directed to the states which places state governments in a vice that threatens to squeeze state resources beyond their limits; and

"Whereas, imposition of unfunded federal mandates requires states to fund the federal requirements with diminishing state revenues or jeopardize their eligibility for certain federal funds; and

"Whereas, the states and Congress should engage in earnest discussions to resolve the difficult position that states are forced into by their efforts to comply with the growing number of unfunded federal mandates, because this trend could eliminate state flexibility to effectively deal with local problems as limited state resources are diverted to funding federally mandated programs; and

"Whereas, federal mandates threaten the fiscal integrity of the states and their right of self-determination; and

"Whereas, the United States Advisory Commission on Intergovernmental Relations recommended in a July 1993 report that "the federal government institute a moratorium on mandates for at least two years and conduct a review of mandating to restore balance, partnership, and state and local self-government in the federal system" and that the "Supreme Court reexamine the constitutionality of mandating as a principle"; and

"Whereas, numerous federal laws impose mandates on the state of Colorado, including, but not limited to the following: Asbestos School Hazard Abatement Act; Family and Medical Leave Act; Safe Drinking Water Act; Clean Air Act; Americans with Disabilities Act; National Voter Registration Act; Title XIX of the federal "Social Security Act"; and Water Pollution Control Act; and

"Whereas, the members of the Colorado General Assembly want the members of the Colorado congressional delegation to fully understand the impact the actions of the federal government have on the state of Colorado, especially the difficulties imposed on the General Assembly in its effort to allocate resources to a large number of pressing state needs; and

"Whereas, the federal court system affords a means to liberate the states from the grip of federal mandates and to give the power to govern back to the people: Now, therefore, be it

"*Resolved by the House of Representatives of the Fifty-ninth General Assembly of the State of Colorado, the Senate concurring herein:* That legal action challenging the constitutionality of both funded and unfunded federal mandates, the court rulings that hinder state management of state issues, and the authority of the federal government to mandate state action is necessary to restore, maintain, and advance the state of Colorado's sovereignty and authority over issues that affect Colorado and the well-being of its citizens' and be it further

"*Resolved*, That the Colorado Attorney General examine and challenge by legal action, in the name of and on behalf of the state of Colorado, federal mandates, court rulings, the authority granted to or assumed by the federal government, and laws, regulations and practices of the federal government to the extent they infringe on the state of Colorado's sovereignty or authority over issues affecting its citizens; and be it further

"*Resolved*, That all of the states are urged to participate in any legal action brought pursuant to this joint resolution and that the Colorado Attorney General shall request and encourage such participation and shall cooperate with other states in any legal action that includes issues of joint concern; and be it further

"*Resolved*, That copies of this joint resolution be sent to the Attorney General and presiding officers of both houses of the legislatures of each of the states in the United States, the President of the United States, the Clerk of the United States House of Representative, the Secretary of the United States Senate, and to each member of the Colorado Congressional Delegation."

POM-564. A concurrent resolution adopted by the Senate of the Legislature of the State of Hawaii; to the Committee on Governmental Affairs.

"SENATE CONCURRENT RESOLUTION

"Whereas, federal mandates imposed on state and local governments have increased greatly over the past several decades; and

"Whereas, federal statutes and administrative regulations for federal mandates impose substantial costs to the states and counties; and

"Whereas, at the same time that federal mandates have increased, federal funding for joint federal-state programs has sharply decreased; and

"Whereas, federal budgetary difficulties may promote more federal mandates on the states and counties for what are actually federal programs; and

"Whereas, state and local governments are already strained in their budgets, particularly in the costs of meeting the federal mandates; and

"Whereas, the 1990 federal budget agreement imposed almost $14 billion in mandated costs over the next five years to state and local governments; and

"Whereas, any further federal mandates would seriously jeopardize the financial well-being of the states and counties: Now, therefore, be it

"*Resolved by the Senate of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1994, the House of Representatives concurring, that the:*

"(1) Congressional Budget Office is requested to continue its efforts to provide Congress with appropriate state fiscal impact statements on federal mandate legislation that affects the states and counties;

"(2) Congress is urged to enact legislation to require federal reimbursement to state and local governments for costs imposed upon them by federal mandates;

"(3) Office of Management and Budget is requested to formulate a comprehensive catalogue of federal mandates currently imposed on state and local governments; and be it further

"*Resolved*, That the Attorney General of the State of Hawaii determine if a basis exists for a cause of action against the federal

government where federal mandates imposed without funding threaten to adversely impact the state and budget and economy; and be it further

"*Resolved*, That the Attorney General submit a report on findings and recommendations to the Legislature by September 1, 1994; and be it further

"*Resolved*, That certified copies of this Concurrent Resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives of the United States, the Office of Management and Budget, the Congressional Budget Office, members of Hawaii's Congressional Delegation, the Governor of Hawaii, the Attorney General of Hawaii, and the Mayor and Council Chair of each county."

POM-565. A concurrent resolution adopted by the Senate of the Legislature of the State of Hawaii; to the Committee on Governmental Affairs.

"SENATE CONCURRENT RESOLUTION

"Whereas, the federal government is charged with protecting the health and safety, as well as promoting other national interests of the American people; and

"Whereas, although the federal government is charged with such responsibilities, in recent years it has saddled states with the responsibility to comply with a myriad of federal mandates, many of which lack federal funding to effectively carry them out; and

"Whereas, the cumulative effect of unfunded federal mandates has increasingly strained the budgets of state, local, and tribal governments; and

"Whereas, additionally, the cost, complexity, and delay in applying for and receiving waivers from federal requirements in appropriate cases have hindered state, local, and tribal governments from tailoring federal programs to meet the specific needs of their communities; and

"Whereas, these governments should have more flexibility to design solutions to the problems faced by citizens in this country without excessive micromanagement and unnecessary regulation from the federal government; and

"Whereas, in an Executive Order issued on October 26, 1993, President William Clinton called for the reduction of unfunded federal mandates, the streamlining of the application process to obtain waivers from federal requirements, and the proliferation of meaningful collaboration and consultation with state, local, and tribal governments on federal matters that have significant effect upon their communities; and

"Whereas, in a letter to the Honolulu Advertiser, Governor John Waihee stated that the cost factor associated with complying with federal mandates will cost the State of Hawaii $377 million or approximately twelve percent of the 1994 state budget; and

"Whereas, fiscal responsibility by the federal government is necessary to restore the economy; and

"Whereas, the Tenth Amendment to the United States Constitution states that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people;" and

"Whereas, increasingly, the federal government has pre-empted powers constitutionally reserved to state and local governments by the Tenth Amendment; and

"Whereas, clearly, there is an immediate need and potential authority for the states to curtail the imposition of unfunded federal mandates; and

"Whereas, the Phoenix Project/Committee of 50 States is a nationwide organization dedicated to the preservation of the fundamental precepts of the United States Constitution: Now, therefore, be it

"*Resolved by the Senate of the Seventeenth Legislature of the State of Hawaii, Regular Session of 1994, the House of Representatives concurring*, That the United States government honor the language, spirit, and intent of the Tenth Amendment of the United States Constitution by ceasing the usurpation of state powers; and be it further

"*Resolved*, That the United States government is urged to cease further pre-emption of state and local powers derived from the Tenth Amendment of the United States Constitution; and be it further

"*Resolved*, That all compulsory federal legislation which directs states to comply under threat of civil or criminal penalties or sanctions or requires states to pass legislation or lose federal funding be prohibited; and be it further

"*Resolved*, That the National Conference of State Legislatures and the Council of State Governments are requested to investigate methods by which the imposition of unfunded federal mandates could be prevented as well as developing proposals to ensure the further protection of the rights of states; and be it further

"*Resolved*, That in developing these solutions, the National Conference of State Legislatures and the Council of State Governments shall study the possibility of including proposals made by the Phoenix Project/Committee of 50 States if appropriate; and be it further

"*Resolved*, That certified copies of this Concurrent Resolution be transmitted to the Governor of each state, the Director of the National Conference of State Legislatures, the Director of the Council of State Governments, the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and to Hawaii's Congressional Delegation."

POM-566. A resolution adopted by the Legislature of the State of New Hampshire; to the Committee on Governmental Affairs.

"HOUSE JOINT RESOLUTION 22

"Whereas, the Congress continues to mandate and assign additional programs and responsibilities to the States and political subdivisions within such States; and

"Whereas, the Congress does not provide the funding for such programs and responsibilities; and

"Whereas, the States and political subdivisions of such States do not have the funds, or in poor economic times, the ability to raise such funds; and

"Whereas, in 1984 the voters in the State of New Hampshire amended their State constitution to provide that the State shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the State or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision; and

"Whereas, we believe fiscal responsibility by the Federal government is necessary to restore the United States economy: Now, therefore, be it

"*Resolved by the Senate and House of Representatives in General Court convened*, That the State of New Hampshire urges the Congress of the United States to pass the Federal Mandates Relief Act of 1993 to provide for Federal payments for Federal mandates imposed upon state and local governments; and

"That copies of this resolution be sent by the House clerk to the President of the United States, to the Vice-President of the United States, to the Speaker of the United States House of Representatives, and to the New Hampshire members of both Houses of Congress."

POM-567. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Governmental Affairs.

"JOINT RESOLUTION

"Whereas, the Federal Government has mandated new programs and transferred the responsibility of funding these programs to the several states and their political subdivisions; and

"Whereas, the Federal Government has also reduced or eliminated funding for certain programs administered at the state or local government level; and

"Whereas, the several states and their political subdivisions, as a result of economic recession and the substantial costs of these programs, are experiencing severe revenue shortfalls and budget imbalances, which are further exacerbated by the need to fund these unfunded federal mandates; and

"Whereas, the several states, unlike the Federal Government, are required by their constitutions to balance their budgets, which further reduces their ability to absorb unfunded federal mandates; and

"Whereas, the State of Maine, recognizing the inequity of passing unfunded mandates on to its political subdivisions, amended its Constitution in November of 1992 to prohibit state legislation or state administrative rules that require additional local government expenditures unless the Maine State Legislature funds those mandates; and

"Whereas, the federal practice of deferring program costs to the states is inherently unfair because many states, such as Maine, lack the resources to fund these programs; and

"Whereas, the Brady Handgun Violence Prevention Act, enacted recently by the United States Congress and effective on February 28, 1994, although laudable in its goals, represents yet another unfunded federal mandate that is leading the State of Maine and its municipalities to incur new expenses related to conducting criminal background checks: Now, therefore, be it

"*Resolved*, That We, your Memorialists, respectfully recommend that the Attorney General of the State of Maine initiate a lawsuit as soon as possible that specifically challenges the continuing practice of enacting unfunded federal mandates as evidenced by the Brady Handgun Violence Prevention Act; and be it further

"*Resolved*, That the Attorney General of the State of Maine, to the extent possible, work in concert with any other state that is filing or is contemplating the filing of a similar lawsuit; and be it further

"*Resolved*, That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, to the Attorney General of the State of Maine and

to each Member of the Maine Congressional Delegation."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD, from the Committee on Appropriations, with amendments:

H.R. 4602. A bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1995, and for other purposes (Rept. No. 103-294).

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. LAUTENBERG (for himself and Mr. HARKIN):

S. 2245. A bill to provide additional methods of recovering costs to the Federal Government health care programs attributable to tobacco related illnesses and diseases, and for other purposes; to the Committee on Finance.

By Mr. DORGAN:

S. 2246. A bill to require the Secretary of the Treasury to include organ donation information with individual income tax refund payments; to the Committee on Finance.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 205. A joint resolution granting the consent of Congress to the compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, MD, and Mineral County, WV, entered into between the States of West Virginia and Maryland; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MOYNIHAN (for himself, Mr. PELL, Mr. SIMON, Mr. D'AMATO, Mr. KENNEDY, Mr. HELMS, and Mr. PRESSLER):

S. Res. 234. A resolution expressing the sense of the Senate concerning the fifth year of imprisonment of Daw Aung San Suu Kyi by Burma's military dictatorship, and for other purposes; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself and Mr. HARKIN):

S. 2245. A bill to provide additional methods of recovering costs to the Federal Government health care programs attributable to tobacco-related illnesses and diseases, and for other purposes; to the Committee on Finance.

MEDICARE AND MEDICAID THIRD PARTY LIABILITY ACT OF 1994

• Mr. LAUTENBERG. Mr. President, the American taxpayers are sitting on a fiscal time bomb right now—it is ticking loudly and will soon explode.

The time bomb is tobacco-related illnesses. The Columbia University Center on Addiction and Substance Abuse—also known as CASA—has estimated that tobacco-related illnesses will cost the Medicare Program $800 billion over the next 20 years. Do you know who is going to pick up the tab for this? The American taxpayers.

CASA estimates that tobacco-related illnesses cost Medicare $16 billion and Medicaid $3 billion per year. But these are conservative estimates because they only cover inpatient hospital costs. CASA believes that these costs will only grow in the next 20 years, when more and more lifetime smokers become eligible for Medicare as they retire.

This is an enormous bill that the American taxpayers will have to pay for. At the same time, the tobacco companies will continue to make large profits.

This presents the Federal Government with a stark choice.

Should American taxpayers pay the bill?

Or should the tobacco companies pay their fair share?

Currently, Medicare and Medicaid are funded by a portion of the Social Security payroll tax and by general tax revenues. The taxpayers are paying their share. There is also a tobacco tax—which hopefully will be increased substantially to pay for health care reform—that means smokers pay their share. Everyone pays for costs of tobacco use except the tobacco companies. This is unfair.

That is why I am introducing the Medicare and Medicaid Third Party Liability Act along with Senator HARKIN. This legislation is modeled after a similar Florida law that was recently enacted.

This bill will do the following:

Allow the Federal Government to sue the tobacco companies to recoup Medicare, Medicaid, VA, and other health expenditures for tobacco-related illnesses;

Let the Federal Government sue the tobacco companies using statistics on the health care costs of tobacco use; and

Allow the Federal Government to obtain awards from the tobacco companies based on each company's share of the U.S. market.

If the Federal Government is successful in collecting Medicaid expenses, it will return the appropriate portion of these funds to each State.

This legislation, by itself, does not compel the tobacco companies to pay any specified amount. It simply lets the Federal Government file a sort of class action suit—on behalf of the taxpayers—to help pay the health care costs of tobacco use. In order for the Government to receive payment, it must win its case in Federal Court under the normal rules of civil procedure.

The tobacco companies say we are picking on them. They complain we should look at other products like alcohol, caffeine, or foods that contain saturated fats. But tobacco is different. It is the only product that when used as intended causes illness and death.

Every day we read more stories about how the tobacco companies have known for many years that their product was dangerous—but they chose to hide their findings from the public. In addition, as the FDA Commissioner stated 3 days ago at a House hearing, the tobacco companies manipulate the nicotine in cigarettes to addict smokers.

Given this track record of deception and misinformation, why should we let the tobacco companies off the hook for all the health care costs that their products create? Why should the taxpayers be solely liable for these costs?

Today, we are scheduled to take up a product liability bill that would seek to limit liability for manufactured products. It is our intention to offer this legislation as an amendment to that bill—to limit the taxpayers' liability—so that we are not asked to pay for all of the billions of dollars in Medicare and Medicaid bills that are coming our way.

It's time for the U.S. taxpayers to get their money back—And make the tobacco companies pay their fair share.

Mr. President, I ask unanimous consent that this legislation be printed in the RECORD.

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

S. 2245

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 "Medicare and Medicaid Third Party Liability Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) illnesses and diseases that result from the use of tobacco products cost Federal Government health care programs billions of dollars, including at least $16,000,000,000 in the medicare program and $3,000,000,000 in the medicaid program for inpatient hospital services in fiscal year 1994;

(2) over the next 20 years, such illnesses and diseases will cost the medicare trust funds at least $800,000,000,000;

(3) in April 1994, the trustees of the medicare trust funds concluded that such funds may be insolvent in 7 years, with $128,000,000,000 of expenditures due to such illnesses and diseases;

(4) recent discoveries, including documents, patents and patent applications, and testimony, have shown that—

(A) the tobacco industry has known for years that the nicotine in cigarettes is addictive,

(B) the industry has attempted both to conceal this information from the public and the Government and to manipulate the amount of nicotine in cigarettes, and

(C) it is possible to manufacture cigarettes which are far less dangerous to consumers;

(5) more than 36 percent of medicare recipients are former smokers and 20 percent are current smokers;

(6) approximately 43 percent of medicaid recipients smoke, compared to 26 percent of the general public; and

(7) the medicare population is much more at risk of contacting illnesses and diseases that result from the use of tobacco products than younger smokers, because such population has smoked longer;

(8) legal scholars and courts are increasingly agreeing that it is appropriate to use statistical evidence to prove causation; and

(9) in view of the large number of Americans killed, disabled, or otherwise injured each year as a result of smoking cigarettes, the addictiveness of the nicotine in cigarettes, and the absence of any significant benefits to society from smoking, cigarettes are an unreasonably dangerous product and cigarette manufacturers are engaged in abnormally dangerous activities.

(b) PURPOSE.—The purpose of this Act is to allow the American taxpayers to recoup billions of dollars in Federal Government health care funds spent on tobacco related illnesses and diseases.

SEC. 3. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties) that manufacture tobacco products. The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the Medicare Program under title XVIII of the Social Security Act;

(B) the Medicaid Program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purpose of this Act to the greatest extend possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of a tobacco product, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under tile XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.•

• Mr. HARKIN. Mr. President, I support the Medicare and Medicaid Third Party Liability Act that has been introduced by the Senator from New Jersey [Mr. LAUTENBERG]. This legislation will allow taxpayers to recover Medicare, Medicaid, and other Federal health program costs associated with tobacco related illnesses. For too long the tobacco companies have been raking in profits while the American taxpayers have been coughing up billions in health care costs attributable to tobacco related illness.

A 1993 report by the Office of Technology Assessment indicates that tobacco related illnesses cost taxpayers approximately $68 billion in 1990—this includes $20.8 billion in direct costs, $6.9 billion in indirect morbidity costs, and $40.3 billion in indirect mortality costs.

The Medicare share of these costs total $16 billion per year for inpatient care alone. The Medicaid share of these costs total $3 billion per year—again this is $3 billion in inpatient costs alone.

The Columbia University Center on Addiction and Substance Abuse has estimated that tobacco related illnesses will cost the Medicare Program $800 billion over the next 20 years. At that rate, Medicare will go bankrupt.

The American people are footing the health care bill for a product—that when used as intended—causes disease, disability, and death. It is unconscionable that the tobacco industry has profited while the taxpayer has been left with the devastating and widespread costs associated with tobacco use.

Almost all of the health care reform bills before Congress call for an increase in the tobacco tax. I applaud this and am hopeful that Congress will hold the line and keep the tax high enough to discourage smoking—particularly among our young people.

At a time when Congress is about to ask smokers to pay more for tobacco products it also seems appropriate to ask tobacco companies to pay for the costs their products impose on Medicare and Medicaid as well as other Federal programs.

We are asking smokers to pay. Is it so much to ask the tobacco industry to turn some of their enormous profits over to treating and curing the disease and disability their products bring on?

The Medicare and Medicaid Third Party Liability Act would allow the Federal Government to sue for Medicare and Medicaid costs, as well as other Federal health program costs, associated with tobacco-related illnesses in one proceeding—much like a class action suit—instead of suing for the costs associated with the tobacco-related illness of each individual recipient or beneficiary.

Under this legislation the Attorney General could use statistical analysis and epidemiological evidence to determine the costs that smoking-related illness impose on Federal health programs.

This legislation by itself would not compel tobacco companies to pay any specific amount. The Federal Government would file suit on behalf of the taxpayers and would have to argue and win its case in Federal court.

Certainly this legislation will be criticized by the tobacco industry. I expect them to argue that the legal principles established by the legislation could easily be extended to other industries like beef, sugar, pharmaceuticals, and automobiles. The legislation that we are introducing today is clearly limited to tobacco—a product unlike any other product on the market. Tobacco is the only product on the market today that when used as intended causes death, disease, and disability. It is a product that deserves to be singled out and treated differently.

In addition, the tobacco industry is an industry that deserves to be singled out. It is an industry that has known about the dangers of its product for years and has consistently acted to hide this fact from the public. The House has held hearings over the last few days that indicate that the tobacco companies have been manipulating the nicotine levels in cigarettes in order to get people permanently hooked on

their product—an action that drives up Federal health care costs and robs taxpayers. We need to act now to protect the American taxpayer.●

By Mr. DORGAN:

S. 2246. A bill to require the Secretary of the Treasury to include organ donation information with individual income tax refund payments; to the Committee on Finance.

ORGAN DONATION INSERT CARD ACT

Mr. DORGAN. Mr. President, I rise today to introduce legislation that proposes a cost-effective public education campaign to encourage organ donation. The Organ Donation Insert Card Act, introduced in the House by my good friend Representative RICHARD DURBIN, would direct the Treasury Department to enclose organ donation information when it mails next year's Federal income tax refund checks.

THE SHORTAGE OF ORGAN DONORS

The most common tragedy in organ transplantation is not the patient who receives a transplant but dies, but the patient who has to wait too long for an organ and dies before a suitable organ can be found. The number of people who need an organ transplant greatly exceeds the number of available organs, and waiting lists are growing.

In 1990, 20,000 people were on organ donor waiting lists. In less than 3 years, that has jumped to more than 31,000, and a new name is added every 20 minutes. Meanwhile, 2,500 people on waiting lists die each year because their bodies simply cannot wait any longer for the needed transplant. The list also includes more than 23,000 people who must survive on kidney dialysis while they wait.

Organ transplants only happen because a grieving family authorizes the transplanting of their loved one's organs. It can be difficult to cope with death, particularly when someone dies unexpectedly. But something good can come from this tragedy. Organ donation can give another person a new chance at life. In fact, an organ donor often can give several other human beings a new chance at life, because doctors now can transplant about 25 different types of organs and tissues.

It is particularly frustrating that we lose so many opportunities to use healthy organs—and many on the waiting list die—because no one authorizes donation of the organs.

While 4,500 donors supply more than 16,000 transplants each year, this represents only about one-third of the potential donors. Other potentially lifesaving transplants never occur because people hesitate to authorize organ donation for themselves or for a family member.

THE ORGAN DONATION INSERT CARD PROPOSAL

Mr. President, my legislation would direct the Secretary of the Treasury to enclose with each income tax refund check mailed next year information that encourages organ donation. The information would include a detachable organ-donor card. It would also include a message urging recipients to sign the card; tell their family they are willing to be an organ donor, and encourage their family members to request or authorize organ donation when appropriate.

The weak link in our Nation's organ donation efforts is the link to the family. A Gallup Poll found that more than 90 percent of the public would authorize organ donation for a loved one who had expressed that wish before death, but less than half would consent to the donation if the discussion had not occurred. According to the poll, less than half of the public have told their families of their wishes regarding organ donation.

As the poll indicates, organ donation won't happen unless the family authorizes it, regardless of whether a potential donor signed a donor card or checked a box on a driver's license. This means it's essential for people who wish to donate organs to tell their family about their wishes. If their family members can recall that a loved one talked to them about the matter, they are more likely to authorize the donation.

The Treasury Department has said that enclosing information with every income tax refund would reach about 70 million households. They indicated that the enclosure would cost approximately $210,000.

The population that would receive these cards is very appropriate for the organ donation appeal. For most transplants, the optimum age range for organ donors is 15 to 65. Individuals receiving income tax refunds tend to fit this demographic. They often are next-of-kin of others in the prime age range for organ donation. Therefore, this appeal will reach a very appropriate group in a highly cost-effective way.

Furthermore, enclosing this appeal with IRS refund checks will not pose a logistical problem or burden the Treasury Department. Tax refund checks frequently are accompanied by an insert with a public service message, such as the 1994 offer for World Cup commemorative coins. In past years, enclosures have advertised similar appeals, such as a "Bill of Rights" coin, a Mount Rushmore anniversary coin, and an Eisenhower centennial coin.

POSITIVE REACTIONS

The medical and transplant recipient communities strongly support this proposal. More than a dozen organizations have endorsed the measure, including the United Network for Organ Sharing, the American Nurses Association, the American Society of Transplant Physicians, the American Society of Transplant Surgeons, the Association of Organ Procurement Organizations, the American Heart Association, the National Kidney Foundation, and the Transplant Recipients International Organization.

By increasing public awareness and encouraging family discussion about organ donation, this legislation would increase the number of donors and reduce the number of people who die while waiting for transplants. I urge my colleagues to support this important 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. 2246

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 "Organ Donation Insert Card Act".

SEC. 2. ORGAN DONATION INFORMATION INCLUDED WITH INCOME TAX REFUND PAYMENTS.

(a) IN GENERAL.—The Secretary of the Treasury shall include with any payment of a refund of individual income tax made during the period beginning on February 1st of the first calendar year beginning more than 4 months after the date of the enactment of this Act and ending on June 30th of such year a copy of the document described in subsection (b).

(b) TEXT OF DOCUMENT.—The Secretary of the Treasury shall, after consultation with the Secretary of Health and Human Services and organizations promoting organ donation, prepare a document suitable for inclusion with individual income tax refund payments which—

(1) encourages organ donation;

(2) includes a detachable organ donor card; and

(3) urges recipients to—

(A) sign and carry the organ donor card;

(B) discuss organ donation with family members and tell family members about the recipient's desire to be an organ donor if the occasion arises; and

(C) encourage family members to request or authorize organ donation if the occasion arises.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 205. A joint resolution granting the consent of Congress to the compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake project lying in Garrett County, MD, and Mineral County, WV, entered into between the States of West Virginia and Maryland; to the Committee on the Judiciary.

JENNINGS RANDOLPH LAKE PROJECT COMPACT

● Mr. SARBANES. Mr. President, today I am introducing legislation together with my colleagues Senators BYRD, ROCKEFELLER, and MIKULSKI to grant congressional consent to a compact entered into between the States of

West Virginia and Maryland, with concurrence of the U.S. Army Corps of Engineers, to provide for joint management and enforcement of laws and regulations pertaining to natural resources and boating at Jennings Randolph Lake.

Jennings Randolph Lake is located on the North Branch of the Potomac River in Garrett County, MD, and Mineral County, WV. Construction of the dam, which created the lake, was authorized by the Flood Control Act of 1962 and the project was specifically designed to improve the water quality of the Potomac River, reduce flood damage, provide water supply, and opportunities for recreation. Completed in 1982, the dame is one of the largest dams east of the Mississippi—approximately 6.6 miles long, with a surface area of 952 acres and a drainage area of 263 square miles. Originally named Bloomington Lake, the project was rededicated in May 1987 in honor of former West Virginia Senator Jennings Randolph.

The lake and surrounding area are extraordinarily beautiful and include some of the most picturesque countryside in the Nation. The lake and the North Branch of the Potomac River below the dam support a recreational trout fishery that is regarded as one of the best in America. Other recreational opportunities including boating, downstream whitewater rafting, hiking, and picnicking are drawing increasing number of visitors to the lake. The Army Corps of Engineers currently operates and maintains five recreation sites at the project and the State of Maryland, in cooperation with the corps, is in the process of developing a boat launch and support facilities on the Maryland side of the project.

Unfortunately, the creation of the lake removed the natural boundary between West Virginia and Maryland and the meandering nature of the former river and the depth of the lake have made it virtually impossible to reestablish the precise location of the boundary. As a consequence, enforcement of natural resources and boating laws regulations on the lake has been tentative at best and at worst, nonexistent. As recreational uses of the lake continue to increase, it is anticipated that enforcement problems will become increasingly difficult.

The compact legislation I am introducing today provides the States of West Virginia and Maryland with concurrent jurisdiction over the project area to enable them to jointly enforce natural resource and boating laws and regulations. This approach eliminates the need to redefine the boundary between the two States for law enforcement purposes. As required before congressional action can be taken, the compact was approved by the respective legislatures of Maryland and West Virginia in their 1993 legislative sessions.

Mr. President, this legislation will address the ongoing problems associated with the management and enforcement of laws and regulations relating to natural resources and boating at the Jennings Randolph Lake project. It has been long awaited by both States and I urge its swift enactment.

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

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

S.J. RES. 205

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL CONSENT.

The Congress hereby consents to the Jennings Randolph Lake Project Compact entered into between the States of West Virginia and Maryland which compact is substantially as follows:

"COMPACT

"Whereas the State of Maryland and the State of West Virginia, with the concurrence of the United States Department of the Army, Corps of Engineers, have approved and desire to enter into a compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, for which they seek the approval of Congress, and which compact is as follows:

"Whereas the signatory parties hereto desire to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, for which they have a joint responsibility; and they declare as follows:

"1. The Congress, under Public Law 87-874, authorized the development of the Jennings Randolph Lake Project for the North Branch of the Potomac River substantially in accordance with House Document Number 469, 87th Congress, 2nd Session for flood control, water supply, water quality, and recreation; and

"2. Section 4 of the Flood Control Act of 1944 (Ch 665, 58 Stat. 534) provides that the Chief of Engineers, under the supervision of the Secretary of War (now Secretary of the Army), is authorized to construct, maintain and operate public park and recreational facilities in reservoir areas under control of such Secretary for the purpose of boating, swimming, bathing, fishing, and other recreational purposes, so long as the same is not inconsistent with the laws for the protection of fish and wildlife of the State(s) in which such area is situated; and

"3. Pursuant to the authorities cited above, the U.S. Army Engineer District (Baltimore), hereinafter 'District', did construct and now maintains and operates the Jennings Randolph Lake Project; and

"4. The National Environmental Policy Act of 1969 (P.L. 91-190) encourages productive and enjoyable harmony between man and his environment, promotes efforts which will stimulate the health and welfare of man, and encourages cooperation with State and local governments to achieve these ends; and

"5. The Fish and Wildlife Coordination Act (16 U.S.C. 661-666c) provides for the consideration and coordination with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation; and

"6. The District has Fisheries and Wildlife Plans as part of the District's project Operational Management Plan; and

"7. In the respective States, the Maryland Department of Natural Resources (hereinafter referred to as 'Maryland DNR') and the West Virginia Division of Natural Resources (hereinafter referred to as 'West Virginia DNR') are responsible for providing a system of control, propagation, management, protection, and regulation of natural resources and boating in Maryland and West Virginia and the enforcement of laws and regulations pertaining to those resources as provided in Annotated Code of Maryland Natural Resources Article and West Virginia Chapter 20, respectively, and the successors thereof; and

"8. The District, the Maryland DNR, and the West Virginia DNR are desirous of conserving, perpetuating and improving fish and wildlife resources and recreational benefits of the Jennings Randolph Lake Project; and

"9. The District and the States of Maryland and West Virginia wish to implement the aforesaid acts and responsibilities through this Compact and they each recognize that consistent enforcement of the natural resources and boating laws and regulations can best be achieved by entering this Compact:

"Now, therefore, be it *Resolved*, That the States of Maryland and West Virginia, with the concurrence of the United States Department of the Army, Corps of Engineers, hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by The Congress of the United States and by the respective state legislatures, to the Jennings Randolph Lake Project Compact, which consists of this preamble and the articles that follow:

"Article I—Name, Findings, and Purpose

"1.1 This compact shall be known and may be cited as the Jennings Randolph Lake Project Compact.

"1.2 The legislative bodies of the respective signatory parties, with the concurrence of the U.S. Army Corps of Engineers, hereby find and declare:

"1. The water resources and project lands of the Jennings Randolph Lake Project are affected with local, state, regional, and national interest, and the planning, conservation, utilization, protection and management of these resources, under appropriate arrangements for inter-governmental cooperation, are public purposes of the respective signatory parties.

"2. The lands and waters of the Jennings Randolph Lake Project are subject to the sovereign rights and responsibilities of the signatory parties, and it is the purpose of this compact that, notwithstanding any boundary between Maryland and West Virginia that preexisted the creation of Jennings Randolph Lake, the parties will have and exercise concurrent jurisdiction over any lands and waters of the Jennings Randolph Lake Project concerning natural resources and boating laws and regulations in the common interest of the people of the region.

"Article II—District Responsibilities

"The District, within the Jennings Randolph Lake Project,

"2.1 Acknowledges that the Maryland DNR and West Virginia DNR have authorities and

responsibilities in the establishment, administration and enforcement of the natural resources and boating laws and regulations applicable to this project, provided that the laws and regulations promulgated by the States support and implement, where applicable, the intent of the Rules and Regulations Governing Public Use of Water Resources Development Projects administered by the Chief of Engineers in Title 36, Chapter RI, Part 327, Code of Federal Regulations,

"2.2 Agrees to practice those forms of resource management as determined jointly by the District, Maryland DNR and West Virginia DNR to be beneficial to natural resources and which will enhance public recreational opportunities compatible with other authorized purposes of the project,

"2.3 Agrees to consult with the Maryland DNR and West Virginia DNR prior to the issuance of any permits for activities or special events which would include, but not necessarily be limited to: fishing tournaments, training exercises, regattas, marine parades, placement of ski ramps, slalom water ski courses and the establishment of private markers and/or lighting. All such permits issued by the District will require the permittee to comply with all State laws and regulations,

"2.4 Agrees to consult with the Maryland DNR and West Virginia DNR regarding any recommendations for regulations affecting natural resources, including, but not limited to, hunting, trapping, fishing or boating at the Jennings Randolph Lake Project which the District believes might be desirable for reasons of public safety, administration of public use and enjoyment,

"2.5 Agrees to consult with the Maryland DNR and West Virginia DNR relative to the marking of the lake with buoys, aids to navigation, regulatory markers and establishing and posting of speed limits, no wake zones, restricted or other control areas and to provide, install and maintain such buoys, aids to navigation and regulatory markers as are necessary for the implementation of the District's Operational Management Plan. All buoys, aids to navigation and regulatory markers to be used shall be marked in conformance with the Uniform State Waterway Marking System,

"2.6 Agrees to allow hunting, trapping, boating and fishing by the public in accordance with the laws and regulations relating to the Jennings Randolph Lake Project,

"2.7 Agrees to provide, install and maintain public ramps, parking areas, courtesy docks, etc., as provided for by the approved Corps of Engineers Master Plan, and

"2.8 Agrees to notify the Maryland DNR and the West Virginia DNR of each reservoir drawdown prior thereto excepting drawdown for the reestablishment of normal lake levels following flood control operations and drawdown resulting from routine water control management operations described in the reservoir regulation manual including releases requested by water supply owners and normal water quality releases. In case of emergency releases or emergency flow curtailments, telephone or oral notification will be provided. The District reserves the right, following issuance of the above notice, to make operational and other tests which may be necessary to insure the safe and efficient operation of the dam, for inspection and maintenance purposes, and for the gathering of water quality data both within the impoundment and in the Potomac River downstream from the dam.

"Article III—State Responsibilities

"The State of Maryland and the State of West Virginia agree:

"3.1 That each State will have and exercise concurrent jurisdiction with the District and the other State for the purpose of enforcing the civil and criminal laws of the respective States pertaining to natural resources and boating laws and regulations over any lands and waters of the Jennings Randolph Lake Project;

"3.2 That existing natural resources and boating laws and regulations already in effect in each State shall remain in force on the Jennings Randolph Lake Project until either State amends, modifies or rescinds its laws and regulations;

"3.3 That the Agreement for Fishing Privileges dated June 24, 1985 between the State of Maryland and the State of West Virginia, as amended, remains in full force and effect;

"3.4 To enforce the natural resources and boating laws and regulations applicable to the Jennings Randolph Lake Project;

"3.5 To supply the District with the name, address and telephone number of the person(s) to be contacted when any drawdown except those resulting from normal regulation procedures occurs;

"3.6 To inform the Reservoir Manager of all emergencies or unusual activities occurring on the Jennings Randolph Lake Project;

"3.7 To provide training to District employees in order to familiarize them with natural resources and boating laws and regulations as they apply to the Jennings Randolph Lake Project; and

"3.8 To recognize that the District and other Federal Agencies have the right and responsibility to enforce, within the boundaries of the Jennings Randolph Lake Project, all applicable Federal laws, rules and regulations so as to provide the public with safe and healthful recreational opportunities and to provide protection to all federal property within the project.

"Article IV—Mutual Cooperation

"4.1 Pursuant to the aims and purposes of this Compact, the State of Maryland, the State of West Virginia and the District mutually agree that representatives of their natural resource management and enforcement agencies will cooperate to further the purposes of this Compact. This cooperation includes, but is not limited to, the following:

"4.2 Meeting jointly at least once annually, and providing for other meetings as deemed necessary for discussion of matters relating to the management of natural resources and visitor use on lands and waters within the Jennings Randolph Lake Project;

"4.3 Evaluating natural resources and boating, to develop natural resources and boating management plans and to initiate and carry out management programs;

"4.4 Encouraging the dissemination of joint publications, press releases or other public information and the interchange between parties of all pertinent agency policies and objectives for the use and perpetuation of natural resources of the Jennings Randolph Lake Project; and

"4.5 Entering into working arrangements as occasion demands for the use of lands, waters, construction and use of buildings and other facilities at the project.

"Article V—General Provisions

"5.1 Each and every provision of this Compact is subject to the laws of the States of Maryland and West Virginia and the laws of the United States, and the delegated authority in each instance.

"5.2 The enforcement and applicability of natural resources and boating laws and regulations referenced in this Compact shall be limited to the lands and waters of the Jennings Randolph Lake Project, including but not limited to the prevailing reciprocal fishing laws and regulations between the States of Maryland and West Virginia.

"5.3 Nothing in this Compact shall be construed as obligating any party hereto to the expenditure of funds or the future payment of money in excess of appropriations authorized by law.

"5.4 The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision of the Jennings Randolph Lake Project Compact is declared to be unconstitutional or inapplicable to any signatory party or agency of any party, the constitutionality and applicability of the Compact shall not be otherwise affected as to any provision, party, or agency. It is the legislative intent that the provisions of the Compact be reasonably and liberally construed to effectuate the stated purposes of the Compact.

"5.5 No member of or delegate to Congress, or signatory shall be admitted to any share or part of this Compact, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

"5.6 When this Compact has been ratified by the legislature of each respective State, when the Governor of West Virginia and the Governor of Maryland have executed this Compact on behalf of their respective States and have caused a verified copy thereof to be filed with the Secretary of State of each respective State, when the Baltimore District of the U.S. Army Corps of Engineers has executed its concurrence with this Compact, and when this Compact has been consented to by the Congress of the United States, then this Compact shall become operative and effective.

"5.7 Either State may, by legislative act, after one year's written notice to the other, withdraw from this Compact. The U.S. Army Corps of Engineers may withdraw its concurrence with this Compact upon one year's written notice from the Baltimore District Engineer to the Governor of each State.

"5.8 This Compact may be amended from time to time. Each proposed amendment shall be presented in resolution form to the Governor of each State and the Baltimore District Engineer of the U.S. Army Corps of Engineers. An amendment to this Compact shall become effective only after it has been ratified by the legislatures of both signatory States and concurred in by the U.S. Army Corps of Engineers, Baltimore District. Amendments shall become effective thirty days after the date of the last concurrence or ratification.".

SEC. 2. The right to alter, amend or repeal this joint resolution is hereby expressly reserved. The consent granted by this joint resolution shall not be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of the compact.●

ADDITIONAL COSPONSORS

S. 266

At the request of Mr. SIMON, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 266, a bill to provide for elementary and secondary school library media resources, technology enhancement, training and improvement.

S. 277

At the request of Mr. SIMON, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 277, a bill to authorize the establishment of the National African American Museum within the Smithsonian Institution.

S. 359

At the request of Mr. DECONCINI, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 359, a bill to require the Secretary of Treasury to mint coins in commemoration of the National Law Enforcement Officers Memorial, and for other purposes.

S. 426

At the request of Mr. SHELBY, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 426, a bill to amend title 4, United States Code, to declare English as the official language of the Government of the United States.

S. 1063

At the request of Mr. HATCH, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 1063, a bill to amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of a qualified football coaches plan.

S. 1680

At the request of Mr. LAUTENBERG, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1680, a bill to amend the Toxic Substances Control Act to protect the public from health hazards caused by exposure to environmental tobacco smoke, and for other purposes.

S. 2009

At the request of Mr. HARKIN, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 2009, a bill to amend title IV of the Social Security Act by reforming the Aid to Families with Dependent Children Program, and for other purposes.

S. 2090

At the request of Mr. WOFFORD, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 2090, a bill to provide negotiating authority for a trade agreement with Chile, but to apply fast track procedures only to such an agreement that contains certain provisions relating to worker rights and the environment.

S. 2111

At the request of Mr. BREAUX, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 2111, a bill to foster further developmemt of the Nation's telecommunications infrastructure and protection of the public interest, and for other purposes.

S. 2127

At the request of Mr. DANFORTH, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 2127, a bill to improve railroad safety at grade crossings, and for other purposes.

S. 2183

At the request of Mr. ROBB, the names of the Senator from Hawaii [Mr. INOUYE], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 2183, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the signing of the World War II peace accords on September 2, 1945.

S. 2227

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 2227, a bill to amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation of municipal solid waste, and for other purposes.

SENATE JOINT RESOLUTION 165

At the request of Mr. COCHRAN, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Joint Resolution 165, a joint resolution to designate the month of September 1994 as "National Sewing Month."

SENATE JOINT RESOLUTION 185

At the request of Mr. PELL, the names of the Senator from Montana [Mr. BAUCUS], the Senator from Ohio [Mr. GLENN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from South Dakota [Mr. PRESSLER], the Senator from Delaware [Mr. ROTH], the Senator from Ohio [Mr. METZENBAUM], the Senator from South Dakota [Mr. DASCHLE], the Senator from Georgia [Mr. COVERDELL], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of Senate Joint Resolution 185, a joint resolution to designate October 1994 as "National Breast Cancer Awareness Month."

SENATE JOINT RESOLUTION 193

At the request of Mr. LAUTENBERG, the names of the Senator from Colorado [Mr. BROWN], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of Senate Joint Resolution 193, a joint resolution to designate May 1995 "Multiple Sclerosis Association of America Month."

SENATE JOINT RESOLUTION 198

At the request of Mr. PRYOR, the names of the Senator from Arizona [Mr. MCCAIN], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Joint Resolution 198, a joint resolution designating 1995 as the "Year of the Grandparent."

SENATE CONCURRENT RESOLUTION 69

At the request of Mr. METZENBAUM, the names of the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of Senate Concurrent Resolution 69, a concurrent resolution expressing the sense of the Congress that any legislation that is enacted to provide for national health care reform should provide for compensation for poison control center services, and that a commission should be established to study the delivery and funding for poison control services.

AMENDMENT NO. 1895

At the request of Mr. DORGAN the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Michigan [Mr. RIEGLE], the Senator from California [Mrs. FEINSTEIN], and the Senator from Virginia [Mr. ROBB] were added as cosponsors of Amendment No. 1895 proposed to S. 687, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

AMENDMENT NO. 1931

At the request of Mr. WARNER the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Amendment No. 1931 intended to be proposed to S. 2182, an original bill to authorize appropriations for fiscal year 1995 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

SENATE RESOLUTION 234—EXPRESSING THE SENSE OF THE SENATE CONCERNING THE FIFTH YEAR OF IMPRISONMENT OF DAW AUNG SAN SUU KYI BY BURMA'S MILITARY DICTATORSHIP

Mr. MOYNIHAN (for himself, Mr. PELL, Mr. SIMON, Mr. D'AMATO, Mr. KENNEDY, Mr. HELMS, and Mr. PRESSLER) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 234

Whereas on July 19, 1994, Nobel Peace Prize winner Daw Aung San Suu Kyi will have endured five years of unlawful house arrest by the State Law and Order Restoration Council (in this preamble referred to as the "SLORC"), the military junta in Burma;

Whereas on May 27, 1990 the people of Burma voted overwhelmingly in a free election for Daw Aung San Suu Kyi and the National League for Democracy;

Whereas despite numerous pledges, the SLORC has failed to honor the results of the May 1990 elections;

Whereas the United States recognizes the individuals who won the 1990 elections as the legitimate representatives of the Burmese people;

Whereas the United States has not sent an ambassador to Rangoon to protest the failure of the SLORC to honor the 1990 elections and the continued human rights abuses suffered by the Burmese people;

Whereas the United Nations General Assembly stated in resolution 48/150 that no evident progress has been made to restore democracy in accordance with the will of the people of Burma as expressed in the 1990 election;

Whereas the Special Rapporteur for Burma appointed by the United Nations Commission on Human Rights has been denied access to Daw Aung San Suu Kyi and other political prisoners in Burma;

Whereas the Government of Thailand has in the past generously provided safe haven to the many Burmese forced to flee the brutal repression of the SLORC regime;

Whereas despite pressure from the SLORC, the Government of Thailand has allowed Burmese democracy leaders to operate within its borders, and has granted visas for international travel;

Whereas recent reports indicate that the Government of Thailand has adopted more restrictive policies toward Burmese refugees in Thailand;

Whereas reports have indicated that some Rohingya refugees located in Bangladesh have been returned to Burma against their will; and

Whereas the members of the Association of Southeast Asian Nations (ASEAN) will meet in Bangkok, Thailand in July 1994, and the SLORC has been invited to attend the opening meeting: Now, therefore, be it hereby

Resolved, That it is the sense of the Senate that the United States Government should—

(1) enunciate a clear and strong policy to promote democracy in Burma;

(2) strongly encourage ASEAN members at the meetings in Bangkok in July to join United States efforts to:

(a) seek the immediate release of Daw Aung San Suu Kyi and all other political prisoners in Burma and allow them to participate fully in the Burmese political process:

(b) achieve the transfer of power to the winners of the 1990 democratic election;

(c) join the arms embargo which the United States continues to maintain against Burma;

(d) end the gross human rights abuses perpetrated by the SLORC, including torture, arbitrary arrests, executions, forced labor, forced relocation and the rape and trafficking of women;

(3) clearly and publicly indicate the continued opposition of the United States to SLORC participation in ASEAN;

(4) work to implement United Nations General Assembly resolution 48/150, unanimously adopted on December 20, 1993, and pledge to seek international sanctions through the United Nations, including a multilateral arms embargo, and the appointment of a special envoy to facilitate the transfer to democracy in Burma;

(5) oppose commercial arrangements that only provide financial support for the SLORC;

(6) oppose foreign aid and financial assistance from international financial institutions such as the World Bank and the International Monetary Fund which only provide financial support for the SLORC;

(7) encourage the Government of Thailand to allow Burmese political leaders and refugees, including the Karen, Mon and Karenni, and other ethnic groups, to continue their efforts to bring democratic change to Burma without fear of harassment or other pressure;

(8) continue the current United States policy of not sending an ambassador to Rangoon until such time as the SLORC has taken concrete steps to end human rights abuses and transfer power to the democratically elected leaders of Burma;

(9) investigate claims of forced repatriation of Rohingya refugees and encourage adequate monitoring to prevent Burmese refugees from being repatriated against their will.

AMENDMENTS SUBMITTED

PRODUCT LIABILITY FAIRNESS ACT

LAUTENBERG (AND OTHERS) AMENDMENT NO. 1932

(Ordered to lie on the table.)

Mr. LAUTENBERG (for himself, Mr. HARKIN, and Mr. GRAHAM) submitted an amendment intended to be proposed by them to the bill (S. 687) to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; as follows:

At the appropriate place, insert the following new title:

TITLE III—MEDICARE AND MEDICAID THIRD PARTY LIABILITY

SEC. 301. SHORT TITLE.

This title may be cited as the "Medicare and Medicaid Third Party Liability Act".

SEC. 302. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) illnesses and diseases that result from the use of tobacco products cost Federal Government health care programs billions of dollars, including at least $16,000,000,000 in the medicare program and $3,000,000,000 in the medicaid program for inpatient hospital services in fiscal year 1994;

(2) over the next 20 years, such illnesses and diseases will cost the medicare trust funds at least $800,000,000,000;

(3) in April 1994, the trustees of the medicare trust funds concluded that such funds may be insolvent in 7 years, with $128,000,000,000 of expenditures due to such illnesses and diseases;

(4) recent discoveries, including documents, patents and patent applications, and testimony, have shown that—

(A) the tobacco industry has known for years that the nicotine in cigarettes is addictive,

(B) the industry has attempted both to conceal this information from the public and the Government and to manipulate the amount of nicotine in cigarettes, and

(C) it is possible to manufacture cigarettes which are far less dangerous to consumers;

(5) more than 36 percent of medicare recipients are former smokers and 20 percent are current smokers;

(6) approximately 43 percent of medicaid recipients smoke, compared to 26 percent of the general public; and

(7) the medicare population is much more at risk of contracting illnesses and diseases that result from the use of tobacco products than younger smokers, because such population has smoked longer;

(8) legal scholars and courts are increasingly agreeing that it is appropriate to use statistical evidence to prove causation; and

(9) in view of the large number of Americans killed, disabled, or otherwise injured each year as a result of smoking cigarettes, the addictiveness of the nicotine in cigarettes, and the absence of any significant benefits to society from smoking, cigarettes are an unreasonably dangerous product and cigarette manufacturers are engaged in abnormally dangerous activities.

(b) PURPOSE.—The purpose of this title is to allow the American taxpayers to recoup billions of dollars in Federal Government health care funds spent on tobacco related illnesses and diseases.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties) that manufacture tobacco products. The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of a tobacco product, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

LAUTENBERG (AND SIMON) AMENDMENT NO. 1933

(Ordered to lie on the table.)

Mr. LAUTENBERG (for himself and Mr. SIMON) submitted an amendment intended to be proposed by them to the bill S. 687, supra; as follows:

At the end of the bill, add the following:

TITLE III—FIREARMS

SEC. 301. VICTIM COMPENSATION FROM PERSONS WHO UNLAWFULLY PROVIDE FIREARMS TO JUVENILES, FELONS, AND OTHER DISQUALIFIED INDIVIDUALS.

(a) VICTIM COMPENSATION.—Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(j) VICTIM COMPENSATION.—

"(1) IN GENERAL.—Any person who sells, delivers, or otherwise transfers—

"(A) a firearm in violation of section 922(d) or section 922(b)(1); or

"(B) a handgun to a person who the transferor knows or has reasonable cause to believe is a juvenile, except as provided in paragraph (6),

shall be liable for damages caused by a discharge of the transferred firearm by the transferee.

"(2) CIVIL ACTION.—An action to recover damages under paragraph (1) may be brought in a United States district court by, or on behalf of, any person, or the estate of any person, who suffers damages resulting from bodily injury to or the death of any person caused by a discharge of the transferred firearm by the transferee.

"(3) DISENTITLEMENT TO RECOVERY.—There shall be no liability under this subsection if it is established by a preponderance of the evidence that—

"(A) the damages were suffered by a person who was engaged in a criminal act against the person or property of another at the time of the injury; or

"(B) the injury was self-inflicted, unless the plaintiff establishes that, at the time of the transfer, the transferor knew or had reasonable cause to believe that the transferee had not attained the age of 18 years or had been adjudicated as a mental defective or committed to a mental institution.

"(4) PERIOD OF LIABILITY.—No action under this subsection may be brought for damages that are caused more than 5 years after the date of the transfer of a firearm upon which an action could otherwise be based.

"(5) ATTORNEY'S FEES AND PUNITIVE DAMAGES.—A prevailing plaintiff in an action under this subsection—

"(A) shall be awarded reasonable attorney's fees and costs, and

"(B) may be awarded punitive damages.

"(6) JUVENILES.—Paragraph (1)(B) does not apply to—

"(A) a temporary transfer of a handgun to a juvenile if the handgun is used by the juvenile—

"(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

"(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

"(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

"(II) with respect to ranching or farming activities as described in clause (i), with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State, or local law from possessing a firearm;

"(iii) if the juvenile keeps the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

"(iv) in accordance with State and local law;

"(B) issuance of a handgun to a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with the handgun in the line of duty;

"(C) a transfer by inheritance of title (but not possession) of a handgun to a juvenile;

"(D) a delivery of a handgun by a juvenile to be used in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest; or

"(E) a transfer of a handgun for consideration if the transfer is made in accordance with State and local law and with the prior consent of the juvenile's parent or legal guardian who is not prohibited by Federal, State, or local law from possessing a firearm.

"(7) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or have any other effect on any other cause of action available to any person.".

(b) DEFINITION.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(30) The term 'juvenile' means a person who is less than 18 years of age.".

(c) APPLICATION OF AMENDMENT.—The amendment made by subsection (a) shall apply to damages resulting from a firearm that was transferred as described in section 924(j)(1) of title 18, on or after the date of enactment of this Act.

LAUTENBERG AMENDMENT NO. 1934

(Ordered to lie on the table.)

Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 687, supra; as follows:

At the end of section 202, add the following:

(d) NONAPPLICABILITY.—This section shall not apply to a civil action for harm caused by a firearm that was transferred unlawfully or negligently by a product seller.

LIEBERMAN AMENDMENT NO. 1935

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill S. 687, supra; as follows:

On page 16, beginning with line 20, strike out through line 8 on page 18 and insert the following:

"(b) LIMITATION CONCERNING CERTAIN DRUGS AND MEDICAL DEVICES.—

(1) A manufacturer or product seller of a drug (as defined in section 201 (g) (1) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321 (g) (1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(h)) which caused the claimant's harm has not engaged in conduct manifesting conscious, flagrant indifference to the safety of those persons who might be harmed by the product, and shall not be subject to an award of punitive damages pursuant to this section, where—

(A) such drug or device was subject to premarket approval by the Food and Drug Administration pursuant to section 505 (as amended by the New Drug Amendments of 1962, P.L. 87-781), 506, 507, 512, or 515 of the Federal Food, Drug, and Costmetic Act (21 U.S.C. 355, 356, 357, 360b, or 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262) with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging of labeling of such drug or device, and such drug or device was actually approved by the Food and Drug Administration; or

(B) the drug or device is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(2) The provisions of paragraph (1) shall not apply in any case in which the claimant proves by a preponderance of evidence that—

(A) (i) the defendant, before or after premarket approval of a drug or device, failed to submit or misrepresented to the Food and Drug Administration or any other agency or official of the Federal government required information, including required information regarding any death or other adverse experience associated with use of the drug or device, and (ii) the information that defendant failed to submit or misrepresented is material and relevant to the performance of such drug or device and is causally related to the harm which the claimant allegedly suffered; or

(B) the defendant made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval of such drug or device; or

(C) the Food and Drug Administration has determined in a formal administrative proceeding (by a final order not subject to further review) or a court has determined in an action brought by the United States (by a final judgement not subject to further review) that the drug or device failed to conform to conditions of the Food and Drug Administration for approval (except for changes permitted without prior approval under applicable law, including Food and Drug Administration regulations), and such failure is causally related to the harm which the claimant allegedly suffered.

(3) The provisions of paragraph (1) shall not apply with respect to a claim for punitive damages based on a defect in manufacturing which causes the drug or device to depart from its intended design."

GRAHAM AMENDMENT NO. 1936

(Ordered to lie on the table.)

Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill S. 687, supra; as follows:

On page 7, line 13, beginning with the comma strike out all through "blood products" on line 14.

FEINSTEIN AMENDMENT NO. 1937

(Ordered to lie on the table.)

Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 687, supra; as follows:

(a) Any corporation, or person who is a manager with respect to a product, facility, equipment or process, is guilty of a criminal offense punishable by imprisonment for a term not exceeding three years or by a fine not exceeding twenty-five thousand dollars both that fine and imprisonment; but if the defendant is a corporation the fine shall not exceed one million dollars ($1,000,000), if that corporation or person does all of the following:

(1) Has actual knowledge of a serious concealed danger that is subject to the regulatory authority of a state or federal agency and is associated with that product or a component of that product or business practice.

(2) Knowingly fails during the period ending 15 days after the actual knowledge is acquired, or if there is imminent risk of great bodily harm or death, immediately, to do both of the following.

(A) Inform the appropriate government agency in writing, unless the corporation or manager has actual knowledge that the division has been so informed.

Where the concerned danger reported pursuant to this paragraph is subject to the regulatory authority of an agency other than the agency to which it was reported, it shall be the responsibility of the agency which has received the information, within 24 hours of receipt of the information, to telephonically notify the appropriate government agency of the hazard, and promptly forward any written notification received.

(B) Warn its affected employees in writing, unless the corporation or manager has actual knowledge that the employees have been so warned.

The requirement for disclosure is not applicable if the hazard is abated within the time prescribed for reporting, unless the appropriate regulatory agency nonetheless requires disclosure by regulation.

Where the appropriate government agency was not notified, but the corporation or manager reasonably and in good faith believed that they were complying with the notification requirements of this section by notifying another government agency, as listed in paragraph (8), no penalties shall apply.

(b) As used in this section:

(1) "Manager" means person having both the following:

(A) Management authority in or as a business entity.

(B) Significant responsibility for any aspect of a business which includes actual authority for the safety of a product or business practice or for the conduct of research or testing in connection with a product or business practice.

(2) "Product" means an article of trade or commerce or other item of merchandise which is a tangible or an intangible good, and includes services.

(3) "Actual knowledge," used with respect to a seriously concealed danger, means has information that would convince a reasonable person in the circumstances in which the manager is situated that the serious concealed danger exists.

(4) "Serious concealed danger," used with respect to a product or business practice, means that the normal or reasonably foreseeable use of, or the exposure of an individual to, the product or business practice creates a substantial probability of death, great bodily harm; or serious exposure to an individual, and the danger is not readily apparent to an individual who is likely to be exposed.

(5) "Great bodily harm" means a significant or substantial physical in).

(6) "Serious exposure" means any exposure to a hazardous substance, when the exposure occurs as a result of an incident or exposure over time and to a degree or in an amount sufficient to create a substantial probability that death or great bodily harm in the future would result from the exposure.

(7) "Warn its affected employees" means given sufficient description of the serious concealed danger to all individuals working for or in the business entity who are likely to be subject to the serious concealed danger in the course of that work to make those individuals aware of that danger.

(8) "Appropriate government agency" means any state of federal agency, including but not limited to those on the following list, that has regulatory authority with respect to the product or business practice and serious concealed dangers of the sort discovered:

(A) The U.S. Department of Health and Human Services.

(B) The U.S. Department of Agriculture.

(C) The U.S. Consumer Product Safety Commission.

(D) The United States Food and Drug Administration.

(E) The United States Environmental Protection Agency.

(F) The National Highway Traffic Safety Administration.

(G) The Federal Trade Commission.

(H) The Nuclear Regulatory Commission.

(I) The Federal Aviation Administration.

(J) The Federal Mine Safety and Health Review Commission.

(c) Notification received pursuant to and in compliance with this section shall not be used against any manager in any criminal case, except in a prosecution for perjury or for giving a false statement.

LIEBERMAN (AND OTHERS) AMENDMENT NO. 1938

Mr. LIEBERMAN (for himself, Mr. ROCKEFELLER, and Mr. GORTON) proposed an amendment to the bill S. 687, supra; as follows:

On page 8, line 20, after the period insert the following: "A civil action for negligent entrustment is not subject to this Act and shall be governed by applicable State law. For purposes of the preceding sentence, the term "negligent entrustment" means causes of action under applicable State law that subject product sellers to liability for their failure to meet the applicable standard of care under State law in selling a product to a person who, because of his youth, inexperience, or otherwise, is likely to handle the product in a manner to cause harm to himself or others.

SPECTER AMENDMENT NO. 1939

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 687, supra; as follows:

Strike the text of the amendment and insert the following: Strike page 25, line 22 through page 27, line 16 of the bill and insert in lieu thereof the following:

"(a) IN GENERAL.—(1) An employer or workers' compensation insurer of an employer shall have a right of subrogation against the net recovery obtained by an employee for harm caused to an employee by a product if the harm is one for which a civil action has been brought pursuant to this Act. The amount subject to subrogation shall be the amount paid as workers' compensation benefits to which the employee is or would be entitled to receive and the present value of such workers' compensation benefits as determined by the appropriate workers' compensation authority.

"(2) If the net amount recovered by the employee is insufficient to satisfy the subrogation lien of the employer or the employer's workers' compensation insurer in full and to compensate the employee adequately, the lien shall be fully satisfied by payment equal to one-half of the employee's net recovery.

"(3) In any proceeding against or settlement with the manufacturer or product seller, the employer or the workers' compensation insurer of the employer shall have an opportunity to participate and to assert a right of subrogation upon any recovery and to assert a right of subrogation upon any recovery obtained from the manufacturer or product seller by reason of such harm, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise. The employee shall not make any settlement with or accept any recovery from the manufacturer or product seller without the written consent of the employer and no release to or agreement with the manufacturer or product seller shall be valid or enforceable for any purpose without such consent. However, the preceding sentence shall not apply if the employer or its workers' compensation insurer is made whole for all benefits paid in workers' compensation benefits or if the provisions of subsection (a)(2) of this section apply.

"(4) If the manufacturer or product seller attempts to persuade the trier of fact that the claimant's harm was caused by the fault of the claimant's employer or coemployees, then the issue of whether the claimant's harm was caused by the claimant's employer or coemployees shall be submitted to the trier of fact. If the manufacturer or product seller so attempts to persuade the trier of fact, it shall provide written notice to the employer. The employer shall have the right to appear, to be represented, to conduct discovery, to introduce evidence, to cross-examine adverse witnesses,".

HOLLINGS AMENDMENT NO. 1940

Mr. HOLLINGS proposed an amendment to amendment No. 1938 proposed by Mr. LIEBERMAN to the bill S. 687, supra; as follows:

At the end of the amendment add the following new section:

SEC. . PRODUCT LIABILITY INSURANCE REPORTING.

(a) REPORT TO CONGRESS. The Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall provide to the Congress before June 30 of each year after the date of enactment of this Act a report

analyzing the impact of this Act on insurers which issue product liability insurance either separately or in conjunction with other insurance; and on self-insurers, captive insurers, and risk retention groups.

(b) COLLECTION OF DATA.—To carry out the purpose of this section, the Secretary shall collect from each insurer all data considered necessary by the Secretary to present and analyze fully the impact of this Act on such insurers.

(c) REGULATIONS.—Within 120 days after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to implement the purposes, and carry out the provisions, of this section. Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Such regulations shall—

(1) require the reporting of information sufficiently comprehensive to make possible a full evaluation of the impact of this Act on such insurers;

(2) specify the information to be provided by such insurers and the format of such information, taking into account methods to minimize the paperwork and cost burdens on such insurers and the Federal Government; and

(3) provide, to the maximum extent practicable, that such information is obtained from existing sources, including, but not limited to, State insurance commissioners, recognized insurance statistical agencies, the Administrative Office of the United States Courts, and the National Center for State Courts.

(d) SUBPOENA.—The Secretary may subpoena witnesses and records related to the report required under this section from any place in the United States. If a witness disobeys such a subpoena, the Secretary may petition any district court of the United States to enforce such subpoena. The court may punish a refusal to obey an order of the court to comply with such a subpoena as a contempt of court.

GORTON (AND OTHERS) AMENDMENT NO. 1941

Mr. GORTON (for himself, Mr. LIEBERMAN, and Mrs. FEINSTEIN) proposed an amendment to the bill S. 687, supra; as follows:

On page 19, beginning with line 7, strike out through line 6 on page 20 and insert the following:

(b) LIMITATION CONCERNING CERTAIN DRUGS AND MEDICAL DEVICES.—

(1) A manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(h)) which caused the claimant's harm has not engaged in conduct manifesting conscious, flagrant indifference to the safety of those persons who might be harmed by the product, and shall not be subject to an award of punitive damages pursuant to this section, where—

(A) such drug or device was subject to premarket approval by the Food and Drug Administration pursuant to section 505 (as amended by the New Drug Amendments of 1962, P.L. 87-781), 506, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 356, 357, 360b, or 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262) with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging of labeling of such drug or device, and such drug or device was actually approved by the Food and Drug Administration; or

(B) the drug or device is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(2) The provisions of paragraph (1) shall not apply in any case in which the claimant proves by a preponderance of evidence that—

(A)(i) the defendant, before or after premarket approval of a drug or device, failed to submit or misrepresented to the Food and Drug Administration or any other agency or official of the Federal government required information, including required information regarding any death or other adverse experience associated with use of the drug or device, and (ii) the information that defendant failed to submit or misrepresented is material and relevant to the performance of such drug or device and is causally related to the harm which the claimant allegedly suffered; or

(B) the defendant made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval of such drug or device; or

(C) the Food and Drug Administration has determined in a formal administrative proceeding (by a final order not subject to further review) or a court has determined in an action brought by the United States (by a final judgment not subject to further review) that the drug or device failed to conform to conditions of the Food and Drug Administration for approval (except for changes permitted without prior approval under applicable law, including Food and Drug Administration regulations), and such failure is causally related to the harm which the claimant allegedly suffered.

(3) The provisions of paragraph (1) shall not apply with respect to a claim for punitive damages based on a defect in manufacturing which causes the drug or device to depart from its intended design.

FEINSTEIN AMENDMENT NO. 1942

Mr. ROCKEFELLER (for Mrs. FEINSTEIN) proposed an amendment to amendment No. 1941 proposed by Mr. GORTON to the bill S. 687, supra; as follows:

Insert in the appropriate place:

(a) Any corporation, or person who is a manager with respect to a product, facility, equipment, process, is guilty of a criminal offense punishable by imprisonment for a term not exceeding three years, or by a fine not exceeding twenty-five thousand dollars ($25,000), or by both that fine and imprisonment; but if the defendant is a corporation the fine shall not exceed one million dollars ($1,000,000), if that corporation or person does all of the following:

(1) Has actual knowledge of a serious concealed danger that is subject to the regulatory authority of a state or federal agency and is associated with that product or a component of that product or business practice.

(2) Knowingly fails during the period ending 15 days after the actual knowledge is acquired, or if there is imminent risk of great bodily harm or death, immediately, to do both of the following:

(A) Inform the appropriate government agency in writing, unless the corporation or manager has actual knowledge that the division has been so informed.

Where the concealed danger reported pursuant to this paragraph is subject to the regulatory authority of an agency other than the agency to which it was reported, it shall be the responsibility of the agency which has received the information, within 24 hours of receipt of the information, to telephonically notify the appropriate government agency of the hazard, and promptly forward any written notification received.

(B) Warn its affected employees in writing, unless the corporation or manager has actual knowledge that the employees have been so warned.

The requirement for disclosure is not applicable if the hazard is abated within the time prescribed for reporting, unless the appropriate regulatory agency nonetheless requires disclosure by regulation.

Where the appropriate government agency was not notified, but the corporation or manager reasonably and in good faith believed that they were complying with the notification requirements of this section by notifying another government agency, as listed in paragraph (8), no penalties shall apply.

(b) As used in this section:

(1) "Manager" means a person having both of the following:

(A) Management authority in or as a business entity.

(B) Significant responsibility for any aspect of a business which includes actual authority for the safety of a product or business practice or for the conduct of research or testing in connection with a product or business practice.

(2) "Product" means an article of trade or commerce or other item of merchandise which is a tangible or an intangible good, and includes services.

(3) "Actual knowledge," used with respect to a seriously concealed danger, means has information that would convince a reasonable person in the circumstances in which the manager is situated that the serious concealed danger exists.

(4) "Serious concealed danger," used with respect to a product or business practice, means that the normal or reasonably foreseeable use of, or the exposure of an individual to, the product or business practice creates a substantial probability of death, great bodily harm, or serious exposure to an individual, and the danger is not readily apparent to an individual who is likely to be exposed.

(5) "Great bodily harm" means a significant or substantial physical injury.

(6) "Serious exposure" means any exposure to a hazardous substance, when the exposure occurs as a result of an incident or exposure over time and to a degree or in an amount sufficient to create a substantial probability that death or great bodily harm in the future would result from the exposure.

(7) "Warn its affected employees" means give sufficient description of the serious concealed danger to all individuals working for or in the business entity who are likely to be subject to the serious concealed danger in the course of that work to make those individuals aware of that danger.

(8) "Appropriate government agency" means any state or federal agency, including but not limited to those on the following list, that has regulatory authority with respect to the product or business practice and serious concealed dangers of the sort discovered:

(A) The U.S. Department of Health and Human Services.

(B) The U.S. Department of Agriculture.

(C) The U.S. Consumer Product Safety Commission.

(D) The United States Food and Drug Administration.

(E) The United States Environmental Protection Agency.

(F) The National Highway Traffic Safety Administration.

(G) The Federal Trade Commission.

(H) The Nuclear Regulatory Commission.

(I) The Federal Aviation Administration.

(J) The Federal Mine Safety and Health Review Commission.

(c) Notification received pursuant to and in compliance with this section shall not be used against any manager in any criminal case, except in a prosecution for perjury or for giving a false statement.

FORD AMENDMENT NO. 1943

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to an amendment by Mr. METZENBAUM to the bill S. 687, supra; as follows:

On page 1, beginning on line 2, strike "REGULATION OF TOBACCO PRODUCTS" and all that follows through page 3, line 5, and insert the following: "MEDICAL DEVICES

"SEC. . TIME LINES ON APPROVAL OF MEDICAL DEVICES.

"(a) DEFINITIONS.—For purposes of this section:

"(1) DEVICE.—The term 'device' has the meaning given the term in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

"(b) IN GENERAL.—The Secretary shall, under the authority of the Secretary to approve a device under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 et seq.) and not later than 180 days from the date of the receipt of an application for approval of such device, approve or deny such application. The action of the Secretary with respect to the approval or denial of an application under this section is subject to administrative review.

"(c) REMEDIES.—

"(1) IN GENERAL.—If the Secretary fails to approve or deny an application for approval of a device within the 180-day period under subsection (b), the Secretary shall, in accordance with a determination made by an administrative law judge under paragraph (2), pay damages to the applicant in an amount described under paragraph (3).

"(2) DETERMINATION OF DAMAGES.—The amount of damages awarded to an applicant under this section shall be determined by an administrative law judge based on evidence submitted by the applicant.

"(3) COMPUTATION OF DAMAGES.—

"(A) IN GENERAL.—The amount of damages awarded to an applicant under this section shall be computed and awarded in accordance with the formula under subparagraph (B).

"(B) FORMULA.—The amount of damages awarded under this section shall be equal to the total of the loss profits of the applicant during the period beginning on the date that is 181 days from receipt of an application for approval under subsection (b) and ending on the date on which such application is approved or denied.

"(4) SPECIAL RULE.—

"(A) IN GENERAL.—If a finding is made under a proceeding in an administrative review (described in subsection (b)) that the Secretary denied an application under subsection (b) only for the purpose of meeting the 180-day period described in such subsection, the applicant shall be awarded an amount of damages that is three times the amount computed under paragraph (3).

"(B) COMPUTATION OF DAMAGES.—Subject to subparagraph (A), the damages awarded under this paragraph shall be awarded and computed in accordance with paragraph (3).

"(C) EFFECTIVE DATE OF DENIAL.—For the purposes of the awarding of damages under this paragraph, an application described in subsection (b) shall be considered to have been denied on the date the finding is made under subparagraph (A).

"(d) ADDITIONAL USES OF APPROVED DEVICES.—A device approved under this section may be used for a use that is not approved by the Secretary without additional approval from the Secretary. The Secretary may require notification with respect to the nonapproved use of an approved device.

"(e) NEW USES OF APPROVED DEVICES.—The Secretary may not prohibit the manufacturer or user of a device from informing each other about new uses for approved devices.

"(f) AGENCY LIABILITY.—The Department of Health and Human Services shall be liable for damages in civil actions filed by or on behalf of an individual or estate of a deceased individual for injury or death that is attributable to the failure of the Secretary to approve a device under subsection (b).".

FORD AMENDMENT NO. 1944

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to an amendment to the bill S. 687, supra; as follows:

On page 3, strike lines 3 through 5 , and insert the following: "Federal Food, Drug, and Cosmetic Act over products containing tobacco which the Secretary has without the enactment of this section.

"SEC. . TIME LINES ON APPROVAL OF MEDICAL DEVICES.

"(a) DEFINITIONS.—For purposes of this section:

"(1) DEVICE.—The term 'device' has the meaning given the term in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

"(b) IN GENERAL.—The Secretary shall, under the authority of the Secretary to approve a device under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 et seq.) and not later than 180 days from the date of the receipt of an application for approval of such device, approve or deny such application. The action of the Secretary with respect to the approval or denial of an application under this section is subject to administrative review.

"(c) REMEDIES.—

"(1) IN GENERAL.—If the Secretary fails to approve or deny an application for approval of a device within the 180-day period under subsection (b), the Secretary shall, in accordance with a determination made by an administrative law judge under paragraph (2), pay damages to the applicant in an amount described under paragraph (3).

"(2) DETERMINATION OF DAMAGES.—The amount of damages awarded to an applicant under this section shall be determined by an administrative law judge based on evidence submitted by the applicant.

"(3) COMPUTATION OF DAMAGES.—

"(A) IN GENERAL.—The amount of damages awarded to an applicant under this section shall be computed and awarded in accordance with the formula under subparagraph (B).

"(B) FORMULA.—The amount of damages awarded under this section shall be equal to the total of the loss profits of the applicant during the period beginning on the date that is 181 days from receipt of an application for approval under subsection (b) and ending on the date on which such application is approved or denied.

"(4) SPECIAL RULE.—

"(A) IN GENERAL.—If a finding is made under a proceeding in an administrative review (described in subsection (b)) that the Secretary denied an application under subsection (b) only for the purpose of meeting the 180-day period described in such subsection, the applicant shall be awarded an amount of damages that is three times the amount computed under paragraph (3).

"(B) COMPUTATION OF DAMAGES.—Subject to subparagraph (A), the damages awarded under this paragraph shall be awarded and computed in accordance with paragraph (3).

"(C) EFFECTIVE DATE OF DENIAL.—For the purposes of the awarding of damages under this paragraph, an application described in subsection (b) shall be considered to have been denied on the date the finding is made under subparagraph (A).

"(d) ADDITIONAL USES OF APPROVED DEVICES.—A device approved under this section may be used for a use that is not approved by the Secretary without additional approval from the Secretary. The Secretary may require notification with respect to the nonapproved use of an approved device.

"(e) NEW USES OF APPROVED DEVICES.—The Secretary may not prohibit the manufacturer or user of a device from informing each other about new uses for approved devices.

"(f) AGENCY LIABILITY.—The Department of Health and Human Services shall be liable for damages in civil actions filed by or on behalf of an individual or estate of a deceased individual for injury or death that is attributable to the failure of the Secretary to approve a device under subsection (b).".

FORD (AND MCCONNELL) AMENDMENT NO. 1945

(Ordered to lie on the table.)

Mr. FORD (for himself and Mr. MCCONNELL) submitted an amendment intended to be proposed by them to an amendment by Mr. METZENBAUM to the bill S. 687, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. . INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

"INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE

"SEC. 4011. (a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL WASTE.—If requested in writing by an affected local government, and by an affected local solid waste planning unit if the local solid waste planning unit exists under State law, a Governor may prohibit the disposal of out-of-State municipal waste in any landfill or incinerator that is subject to the jurisdiction of the Governor or the affected local government.

"(b) DEFINITIONS.—As used in this section:

"(1)(A) The term 'affected local government', used with respect to a landfill or incinerator, means the elected officials of the city, town, borough, county, or parish in which the facility is located.

"(B) Within 90 days after the date of enactment of this section, the Governor shall designate which entity listed in subparagraph (A) shall serve as the affected local government for actions taken under this section. If the Governor fails to make a designation, the affected local government shall be the city, town, borough, county, parish, or other public body created pursuant to State law, with primary jurisdiction over the land or the use of land on which the facility is located.

"(2) The term 'affected local solid waste planning unit' means a political subdivision of a State with authority relating to solid waste management planning in accordance with State law.

"(3) The term 'municipal waste' means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass (or any combination thereof). The term 'municipal waste' does not include—

"(A) any solid waste identified or listed as a hazardous waste under section 3001;

"(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

"(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal waste (as otherwise defined in this paragraph) and has been transported into a State for the purpose of recycling or reclamation;

"(D) any solid waste that is—

"(i) generated by an industrial facility; and

"(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator or a company with which the generator is affiliated;

"(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(F) any industrial waste that is not identical to municipal waste (as otherwise defined in this paragraph) with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

"(G) any medical waste that is segregated from or not mixed with municipal waste (as otherwise defined in this paragraph); or

"(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

"(4) The term 'out-of-State municipal waste', used with respect to a State, means municipal waste generated outside of the State. To the extent that it is consistent with the United States-Canada Free-Trade Agreement and the General Agreement on Tariffs and Trade to so define the term, the term shall include municipal waste generated outside of the United States.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

"Sec. 4011. Interstate transportation of municipal waste.".

FORD (AND MCCONNELL) AMENDMENTS NOS. 1946 and 1947

(Ordered to lie on the table.)

Mr. FORD (for himself and Mr. MCCONNELL) submitted two amendments intended to be proposed by them to an amendment by Mr. HARKIN to the bill S. 687, supra; as follows:

AMENDMENT NO. 1946

In lieu of the matter proposed to be inserted, insert the following:

SEC. . INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

"INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE

"SEC. 4011. (a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL WASTE.—If requested in writing by an affected local government, and by an affected local solid waste planning unit if the local solid waste planning unit exists under State law, a Governor may prohibit the disposal of out-of-State municipal waste in any landfill or incinerator that is subject to the jurisdiction of the Governor or the affected local government.

"(b) DEFINITIONS.—As used in this section:

"(1)(A) The term 'affected local government', used with respect to a landfill or incinerator, means the elected officials of the city, town, borough, county, or parish in which the facility is located.

"(B) Within 90 days after the date of enactment of this section, the Governor shall designate which entity listed in subparagraph (A) shall serve as the affected local government for actions taken under this section. If the Governor fails to make a designation, the affected local government shall be the city, town, borough, county, parish, or other public body created pursuant to State law, with primary jurisdiction over the land or the use of land on which the facility is located.

"(2) The term 'affected local solid waste planning unit' means a political subdivision of a State with authority relating to solid waste management planning in accordance with State law.

"(3) The term 'municipal waste' means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass (or any combination thereof). The term 'municipal waste' does not include—

"(A) any solid waste identified or listed as a hazardous waste under section 3001;

"(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

"(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal waste (as otherwise defined in this paragraph) and has been transported into a State for the purpose of recycling or reclamation;

"(D) any solid waste that is—

"(i) generated by an industrial facility; and

"(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator or a company with which the generator is affiliated;

"(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(F) any industrial waste that is not identical to municipal waste (as otherwise defined in this paragraph) with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

"(G) any medical waste that is segregated from or not mixed with municipal waste (as otherwise defined in this paragraph); or

"(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

"(4) The term 'out-of-State municipal waste', used with respect to a State, means municipal waste generated outside of the State. To the extent that it is consistent with the United States-Canada Free-Trade Agreement and the General Agreement on Tariffs and Trade to so define the term, the term shall include municipal waste generated outside of the United States.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

"Sec. 4011. Interstate transportation of municipal waste.".

AMENDMENT NO. 1947

In lieu of the matter proposed to be inserted, insert the following:

SEC. . INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

"INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE

"SEC. 4011. (a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL WASTE.—If requested in writing by an affected local government, and by an affected local solid waste planning unit if the local solid waste planning unit exists under State law, a Governor may prohibit the disposal of out-of-State municipal waste in any landfill or incinerator that is subject to the jurisdiction of the Governor or the affected local government.

"(b) DEFINITIONS.—As used in this section:

"(1)(A) The term 'affected local government', used with respect to a landfill or incinerator, means the elected officials of the city, town, borough, county, or parish in which the facility is located.

"(B) Within 90 days after the date of enactment of this section, the Governor shall designate which entity listed in subparagraph (a) shall serve as the affected local government for actions taken under this section. If the Governor fails to make a designation, the affected local government shall be the city, town, borough, county, parish, or other public body created pursuant to State law, with primary jurisdiction over the land or the use of land on which the facility is located.

"(2) The term 'affected local solid waste planning unit' means a political subdivision of a State with authority relating to solid waste management planning in accordance with State law.

"(3) The term 'municipal waste' means refuse (and refuse-derived fuel) generated by

the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass (or any combination thereof). The term 'municipal waste' does not include—

"(A) any solid waste identified or listed as a hazardous waste under section 3001;

"(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

"(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal waste (as otherwise defined in this paragraph) and has been transported into a State for the purpose of recycling or reclamation;

"(D) any solid waste that is—

"(i) generated by an industrial facility; and

"(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator or a company with which the generator is affiliated;

"(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(F) any industrial waste that is not identical to municipal waste (as otherwise defined in this paragraph) with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

"(G) any medical waste that is segregated from or not mixed with municipal waste (as otherwise defined in this paragraph); or

"(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

"(4) The term 'out-of-State municipal waste', used with respect to a State, means municipal waste generated outside of the State. To the extent that it is consistent with the United States-Canada Free-Trade Agreement and the General Agreement on Tariffs and Trade to so define the term, the term shall include municipal waste generated outside of the United States.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

"Sec. 4011. Interstate transportation of municipal waste.".

FORD (AND MCCONNELL) AMENDMENT NO. 1948

(Ordered to lie on the table.)

Mr. FORD (for himself and Mr. MCCONNELL) submitted two amendments intended to be proposed by them to amendment No. 1922 proposed by Mr. METZENBAUM to the bill S. 687, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

"INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE

"SEC. 4011. (a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL WASTE.—If requested in writing by an affected local government, and by an affected local solid waste planning unit if the local solid waste planning unit exists under State law, a Governor may prohibit the disposal of out-of-State municipal waste in any landfill or incinerator that is subject to the jurisdiction of the Governor or the affected local government.

"(b) DEFINITIONS.—As used in this section:

"(1)(A) The term 'affected local government', used with respect to a landfill or incinerator, means the elected officials of the city, town, borough, county, or parish in which the facility is located.

"(B) Within 90 days after the date of enactment of this section, the Governor shall designate which entity listed in subparagraph (A) shall serve as the affected local government for actions taken under this section. If the Governor fails to make a designation, the affected local government shall be the city, town, borough, county, parish, or other public body created pursuant to State law, with primary jurisdiction over the land or the use of land on which the facility is located.

"(2) The term 'affected local solid waste planning unit' means a political subdivision of a State with authority relating to solid waste management planning in accordance with State law.

"(3) The term 'municipal waste' means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass (or any combination thereof). The term 'municipal waste' does not include—

"(A) any solid waste identified or listed as a hazardous waste under section 3001;

"(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

"(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal waste (as otherwise defined in this paragraph) and has been transported into a State for the purpose of recycling or reclamation;

"(D) any solid waste that is—

"(i) generated by an industrial facility; and

"(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator or a company with which the generator is affiliated;

"(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(F) any industrial waste that is not identical to municipal waste (as otherwise defined in this paragraph) with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

"(G) any medical waste that is segregated from or not mixed with municipal waste (as otherwise defined in this paragraph); or

"(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

"(4) The term 'out-of-State municipal waste', used with respect to a State, means municipal waste generated outside of the State. To the extent that it is consistent with the United States-Canada Free-Trade Agreement and the General Agreement on Tariffs and Trade to so define the term, the term shall include municipal waste generated outside of the United States.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

"Sec. 4011. Interstate transportation of municipal waste.".

FORD AMENDMENT NO. 1949

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to an amendment proposed by Mr. LAUTENBERG to the bill S. 687, supra; as follows:

On page 7, strike out lines 5 through 7 and insert in lieu thereof the following:

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

SEC. . LIMITATION ON LIABILITY.

Notwithstanding any other provision of this title, in any civil action subject to this title, the plaintiff shall be required to prove by a preponderance of the evidence that the tobacco product in question was defective in design or manufacture or breached an express or implied warranty. In no event may liability be imposed on any other theory, including a failure of a tobacco product manufacturer to provide adequate warnings, so long as the product in question was sold, for any period during which the patient used the product, with the health warnings mandated by section 4 of the Federal Cigarette Labelling and Advertising Act (15 U.S.C. 1333) or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402).

FORD AMENDMENTS NOS. 1950 THROUGH 1951

(Ordered to lie on the table.)

Mr. FORD submitted two amendments intended to be proposed by him to an amendment proposed by Mr. METZENBAUM to the bill, S. 687, supra; as follows:

AMENDMENT NO. 1950

On page 3, strike out lines 15 through 18 and insert in lieu thereof the following:

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

(d) OFFSET OF DAMAGES.—Notwithstanding any other provision of this title, in any civil action subject to this title, after liability has been established and damages determined, such damages shall be offset in an amount equal to any Federal excise tax collected on tobacco products for the period for which liability is imposed.

AMENDMENT NO. 1951

On page 3, strike out lines 15 through 18 and insert in lieu thereof the following:

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be

distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

(d) LIMITATION ON LIABILITY.—Notwithstanding any other provision of this title, in any civil action subject to this title, the plaintiff shall be required to prove by a preponderance of the evidence that the tobacco product in question was defective in design or manufacture or breached an express or implied warranty. In no event may liability be imposed on any other theory, including a failure of a tobacco product manufacturer to provide adequate warnings, so long as the product in question was sold, for any period during which the patient used the product, with the health warnings mandated by section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402).

FORD (AND OTHERS) AMENDMENTS NOS. 1952 THROUGH 1972

(Ordered to lie on the table.)

Mr. FORD (for himself, Mr. MCCONNELL, Mr. HELMS, and Mr. FAIRCLOTH) submitted 21 amendments intended to be proposed by them to an amendment proposed by Mr. LAUTENBERG to the bill S. 687, supra; as follows:

AMENDMENT NO. 1952

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which was created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(b) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing or judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Marina Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of any product, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceedings.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicare program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of any product, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1953

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood or blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or high-fat food products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or high-fat food products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1954

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use; the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or rental housing products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection

(a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or rental housing products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1955

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the streams of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or high-cholesterol food products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or high-cholesterol food products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1956

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or radar products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code, and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or radar products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1957

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term "manufacturer" means—

(A) any person who is engaged in a business to produce, create make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of a delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or medical device products, the Attorney General of the United States may seek

recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or medical device products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1958

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or pharmaceutical products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or pharmaceutical products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each

State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1959

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or chemical manufacturing products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or chemical manufacturing products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion of the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1960

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

"State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or wood pulp products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes——

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or wood pulp products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XI of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1961

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or plastic products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such

action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or plastic products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case the amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1962

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of the product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of the product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or has a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or glass products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medical program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by one of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In an action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or glass products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The reminder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1963

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Isiands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or automobile products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or automobile products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1964

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substances, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or orange juice products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commended within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or orange juice products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1965

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state——

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include——

(A) seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or beef products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or beef products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1966

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate

the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or dairy products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or dairy products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, to both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1967

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication

caused, in whole or in part, by the use of tobacco or oil products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or oil products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1968

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of a product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, and aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use; the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or power products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipient described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issue of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or power products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each

State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1969

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or 4 formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of the product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Marina Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303 CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or phosphate products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients of which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis of epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or phosphate products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against such liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1970

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4)"product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or waste disposal products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or waste disposal products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1971

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or sugar products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the medicare program under title XIX of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such

action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or sugar products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under section 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

AMENDMENT NO. 1972

On page 1, beginning with line 9, strike out all through the end of the amendment and insert in lieu thereof the following:

SEC. 302. DEFINITIONS.

(1) For purposes of this title the term—"manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the use of a product;

(2) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(3) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state—

(A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(B) which is produced for introduction into trade or commerce;

(C) which has intrinsic economic value; and

(D) which is intended for sale or lease to persons for commercial or personal use;

the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(4) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(5) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

SEC. 303. CLASS ACTION TO RECOVER COSTS TO FEDERAL GOVERNMENT HEALTH CARE PROGRAMS OF TOBACCO RELATED ILLNESSES AND DISEASES.

(a) IN GENERAL.—(1) With respect to payments made under any applicable Federal Government health care program to or on behalf of more than one recipient with a disease, illness, condition, or complication caused, in whole or in part, by the use of tobacco or movies and entertainment products, the Attorney General of the United States may seek recovery for such payments from third parties (or any successors to such third parties). The Attorney General (after consultation with the appropriate Secretaries who administer such programs) may bring an action in the name of the United States in United States district court to recover such payments made to or on behalf of all such recipients in one proceeding.

(2) Any action to enforce the rights of the Attorney General under this section with respect to any payment described in paragraph (1) shall be commenced within 5 years of such payment.

(3) For purposes of paragraph (1), the term "applicable Federal Government health care program" includes—

(A) the Medicare program under title XVIII of the Social Security Act;

(B) the medicaid program under title XIX of such Act;

(C) the veterans health care program under title 38, United States Code; and

(D) any other similar Federal health care program.

(b) NOTICE UNDER THE CLASS ACTION.—(1) In any action brought under this section, no notice to recipients described in subsection (a)(1) is required, and such recipients shall have no right to become a party to such action. Such action is independent of any rights or causes of action of such recipients.

(2) In any such action in which the number of recipients described in subsection (a)(1) is so large as to cause it to be impracticable to join or identify each claim, the Attorney General shall not be required to so identify the individual recipients for which payment has been made, but rather can proceed to seek recovery based upon payments made to or on behalf of an entire class of recipients.

(c) RULES OF EVIDENCE.—In any action brought under this section, the Federal Rules of Evidence shall be construed, regarding the introduction and probative value of evidence on the issues of causation and damages, in order to effectuate the purposes of this Act to the greatest extent possible. The issues of causation and damages in any such action may be proven by use of statistical analysis or epidemiological evidence, or both.

(d) SHARE OF LIABILITY.—In any action brought under this section in which a third party is liable due to its manufacture, sale, or distribution of tobacco or movies and entertainment products, the Attorney General shall be allowed to proceed under a market share theory, if the products involved are substantially interchangeable and substantially similar factual or legal issues would be involved in seeking recovery against each liable third party individually. In the alternative, the Attorney General shall be allowed to proceed under a theory of concerted action or enterprise liability, or both, if warranted by the facts presented to the court.

(e) DISTRIBUTION OF RECOVERY.—Amounts recovered under any action brought under this section shall be paid to the United States and disposed of as follows:

(1) In the case of amounts recovered arising out of a claim under title XIX of the Social Security Act, there shall be paid to each State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1817 and 1841 of the Social Security Act shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

FORD AMENDMENTS NOS. 1973–1992

(Ordered to lie on the table.)

Mr. FORD submitted 20 amendments intended to be proposed by him to amendment No. 1922 proposed by Mr. METZENBAUM to the bill S. 687, supra; as follows:

AMENDMENT NO. 1973

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by using any product.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery

from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its product, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1974

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of rental housing.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1975

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of high fat food products.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1976

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of radar products.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1977

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of medical devices.

(2) In the event that medical assistance has been provided to more than one recipient,

and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1978

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under title XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of pharmaceutical products.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1979

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of chemical manufacturing products.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1980

At the appropriate place add the following new title:

TITLE—REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of wood pulp.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditure arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or cases of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1981

At the appropriate place add the following new title:

TITLE—REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of plastic.

(2) In the event that medical assistance has been provided to more than one recipient,

and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) in an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1982

At the appropriate place add the following new title:

TITLE—REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of glass products.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1983

At the appropriate place add the following new title:

TITLE—REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under title XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of automobiles.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENTS—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OR RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1984

At the appropriate place add the following new title:

TITLE—REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of orange juice.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1985

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH.

(A) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of beef.

(2) In the event that medical assistance has been provided to more than one recipient,

and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) the Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1986

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of dairy products.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1987

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of oil.

(2) In the event that medical assitance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1988

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of power.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1989

At the appropriate place add the following new title:

TITLE—REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of phosphate products.

(2) In the event that medical assistance has been provided to more than one recipient,

and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1990

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of waste disposal.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1991

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of sugar products.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

AMENDMENT NO. 1992

At the appropriate place add the following new title:

TITLE —REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH

SEC. . REIMBURSEMENT OF PAYMENTS MADE FOR CAUSED ILLNESS, INJURY, OR DEATH.

(a) JURISDICTION.—

(1) The Federal Government or any department or agency thereof or any State or political subdivision, department, or agency thereof, may bring an action in any United States District Court against a manufacturer of cigarettes to recover reimbursement for the full amount of medical assistance provided by medicare or medicaid under titles XVIII or XIX of the Social Security Act on behalf of a recipient for illness, injury, or death that may have been caused by cigarette smoking or use of movies and entertainment.

(2) In the event that medical assistance has been provided to more than one recipient, and the government elects to seek recovery from cigarette manufacturers due to actions by the manufacturers or circumstances which involve common issues of fact or law, an action may be brought under paragraph (1) to recover sums paid to all such recipients in one proceeding.

(b) CAUSE OF ACTION FOR REIMBURSEMENT.—

(1) In an action under subsection (a), a manufacturer shall be held strictly liable in tort for medicare and medicaid expenditures arising from illness, injury, or death caused by its products, to the limit of legal liability up to the amount of medical assistance paid by medicare or medicaid.

(2) The Federal Rules of Evidence and principles of common law and equity shall be broadly construed to ensure full reimbursement. Issues of causation and aggregate damages may be proven by use of statistical analysis and epidemiological estimates. Recovery against cigarette manufacturers may be sought under a market share theory. Where joinder or identification of each claim is impracticable, recovery may be sought based upon payments made on behalf of an entire class of recipients.

(3) An action under subsection (a) is independent of any rights or causes of action of a recipient and no action of a recipient shall prejudice or impair an action for reimbursement under subsection (a).

(c) DISTRIBUTION OF RECOVERY.—Any recovery in an action under subsection (a) shall be distributed to the Federal and State governments in accordance with the Federal and State shares of the expenditures.

FORD AMENDMENTS NOS. 1993–1999

(Ordered to lie on the table.)

Mr. FORD submitted seven amendments intended to be proposed by him to amendment No. 1894 proposed by Mr. HARKIN to the bill S. 687, supra; as follows:

AMENDMENT NO. 1993

On page 1, line 2, after tobacco insert the following: "or any product."

AMENDMENT NO. 1994

On page 1, line 2, after tobacco insert the following: "or rental housing."

AMENDMENT NO. 1995

On page 1, line 2, after tobacco insert the following: "or high cholesterol food products."

AMENDMENT NO. 1996

On page 1, line 2, after tobacco insert the following: "or high fat food products."

AMENDMENT NO. 1997

On page 1, line 2, after tobacco insert the following: "or radar products."

AMENDMENT NO. 1998

On page 1, line 2, after tobacco insert the following: "or medical devices."

AMENDMENT NO. 1999

On page 1, line 2, after tobacco insert the following: "or pharmaceutical products."

FORD AMENDMENT NO. 2000

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to an amendment proposed by Mr. LAUTENBERG to the bill S. 687, supra; as follows:

On page 7, strike out lines 5 through 7 and insert in lieu thereof the following:

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

SEC. . OFFSET OF DAMAGES.

Notwithstanding any other provision of this title, in any civil action subject to this title, after liability has been established and damages determined, such damages shall be offset in an amount equal to any Federal excise tax collected on tobacco products for the period for which liability is imposed.

FORD AMENDMENTS NOS. 2001–2014

(Ordered to lie on the table.)

Mr. FORD submitted 14 amendments intended to be proposed by him to amendment No. 1894 proposed by Mr. HARKIN to the bill S. 687, supra; as follows:

AMENDMENT NO. 2001

On page 1, line 2, after tobacco insert the following: "or chemical manufacturing products."

AMENDMENT NO. 2002

On page 1, line 2, after tobacco insert the following: "or wood pulp."

AMENDMENT NO. 2003

On page 1, line 2, after tobacco insert the following: "or plastic."

AMENDMENT NO. 2004

On page 1, line 2, after tobacco insert the following: "or glass products."

AMENDMENT NO. 2005

On page 1, line 2, after tobacco insert the following: "or automobiles."

AMENDMENT NO. 2006

On page 1, line 2, after tobacco insert the following: "or orange juice."

AMENDMENT NO. 2007

On page 1, line 2, after tobacco insert the following: "or beef."

AMENDMENT NO. 2008

On page 1, line 2, after tobacco insert the following: "or dairy products."

AMENDMENT NO. 2009

On page 1, line 2, after tobacco insert the following: "or oil."

AMENDMENT NO. 2010

On page 1, line 2, after tobacco insert the following: "or power."

AMENDMENT NO. 2011

On page 1, line 2, after tobacco insert the following: "or phosphate products."

AMENDMENT NO. 2012

On page 1, line 2, after tobacco insert the following: "or waste disposal."

AMENDMENT NO. 2013

On page 1, line 2, after tobacco insert the following: "or sugar products."

AMENDMENT NO. 2014

On page 1, line 2, after tobacco insert the following: "or movies and entertainment."

FORD AMENDMENTS NOS. 2015–2035

(Ordered to lie on the table.)

Mr. FORD submitted 21 amendments intended to be proposed by him to amendment No. 1893 proposed by Mr. HARKIN to the bill S. 687, supra; as follows:

AMENDMENT NO. 2015

On page 1, line 2, after tobacco insert the following: "or any product."

AMENDMENT NO. 2016

On page 1, line 2, after tobacco insert the following: "or rental housing."

AMENDMENT NO. 2017

On page 1, line 2, after tobacco insert the following: "or high cholesterol food products."

AMENDMENT NO. 2018

On page 1, line 2, after tobacco insert the following: "or high fat food products."

AMENDMENT NO. 2019

On page 1, line 2, after tobacco insert the following: "or radar products."

AMENDMENT NO. 2020

On page 1, line 2, after tobacco insert the following: "or medical devices."

AMENDMENT NO. 2021

On page 1, line 2, after tobacco insert the following: "or pharmaceutical products."

AMENDMENT NO. 2022

On page 1, line 2, after tobacco insert the following: "or chemical manufacturing products."

AMENDMENT NO. 2023

On page 1, line 2, after tobacco insert the following: "or wood pulp."

AMENDMENT NO. 2024

On page 1, line 2, after tobacco insert the following: "or plastic."

AMENDMENT NO. 2025

On page 1, line 2, after tobacco insert the following: "or glass products."

AMENDMENT NO. 2026

On page 1, line 2, after tobacco insert the following: "or automobiles."

AMENDMENT NO. 2027

On page 1, line 2, after tobacco insert the following: "or orange juice."

AMENDMENT NO. 2028

On page 1, line 2, after tobacco insert the following: "or beef."

AMENDMENT NO. 2029

On page 1, line 2, after tobacco insert the following: "or dairy products."

AMENDMENT NO. 2030

On page 1, line 2, after tobacco insert the following: "or oil."

AMENDMENT NO. 2031

On page 1, line 2, after tobacco insert the following: "or power."

AMENDMENT NO. 2032

On page 1, line 2, after tobacco insert the following: "or phosphate products."

AMENDMENT NO. 2033

On page 1, line 2, after tobacco insert the following: "or waste disposal."

AMENDMENT NO. 2034

On page 1, line 2, after tobacco insert the following: "or sugar products."

AMENDMENT NO. 2035

On page 1, line 2, after tobacco insert the following: "or movies and entertainment."

FORD AMENDMENTS NOS. 2036–2038

(Ordered to lie on the table.)

Mr. FORD submitted three amendments intended to be proposed by him to an amendment proposed by Mr. LAUTENBERG to the bill S. 687, supra; as follows:

AMENDMENT NO. 2036

On page 5, beginning with line 22, strike out all through line 4 on page 6.

AMENDMENT NO. 2037

On page 1, beginning with line 9, strike out all through line 2 on page 4.

AMENDMENT NO. 2038

On page 5, beginning with line 9, strike out all through line 21.

BUMPERS AMENDMENTS NOS. 2039–2040

(Ordered to lie on the table.)

Mr. BUMPERS submitted two amendments intended to be proposed by him to the bill S. 687, supra; as follows:

AMENDMENT NO. 2039

On line 2 of the amendment, strike "20 employees" and insert in lieu thereof: "100 employees".

AMENDMENT NO. 2040

On line 2 of the amendment, strike "20 employees" and insert in lieu thereof: "100 employees".

LIEBERMAN AMENDMENTS NOS. 2041–2042

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted two amendments to the bill S. 687, supra; as follows:

AMENDMENT NO. 2041

In lieu of the matter proposed to be stricken, insert the following:

(b) LIMITATION CONCERNING CERTAIN DRUGS AND MEDICAL DEVICES.—

79–059 O—97 Vol. 140 (Pt. 10) 39

(1) A manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(h)) which caused the claimant's harm has not engaged in conduct manifesting conscious, flagrant indifference to the safety of those persons who might be harmed by the product, and shall not be subject to an award of punitive damages pursuant to this section, where—

(A) such drug or device was subject to premarket approval by the Food and Drug Administration pursuant to section 505 (as amended by the New Drug Amendments of 1962, P.L. 87-781), 506, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 356, 357, 360b, or 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262) with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging of labeling of such drug or device, and such drug or device was actually approved by the Food and Drug Administration; or

(B) the drug or device is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(2) The provisions of paragraph (1) shall not apply in any case in which the claimant proves by a preponderance of evidence that—

(A)(i) the defendant, before or after premarket approval of a drug or device, failed to submit or misrepresented to the Food and Drug Administration or any other agency or official of the Federal government required information, including required information regarding any death or other adverse experience associated with use of the drug or device, and (ii) the information that defendant failed to submit or misrepresented is material and relevant to the performance of such drug or device and is causally related to the harm which the claimant allegedly suffered; or

(B) the defendant made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval of such drug or device; or

(C) the Food and Drug Administration has determined in a formal administrative proceeding (by a final order not subject to further review) or a court has determined in an action brought by the United States (by a final judgment not subject to further review) that the drug or device failed to conform to conditions of the Food and Drug Administration for approval (except for changes permitted without prior approval under applicable law, including Food and Drug Administration regulations), and such failure is causally related to the harm which the claimant allegedly suffered.

(3) The provisions of paragraph (1) shall not apply with respect to a claim for punitive damages based on a defect in manufacturing which causes the drug or device to depart from its intended design.

AMENDMENT NO. 2042

In lieu of the matter proposed to be stricken, insert the following:

(b) LIMITATION CONCERNING CERTAIN DRUGS AND MEDICAL DEVICES.—

(1) A manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(h)) which caused the claimant's harm has not engaged in conduct manifesting conscious, flagrant indifference to the safety of those persons who might be harmed by the product, and shall not be subject to an award of punitive damages pursuant to this section, where—

(A) such drug or device was subject to premarket approval by the Food and Drug Administration pursuant to section 505 (as amended by the New Drug Amendments of 1962, P.L. 87-781), 506, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 356, 357, 360b, or 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262) with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging of labeling of such drug or device, and such drug or device was actually approved by the Food and Drug Administration; or

(B) the drug or device is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(2) The provisions of paragraph (1) shall not apply in any case in which the claimant proves by a preponderance of evidence that—

(A)(i) the defendant, before or after premarket approval of a drug or device, failed to submit or misrepresented to the Food and Drug Administration or any other agency or official of the Federal Government required information, including required information regarding any death or other adverse experience associated with use of the drug or device, and (ii) the information that defendant failed to submit or misrepresented is material and relevant to the performance of such drug or device and is causally related to the harm which the claimant allegedly suffered; or

(B) the defendant made an illegal payment to an official of the Food and Drug Administration for the purpose of either securing or maintaining approval of such drug or device; or

(C) the Food and Drug Administration has determined in a formal administrative proceeding (by a final order not subject to further review) or a court has determined in an action brought by the United States (by a final judgment not subject to further review) that the drug or device failed to conform to conditions of the Food and Drug Administration for approval (except for changes permitted without prior approval under applicable law, including Food and Drug Administration regulations), and such failure is causally related to the harm which the claimant allegedly suffered.

(3) The provisions of paragraph (1) shall not apply with respect to a claim for punitive damages based on a defect in manufacturing which causes the drug or device to depart from its intended design.

(c) LIMITATION CONCERNING CERTAIN AIRCRAFT AND COMPONENTS.—(1) Punitive damages shall not be awarded pursuant to this section against a manufacturer of an aircraft or aircraft component which caused the claimant's harm where—

(A) such aircraft or component was subject to pre-market certification by the Federal Aviation Administration with respect to the safety of the design or performance of the aspect of such aircraft or component which caused the claimant's harm or the adequacy of the warnings regarding the operation or maintenance of such aircraft or component;

(B) the aircraft or component was certified by the Federal Aviation Administration under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.); and

(C) the manufacturer of the aircraft or component complied, after delivery of the aircraft or component to a user, with Federal Aviation Administration requirements and obligations with respect to continuing airworthiness, including the requirement to provide maintenance and service information related to airworthiness whether or not such information is used by the Federal Aviation Administration in the preparation of mandatory maintenance, inspection, or repair directives.

(2) The provisions of paragraph (1) shall not apply in any case in which—

(A) the defendant, before or after pre-market certification of an aircraft or aircraft component, withheld from or misrepresented to the Federal Aviation Administration required information that is material and relevant to the performance or the maintenance or operation of such aircraft or component or is causally related to the harm which the claimant allegedly suffered; or

(B) the defendant made an illegal payment to an official of the Federal Aviation Administration for the purpose of either securing or maintaining certification of such aircraft or component.

(d) SEPARATE PROCEEDING.—At the request of the manufacturer or product seller, the trier of fact shall consider in a separate proceeding (1) whether punitive damages are to be awarded and the amount of such award, or (2) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(e) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—In determining the amount of punitive damages, the trier of fact shall consider all relevant evidence, including—

(1) the financial condition of the manufacturer or product seller;

(2) the severity of the harm caused by the conduct of the manufacturer or product seller;

(3) the duration of the conduct or any concealment of it by the manufacturer or product seller;

(4) the profitability of the conduct to the manufacturer or product seller;

(5) the number of products sold by the manufacturer or product seller of the kind causing the harm complained of by the claimant;

(6) awards of punitive or exemplary damages to persons similarly situated to the claimant;

(7) prospective awards of compensatory damages to persons similarly situated to the claimant;

(8) any criminal penalties imposed on the manufacturer or product seller as a result of the conduct complained of by the claimant; and

(9) the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1995

COHEN AMENDMENT NO. 2043

(Ordered to lie on the table)

Mr. COHEN submitted an amendment intended to be proposed by him to the bill (S. 2182) to authorize appropriations for fiscal year 1995 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

On page 371, between lines 6 and 7, insert the following:

SEC. 3159. SAFETY OVERSIGHT AND ENFORCEMENT AT DEFENSE NUCLEAR FACILITIES.

(a) FINDINGS.—Congress finds the following:

(1) Effective oversight of matters relating to nuclear safety at defense nuclear facilities and enforcement of nuclear safety standards at such facilities are critical to ensuring the safety of the public and the workers at such facilities.

(2) The Department of Energy has not devoted adequate attention to matters relating to nuclear safety at defense nuclear facilities.

(b) SAFETY AT DEFENSE NUCLEAR FACILITIES.—The Secretary of Energy shall take appropriate actions to ensure that—

(1) officials of the Department of Energy who are responsible for independent oversight of matters relating to nuclear safety at defense nuclear facilities and enforcement of nuclear safety standards at such facilities maintain independence from officials who are engaged in management of such facilities;

(2) the independent, internal oversight functions carried out by the Department include, at the minimum, activities relating to—

(A) the assessment of the safety of defense nuclear facilities;

(B) the assessment of the effectiveness of Department program offices in carrying out programs relating to the environment, safety, health, and security at defense nuclear facilities;

(C) the provision to the Secretary of oversight reports that—

(i) contain validated technical information; and

(ii) provide a clear analysis of the extent to which line programs governing defense nuclear facilities meet applicable goals for the environment, safety, health, and security at such facilities; and

(D) the development of clear performance standards to be used in assessing the adequacy of the programs referred to in subparagraph (C)(ii);

(3) the Department has a system for bringing issues relating to nuclear safety at defense nuclear facilities to the attention of the officials of the Department (including the Secretary of Energy) having authority to resolve such issues in an adequate and timely manner; and

(4) an adequate number of qualified personnel of the Department are assigned to oversee matters relating to nuclear safety at defense nuclear facilities and enforce nuclear safety standards at such facilities.

(c) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Energy shall submit to the congressional defense committees a report describing—

(1) the actions that the Secretary has taken or will take to fulfill the requirements set forth in paragraphs (1), (2), and (3) of subsection (b);

(2) the actions in addition to the actions described under paragraph (1) that the Secretary could take in order to fulfill such requirements; and

(3) the respective roles with regard to nuclear safety at defense nuclear facilities of the following officials:

(A) The Associate Deputy Secretary of Energy for Field Management.

(B) The Assistant Secretary of Energy for Defense Programs.

(C) The Assistant Secretary of Energy for Environmental Restoration and Waste Management.

PRODUCT LIABILITY FAIRNESS ACT

HELMS AMENDMENT NO. 2044

(Ordered to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to amendment No. 1888 proposed by Mrs. BOXER to the bill S. 687, supra; as follows:

In the amendment add before the end the following:

"or any psychological, emotional or physical harm, injury, illness or disease caused by the drug RU-486.".

HELMS AMENDMENT NO. 2045

(Ordered to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to amendment No. 1887 proposed by Mrs. BOXER to the bill S. 687, supra; as follows:

In the amendment add before the end the following:

"or any psychological, emotional or physical harm, injury, illness or disease caused by the drug RU-486.".

HELMS AMENDMENTS NOS. 2046–2052

(Ordered to lie on the table.)

Mr. HELMS submitted seven amendments intended to be proposed by him to amendment No. 1900 proposed by Mr. FORD to the bill S. 687, supra; as follows:

AMENDMENT NO. 2046

At the end of the amendment, add the following:

SEC. . PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between compulsive gambling and spousal abuse and other forms of violence, to include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to compulsive gambling.

AMENDMENT NO. 2047

At the end of the amendment, add the following:

SEC. . GAMBLING LOSSES.

Notwithstanding any other provision of law, no deduction from personal income tax under the Internal Revenue Code of 1986 shall be available for gambling losses incurred after January 1, 1995, in a privately owned gambling establishment. For the purposes of this section, gambling on Indian reservations shall not be considered as gambling on a privately owned establishment.

AMENDMENT NO. 2048

At the end of the amendment, add the following:

SEC. . GAMBLING ADDICTION STUDY.

No later than 180 days after the date of the enactment of this Act, the Commissioner of the Food and Drug Administration shall provide a report to the Speaker of the House of Representatives and the President of the Senate, on the extent to which gambling casinos including the serving of alcohol therein, and the games of chance and skill therein, are designed or manipulated to foster, maintain, or encourage a psychological addiction to gambling among casino patrons.

AMENDMENT NO. 2049

At the end of the amendment, add the following:

SEC. . GAMBLING CONSUMER PROTECTION ACT OF 1994.

It shall be unlawful, after January 1, 1995, for any private gambling establishment to have any game of skill or chance which does not prominently display a sign informing patrons—

(1) of the odds against winning the particular game; and

(2) that gambling can become a compulsive, lifelong psychological addiction.

AMENDMENT NO. 2050

At the end of the amendment, add the following:

SEC. . WARNINGS ON CONDOMS.

No later than January 1, 1995—

(1) all brands and types of condoms sold in the United States shall be tested by the Commissioner of the Food and Drug Administration for their effectiveness, when used as instructed, in the prevention of pregnancy and the transmission of the HIV virus that causes AIDS; and

(2) the individual packaging of all condoms determined by the Commissioner to be less than 100 percent effective in one or both respects must incorporate a written warning stating that the condoms have been found by the Commissioner of the Food and Drug Administration to be less than 100 percent effective in preventing pregnancy or in preventing the transmission of the HIV virus that causes AIDS, and shall include both warnings if applicable.

AMENDMENT NO. 2051

At the end of the amendment, add the following:

SEC. . PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between violence in domestically produced feature films, television programs, and music recordings, and the occurrence and acceptance of spousal abuse and other forms of violence in American homes and in American society. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence

which are related to depictions or descriptions of violence in such organs of mass entertainment.

AMENDMENT NO. 2052

At the end of the amendment, add the following:

SEC. . PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between alcohol abuse and spousal abuse and other forms of violence. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to alcohol abuse.

HELMS AMENDMENT NO. 2053

(Ordered to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to amendment No. 1904 proposed by Mr. MCCONNELL to the bill S. 687, supra; as follows:

At the end of the amendment, add the following:

SEC. . PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between compulsive gambling and spousal abuse and other forms of violence, to include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to compulsive gambling.

HELMS AMENDMENTS NOS. 2054–2059

(Ordered to lie on the table.)

Mr. HELMS submitted six amendments intended to be proposed by him to amendment No. 1904 proposed by Mr. MCCONNELL to the bill S. 687, supra; as follows:

AMENDMENT NO. 2054

At the end of the amendment, add the following:

SEC.—.GAMBLING LOSSES.

Notwithstanding any other provision of law, no deduction from personal income tax under the Internal Revenue Code of 1986 shall be available for gambling losses incurred after January 1, 1995, in a privately owned gambling establishment. For the purposes of this section, gambling on Indian reservations shall not be considered as gambling on a privately owned establishment.

AMENDMENT NO. 2055

At the end of the amendment, add the following:

SEC.—.GAMBLING ADDICTION STUDY.

No later than 180 days after the date of the enactment of this Act, the Commissioner of the Food and Drug Administration shall provide a report to the Speaker of the House of Representatives and the President of the Senate, on the extent to which gambling casinos including the serving of alcohol therein, and the games of chance and skill therein, are designed or manipulated to foster, maintain, or encourage a psychological addiction to gambling among casino patrons.

AMENDMENT NO. 2056

At the end of the amendment, add the following:

SEC.—.GAMBLING CONSUMER PROTECTION ACT OF 1994.

It shall be unlawful, after January 1, 1995, for any private gambling establishment to have any game of skill or chance which does not prominently display a sign informing patrons—

(1) of the odds against winning the particular game; and

(2) that gambling can become a compulsive, lifelong psychological addition.

AMENDMENT NO. 2057

At the end of the amendment, add the following:

SEC.—.WARNINGS ON CONDOMS.

No later than January 1, 1995—

(1) all brands and types of condoms sold in the United States shall be tested by the Commissioner of the Food and Drug Administration for their effectiveness, when used as instructed, in the prevention of pregnancy and the transmission of the HIV virus that causes AIDS; and

(2) the individual packaging of all condoms determined by the Commissioner to be less than 100 percent effective in one or both respects must incorporate a written warning stating that the condoms have been found by the Commissioner of the Food and Drug Administration to be less than 100 percent effective in preventing pregnancy or in preventing the transmission of the HIV virus that causes AIDS, and shall include both warnings if applicable.

AMENDMENT NO. 2058

At the end of the amendment, add the following:

SEC.—.PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between violence in domestically produced feature films, television programs, and music recordings, and the occurrence and acceptance of spousal abuse and other forms of violence in American homes and in American society. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to depictions or descriptions of violence in such organs of mass entertainment.

AMENDMENT NO. 2059

At the end of the amendment, add the following:

SEC.—.PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between alcohol abuse and spousal abuse and other forms of violence. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to alcohol abuse.

HELMS AMENDMENTS NOS. 2060–2068

(Ordered to lie on the table.)

Mr. HELMS submitted nine amendments intended to be proposed by him to amendment No. 1894 proposed by Mr. HARKIN to the bill S. 687, supra; as follows:

AMENDMENT NO. 2060

In the amendment add after "products" the following: "or alcoholic beverages or products".

AMENDMENT NO. 2061

In the amendment add after "products" the following: "or the drug RU 486".

AMENDMENT NO. 2062

At the end of the amendment, add the following:

SEC. . PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statical correlation between alcohol abuse and spousal abuse and other forms of violence. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to alcohol abuse.

AMENDMENT NO. 2063

At the end of the amendment, add the following:

SEC. ___. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between violence in domestically produced feature films, television programs, and music recordings, and the occurrence and acceptance of spousal abuse and other forms of violence in American homes and in American society. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to depictions or descriptions of violence in such organs of mass entertainment.

AMENDMENT NO. 2064

At the end of the amendment, add the following:

SEC. _. WARNINGS ON CONDOMS.

No later than January 1, 1995—

(1) all brands and types of condoms sold in the United States shall be tested by the Commissioner of the Food and Drug Administration for their effectiveness, when used as instructed, in the prevention of pregnancy and the transmission of the HIV virus that causes AIDS; and

(2) the individual packaging of all condoms determined by the Commissioner to be less than 100 percent effective in one or both respects must incorporate a written warning stating that the condoms have been found by the Commissioner of the Food and Drug Administration to be less than 100 percent effective in preventing pregnancy or in preventing the transmission of the HIV virus

that causes AIDS, and shall include both warnings if applicable.

AMENDMENT NO. 2065

At the end of the amendment, add the following:

SEC. _. GAMBLING CONSUMER PROTECTION ACT OF 1994.

It shall be unlawful, after January 1, 1995, for any private gambling establishment to have any game of skill or chance which does not prominently display a sign informing patrons—

(1) of the odds against winning the particular game; and

(2) that gambling can become a compulsive, lifelong psychological addition.

AMENDMENT NO. 2066

At the end of the amendment, add the following:

SEC. _. GAMBLING ADDICTION STUDY.

No later than 180 days after the date of the enactment of this Act, the Commissioner of the Food and Drug Administration shall provide a report to the Speaker of the House of Representatives and the President of the Senate, on the extent to which gambling casinos including the serving of alcohol therein, and the games of chance and skill therein, are designed or manipulated to foster, maintain, or encourage a psychological addiction to gambling among casino patrons.

AMENDMENT NO. 2067

At the end of the amendment, add the following:

SEC. _. GAMBLING LOSSES.

Notwithstanding any other provision of law, no deduction from personal income tax under the Internal Revenue Code of 1986 shall be available for gambling losses incurred after January 1, 1995, in a privately owned gambling establishment. For the purposes of this section, gambling on Indian reservations shall not be considered as gambling on a privately owned establishment.

AMENDMENT NO. 2068

At the end of the amendment, add the following:

SEC. _. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between compulsive gambling and spousal abuse and other forms of violence, to include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to compulsive gambling.

HELMS AMENDMENTS NOS. 2069 and 2070

(Ordered to lie on the table.)

Mr. HELMS submitted two amendments intended to be proposed by him to amendment No. 1893 proposed by Mr. HARKIN to the bill S. 687, supra; as follows:

AMENDMENT NO. 2069

In the amendment add after "product" the following: "or the drug RU 486".

AMENDMENT NO. 2070

In the amendment add before the end the following: "or alcoholic beverages or products".

HELMS AMENDMENTS NOS. 2071 THROUGH 2077

(Ordered to lie on the table.)

Mr. HELMS submitted seven amendments intended to be proposed by him to amendment No. 1893 proposed by Mr. HARKIN to the bill S. 687, supra; as follows:

AMENDMENT NO. 2071

At the end of the amendment, add the following:

SEC. ___. WARNINGS ON CONDOMS.

No later than January 1, 1995—

(1) all brands and types of condoms sold in the United States shall be tested by the Commissioner of the Food and Drug Administration for their effectiveness, when used as instructed, in the prevention of pregnancy and the transmission of the HIV virus that causes AIDS; and

(2) the individual packaging of all condoms determined by the Commissioner to be less than 100 percent effective in one or both respects must incorporate a written warning stating that the condoms have been found by the Commissioner of the Food and Drug Administration to be less than 100 percent effective in preventing pregnancy or in preventing the transmission of the HIV virus that causes AIDS, and shall include both warnings if applicable.

AMENDMENT NO. 2072

At the end of the amendment, add the following:

SEC. ___. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between violence in domestically produced feature films, television programs, and music recordings, and the occurrence and acceptance of spousal abuse and other forms of violence in American homes and in American society. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to depictions or descriptions of violence in such organs of mass entertainment.

AMENDMENT NO. 2073

At the end of the amendment, add the following:

SEC. ___. GAMBLING CONSUMER PROTECTION ACT OF 1994.

It shall be unlawful, after January 1, 1995, for any private gambling establishment to have any game of skill or chance which does not prominently display a sign informing patrons—

(1) of the odds against winning the particular game; and

(2) that gambling can become a compulsive, lifelong psychological addiction.

AMENDMENT NO. 2074

At the end of the amendment, add the following:

SEC. ___. GAMBLING ADDICTION STUDY.

No later than 180 days after the date of the enactment of this Act, the Commissioner of the Food and Drug Administration shall provide a report to the Speaker of the House of Representatives and the President of the Senate, on the extent to which gambling casinos including the serving of alcohol therein, and the games of chance and skill therein, are designed or manipulated to foster, maintain, or encourage a psychological addiction to gambling among casino patrons.

AMENDMENT NO. 2075

At the end of the amendment, add the following:

SEC. ___. GAMBLING LOSSES.

Notwithstanding any other provision of law, no deduction from personal income tax under the Internal Revenue Code of 1986 shall be available for gambling losses incurred after January 1, 1995, in a privately owned gambling establishment. For the purposes of this section, gambling on Indian reservations shall not be considered as gambling in a privately owned establishment.

AMENDMENT NO. 2076

At the end of the amendment, add the following:

SEC. ___. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between compulsive gambling and spousal abuse and other forms of violence, to include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to compulsive gambling.

AMENDMENT NO. 2077

At the end of the amendment, add the following:

SEC. ___. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between alcohol abuse and spousal abuse and other forms of violence. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to alcohol abuse.

HELMS AMENDMENTS NOS. 2078 THROUGH 2083

(Ordered to lie on the table)

Mr. HELMS submitted six amendments intended to be proposed by him to amendment no. 1922 proposed by Mr. METZENBAUM to the bill, S. 687, supra; as follows:

AMENDMENT NO. 2078

At the end of the amendment, add the following:

SEC. —. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between alcohol abuse and spousal abuse and other forms of violence. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to alcohol abuse.

AMENDMENT NO. 2079

At the end of the amendment, add the following:

SEC. ___. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between violence in domestically produced feature films, television programs, and music recordings, and the occurrence and acceptance of spousal abuse and other forms of violence in American homes and in American society. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to depictions or descriptions of violence in such organs of mass entertainment.

AMENDMENT NO. 2080

At the end of the amendment, add the following:

SEC. —. WARNINGS ON CONDOMS.

No later than January 1, 1995—

(1) all brands and types of condoms sold in the United States shall be tested by the Commissioner of the Food and Drug Administration for their effectiveness, when used as instructed, in the prevention of pregnancy and the transmission of the HIV virus that causes AIDS; and

(2) the individual packaging of all condoms determined by the Commissioner to be less than 100 percent effective in one or both respects must incorporate a written warning stating that the condoms have been found by the Commissioner of the Food and Drug Administration to be less than 100 percent effective in preventing pregnancy or in preventing the transmission of the HIV virus that causes AIDS, and shall include both warnings if applicable.

AMENDMENT NO. 2081

At the end of the amendment, add the following:

SEC. ___. GAMBLING CONSUMER PROTECTION ACT OF 1994.

It shall be unlawful, after January 1, 1995, for any private gambling establishment to have any game of skill or chance which does not prominently display a sign informing patrons—

(1) of the odds against winning the particular game; and

(2) that gambling can become a compulsive, lifelong psychological addiction.

AMENDMENT NO. 2082

At the end of the amendment, add the following:

SEC. ___. GAMBLING ADDICTION STUDY.

No later than 180 days after the date of the enactment of this Act, the Commissioner of the Food and Drug Administration shall provide a report to the Speaker of the House of Representatives and the President of the Senate, on the extent to which gambling casinos including the serving of alcohol therein, and the games of chance and skill therein, are designed or manipulated to foster, maintain, or encourage a psychological addiction to gambling among casino patrons.

AMENDMENT NO. 2083

At the end of the amendment, add the following:

SEC. ___. GAMBLING LOSSES.

Notwithstanding any other provision of law, no deduction from personal income tax under the Internal Revenue Code of 1986 shall be available for gambling losses incurred after January 1, 1995, in a privately owned gambling establishment. For the purposes of this section, gambling on Indian reservations shall not be considered as gambling on a privately owned establishment.

HELMS AMENDMENT NO. 2084

(Ordered to lie on the table.)

Mr. HELMS submitted seven amendments intended to be proposed by him to amendment No. 1922 proposed by Mr. METZENBAUM to the bill S. 687, supra; as follows:

At the end of the amendment, add the following:

SEC. ___. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between compulsive gambling and spousal abuse and other forms of violence, to include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to compulsive gambling.

HELMS AMENDMENTS NOS. 2085–2091

(Ordered to lie on the table.)

Mr. HELMS submitted seven amendments intended to be proposed by him to amendment No. 1890 proposed by Mr. LAUTENBERG to the bill S. 687, supra; as follows:

AMENDMENT NO. 2085

On page 7, strike out lines 5 through 7 and insert in lieu thereof:

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

SEC. ___. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between alcohol abuse and spousal abuse and other forms of violence. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to alcohol abuse.

AMENDMENT NO. 2086

On page 7, strike out lines 5 through 7 and insert in lieu thereof:

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

SEC. ___. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between violence in domestically produced feature films, television programs, and music recordings, and the occurrence and acceptance of spousal abuse and other forms of violence in American homes and in American society. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to depictions or descriptions of violence in such organs of mass entertainment.

AMENDMENT NO. 2087

On page 7, strike out lines 5 through 7 and insert in lieu thereof:

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

SEC. _. WARNINGS ON CONDOMS.

No later than January 1, 1995—

(1) all brands and types of condoms sold in the United States shall be tested by the Commissioner of the Food and Drug Administration for their effectiveness, when used as instructed, in the prevention of pregnancy and the transmission of the HIV virus that causes AIDS; and

(2) the individual packaging of all condoms determined by the Commissioner to be less than 100 percent effective in one or both respects must incorporate a written warning stating that the condoms have been found by the Commissioner of the Food and Drug Administration to be less than 100 percent effective in preventing pregnancy or in preventing the transmission of the HIV virus that causes AIDS, and shall include both warnings if applicable.

AMENDMENT NO. 2088

On page 7, strike out lines 5 through 7 and insert in lieu thereof:

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

SEC. _. GAMBLING CONSUMER PROTECTION ACT OF 1994.

It shall be unlawful, after January 1, 1995, for any private gambling establishment to have any game of skill or chance which does not prominently display a sign informing patrons—

(1) of the odds against winning the particular game; and

(2) that gambling can become a compulsive, lifelong psychological addiction.

AMENDMENT NO. 2089

On page 7, strike out lines 5 through 7 and insert in lieu thereof:

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

SEC. _. GAMBLING ADDICTION STUDY.

No later than 180 days after the date of the enactment of this Act, the Commissioner of the Food and Drug Administration shall provide a report to the Speaker of the House of Representatives and the President of the Senate, on the extent to which gambling casinos including the serving of alcohol therein, and the games of chance and skill therein, are designed or manipulated to foster, maintain, or encourage a psychological addiction to gambling among casino patrons.

AMENDMENT NO. 2090

On page 7, strike out lines 5 through 7 and insert in lieu thereof:

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

SEC. GAMBLING LOSSES.

Notwithstanding any other provision of law, no deduction from personal income tax under the Internal Revenue Code of 1986 shall be available for gambling losses incurred after January 1, 1995, in a privately owned gambling establishment. For the purposes of this section, gambling on Indian reservations shall not be considered as gambling on a privately owned establishment.

AMENDMENT NO. 2091

On page 7, strike out lines 5 through 7 and insert in lieu thereof:

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

SEC. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between compulsive gambling and spousal abuse and other forms of violence, to include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to compulsive gambling.

HELMS AMENDMENTS NOS. 2092 THROUGH 2093

(Ordered to lie on the table.)

Mr. HELMS submitted two amendments intended to be proposed by him to amendment No. 1910 proposed by Mr. METZENBAUM to the bill, S. 687, supra; as follows:

AMENDMENT NO. 2092

At the end of the amendment, add the following:

SEC. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between alcohol abuse and spousal abuse and other forms of violence. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to alcohol abuse.

AMENDMENT NO. 2093

At the end of the amendment, add the following:

SEC. PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between violence in domestically produced feature films, television programs, and music recordings, and the occurrence and acceptance of spousal abuse and other forms of violence in American homes and in American society. Such report shall include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to depictions or descriptions of violence in such organs of mass entertainment.

HELMS AMENDMENTS NOS. 2094–2098

(Ordered to lie on the table.)

Mr. HELMS submitted five amendments intended to be proposed by him to amendment No. 1910 proposed by Mr. METZENBAUM to the bill S. 687, supra; as follows:

AMENDMENT NO. 2094

At the end of the amendment, add the following:

SEC. . WARNINGS ON CONDOMS.

No later than January 1, 1995—

(1) all brands and types of condoms sold in the United States shall be tested by the Commissioner of the Food and Drug Administration for their effectiveness, when used as instructed, in the prevention of pregnancy and the transmission of the HIV virus that causes AIDS; and

(2) the individual packaging of all condoms determined by the Commissioner to be less than 100 percent effective in one or both respects must incorporate a written warning stating that the condoms have been found by the Commissioner of the Food and Drug Administration to be less than 100 percent effective in preventing pregnancy or in preventing the transmission of the HIV virus that causes AIDS, and shall include both warnings if applicable.

AMENDMENT NO. 2095

At the end of the amendment, add the following:

SEC. . GAMBLING CONSUMER PROTECTION ACT OF 1994.

It shall be unlawful, after January 1, 1995, for any private gambling establishment to have any game of skill or chance which does not prominently display a sign informing patrons—

(1) of the odds against winning the particular game; and

(2) that gambling can become a compulsive, lifelong psychological addiction.

AMENDMENT NO. 2096

At the end of the amendment, add the following:

SEC. . GAMBLING ADDICTION STUDY.

No later than 180 days after the date of the enactment of this Act, the Commissioner of the Food and Drug Administration shall provide a report to the Speaker of the House of Representatives and the President of the Senate, on the extent to which gambling casinos including the serving of alcohol therein, and the games of chance and skill therein, are designed or manipulated to foster, maintain, or encourage a psychological addiction to gambling among casino patrons.

AMENDMENT NO. 2097

At the end of the amendment, add the following:

SEC. . GAMBLING LOSSES.

Notwithstanding any other provision of law, no deduction from personal income tax under the Internal Revenue Code of 1986 shall be available for gambling losses incurred after January 1, 1995, in a privately owned gambling establishment. For the purposes of this section, gambling on Indian reservations shall not be considered as gambling on a privately owned establishment.

AMENDMENT NO. 2098

At the end of the amendment, add the following:

SEC. . PREVENTION OF SPOUSAL ABUSE AND OTHER FORMS OF VIOLENCE.

No later than 180 days after the date of the enactment of this Act, the Attorney General shall provide the Speaker of the House of Representatives and the President of the Senate with a comprehensive report on the sociological relationship and statistical correlation between compulsive gambling and spousal abuse and other forms of violence, to include recommendations of the Attorney General for reducing the number of incidents of spousal abuse and other forms of violence which are related to compulsive gambling.

McCONNELL AMENDMENTS NOS. 2099–2100

(Ordered to lie on the table.)

Mr. McCONNELL submitted two amendments intended to be proposed by him to amendment No. 1893 proposed by Mr. HARKIN to the bill S. 687, supra; as follows:

AMENDMENT NO. 2099

In the amendment insert "or pornography" after "tobacco".

AMENDMENT NO. 2100

In the amendment insert "or pornography" after "tobacco".

HEFLIN AMENDMENTS NOS. 2101–2102

(Ordered to lie on the table.)

Mr. HEFLIN submitted two amendments intended to be proposed by him to amendment No. 1941 proposed by Mr. GORTON to the bill S. 687, supra; as follows:

AMENDMENT NO. 2101

At the end of the matter proposed to be inserted, add the following:

"(4) Notwithstanding the preceding paragraphs of this subsection, this subsection shall have no force or effect as law."

AMENDMENT NO. 2102

At the end of the matter proposed to be inserted, add the following:

"(4) Notwithstanding any other provision of this Act, the provisions of subsections (b) and (c) of this section, shall not have any force or effect.

NOTICE OF HEARING

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I wish to announce that the Committee on Rules and Administration will meet at 9:30 a.m., in SR–301, Russell Senate Office Building, on Thursday, July 14, 1994. The Committee will hold an oversight hearing on the operations of the Library of Congress.

For further information regarding this hearing, please contact Carole Blessington of the Rules Committee staff on x40278.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the full

Committee on Environment and Public Works be authorized to meet during the session of the Senate on Tuesday, June 28, beginning at 10 a.m., to conduct a hearing on the Superfund Reform Act of 1994.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, June 28, at 10 a.m. to hold a hearing on Treaty Doc. 103–24, the Convention on Regulating Fishing Vessels on the High Seas.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee for authority to meet on Tuesday, June 28, at 10 a.m., for a hearing on: Delinquent Criminal Debt: What's Owed? What's Paid.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday June 28, 1994 at 4 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON CONSTITUTION

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Subcommittee on Constitution, of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Tuesday, June 28, 1994, at 10 a.m., to hold an oversight hearing on the Hate Crimes Statistics Act.

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

SUBCOMMITTEE ON RESEARCH AND DEVELOPMENT

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Subcommittee on Research and Development of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., June 28, 1994, to receive testimony on S. 2104, a bill to establish within the national laboratories of the Department of Energy a National Albert Einstein Distinguished Educator Fellowship Program.

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

SUBCOMMITTEE ON WATER AND POWER

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 2:30 p.m., June 28, 1994, to receive testimony on the following bills: S. 1786, to increase the authorization of the appropriations for the Belle Fourche Irrigation Project, and for other purposes; S. 1988, to authorize the transfer of a certain loan contract to the Upper Yampa Water Conservancy District, and for other purposes; S. 2066, to expand the MNI Wiconi Rural Water Supply Project, and for other purposes; S. 2068, to authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and the construction of the water supply system, and for other purposes; S. 2124, to provide for private development of power at the Mancos Project, and for other purposes; and S. 2213, to make applicable the provisions of the act commonly known as the "Warren Act" to the Central Utah Project, UT, and for other purposes.

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

SUBCOMMITTEE ON WESTERN HEMISPHERE AND PEACE CORPS AFFAIRS

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Subcommittee on Western Hemisphere and Peace Corps Affairs of the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, June 28, at 2:00 p.m. to hold a hearing on U.S. Policy Toward Haiti.

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

ADDITIONAL STATEMENTS

THE INAUGURATION OF BOBBY WHITEFEATHER

• Mr. DURENBERGER. Mr. President, I rise today to congratulate a leader and pay tribute to a great nation. On Thursday, Bobby Whitefeather will be inaugurated as the new chairman of the Red Lake Nation.

Over the past 16 years, it has been my privilege to serve the people of Red Lake in the U.S. Senate. But, it has been an even greater privilege to have learned what lessons I have learned from the people of Red Lake, a people profound in purpose and resolute in faith.

Of course, there are a lot of people with purpose and many people with faith. But, so often it is purpose and faith unchallenged. And, that is no purpose or faith at all. None of what the Red Lake people have accomplished over the years has come without challenge—or without cost. The cost has been great: centuries of adversity.

But, again and again, the Red Lake people have confronted and conquered, confronted and conquered. And, today, the Red Lake people stand tall as a nation, a shining example of a people—weathered by the past—with a confident and unwavering hope for the future.

The lesson we learn from the Red Lake people is great to anyone who has ever struggled in his or her life: never shrink from purpose and never lose your faith. To me, there is no greater lesson than this. There is no better teacher than the people of Red Lake. And, perhaps, no better student than me.

So, when I arrived in Washington 16 years ago, I was ready to lead, ready to teach. Now, as I prepare to leave this city, I am ready to lead and ready to learn.

Mr. President, I am grateful to the people of Red Lake for the great lessons I have learned from them and the friendship we share. And, I congratulate Chairman Whitefeather, Secretary Roy, Councilman Dudley, and all of the council as they prepare to lead—and to learn.•

HOMICIDES BY GUNSHOT IN NEW YORK CITY

• Mr. MOYNIHAN. Mr. President, I rise, as has been my practice each week in this session of the 103d Congress, to announce to the Senate that during the last week, 19 people were killed in New York City by gunshot, bringing this year's total to 481.

As the surge of tragic deaths by gunshot continues to grow in city streets throughout the country, it is time to revisit methods to curb this violence. While the Brady law, which was passed last year, has kept guns out of the hands of thousands of potential felons, it has not ended the plague of violence we face. That is why I have long advocated attacking the very agents of the killings themselves: the bullets.

As I have said before, guns do not kill people, bullets do. I have introduced legislation that would ban or tax certain rounds of ammunition. This effort began in 1986, when President Reagan signed into law a bill I introduced that bans sale of armor-piercing—cop-killer—bullets.

Mr. President, we are dealing with a national emergency; an epidemic. So our efforts to address this crisis must match the severity of the problem. By controlling the supply of ammunition, we can quickly an measurably reduce the senseless homicides that have reached such grim proportions today.

I would like to draw the Senate's attention to a letter by Dr. Ward Casscells of the University of Texas published in the June 23 New England Journal of Medicine. Dr. Casscells proposes restricting the sale of handgun ammunition to shooting clubs, police, and the Secret Service. He rightly focuses on the need to keep deadly bullets out of the hands of potential criminals. Dr. Casscells' insight deserves our attention. I ask that his letter be made part of the RECORD.

The letter follows:

[From the New England Journal of Medicine, June 23, 1994]

SHOULD AMMUNITION BE RESTRICTED?

TO THE EDITOR: Like many Americans, I am afraid that waiting periods and background checks would delay but not prevent the purchase of handguns by criminals. It would be difficult to confiscate all the guns: 67 million handguns are owned by private citizens in the United States, and there are guns in 48 percent of U.S. households.[1] The cost of repurchasing all these guns would be high. Confiscation would raise constitutional issues, and in any case, guns can be hidden.

My proposal is to restrict the sale of handgun ammunition to shooting clubs, police, and the Secret Service. A legal case might even be made for confiscating existing handgun ammunition from retail stores to prevent those inventories from creating an instant black market. The costs of compensating retailers would probably be offset by savings in the health care of victims of shootings: the annual cost of hospital services for treating firearm injuries is estimated at $1 billion, with an estimated total cost to the U.S. economy of $14 billion a year.[1]

This proposal would not result in a hardship to the millions of law-abiding citizens who keep handguns for protection in their home (whether or not such a practice is a good idea) and never use them. Let these citizens keep whatever shells and bullets they have. Meanwhile, criminals will deplete their stocks of ammunition.

I have had a shotgun since I hunted birds as a boy with my father. When I was in junior high school, my best friend was murdered, and his father, the late Pete Shields, quit his job and founded Handgun Control, sponsor of the recently passed Brady Bill. As a homeowner and a father, I still have that shotgun (hidden, with the shells hidden separately). It does not give me much reassurance, and even that I would gladly give up if most of the people with handguns could not obtain ammunition. I am sure some ammunition would be smuggled into the country before long or manufactured in basements, but my hope is that there would be less of it, and in the meantime we would all be a little safer.

WARD CASSCELLS, M.D.,
University of Texas—Houston Medical School.●

[1] Time, December 20, 1993:21–3.

HONORING THE VILLAGE OF SOLVAY

● Mr. D'AMATO. Mr. President, I rise today to speak in celebration of the village of Solvay on the occasion of their 100th anniversary of incorporation. On May 31 the village of Solvay enacted a centennial festival which began with a ceremony whereby honored guests presented proclamations to the village. This celebration will continue through the 21st of October with appropriate fanfare. I ask my colleagues to join me in celebrating the longevity, success, and patriotism of the people of Solvay, NY.

The village of Solvay was originally referred to as the town of Geddes after James Geddes. Beginning in the late 1800's, 20 business and industrial leaders met to discuss the incorporation of the village of Solvay. The meetings were led by Frederick R. Hazard, president of Solvay Works. The village was located in the town of Geddes and county of Onondaga and contained one and one-quarter square miles of property. The population at the time was approximately 1,761.

On May 31, 1894, the town of Geddes became officially called the village of Solvay. Solvay's first governing body included many of the 20 business leaders that had originally met in efforts to incorporate Solvay. In 1898, the village's first budget was adopted and taxes were to be collected.

Solvay's governing body posed an annexation in 1909 to become a part of Syracuse, but the voters defeated the proposal. Later in 1957, Solvay's population was great enough to be considered a city, however, the village declined preferring to keep its former title. Finally in 1986, a committee drafted a proposal and submitted it to Albany as a study bill. This bill was never taken out of the committee, therefore, shattering any hopes of Solvay becoming a city.

Over the past century, Solvay has shown great economical growth in many instances, beginning in 1884 when the Solvay Process Plant provided hundreds of jobs as it ran 24 hours a day—7 days a week. By 1890, the New York State Fair had opened in Solvay and, once again, brought economic wealth to the small village. However, the major boom in Solvay's history occurred when the village bought and installed its own lighting system. Today, they still rank as one of the few and the oldest municipalities in the country.

I am proud to represent Solvay and villages like it. It is people like the good people of Solvay who make up the fabric of American life. I ask my colleagues to recognize the values of Solvay and celebrate the ability of this incorporated village to continue to prosper and develop over a century of change. I salute the residents of Solvay, and congratulate each of you on your 100th anniversary. Congratulations and best wishes for continued prosperity.●

PLANT VARIETY PROTECTION ACT AMENDMENTS OF 1994

● Mr. KERREY. Mr. President, on May 25, the Senate discharged the Committee on Agriculture, Nutrition, and Forestry from further consideration of S. 1409, the Plant Variety Protection Act Amendments of 1994, and subsequently adopted an amendment in the nature of a substitute and approved the bill, as amended, by unanimous consent.

Because the bill was discharged from committee, no committee report was filed on the legislation. However, given the complex and technical nature of the bill, a section-by-section analysis, including related legislative history, was prepared to provide additional background and insight regarding the various amendments to the Plant Variety Protection Act that are incorporated in S. 1409.

Unfortuately, Mr. President, the section-by-section analysis was inadvertently not printed in the RECORD of May 25 following approval of S. 1409.

Therefore, as the primary sponsor of S. 1409, I ask the section-by-section analysis of S. 1409 be included in today's RECORD, so that the legislative history of this important legislation is properly established.

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

SECTION-BY-SECTION ANALYSIS OF THE PLANT VARIETY PROTECTION ACT AMENDMENTS OF 1993

Section 1. Provides that the Act may be cited as the "Plant Variety Protection Act Amendments of 1993".

Section 2. Replaces section 41 of the Plant Variety Protection Act (hereafter referred to as the "PVPA") by reordering, revising, adding and deleting definitions [(subsection (a)] and rules of construction [subsection (b)], as follows:

Section 41(a)(1) is current section 41(g).

Section 41(a)(2) revises the definition of the term "breeder" in order to conform to Article 1(iv) of the International Convention for the Protection of New Varieties of Plants (UPOV), March 19, 1991, by removing the statement that the terms "breed", "develop", "originate", and "discover" each include the other and instead specifying that the breeder is the person who directs the final breeding or who both discovers and develops the variety. Also, it clarifies that a person who rediscovers a publicly known variety is not the breeder of that variety.

Section 41(a)(3) defines a new term, "essentially derived variety", to comply with article 14(5) of the 1991 UPOV Convention. A variety that is essentially derived from another variety may be protected (if otherwise eligible), but if it is derived from a protected variety, the infringement provisions of section 111 of the PVPA may apply [see section 9(3) of these amendments]. Under current law, an existing variety may be used in development of a new variety which may differ only in minor and unimportant ways from the original variety. The new variety may be freely exploited by its developer without obligation to the original breeder. An illustrative list of the types of breeding procedures is included in the definition. The essentially-derived provisions do not modify the requirements for granting of a PVPA certificate, but they do provide an opportunity for the original breeder to seek compensation through agreement or litigation. Guidelines on Essentially Derived Varieties have been published by the Office of the Union [IOM/6/2, 30 Oct 1992, UPOV].

Section 41(a)(4) is current section 41(c).

Section 41(a)(5) defines tubers or parts of tubers as seed for the purposes of this act.

Section 41(a)(6) is current section 41(f).

Section 41(a)(7) defines tuber-propagated to include any production by a tuber or a part of a tuber.

Section 41(a)(8) is current section 41(b) with minor revisions to adapt the definition

of "United States" and "this country" to current U.S. standards.

Section 41(a)(9) adds a definition of "variety" and removes the definition of "novel variety." The PVPA did not define the term "variety," although the meaning was implicit in the definition of "novel variety." The elements of a novel variety (distinctness, uniformity, and stability) are modified and placed in section 42. Part of the provision relating to distinctness is placed in a rule of construction, discussed below. This places the substantive requirements for protection in one section and avoids confusion which may result from the use of the term "novel variety." The PVPA used "novel variety" to refer primarily to a variety which is distinct, while the 1991 UPOV Convention uses "novelty" to refer to a variety which is new.

The definition of the term "date of determination" [current section 41(d)] is removed, because the term would no longer be used elsewhere in the PVPA (section 3 of this Act amends section 42 of the PVPA to base eligibility for protection on the date of filing for protection rather than the date of determination of a variety). The 1991 UPOV Convention requires that protection be based on the date of filing and not the date of determination.

Tubers and tissue culture plantlets are added to the list of forms that may represent a variety. These forms are most commonly associated with tuber-propagated varieties.

The inclusion of "tuber propagation" in the definitions makes asexually-reproduced, tuber-propagated varieties equivalent to sexually-reproduced, seed-propagated varieties. Plant breeders' rights for asexually-reproduced varieties are usually obtained under the Plant Patent Act; however, tuber-propagated varieties, such as potatoes and Jerusalem artichokes, are excluded. This section is intended to give plant breeders' rights to the developers of those tuber-propagated varieties which are excluded from the Plant Patent Act.

Section 41(b) contains the Rules of Construction. Current subsection (h) defines the term "testing." The definition is replaced by a rule of construction, discussed below. Current subsections (i) and (j) define the term "public variety" and provide a rule of construction concerning that term. The term "public variety" will no longer be used in the PVPA but, as discussed below, the vast majority of the varieties which, without these amendments, are excluded from protection because they have been public varieties for more than one year, will continue to be excluded from protection.

New sections 41(b)(1) and (2) add rules of construction which replace the definition of the term "testing." New section 41(b)(1) provides that the disposition for purposes other than propagation of harvested material produced as a result of experimentation or testing to ascertain the characteristics of a variety will not be considered a disposition for the purposes of exploitation of the variety, which would otherwise begin a time period bar to protection under section 42 of the PVPA as amended. New section 41(b)(2) provides that the sale or other disposition of a variety for reproductive purposes shall not be considered to be for the purposes of exploitation of the variety if done as an integral part of a testing program or to increase the variety on behalf of the breeder. These clarifying provisions reflect the longstanding interpretation of the PVPA.

New section 41(b)(3) adds a rule of construction which provides that the sale of hybird seed shall be considered a sale of harvested material of the varieties from which it was produced. Whether the sale was for the purposes of exploitation of those varieties depends upon the circumstances of the sale. Prior to these amendments, a similar result was obtained under section 42 of the PVPA, which made the use of a variety an event which began a one-year period after which protection for the variety is to be barred.

New section 41(b)(4) provides that the filing of an application for protection or for the entering of another variety in an official register of varieties, in any country, shall be considered to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of protection or to the entering of the said other variety in the official register of varieties, as the case may be. This rule of construction is necessary to conform to Article 7 of the 1991 UPOV Convention.

New section 41(b)(5) is derived from the distinctness portion of the deleted definition of "novel variety' and clarifies the broad range of characteristics which may be the basis of distinctiveness.

New section 41(b)(6) provides a rule of construction clarifying that a variety which is adequately described by a publication, which includes a disclosure of the principal characteristics by which the variety is distinguished, will be considered to be publicly known and a matter of common knowledge, and that a variety may become publicly known or a matter of common knowledge by other means. This provision is derived from current subsections 41 (i) and (j) and related portions of section 42(a)(1).

Section 3. Amends section 42 of the PVPA, "Right to Plant Variety Protection; Plant Varieties Protectable". The amended section sets forth the substantive requirements for plant variety protection, which are changed in several significant ways.

The exclusion of protection for first generation hybrids is removed. This is necessary to conform to Articles 1(vi), 5 and 9 of the 1991 UPOV Convention.

Also, the amendment places together the substantive requirements for protection: that the variety be new, distinct, uniform and stable. Currently, section 42 of the PVPA incorporates the elements of distinctness, uniformity and stability from the definition of "novel variety", and separately states the bars to protection. Because all of the requirements are set forth together, the bars to protection are integrated and, therefore, no longer need to be separately stated.

The first requirement that a variety has to meet in order to be protected is that it be "new" [section 42(a)(1)]. This concept incorporates most of the first part of the current "public variety" bar which precludes protection when a variety has been sold or used in this country for more than one year. It modifies the bar in that sale or use without the consent of the breeder (or successor in interest) is no longer a bar. Also, the secret commercial use of a variety will not present a bar to protection of a variety which cannot be clearly distinguished from the secret variety. This is because the requirement that a variety be "new" applies only to the variety for which protection is sought, and not to any other variety, including those which cannot be clearly distinguished from it.

The second requirement, that a variety be "distinct" [Section 42(a)(2)], makes two significant changes in the PVPA. First, the date at which the variety must be distinct is changed to the date of filing, rather than the date of determination. Second, it eliminates a portion of the second part of the "public variety" bar which denies protection if the variety has been both publicly known and existing in this country for more than one year prior to the application. Thus, the breeder is able to publish the characteristics of the variety or to place it in varietal trials without beginning a time bar to protection.

The requirements for uniformity and stability are not changed substantively, but are moved from the definition of "novel variety" to sections 42(a) (3) and (4), respectively.

The amendment removes the bar in current section 42(a)(2) for filing an application in another country more than one year before the effective filing date here. This provision is necessary to conform to Article 5(2) of the 1991 UPOV Convention. It should be noted that the Secretary has issued regulations under current section 42(b) of the PVPA which have the effect of extending the one-year periods in section 42(a) to four years (six years for trees and vines) from the time the variety was marketed in another country [7 CFR 180.7(a)(7) (1992)]. The regulation was necessary to conform to the 1978 UPOV Convention.

The amendment also removes the bar in current section 42(a)(3), that another person is entitled to an earlier date of determination. As discussed above, eligibility for protection will based on the date of filing rather than the date of determination.

The amendment also adds a provision [new section 42(b)] to determine eligibility for protection when applicants have the same effective filing date for varieties which cannot be clearly distinguished from one another.

Current section 42(b), which allows the Secretary to extend certain time limits and to commensurately reduce the term of protection, is deleted. This ensures conformity to Articles 5, 6, 7 and 19 of the 1991 UPOV Convention.

Section 4. Amends section 52 of the PVPA, "Content of Application".

Section 4(1) adds a sentence at the end of section 52(1) of the PVPA specifying that the variety must be named in accordance with regulations issued by the Secretary. This provision is intended to ensure conformity with Article 20 of the 1991 UPOV convention. Regulations issued by the Secretary will permit only variety names that comply with the provisions of the 1991 UPOV Convention or any other treaty or statute which may apply. In particular, the regulations will only permit denominations that are not liable to mislead or cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In addition, the regulations will only permit a variety name that is different from that of another variety of the same species or of a closely related species, either in this country or in any member of UPOV. (Other aspects of Article 20 are addressed elsewhere; provisions for requiring a change in the variety name are in section 6 and provisions for requiring the use of the variety name are in section 11.)

Section 4(2) amends section 52(2) of the PVPA by replacing the word "novelty" with the phrase "distinctiveness, uniformity and stability". This change is not substantive since distinctiveness, uniformity and stability are the elements of a novel variety in the PVPA. The change avoids confusion since the amendments will discontinue the use of the term "novel variety" throughout the PVPA.

Section 4(3) renumbers paragraphs (3) and (4).

Section 4(4) adds a new section 52(3) requiring that the application contain a statement of the basis of the applicant's claim that the variety is new.

Section 4(5) adds "propagating material" as a form of deposit for the viable sample required in newly-designated paragraph (4).

Section 5. Amends section 55 of the PVPA. "Benefit of Earlier filing Date".

Section 5(1) divides subsection (a) into paragraphs (1) and (2). This change is not substantive but is clarifying in view of an addition discussed below.

Section 5(2) adds the phrase "not including the date on which the application is filed in the foreign country" to ensure that the provision for a twelve-month period in which an applicant may claim the priority of an earlier filing date in another country will conform to the period contained in Article 11(1) of the 1991 UPOV Convention.

Section 5(3) adds a paragraph providing that an applicant entitled to a right of priority shall be allowed a period of two years after the expiration of the period of priority to furnish any necessary information, document, or material required for the purpose of the examination of the application, or if the first application is rejected or withdrawn, an appropriate period after such rejection or withdrawal, to be determined by the Secretary, to provide the information, document, or material. An event occurring within the period of priority (such as the filing of another application or use of the variety that is the subject of the first application) shall not constitute a ground for rejecting the application or give rise to any third party right.

This provision ensures conformity with Article 11(3) of the 1991 UPOV Convention, which is intended to ensure that applicants are not unfairly denied the benefit of the earlier date of application because of unreasonable time constraints. For example, a breeder who files for protection in several countries may not have enough seed of the variety to submit the required sample to each country.

Section 6. Revises the time limit on response to notices from the PVPA office to the person submitting an application for protection.

Section 7. Amends section 83 of the PVPA, "Contents and Term of Plant Variety Protection".

Section 7(1) revises section 83(a) so that it continues to allow an owner to elect that the variety shall be sold only as a class of certified seed, but no longer allows an election that the variety be sold *by variety name only* as a class of certified seed. This change is necessary to conform to Article 20(7) of the 1991 UPOV Convention, which requires that protected varieties must be sold by variety name. Owners may elect to waive their right to the number of generations specified under the certified seed provisions to compensate for unforeseen commercial seed production problems or loss of a generation due to a natural disaster.

Section 7(2) revises section 83(b) to provide that the term of plant variety protection shall expire 20 years after the date of issue, except that the term shall expire 25 years after the date of issue in the case of a tree or vine. This extends the term of protection from the current 18 years, in conformity with Article 19 of the 1991 UPOV Convention.

Section 7(3) amends section 83(c) by adding the failure to comply with regulations requiring the submission of a different name for the variety as a condition which shall cause a certificate of protection to expire. This provision is necessary to ensure that varieties are named in conformity with Article 20 of the 1991 UPOV Convention and to secure the cooperation of owners in making any necessary changes in variety names. It is in conformity with Article 22 of the 1991 UPOV Convention, pertaining to cancellation of the breeder's right.

Section 8. Amends the PVPA by removing the provisions which relate exclusively to priority contests and by making conforming changes in other sections. A priority contest is an adversarial proceeding between competing applicants to determine which has the earliest date of determination (i.e., the date that it was determined that a variety had been developed or discovered and sexually reproduced). Section 42 of the PVPA has been changed so that the date of filing for protection, rather than the date of the determination of the variety, determines priority when applications are received for the same variety, or for varieties which cannot be clearly distinguished from one another. Because the date of filing is a matter of record, it is no longer necessary or appropriate to provide for an adversarial proceeding.

To conform to this section, section 102 is amended to include tuber propagable material among the types of plant material allowed to be released by the owner during testing.

Section 9. Adds a section requiring prompt payment for certain types of seed grown under contract. It is the intent of the committee that the prompt payment provisions of the Act serve to ensure payment under a contract for the production of lawn, turf, forage grass seed, alfalfa, and clover seed within 30 days of the date agreed upon by the parties and expressed in the production contract or by May 1 of the year following the contracted year of production.

Section 10. Revises section 111 of the PVPA, "Infringement of Plant Variety Protection".

Section 10(1)(A) changes the first reference to "novel variety" to "protected variety".

Section 10(1)(B) also adds marketing as an act which requires the authority of the breeder. This clarifying change assures conformity with Article 14(1)(iv) of the 1991 UPOV Convention.

Section 10(1)(C) deletes the word "novel" elsewhere in section 111.

Section 10(1)(D) includes tuber propagation as a step in marketing.

Section 10(1)(E) deletes "or" in paragraphs (3) through (6).

Section 10(1)(F) redesignates paragraphs to allow for the insertion of new provisions.

Section 10(1)(G) inserts two new provisions explaining actions which constitute infringement: conditioning a variety for the purposes of propagation (planting), and stocking a variety for any of the purposes which constitute infringement. These provisions are necessary to conform to Article 14(1)(a) of the 1991 UPOV Convention. They will allow the owner of a variety to take action at earlier stages and thus minimize injury. The provision against conditioning a variety for planting does not apply to the conditioning of seed saved by farmers for replanting on their own holdings. However, knowingly conditioning saved seed intended for sale will be a violation of the act.

Section 10(2) redesignates subsection (b) as subsection (f) and adds new subsections (b) through (e).

New subsection 111(b) provides that the owner of a protected variety may make authorization to use the variety subject to conditions and limitations. This is a clarifying change which assures conformity with Article 14(1)(b) of the 1991 UPOV Convention.

New subsection 111(c) provides that the infringement provisions apply equally to any variety that is essentially derived from a protected variety, unless the protected variety is itself an essentially derived variety, to any variety that is not clearly distinguishable from a protected variety, to any variety whose production requires the repeated use of the protected variety, and to harvested material (including entire plants and parts of plants) obtained through the unauthorized use of propagating material of a protected variety, unless the owner of the variety has had a reasonable opportunity to exercise the rights provided by this Act with respect to the propagating material. These provisions are necessary to conform to Article 14(5) and (2) of the 1991 UPOV Convention.

New subsection 111(d) provides that it shall not be an infringement to perform any act concerning harvested material, including entire plants and parts of plants, of a protected variety which has been sold or otherwise marketed with the consent of the owner in the United States, unless such act involves further propagation of the variety or involves an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption. This provision ensures conformity to Article 15 of the 1991 UPOV Convention and sets forth the various rights provided by the PVPA.

New subsection 111(e) provides that it shall not be an infringement to perform any act done privately and for non-commercial purposes. This provision ensures conformity to Article 15(1)(i) of the 1991 UPOV Convention.

Section 11. Amends section 113 of the PVPA by deleting the provision which allows a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell "saved seed" to other such persons, for reproductive purposes. The amendment does not diminish the right of a farmer to save seed for replanting and to use the resulting crop or to sell the seed for other than reproductive purposes. Deletion of the provision allowing certain sales of saved seed is necessary to conform to Articles 14(1) and 15(2) of the 1991 UPOV Convention.

It is not the intent of the committee that deletion of the provision allowing the sale of saved seed be viewed as a step toward the eventual end to the traditional right of farmers to save seed for use on their own holdings. During the UPOV negotiations, many representatives to the UPOV conference asserted that farmers in their countries had a traditional right to save seed for their own use and that removal of this right would likely preclude some non-member countries, currently considering joining, from doing so. The Federation of Agricultural Producers, an international organization of farmers, considered the revised UPOV, including the saved seed provision (as reflected in the PVPA amendments), "a reasonable compromise balancing the interests of farmers, consumers, and breeders so that society as a whole would benefit from the exploitation of plant genetic resources." [Paragraph 244.7, In: Records of the Diplomatic Conference for the Revision of the UPOV, Geneva, 1991, pub. no. 346(E)]. Retention of the farmers' exemption is an attempt to balance the varying interests of U.S. companies and producers, as well as to strengthen acceptance of plant breeders' rights internationally.

The PVPA exemption concerning a farmer's use of saved seed should be interpreted in a practical manner. The exemption should not be limited, for example, to the replanting of saved seed on the same acre from which it was harvested. Instead, the exemption should be interpreted broadly to allow a farmer, for example, to plant the saved seed on any acreage involved in the farmer's partnership, or corporate farming operation, whether the land is rented or owned by the farming operation. In another example, in the normal course of the ginning of cotton, seed can become commingled, one farm's with another's. This is a result of the manner in which seed is removed from cotton and stored at the gin. The saved seed exemption should not be interpreted so restrictively as to place cotton farmers (or other farmers in similar situations) in jeopardy of violating the PVPA because seed may become commingled due to established agricultural practices.

Modifications to Section 113 prevent farmers from selling seed of protected varieties, for the purpose of propagation, without permission of the certificate owner. The Committee realizes that in some cases farmers may have incidental amounts of treated seed or saved seed in order to use it pursuant to section 113 and, due to prevented planting or other unforeseen causes (such as a change in government farm programs), may have excess seed. Under these circumstances, the Committee encourages farmers to seek, and certificate owners or their agents to grant, on a case-by-case basis, permission for the sale of such incidental amounts of seed. Certificate owners are encouraged to establish and have in place clear policies that allow such requests to be handled at the farmer/dealer level.

In addition, although, for purposes of Sections 111 and 113, it shall remain within the sole prerogative of the owner of a protected variety to give consent for the sale of such variety, consent to sell saved seed should ordinarily not be withheld from a farmer in circumstances irreparably affecting the farmer's economic viability. For example, where the farmer is unable to plant seed saved with the intent of planting a particular crop because of serious illness or disability, financial distress, or other unanticipated events that unavoidably disrupt farming operations, or upon disposition of all farm assets and inventory, consent to sell such seed should generally be granted. Even under such dire circumstances, however, consent may still be limited to the sale of seed only to another farmer whose primary occupation is the growing of crops for other than reproductive purposes, and in an amount not to exceed that which was saved by the first farmer for planting that year's crop on the first farmer's holdings. Certificate owners are encouraged to establish and have in place clear policies that allow requests under such circumstances to be handled at the farmer/dealer level.

Section 12. Amends section 127 of the PVPA by deleting the word "novel". It is unnecessary to refer to a variety as a "novel" variety in this context and it could cause confusion in view of the deletion of "novel variety" as a defined term in section 41 of the PVPA. Section 128 of the PVPA prohibits the use of the notices referred to in section 127 for varieties for which an application for protection has not been filed or for which a certificate of protection has not been granted, as the case may be.

Section 13. Amends section 128 of the PVPA by including "tuber-propagating" as a type of plant material covered and adding a requirement that a protected variety be sold by variety name, even after the expiration of protection. An exemption for lawn, turf, forage grass, alfalfa and clover seed from the requirement that protected seeds be sold by variety name is provided. The committee intends this provision to allow the current practice of marketing and selling seeds as "variety not stated", with its existing limitations, to continue within the specified seed groups. The committee does not intend for this provision to preempt state law or to confer new rights to those in existence prior to the enactment of this statute.

Because of continuing interest in developments affecting the grass and alfalfa seed industries in the Northwest, the Secretary is strongly encouraged to direct the Cooperative State Research Service, in cooperation with Oregon State University, to conduct a study of the general trends in and characteristics of those industries, including a survey and review of the effects and extent of different marketing techniques, such as "variety not stated" marketing.

The general requirement to use variety name is necessary to conform to Article 20(7) of the 1991 UPOV Convention. The requirement is placed in section 128 for efficiency in enforcement.

Section 14. Eliminates gender-specific language in the PVPA.

Section 15. Provides for the transition from the current PVPA. Applications received before the effective date of these amendments will be examined under current law, but an applicant could reapply under the new provisions. The original date of filing is retained for the purposes of section 42(a)(1), as amended by this act. The scope of protection provided by certificates issued under current law will not be changed by these amendments.

The labelling requirements in this section refer to the existing sections 127 and 128 of the PVPA. To obtain protection under the amended PVPA, the notice given by the owner must specify that the variety is protected under the Act as amended. Section 13(c)(2) extends the provisions of section 128 of the PVPA to any person using false or misleading statements or labels concerning protection under the PVPA as amended. This includes claiming provisions of the amended Act apply to a variety, when they do not.

Section 16. Establishes that these amendments will be effective 180 days after the date of enactment in order to provide for the issuance of new regulations and for the efficient transition from current law.●

SOUTHWESTERN COMMUNITY COLLEGE COMMENCEMENT ADDRESS

● Mr. HARKIN. Mr. President, I would like to share with my colleagues the commencement address delivered last month at Southwestern Community College in Creston, IA, by Frank Mensel, national policy advisor of the American Student Association of Community Colleges.

His observations about the vital contribution that education programs make to the development of a globally competitive work force are a valuable contribution to the national interest. I ask that his address follow the conclusion of the statement.

The address follows:

COMMENCEMENT ADDRESS BY FRANK MENSEL, NATIONAL POLICY ADVISOR OF THE AMERICAN STUDENT ASSOCIATION OF COMMUNITY COLLEGES, SOUTHWESTERN COMMUNITY COLLEGE, CRESTON, IA, MAY 13, 1994

I want to spend a few minutes with you tonight on a history lesson—one I doubt you picked up in any class.

Let me ask, please, how many of you have been helped by Federal Pell Grants? Now, please keep your hand up if you think you would be here tonight if Pell Grants didn't exist.

Among those of you who have been steadily employed off campus during your college years, do any of you have employers who have helped pay for any of your courses? Did you know that you do not pay federal income taxes on this employee educational assistance, derived from Section 127 of the federal tax code?

Finally, are any of you veterans, National Guard or Air Guard members, or Reservists? Have you been using any of your Montgomery GI Bill benefits to obtain this degree?

My purpose is to show that this graduating class, like every other community college graduating class of this era, has benefitted greatly from what I regard as four pillars of the American Dream.

First and foremost of these pillars is the community college itself. Call us the people's colleges, or the colleges of late bloomers, or the colleges of second chances, America's network of two-year colleges, public and private, all closely attuned to their immediate community, has no real equal in any other land.

Our universities brag that they are collectively a matchless "graduate school to the world". And proudly and rightly so. Yet it is our community colleges that are the envy to the less privileged people of other lands.

Fundamentally, we are the colleges of self-renewal. In some States, the community colleges can boast that they form the largest graduate school—because their enrollment of students with bachelor, master and doctor's degrees exceeds the aggregate enrollment of the graduate schools of their State.

Do you know the popular origin of the phrase community college? Shortly after World War II ended, President Truman appointed a blue-ribbon commission to look at the future of higher education. His concern was two-fold: He wanted college opportunity to be more economically and conveniently available to larger populations, to build a more learned society; he also wanted the legions of returning veterans to have more options for using their newly enacted GI Bill educational benefits. When the Truman Commission made its report in 1947, urging the establishment of more two-year colleges to serve these needs, it called them community colleges.

In the academic year now ending, some 8.2 million Americans, most of them working adults like you, have been earning credits at community colleges. According to the American Council on Education, this is more than 45 percent of all students in higher education. For more than a decade, the majority of Americans entering higher education have started in the community colleges.

Still, it is the complementary federal pillars that make the community colleges work so well for so many of you. Obviously, many of the would not be here tonight were it not for federal grants and loans.

The latest count I've seen indicates that Pell Grants, in the 22 years since their enactment, have provided college access for some 58 million Americans. That's about twice the

number that have gained college access from four different GI Bills spanning 50 years.

Yet the Montgomery GI Bill stands out as enormously important to both national security and U.S. competitiveness. Community colleges were higher education's strongest voice in the enactment of this permanent GI Bill, and for good reason.

It has been the first of the four GI Bills to qualify as an "up front" GI Bill—i.e., it enables the enlistees to take advantage of their educational benefits while in the service. Any service member who has successfully completed basic training can begin using his or her educational benefits for off-duty courses. Under prior GI Bills, only veterans could use the educational benefits. Today's veterans leave the service with highly advanced skills to enhance the civilian workforce.

Sadly, many of you who already have jobs are not yet taking advantage of the employee educational assistance, where your employer offers it. Though enacted as recently as 1979, EEA now seems to be available on varying terms from a majority of private and public employers, including many small businesses.

Surveys by the American Society for Training and Development have shown that as many as 1.5 million Americans now use this incentive each year to advance their job skills and careers. More than 90 percent of the employers who offer EEA report that they have employees who are using it at community colleges.

The bulwark formed by these pillars does more than put serious college training within reach of millions of less affluent Americans who otherwise might never achieve the marketable skills that make their American Dream possible; together, they also are helping more and more workers build skills that keep them in the forefront of global competition.

In a land as awash as ours in diversity and demographic change, the challenge of building and maintaining a globally competitive workforce is enormous. With Goals 2000 and the emerging voluntary National Skill Standards, among other Clinton initiatives, community colleges will play a larger and larger role in meeting this challenge. And Federal Pell Grants, employee educational assistance, and the MGIB are proven programs that should also make increasingly vital contributions.

I hope each of you is grateful for the opportunities that have put you here, and I hope your education has given you an historic appreciation of those opportunities. Many of you will return to this campus again and again to recast your job skills, or to revitalize your personal lives.

You should be grateful, too, for something else. Though a comparatively small state, Iowa holds a rare distinction in Congress. Both the House and Senate subcommittees that fund education programs, from Head Start to Pell Grants, are chaired by distinguished Iowans. Congressman Neal Smith, the most senior member of the House Appropriations committee, chairs its subcommittee on Labor, Health and Human Services, and Education. Senator Tom Harkin chairs the same subcommittee in the Senate. Both have gone to bat many times for projects and services that enhance this community and serve your needs. In fact, Congressman Smith helped to educate your president, Dr. Byerly, whose six-week Congressional internship some 25 years ago was served in the Smith office.

Those Washington internships were the root of the dynamic and influential network of community college professionals known as the National Council on Resource Development, which represents the development and grants specialists. Incidentally, the original draft of the NCRD charter was framed in Congressman Smith's office by the first class of AACC interns. They even invited the Congressman's ideas, and the charter reflects his critique.

If you leave here with one thought or impulse, let it prompt you to write a brief letter or card to your own Congressman, and to Neal Smith and Tom Harkin, thanking them for your Pell Grants or loans. If you didn't have a Pell Grant, surely you have friends who did. You should know that roughly one-third of the FTE in the community colleges nationwide is identified with students on Pell Grants. Without those grants, some of you and some of your friends would not be here tonight. It's even conceivable that this college wouldn't be here.

As graduates, you must realize that you rank well up among the most fortunate five percent of the world's population. This fact, sobering as it may seem, should tell you how badly the world needs the skills you have acquired.

You hardly need me to remind you that your generation is facing global challenges on a scale that earlier generations have never faced. It is also clear that you face the most competitive job market younger Americans have faced in some 60 years. In skill terms, the most competitive ever.

If you are not aimed now at university admission, your immediate concern, I know, is a good job, or advancement in the job you already enjoy, and a fuller family life. Perhaps the most reassuring thing I can say is to remind you that as global economic competition intensifies, more and more of the good jobs will be filled by the community college grads with advanced technical skills.

And, with the marketplace increasingly globalized, your skills could land you at almost any corner of the globe in the years to come, at the cutting edges of cultural change and job adventures that you may only have dreamed of. That's exciting.

My parting advice is that as you work your way through life, you always view your glass as half full. Optimism and humor will get you over the rough patches. If you can see the adventure behind every adversity, you will go far.●

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mitch McConnell:									
United States	Dollar				237.00				237.00
Jordan	Dollar						22.18		22.18
Egypt	Pound	1,230.32	364.00				54.08	1,230.32	418.08
Robin Cleveland:									
United States	Dollar				2,913.95				2,913.95
Israel	Dollar		1,268.00						1,268.00
Jordan	Dollar						22.18		22.18
Egypt	Pound	1,230.32	364.00				54.08	1,230.32	418.08
James M. Cubie:									
United States	Dollar				4,775.85				4,775.85
India	Rupee	18,983.70	711.00					18,983.70	711.00
Nepal	Rupee	11,232	312.00					11,232	312.00
Thailand	Baht	3,644.68	163.00					3,644.68	163.00
Total			3,182.00		7,926.80		152.52		11,261.32

Patrick LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry, Apr. 29, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Daniel K. Inouye:									
Korea	Won	330,480	408.00					330,480	408.00
Malaysia	Ringit	715.12	276.00					715.12	276.00
Thailand	Baht	8,303	326.00					8,303	326.00
Vietnam	Dollar		207.00						207.00
Senator Ted Stevens:									
Korea	Won	330,480	408.00					330,480	408.00
Malaysia	Ringit	715.12	276.00					715.12	276.00
Thailand	Baht	8,303	326.00					8,303	326.00
Vietnam	Dollar		207.00						207.00
Richard L. Collins:									
Korea	Won	330,480	408.00					330,480	408.00
Malaysia	Ringit	715.12	276.00					715.12	276.00
Thailand	Baht	8,303	326.00					8,303	326.00
Vietnam	Dollar		207.00						207.00
Steve Cortese:									
Korea	Won	330,480	408.00					330,480	408.00
Malaysia	Ringit	715.12	276.00					715.12	276.00
Thailand	Baht	8,303	326.00					8,303	326.00
Vietnam	Dollar		207.00						207.00
Senator Thad Cochran:									
Germany	Deutsche Mark	115.24	66.46					115.24	66.46
Senator Christopher S. Bond:									
Germany	Deutsche Mark	299.10	172.49					299.10	172.49
Senator Barbara A. Mikulski:									
Germany	Deutsche Mark	404.35	233.19					404.35	233.19
Total			5,340.14						5,340.14

Robert C. BYRD,
Chairman, Committee on Appropriations, May 5, 1994.

ADDENDUM—CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM JULY 1 TO SEPT. 30, 1993

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Tom Harkin:									
Japan	Yen	29,390	272.00					29,390	272.00
Total			272.00						272.00

Robert C. BYRD,
Chairman, Committee on Appropriations, May 5, 1994.

ADDENDUM—CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS, FOR TRAVEL FROM APR. 1 TO JUNE 30, 1993

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
C. Richard D'Amato									
Italy	Dollar		178.00						178.00
Russia	Dollar		596.00						596.00
Total			774.00						774.00

Robert C. BYRD,
Chairman, Committee on Appropriations, Apr. 11, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Sam Nunn:									
Russia	Dollar		499.13						499.13
Japan	Yen	63,464	562.38					63,464	562.38
South Korea	Won	8,505	10.50					8,505	10.50
Richard E. Combs, Jr.:									
Russia	Dollar		523.63						523.63
Japan	Yen	56,897	504.18					56,897	504.18
South Korea	Won	526,609	600.90					526,609	600.90
United States	Dollar				3,265.45				3,265.45
South Korea	Dollar						55.00		55.00
Jeffrey Record:									
Russia	Dollar		537.00						537.00
Japan	Yen	69,947	619.00					69,947	619.00
South Korea	Won	554,040	684.00					554,040	684.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				3,236.00				3,236.00
South Korea	Dollar						85.00		85.00
Richard D. Finn, Jr.:									
Russia	Dollar		518.71						518.71
Japan	Yen	53,040	470.00					53,040	470.00
South Korea	Won	108,540	134.00					108,540	134.00
Senator Dirk Kempthorne:									
Israel	Dollar		492.00						492.00
Saudi Arabia	Dollar		30.00				19.00		49.00
Italy	Lire	432,788	257.00					432,788	257.00
Glen E. Tait:									
Israel	Dollar		492.00						492.00
Saudi Arabia	Dollar		60.00				30.00		90.00
Italy	Lire	432,788	257.00					432,788	257.00
Frank Norton:									
Saudi Arabia	Riyal	3,390	904.00					3,390	904.00
Syria	Dollar		512.00						512.00
Egypt	Pound	1,230.32	364.00					1,230.32	364.00
Israel	Shekel	484	375.00					484	375.00
Morocco	Dirham	4,097.31	426.00					4,097.31	426.00
Michael J. McCord:									
United States	Dollar				3,302.75				3,302.75
Germany	Dollar		85.00						85.00
Belgium	Franc	5,881	161.00					5,881	161.00
Czech Republic	Crown	5,747	192.00					5,747	192.00
Hungary	Forint	26,912	263.00					26,912	263.00
Charles S. Abell:									
Saudi Arabia	Riyal	3,390	904.00					3,390	904.00
Syria	Dollar		512.00						512.00
Egypt	Pound	1,230.32	364.00					1,230.32	364.00
Israel	Shekel	484	375.00					484	375.00
Morocco	Dirham	4,097.31	426.00					4,097.31	426.00
Senator Richard C. Shelby:									
United States	Dollar				4,313.85				4,313.85
Saudi Arabia	Riyal	3,390	904.00					3,390	904.00
Egypt	Pound	1,230.32	364.00					1,230.32	364.00
Syria	Dollar		512.00						512.00
Israel	Dollar		210.00						210.00
Israel	Shekel	483.89	165.00					483.89	165.00
Morocco	Dirham	4,097.31	426.00					4,097.31	426.00
Terence M. Lynch:									
Saudi Arabia	Riyal	2,543	678.00					2,543	678.00
Egypt	Pound	1,230.32	364.00					1,230.32	364.00
Syria	Dollar		512.00						512.00
Israel	Dollar		210.00						210.00
Israel	Shekel	483.89	165.00					483.89	165.00
Morocco	Dirham	4,097.31	426.00					4,097.31	426.00
United States	Dollar				4,313.85				4,313.85
Thomas J. Young:									
Saudi Arabia	Riyal	3,015	804.00					3,015	804.00
Syria	Dollar		512.00						512.00
Egypt	Dollar	1,230.32	364.00					1,230.32	364.00
Israel	Shekel	483.89	210.00					483.89	210.00
Morocco	Dirham	2,048.55	213.00					2,048.55	213.00
Patrick T. Henry:									
United States	Dollar				4,313.85				4,313.85
Saudi Arabia	Riyal	3,390	904.00					3,390	904.00
Egypt	Pound	1,230.32	364.00					1,230.32	364.00
Syria	Dollar		512.00						512.00
Israel	Dollar		210.00						210.00
Israel	Shekel	483.89	165.00					483.89	165.00
Morocco	Dirham	4,097.31	426.00					4,097.31	426.00
Lucia M. Chavez:									
United States	Dollar				4,313.85				4,313.85
Saudi Arabia	Riyal	3,390	904.00					3,390	904.00
Syria	Dollar		512.00						512.00
Egypt	Pound	1,230.32	364.00					1,230.32	364.00
Israel	Shekel	486	210.00					486	210.00
Israel	Dollar		165.00						165.00
Morocco	Dirham	4,097.31	426.00					4,097.31	426.00
Senator John Glenn:									
Germany	Deutsche Mark	3.20	1.85					3.20	1.85
Senator Bob Smith:									
Germany	Deutsche Mark	397.09	229.00					397.09	229.00
Thomas L. Lankford:									
Germany	Deutsche Mark	1,007.15	580.82					1,007.15	580.82
William S. Cohen:									
Germany	Deutsche Mark	268.77	155.00					268.77	155.00
Richard E. Combs, Jr.									
Russia	Dollar		1,221.33		2,218.95		108.00		3,548.28
James M. Bodner:									
Germany	Deutsche Mark			11	6.34			11	6.34
Total			27,503.43		29,284.89		297.00		57,085.32

Sam NUNN,
Chairman, Committee on Armed Services, Apr. 1, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Harold J. Creel Jr.:									
France	Franc	9,078.44	1,536.11					9,078.44	1,536.11

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				659.85				659.85
Elizabeth A. Inadomi:									
Japan	Yen	154,213	1,372.00	26,790	238.35			181,003	1,610.35
United States	Dollar				3,864.45				3,864.45
Harold J. Creel, Jr.:									
France	Franc	7,636.20	1,335.00					7,636.20	1,335.00
United States	Dollar				659.95				659.95
Total			4,243.11		5,422.60				9,665.71

Ernest F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, Apr. 12, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES, FOR TRAVEL JAN. 2–17, 1994—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator J. Bennett Johnston:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
Senator Mark O. Hatfield:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00		1,254.43			10,850	1,680.43
Senator Arlen Specter:									
China	Yuan	3,853.92	444.00					3,853.92	444.00
Vietnam	Dollar		438.00						438.00
Thailand	Baht	8,659.8	340.00					8,659.8	340.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
Senator Don Nickles:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Korea	Won	124,740	154.00					124,740	154.00
United States	Dollar				2,278.45				2,278.45
Senator Harlan Mathews:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
Senator Robert F. Bennett:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
United States	Dollar				756.00				756.00
Benjamin S. Cooper:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
Gary Ellsworth:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
Laura Hudson:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
Eric Silagy:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
G. Robert Wallace:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
Delegation expenses:									
China							2,276.34		2,276.34
Vietnam							1,794.91		1,794.91
Thailand							4,165.53		4,165.53
Indonesia							10,162.15		10,162.15
United States and U.S. Territories							4,039.17		4,039.17
Total			24,617.00		4,288.88		22,438.10		51,343.98

Note.—The following individuals traveled under the authorization of the Republican Leader: Senator Alan K. Simpson and Ms. Jan Paulk. Their reports appear under the authorizing source. Delegation expenses include direct payments and reimbursements to the Department of State and to the Department of Defense under authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S.Res. 179, agreed to May 25, 1977.

J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, June 14, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Ian Butterfield:									
Belgium	Franc	45,536	1,260.00					45,536	1,260.00
England	Pound	573.44	848.00					573.44	848.00
United States	Dollar				844.25				844.25
Total			2,108.00		844.25				2,952.25

John GLENN,
Chairman, Committee on Governmental Affairs, June 10, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John Rockefeller:									
Japan	Yen	222,000	2,114.29	40,590	386.57			262,590	2,500.86
United States	Dollar				6,380.45				6,380.45
Total			2,114.29		6,767.02				8,881.31

Daniel PATRICK MOYNIHAN,
Chairman, Committee on Finance, Mar. 30, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Christopher J. Dodd:									
Haiti	Gourde	195	13.66					195	13.66
	Dollar		203.00						203.00
Senator John F. Kerry:									
Hong Kong	Dollar		1,316.00		1,478.57		382.88		3,177.45
China	Dollar		653.00				174.36		827.36
Vietnam	Dollar		514.00						514.00
Indonesia	Dollar		231.00		630.71		971.26		1,832.97
Thailand	Dollar		212.97				1,249.67		1,462.64
United Kingdom	Dollar		262.00						262.00
France	Dollar		89.00						89.00
United States	Dollar				7,771.95				7,771.95
Senator Richard G. Lugar:									
Russia	Dollar		645.00						645.00
Japan	Yen	88,700	786.00					88,700	786.00
Korea	Won	292,410	361.00					292,410	361.00
Senator Daniel P. Moynihan:									
India	Rupee	23,750	760.00					23,750	760.00
United States	Dollar				8,124.35				8,124.35
Senator Claiborne Pell:									
Tajikistan	Dollar		200.00						200.00
Uzbekistan	Dollar		150.00						150.00
Kyrgyzstan	Dollar		200.00						200.00
Kazakhstan	Dollar		250.00						250.00
United Kingdom	Pound	372	557.00					372	557.00
Senator Larry Pressler:									
United Kingdom	Pound	532.41	786.00					532.41	786.00
United States	Dollar				6,620.95				6,620.95
Lisa Alfred:									
Angola	Dollar		496.00						496.00
Mozambique	Dollar		230.00						230.00
South Africa	Dollar		179.00						179.00
Zambia	Dollar		412.00						412.00
United States	Dollar				6,492.95				6,492.95
Kristin Brady:									
Russia	Dollar		766.67						766.67
Kazakhstan	Dollar		766.67						766.67
Kyrgyzstan	Dollar		766.66						766.66
United States	Dollar				3,736.00				3,736.00
Thomas J. Callahan:									
Ethiopia	Dollar		1,400.00						1,400.00
Kenya	Dollar		900.00						900.00
United Kingdom	Pound	176.57	262.00					176.57	262.00
Belgium	Dollar		315.00						315.00
Nadereh Chahmirzadi:									
Angola	Dollar		496.00						496.00
Mozambique	Dollar		230.00						230.00
South Africa	Dollar		179.00						179.00
Zambia	Dollar		412.00						412.00
United States	Dollar				6,492.95				6,492.95
Geryld B. Christianson:									
Tajikistan	Dollar		96.00						96.00
Kyrgyzstan	Dollar		143.00						143.00
Uzbekistan	Dollar		71.00						71.00
Kazakhstan	Dollar		220.00						220.00
United Kingdom	Pound	439.32	657.00					439.32	657.00
Robert Dockery:									
Haiti	Dollar		149.00						149.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				381.00				381.00
Jay Ghazal:									
United Kingdom	Pound	304.32	455.00					304.32	455.00
Tajikistan	Dollar		225.00						225.00
Uzbekistan	Dollar		225.00						225.00
Kyrgyzstan	Dollar		225.00						225.00
Kazakhstan	Dollar		225.00						225.00
G. Garrett Grigsby:									
Costa Rica	Colone	71,615	480.64					71,615	480.64
Honduras	Lempira	2,660	363.89	1,566.5	214.30			4,226.5	578.19
United States	Dollar				946.00				946.00
Thomas G. Hughes:									
Netherlands	Dollar		312.75		15.00		39.45		367.20
Belgium	dollar		655.00				52.80		707.80
United States	Dollar				2,358.55				2,358.55
Karen Kornbluh:									
Hong Kong	Dollar	8,332	1,079.00					8,332	1,079.00
China	Renminbi	5,442	627.00					5,442	627.00
United States	Dollar				3,050.00				3,050.00
Elizabeth Lambird:									
China	Renminbi	8,306.80	957.00					8,306.80	957.00
Hong Kong	Dollar	2,541.50	329.00					2,541.50	329.00
United States	Dollar				2,975.95				2,975.95
Robyn Lieberman:									
Hong Kong	Dollar	10,166.10	1,324.60					10,166.10	1,324.60
China	Renminbi		1,745.00						1,745.00
United States	Dollar				3,249.45				3,249.45
Michelle Maynard:									
Russia	Dollar		666.67						666.67
Kyrgyzstan	Dollar		666.67						666.67
Kazakhstan	Dollar		666.66						666.66
United States	Dollar				3,736.00				3,736.00
Michelle Maynard:									
United Kingdom	Pound	284.32	445.91					284.32	445.91
Tajikistan	Dollar		200.00						200.00
Uzbekistan	Dollar		200.00						200.00
Kazakhstan	Dollar		200.00						200.00
Kyrgyzstan	Dollar		200.00						200.00
Kenneth A. Myers, Jr.:									
Russia	Dollar		678.00		45.00				723.00
Japan	Yen	88,700	786.00					88,700	786.00
Korea	Won	308,610	381.00					308,610	381.00
Russia	Dollar		1,484.00		120.00				1,604.00
Janice O'Connell:									
Haiti	Gourde	434	30.41					434	30.41
United States	Dollar		203.00						203.00
Dominican Republic	Peso	2,015	154.52					2,015	154.52
George Pickart:									
India	Rupee	41,563	1,330.00					41,563	1,330.00
Pakistan	Rupee	16,228.26	534.00					16,228.26	534.00
United States	Dollar				3,806.35				3,806.35
F. Carter Pilcher:									
Morocco	Dollar		500.00						500.00
Tunisia	Dollar		180.00						180.00
Spain	Peseta	24,840	180.00					24,840	180.00
United States	Dollar				4,041.15				4,041.15
Danielle Pletka:									
India	Rupee	41,563	1,330.00					41,563	1,330.00
Pakistan	Rupee	16,228.26	534.00					16,228.26	534.00
United States	Dollar				3,806.35				3,806.35
Stephen A. Rickard									
India	Rupee	41,563	1,330.02					41,563	1,330.02
Pakistan	Rupee	16,228.26	534.00					16,228.26	534.00
United States	Dollar				3,806.35				3,806.35
Nancy H. Stetson:									
Hong Kong	Dollar		1,316.00						1,316.00
China	Dollar		578.00						578.00
Vietnam	Dollar		314.00						314.00
Thailand	Dollar		213.00						213.00
Indonesia	Dollar		156.00						156.00
United States	Dollar				5,074.95				5,074.95
Christopher Walker:									
Costa Rica	Colone	71,615	480.64					71,615	480.64
Honduras	Lempira	2,660	363.89	1,566.5	214.30			4,226.5	578.19
United States	Dollar				946.00				946.00
Total			43,401.90		80,135.13		2,870.42		126,407.45

Claiborne PELL,
Chairman, Committee on Foreign Relations, May 20, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Kathleen Sullivan:									
Mexico	Peso	1,904.40	592.00					1,904.40	592.00
United States	Dollar				602.50				602.50
Guyle Cavin:									
Mexico	Peso	1,904.40	592.00					1,904.40	592.00
United States	Dollar				602.50				602.50
Jerry Tinker:									
United States	Dollar				517.20				517.20

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Mexico	Peso	990	300.00					900	300.00
Mexico	Dollar		117.00						117.00
Carlos Angulo:									
Mexico	Peso	990	300.00					990	300.00
United States	Dollar				463.00				463.00
Richard W. Day:									
Mexico	Peso	990	300.00					990	300.00
Mexico	Dollar		117.00						117.00
United States	Dollar				539.20				593.20
Total			2,318.00		2,724.40				5,042.40

Joseph R. BIDEN, JR.,
Chairman, Committee on the Judiciary, May 5, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON LABOR AND HUMAN RESOURCES, FOR TRAVEL FROM OCT. 1 TO DEC. 31, 1993

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Paul Wellstone:									
United States	Dollar				3,378.00				3,378.00
Croatia	Dinar	125,033	19.40		481.00		194.50		694.90
Serbia	Dollar		299.60		89.75		45.00		434.35
Kosovo					89.75		45.00		134.75
Macedonia					89.75		45.00		134.75
Greece					89.75		45.00		134.75
Colin McGuinnis:									
United States	Dollar				3,378.00				3,378.00
Croatia	Dinar	1,948,581	302.34		713.00		194.50		1,209.94
Serbia	Dollar		243.66		89.75		45.00		378.41
Kosovo					89.75		45.00		134.75
Macedonia					89.75		45.00		134.75
Greece					89.75		45.00		134.75
Total			865.00		8,668.00		749.00		10,282.00

Edward M. KENNEDY,
Chairman, Committee on Labor and Human Resources, May 12, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SELECT COMMITTEE ON INTELLIGENCE, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Christopher Straub			475.76		5,803.50				6,279.26
William Griffies			1,658.00		6,089.05				7,747.05
Howard Walgren			1,658.00		6,089.05				7,747.05
Gary Sojka			2,385.00		3,362.95				5,747.95
Eric Thoemmes			2,685.00		3,362.95				6,047.95
Author Grant			1,187.00		5,264.92				6,451.92
Patricia Handback			590.00		6,235.95				6,825.95
Scott Bunton			1,551.04		2,618.95				4,169.99
Senator Dennis DeConcini			344.67						344.67
Senator Bob Graham			271.46						271.46
Norman Bradley			509.40						509.40
Christopher Straub			553.80						553.80
Alfred Cumming			506.46						506.46
Total			14,375.59		38,827.32				53,202.91

Dennis DeCONCINI,
Chairman, Select Committee on Intelligence, Apr. 14, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Michael Amitay:									
United States	Dollar				1,078.55				1,078.55
Poland	Dollar		1,110.00				86.00		1,196.00
Orest Deychaiksky:									
United States	Dollar				2,539.85				2,539.85
Ukraine	Dollar		1,378.00				45.00		1,423.00
David Evans:									
United States	Dollar				4,174.45				4,174.45
Kazakhstan	Dollar		1,530.00				4.19		1,354.19

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE, FOR TRAVEL FROM JAN. 1 TO MAR. 31, 1994—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				1,476.75				1,476.75
Czech Republic	Crown	41,431.60	1,400.00			7,623.11	257.59	49,054.71	1,657.59
Heather Hurlburt:									
United States	Dollar				984.05				984.05
Austria	Schilling	83,791.23	6,837.31	24,687.82	2,014.51	3,731.77	304.51	112,210.82	9,156.33
Kyrgyzstan	Schilling	6,127.50	500.00					6,127.50	500.00
Czech Republic	Dollar		690.00						690.00
United States	Dollar				2,378.25				2,378.25
Austria	Schilling	20,343.30	1,660.00					20,343.30	1,660.00
Ronald McNamara:									
United States	Dollar				1,486.65				1,486.65
Czech Republic	Crown	24,625.40	840.00					24,625.40	840.00
Michael Ochs:									
United States	Dollar				5,008.95				5,008.95
Russian Federation	Dollar		960.00				82.60		1,042.60
Kazakhstan	Dollar		1,603.00						1,603.00
James Ridge, Jr.:									
United States	Dollar				1,078.55				1,078.55
Poland	Dollar		1,110.00				97.42		1,207.42
Erika Schlager:									
United States	Dollar				3,046.35				3,046.35
Poland	Zloty	19,928,000	940.00					19,928,000	940.00
The Netherlands	Dollar		434.00						434.00
Victoria Showalter:									
United States	Dollar				1,940.65				1,940.65
Germany	Mark			920.50	545.00			920.50	545.00
Moldova	Dollar		660.00						660.00
Romania	Dollar		217.00						217.00
Samuel Wise:									
Poland	Zloty	19,928,000	940.00					19,928,000	940.00
United States	Dollar				1,025.55				1,025.55
Czech Republic	Dollar		850.00						850.00
John Finerty:									
United States	Dollar				1,940.65				1,940.65
Germany	Mark			920.50	545.00			920.50	545.00
Moldova	Dollar		660.00						660.00
Romania	Dollar		217.00						217.00
United States	Dollar				2,523.15				2,523.15
Ukraine	Dollar		685.00						685.00
Austria	Dollar		150.00						150.00
Total			25,191.31		33,786.91		877.31		59,855.53

Dennis DeCONCINI,
Chairman, Commission on Security and Cooperation in Europe, Apr. 29, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE MAJORITY LEADER FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jan Paulk:									
China	Yuan	6,944	800.00					6,944	800.00
Thailand	Baht	5,432	213.00	43,045	1,688.00			48,477	1,901,000
Total			1,013.00		1,688.00				2,701.00

George J. MITCHELL,
Majority Leader, Apr. 26, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM DEC. 5–19, 1993.

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Thad Cochran:									
South Korea	Won	205,230	254.00					205,230	254.00
Burma	Dollar		156.00						156.00
India	Rupee	27,985	895.00					27,985	895.00
Pakistan	Rupee	15,380.48	512.00					15,380.48	512.00
Kuwait	Dinar	94.925	318.00					94.925	318.00
Austria	Schilling	5,428.52	452.00					5,428.52	452.00
Senator Hank Brown:									
South Korea	Won	163,216	202.00					163,216	202.00
Burma	Dollar		156.00						156.00
India	Rupee	26,594	851.00					26,594	851.00
Pakistan	Rupee	13,938.56	464.00					13,938.56	464.00
Kuwait	Dinar	76.856	265.00					76.856	265.00
Austria	Schilling	5,428.52	452.00					5,428.52	452.00
Senator Larry Pressler:									
South Korea	Won	205,230	254.00					205,230	254.00
Burma	Dollar		156.00						156.00
India	Rupee	27,985	895.00					27,985	895.00
Pakistan	Rupee	15,380.48	512.00					15,380.48	512.00
Kuwait	Dinar	94.925	318.00					94.925	318.00
Austria	Schilling	5,428.52	452.00					5,428.52	452.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM DEC. 5–19, 1993.—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Dr. Robert McArthur:									
South Korea	Won	205,230	254.00					205,230	254.00
Burma	Dollar		156.00						156.00
India	Rupee	27,985	895.00					27,985	895.00
Pakistan	Rupee	15,380.48	512.00					15,380.48	512.00
Kuwait	Dinar	94.925	318.00					94.925	318.00
Austria	Schilling	5,428.52	452.00					5,428.52	452.00
William Triplett:									
South Korea	Won	205,230	254.00					205,230	254.00
Burma	Dollar		156.00						156.00
India	Rupee	27,985	895.00					27,985	895.00
Pakistan	Rupee	15,380.48	512.00					15,380.48	512.00
Kawait	Dinar	94.925	318.00					94.925	318.00
Austria	Schilling	5,428.52	452.00					5,428.52	452.00
Sally Walsh:									
South Korea	Won	205,230	254.00					205,230	254.00
Burma	Dollar		156.00						156.00
India	Rupee	27,985	895.00					27,985	895.00
Pakistan	Rupee	15,380.48	512.00					15,380.48	512.00
Kuwait	Dinar	94.925	318.00					94.925	318.00
Austria	Schilling	5,428.52	452.00					5,428.52	452.00
Delegation expenses: [1]									
South Korea	Dollar						997.69		997.69
Burma	Dollar						1,589.65		1,589.65
India	Dollar						2,687.19		2,687.19
Pakistan	Dollar						3,885.58		3,885.58
Kuwait	Dollar						3,680.88		3,680.88
Austria	Dollar						3,969.68		3,969.68
Total		15,325.00					16,810.67		32,135.67

[1] Delegation expenses include direct payments and reimbursements to the State Department and to the Defense Department under authority of Sec 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of PL 95–384, and S. Res. 179, agreed to May 25, 1977.

ROBERT J. DOLE,
Republican Leader, Apr. 21, 1994.

AMENDED—CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM OCT. 1 TO DEC. 31, 1993

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Rolf Lundberg:									
Switzerland	Franc	661.46	1,918.25					661.46	1,918.25
United States	Dollar				797.45				797.45
Mira Baratta:									
Croatia	Dollar		1,540.00		128.00				1,668.00
United States	Dollar				1,493.25				1,493.25
Total			3,458.25		2,418.70				5,876.95

ROBERT J. DOLE,
Republican Leader, May 25, 1994.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR TRAVEL AUTHORIZED BY THE REPUBLICAN LEADER FROM JAN. 1 TO MAR. 31, 1994

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Alan K. Simpson:									
China	Yuan	6,944	800.00					6,944	800.00
Vietnam	Dollar		514.00						514.00
Thailand	Baht	10,850	426.00					10,850	426.00
Indonesia	Rupiah	1,360,285	649.00					1,360,285	649.00
Senator William V. Roth, Jr.:									
Philippines	Peso	18,214.68	660.00					18,214.68	660.00
Japan	Dollar		343.00				164.12		507.12
United States	Dollar				1,472.45				1,472.45
Daniel Bob:									
Taiwan	Dollar		209.00						209.00
Philippines	Peso	18,214.68	660.00					18,214.68	660.00
Japan	Dollar		343.00				164.12		507.12
United States	Dollar				988.55				988.55
Senator William V. Roth, Jr.:									
Belgium	Franc	27,466	760.00					27,466	760.00
United States	Dollar				497.00				497.00
Total			5,364.00		2,958.00		328.24		8,650.24

Robert J. DOLE,
Republican Leader, May 25, 1994.

IMPOSITION OF TEMPORARY FEES TO PAY FOR VIOLATIONS OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Mr. ROCKEFELLER. Madam President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 4581 regarding the imposition of temporary fees to pay for violations of the Perishable Agricultural Commodities Act; that the Senate proceed to its immediate consideration; that the bill be read a third time and passed; the motion to reconsider be laid on the table, and any statements thereon appear in the RECORD at the appropriate place as though written.

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

So the bill (H.R. 4581) was deemed read a third time, and passed as follows:

H.R. 4581

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FILING AND HANDLING FEES FOR COMPLAINTS OF VIOLATIONS OF PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930.

(a) TEMPORARY FILING FEE REQUIRED.—During fiscal years 1995 and 1996, the Secretary of Agriculture shall require persons who submit petitions to the Secretary under section 6(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f(a)), alleging a violation of section 2 of such Act (7 U.S.C. 499b), to include a filing fee of $60 per petition.

(b) TEMPORARY HANDLING FEE REQUIRED.—During fiscal years 1995 and 1996, if the Secretary determines under section 6(a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f(a)), that the facts contained in a petition described in such section warrant further action, the person or persons submitting the petition shall submit to the Secretary a handling fee of $300. The Secretary may not forward a copy of the complaint to the commission merchant, dealer, or broker involved until after the Secretary receives the required handling fee. In determining the amount of damages incurred by an injured person or persons preparatory to issuing a reparation order under section 7 of such Act (7 U.S.C. 499g), the Secretary shall include the amount of any handling fee paid by the injured person or persons under this subsection.

(c) DEPOSIT OF FEES.—The Secretary shall deposit fees submitted under this section into the Perishable Agricultural Commodities Act Fund.

ORDERS FOR TOMORROW

Mr. ROCKEFELLER. Madam President, in behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Wednesday, June 29; that, following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders reserved for their use later in the day; that immediately thereafter, the Senate resume consideration of S. 687, the Product Liability Act, with the time until 10 a.m. for debate on the motion to invoke cloture for S. 687, with the time equally divided and controlled between Senator HOLLINGS and Senator ROCKEFELLER or their designees; further, that Senators may file second-degree amendments until 9:30 a.m., Wednesday.

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

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. ROCKEFELLER. Madam President, if there is no further business to come before the Senate today, and I see no other Senator seeking recognition, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate at 7:16 p.m., recessed until tomorrow, Wednesday, June 29, 1994, at 9 a.m.

HOUSE OF REPRESENTATIVES—*Tuesday, June 28, 1994*

The House met at 10:30 a.m. and was called to order by the Speaker pro tempore [Mr. MONTGOMERY].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
June 28, 1994.

I hereby designate the Honorable G.V. (SONNY) MONTGOMERY to act as Speaker pro tempore on this day.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

MORNING BUSINESS

The SPEAKER pro tempore. Pursuant to the order of the House of February 11, 1994, and June 10, 1994, the Chair will now recognize Members from the list submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to 30 minutes, and each Member, other than the majority and minority leaders, limited to 5 minutes.

The Chair recognizes the gentleman from Florida [Mr. GOSS] for 4 minutes.

ANOTHER WEEK IN HAITI

Mr. GOSS. Mr. Speaker, another week has passed and the President's Haiti policy is still producing all of the wrong results—including a large and growing price tag. Although we have never had a formal response to our requests for cost estimates on the Haiti operation, this week we finally learned some revealing details from the news media. We now know that it costs $15,300 a day to fuel the U.S.S. *Comfort*—the hospital ship in Kingston, Jamaica—and the Coast Guard spends at least $120,000 a day to run that ship as a processing center. We can add in $12 million paid to Turks and Caicos for use of a beach, $1.5 million to rent a cruise ship we never used, $63,000 a day to rent two other cruise ships—and we still have not counted the costs of eight Navy ships; a dozen or so other Coast Guard cutters or the sanction enforcement teams in the Dominican Republic. When we add it all up, I suspect the price tag will seem staggering, even to the big spenders in the Clinton administration.

All this big money should be producing big results, right? Wrong. Other than big misery to innocent Haitian victims and United States businesses seeking to boost productivity in Haiti, our sanctions are having little impact on the targets of Cedras and company. In fact, to the contrary, the military junta in Haiti is profiting from the embargo—enriching itself through the sale of contraband, often stolen from United States aid shipments. Aid workers are frustrated at every turn by the unintended consequences of the embargo, particularly the rapid deterioration of infrastructure. Much needed food and medicine spoils on the docks for lack of machinery and trucks to move them. We have seen the toll of such deterioration before—the distended stomachs, the reddish hair, the stick-like limbs—these are the signs of malnutrition we now see in two out of three Haitian children.

Desperate Haitians, drawn by the hope of the President's new offshore refugee processing, are taking to the seas in ever-increasing numbers. In this morning's paper we read that the idealists in the administration are belatedly awaking to the reality of the problem they have caused: "This is the surge that we had to worry about, the influx that swamps the system" said on administration official. With word getting out that the United States has upped its rate of positive asylum rulings from 5 percent to more than 30 percent of those applying, it is no wonder Haitians by the thousands are trying to make it to those processing ships. This month, the Coast Guard has intercepted more than 4,500, twice as many as we saw in May. In the end, if they cannot starve the Haitians into democracy the President and his "B team" of foreign policy advisors seem committed to forcing a democracy at the barrel of a gun.

If the embargo should be declared a failure, military intervention is clearly the President's contingency plan. Even the U.N. Special Representative on Haiti, Dave Caputo, concluded that United States policy toward Haiti is being driven by domestic political concerns. Last month Caputo said:

> The Americans will not be able to stand for much longer, until August at the latest, the criticism of their foreign policy on the domestic front. They want to do something; they are going to try to intervene militarily.

We and others have tried to provide the President with a better way out of this stalemate. But all other views are being ignored. And that is a tragedy, for Haitians, and for Americans who may risk their lives in an ill-conceived military mission.

Mr. Speaker, we can do better; we must do better.

THE 50TH ANNIVERSARY OF LIBERATION OF GUAM

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentleman from Guam [Mr. UNDERWOOD] is recognized during morning business for 5 minutes.

Mr. UNDERWOOD. Mr. Speaker, last Saturday, June 25, 1994, at Arlington National Cemetery, I sponsored a commemoration ceremony for the 50th anniversary of the liberation of Guam and the Battle of Saipan and other islands at the ceremony. This commemoration which took place at the Tomb of the Unknown Soldier is the only national commemoration held this year to recognize battles in the Pacific theatre during World War II.

Mr. Speaker, I am extremely grateful for the participation of Interior Secretary Babbitt, Navy Secretary Dalton, Chairman of the Joint Chiefs of Staff, General Shalishkavili. Their support, stirring words, and encouragement reflects the administration's growing awareness of these historical events.

But I must take note of the fact that the event was largely ignored by the media and by the Nation's leadership other than those mentioned. There is no effort to equate the magnitude of Normandy with the battles which took place 50 years ago in Guam and Saipan but while Normandy pulled the Nation's leadership across the Atlantic, the Pacific battles could not get many to cross the Potomac.

D-day has come to mean only Normandy in the minds of many. But I want the Members of this body to understand that there was more. Last week, I received a call from a veteran of the Pacific theatre. This veteran from Atlanta called me to thank me for the commemoration which we held last Saturday. And he reminded me that for the men who fought in the Marianas and all across the Pacific; every island was a D-day; Guadalcanal, Peleilu, Tarawa, Saipan, Guam, Iwo Jima. All of these were D-days which required the courage and commitment which the American soldier, marine, airman, and sailor always gave.

And there was something more here, especially in the case of Guam—my island. Guam was the only U.S. territory occupied during World War II which had people on it. In fact, it was the first time since the War of 1812 that

U.S. soil was invaded by a foreign power. And when the 3d Marines, the 77th Infantry, the 1st Marine Provisional Brigade stormed ashore, they were reoccupying, they were returning.

And this was not lost upon the marines and soldiers who cried at the sight of the people of Guam coming down from the hills and who were heartened by little children who held handmade American flags, imperfect in their design yet perfect in their meaning.

My people suffered terribly during the war; my own parents lost three children; there were random acts of cruelty; forced marches, forced labor, and acts of loyalty to America were met with fists, rifle butts, the bullet, and even the sword.

And in Saipan, the invasion was the first contact between the American Nation and the people of that island. This experience eventually led to the creation of the Commonwealth of the Northern Marianas, the only acquisition of territory engaged in by this country since the purchase of the Virgin Islands.

While the Guam and Marianas commemoration did not inspire the attention that other World War II commemorations did, it will remain amongst the most meaningful not only because of the bravery of the American military, but because of the bringing together of the spirit of freedom and liberty in the middle of the Pacific.

Freedom is a system based on courage, and there was ample support of this system by the exploits of the men in uniform and my island elders who were in rags. In their sacrifice, in their commitment, in their finest hour, we find the courage which has made our freedom possible.

And we must teach the lessons of this experience to all; it is entirely fitting that we layed a wreath at the Tomb of the Unknown Soldier to honor the experience and the story of Guam, a story largely unknown.

The commemoration of the Battle of Saipan took place on June 15 on that island and the commemoration of the Battle of Guam will take place on July 21. Let us all take the time to reflect upon the meaning of these battles for the Nation, and take the time to honor and recognize the veterans of the Pacific. They deserve more than they have received to date.

□ 1040

DRIFT AND DISORDER IN THE CLINTON FOREIGN POLICY—PART 2, TO INVADE OR NOT TO INVADE

The SPEAKER pro tempore (Mr. MONTGOMERY). Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentleman from Nebraska [Mr. BEREUTER] is recognized during morning business for 5 minutes.

Mr. BEREUTER. Mr. Speaker, on May 24, 1994, this Member felt it necessary to come before this body, quite reluctantly, to express his deep concerns and misgivings about the lack of direction in American foreign policy. It is an erratic, flip-flop foreign policy which encourages international thugs and rogue regimes to conclude that America neither says what it means nor means what it says. They are thereby encouraged to have the view that there is precious little penalty for flaunting international norms of behavior.

Today this Member believes it necessary to elaborate on this concern, looking specifically at the Clinton administration's deep misunderstanding of the proper role and value of the military as an instrument of foreign policy. Indeed, it is when one looks at the Clinton administration's military policy that the disarray becomes most pronounced and more immediately dangerous.

Mr. Speaker, like most Americans, this Member was pleased when President Clinton, in his 1994 State of the Union Address, announced that "as long as I am President [our forces] will remain the best-equipped, the best-trained, and the best prepared fighting force on the face of the earth." Yet this was quickly shown to be a hollow promise, as each and every month our Armed Forces continue to cut 15,000 personnel, retire 1 ship, slash 37 primary aircraft from our inventory, and eliminate 1 combat battalion.

It also is clear that this administration intends to address its budgetary shortfalls by raiding much-needed defense programs. In addition to defense cuts that will total $156 billion through fiscal year 1999, the defense budget also is being raided to pay for billions in nondefense initiatives such as environmental clean-up, our U.N. responsibilities, and cancer research. As a result, this Nation is headed down the perilous course to a hollow Army and a decommissioned Navy, the type of military establishment which would not allow us to adequately honor our treaty commitments and defend our people and national interests.

This gradual crippling of our military capability is particularly unfortunate, Mr. Speaker, because President Clinton and his advisers appear willing, and indeed, eager, to deploy U.S. Forces in a host of contingencies. This administration has already committed at least 25,000 ground troops to enforce a peace settlement in Bosnia—without any sign of congressional support. This administration has committed U.S. ground forces as part of a Middle East peace settlement. And, this administration was perfectly willing to retain United States Forces in Somalia far beyond the time when the original mission was fulfilled.

This Member is particularly concerned about the apparent willingness of the Clinton administration to invade Haiti, by whatever guise and whatever name, as part of an effort to restore Jean Bertrand Aristide to power. Mr. Speaker, such an action would be the height of folly and, ultimately, an expensive disaster with long-term damage to our hemispheric relations. While the deployment of United States Forces in Haiti may address the near-term problem that President Clinton is experiencing with certain more restive elements of his coalition, this is precisely the sort of intervention that would haunt American policymakers for years, and perhaps decades, in the future. Our Haitian policy must not be set by the fasting of Randall Robinson.

Mr. Speaker, the question of whether or not the United States should become militarily engaged in Haiti is not even a close call. While this Member has no doubt our forces would face little military resistance to an invasion, we would then be forced to assume broad humanitarian and administrative responsibilities in an attempt to provide law and order, support the regime we will have reinstated, and protect President Aristide from his many enemies. This would be far more difficult than the Haiti hawks would have us believe. This Member would remind this body that the last time the United States became involved in Haiti, it took 19 years before we were about to extricate ourselves.

It is clear that there are powerful elements within the Clinton political coalition and the administration who see the U.S. Armed Forces are merely a tool to be used in this grand game called nationbuilding. And these master strategists are not in the slightest deterred by the fact that our military capability is being slashed well below the level dictated by elementary prudence.

The logical disconnect is mind-boggling, but it does not seem to have penetrated key elements in this coalition or the administration. We are reducing our Army by a battalion a month, we are reducing our Air Force by 37 aircraft a month, we are reducing our Navy by 1 combat vessel a month. Yet this administration is preparing to commit tens of thousands of troops to a very lengthy occupation, on a mission that is clearly misguided and which is not a vital interest to the United States.

Mr. Speaker, this Member is not an isolationist. This Member has supported and will continue to support the deployment of our Armed Forces when it is proper and necessary to do so.

For example, this Member strongly supports the deployment of troops in Macedonia to serve a deterrent against the spillover of the conflict in Bosnia. Indeed, this Member has urged the deployment of a full brigade rather than the reinforced company presently in Macedonia, and this Member has expressed his support for much more

forceful and responsive rules of engagement for those troops. This is clearly a situation where the vital interests of the United States are at stake.

But this Member will not support, and will not remain silent, as the Clinton administration plans to embark on a counterproductive and politically motivated military incursion in Haiti. President Aristide may have been democratically elected by the Haitian people, but he is not a democrat. Were we to bring about his return to power, we would also be responsible for his subsequent actions—and Mr. Aristide has a proven track record of extreme political violence. When Mr. Aristide resumes supporting arbitrary arrests and advocating necklacing of political opponents, as it clearly did, that too would be America's responsibility.

Mr. Speaker, military action in Haiti is not the national interest, and therefore will not be supported by the American people. By embarking on this course, President Clinton only reinforces the deep-seated belief that this administration's foreign policy is in a state of deep disarray.

THE VIOLENCE AGAINST WOMEN ACT

The SPEAKER pro tempore (Ms. CANTWELL). Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentlewoman from California [Ms. ROYBAL-ALLARD] is recognized during morning business for 2 minutes.

Ms. ROYBAL-ALLARD. Madam Speaker, the recent killing of Nicole Brown Simpson has focused attention like never before on the national epidemic of domestic violence. Now that public awareness is at an all-time high, the crime bill conferees have an unprecedented opportunity to report the Violence Against Women Act out of committee in its strongest possible form and help curtail an epidemic that is destroying the very centerpiece of our Nation; our families.

Although many of the facts of the Simpson case are not known at this time, we do know the system designed to protect families against violence failed the entire Simpson family as it has failed countless families throughout this country.

The story, unfortunately, is a familiar one:

Police who were called on numerous occasions did not pursue arrest.

Medical professionals who provided treatment did not intervene.

The judge who presided over the one court proceeding found the pattern of violence only serious enough to warrant a sentence of community service.

Now a young woman and an innocent bystander are dead, and two children will grow up without their mother, and possibly without their father.

In Los Angeles where Nicole Simpson was killed, there is one domestic violence homicide every 2½ days. Yet in the entire county of Los Angeles with a population of more than 9 million people, there are only 18 shelters for battered women, with only 250 available beds. Currently, two-thirds of the women who apply for shelter are turned away because there is no room.

We can and must do better for the women and children of America. It is imperative that the Violence Against Women Act be reported out of committee with its full funding.

The full $1.8 billion in the Senate-passed bill will provide much-needed assistance to States and localities for police, prosecutors, women's shelters and community prevention programs, where it is most needed.

Madam Speaker, I am proud to be joined today by many of my colleagues who share my deep concern about domestic violence in America. The crime bill conferees must pass the Violence Against Women Act in its strongest form as a first step in providing the systematic support needed to break the cycle of family violence.

We cannot afford to fail the families of America.

We have waged wars and campaigns to make the world safe for democracy—we must now wage a campaign to make women and children safe in their own homes.

SUPPORT CONTINUED FUNDING FOR SPACE STATION PROGRAM

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentleman from Texas, Mr. SAM JOHNSON, is recognized during morning business for 3 minutes.

Mr. SAM JOHNSON of Texas. Madam Speaker, this week Congress will be voting on space station funding. Are we going to abandon America's future, or will we continue a legacy of leading the world into space? Does this Congress have the same courage and foresight that our predecessors had to bring us the growth, prosperity, prestige, and quality of life that Americans now enjoy, unprecedented and unmatched anywhere in the world.

We have a great investment in our space program. We can't just trash one of our society's greatest achievements. Achievements in space have inspired our children to excellence.

But now, we are in danger of having an entire generation grow into adulthood without turning the dream of stepping out of the bounds of Earth's gravity into reality. An entire generation or more; think of it.

We all know the space program's contributions have touched all aspects of our modern life. New technologies, new products, new jobs, and economic growth have been a direct result of our space program.

It has contributed to timely and accurate breast cancer detection, highly advanced air and water filters, improved engine lubricants, lightweight composites, high-technology lasers robotics, and even improved shock absorption in athletic shoes.

Our achievements in space have also contributed to America's stature in the world.

No other nation on earth can even come close to matching our accomplishments. And now with strong partners in Russia, Europe, and Japan, we have the knowledge, the resources, and the ability to reach our next goal in space—completion on the space station.

Budget cutting is the only argument that space station opponents have. I want my colleagues to reach back in time to a previous Congress' courage and look to the future in the same manner. And it is with that awareness that I urge everyone to make the tough choice, a visionary choice like the one made 25 years ago that put American astronauts on the Moon.

It is for our kids; it is for our America.

It is the right time. It is the right choice, to fully support continued funding for the space station program. It is an investment in America's future. It is the future of planet Earth.

□ 1050

DOMESTIC VIOLENCE PREVENTION

The SPEAKER pro tempore (Ms. CANTWELL). Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentlewoman from Oregon [Ms. FURSE] is recognized during morning business for 2 minutes.

Ms. FURSE. Madam Speaker, when people in America think of violent crime, they often think of gang members killing each other over turf wars. Unfortunately, violent crime is prevalent in American homes.

Domestic violence is a problem that potentially strikes all women, whether they are rich or poor. It makes the place that should be safe—their own home—unsafe. The House and Senate must complete work on the conference of the Violence Against Women Act to begin to address the problem of family violence in our communities.

Last year, in the city of Portland, OR, domestic violence claimed the lives of 22 people. Three babies were killed by their parents, three men were killed for intervening in a domestic dispute, three men killed themselves after killing a partner or family member, a woman who feared for her own life killed her boyfriend, and 12 women were murdered by their husbands, their boyfriends, former partners or family members.

The House and Senate have passed the Violence Against Women Act as part of the crime bill to address the problems our communities face in dealing with violence in the home. One of

the provisions of the Violence Against Women Act is my own Domestic Violence Community Initiatives Act which will assist communities in bringing together the shelters, law enforcement, religious organizations, health care providers, teachers and principals to develop a coordinated community response to the problem. Because the problem of domestic violence involves so many different aspects of our society, only a coordinated approach can produce truly effective solutions.

It's time we make domestic violence prevention a priority. We can prevent these horror stories and help make homes a safe place, a haven once again.

A CALL FOR SOLUTIONS TO DOMESTIC VIOLENCE

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentlewoman from Maryland [Mrs. MORELLA] is recognized during morning business for 2 minutes.

Mrs. MORELLA. Madam Speaker, I am pleased to join my colleagues this morning for this special order or morning hours.

Whether walking alone down city streets late at night, driving to work in quiet suburban neighborhoods, or even home alone with their loved ones, for women and girls in America, violence is an everyday fact of life.

In this country, every 5 minutes a woman is raped, every 15 seconds a woman is beaten by her husband or companion, and every year 4,000 women are killed by their abusers. Street and domestic violence costs our Nation 5.3 billion health care dollars annually. More than 30 percent of women in emergency rooms are there because of domestic violence, and more than 60 percent of the women in mental health wards are there because of ongoing abuse.

The Violence Against Women Act, now before a House-Senate conference committee, must be passed promptly and funded fully.

For almost 2 weeks, the country has been riveted by the story of one woman victimized by a police force, a court system, and a society that looked the other way. Her terrible story is typical however, of many American women who would rather walk down dark city streets at night than stay at home with their loved ones.

Congress has an opportunity to begin to change all that—to help prevent the battering of 4 million American women and to protect the 3.5 million children who witness these attacks every year.

VAWA will help fund a national domestic hotline, more emergency shelters, and community education programs; provide training for police and for judges; provide for the interstate enforcement of orders of protection; and provide help for battered immigrant women. It will declare crimes of violence committed because of gender to be civil rights violations.

VAWA unequivocally sends the message that domestic violence, rape, and sexual assaults are crimes that we will not tolerate in our society.

DOMESTIC VIOLENCE

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized during morning business for 2 minutes.

Mrs. CLAYTON. Madam Speaker, domestic violence is the most common form of violence, yet it is the least reported crime. Domestic violence results in more injuries which require medical treatment than rape, auto accidents, and muggings combined. This is a problem that knows no boundaries. The majority of domestic violence victims are women—women of all ages, all races, all income, and all education levels.

Domestic violence has reached epidemic proportions in the United States, women not only have to fear for their safety on city streets, but also in their own homes. In the very place they should feel safe. Yet daily there are women killed in their homes by a spouse or partner they love and trust. I ask you why then it takes the death of the wife of a national celebrity to bring this issue to the forefront. Is one life more precious than another?

This is not a new problem in our society, but one which is finally obtaining the national attention it deserves. We have come a long way from the days a woman was told by friends and family, law enforcement agencies, and even clergy that she must be doing something wrong to provoke such irrational behavior. But we have an even longer road to go.

We as lawmakers must show women that they do not stand alone, that we are making strides to give back their safety and their lives. H.R. 1133, the Violence Against Women Act is just that kind of legislation. I cosponsored this legislation and I want to see it passed into law. I want to see more rigid enforcement and sentencing of abusers. I want to see additional funding for programs for victims of sexual assault and domestic violence. I want to see the courts treat these women like victims, not like criminals. I want to see a national toll-free hotline funded which will provide assistance to these victims. I believe in H.R. 1133 and I know that it will make a difference.

We must give these women hope; we must show them they are not alone and that we care. This bill will empower women by letting them know that finally the law is on their side.

□ 1100

HEALTH CARE REFORM WITHOUT EMPLOYER MANDATES

The SPEAKER pro tempore (Ms. CANTWELL). Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentleman from Michigan [Mr. KNOLLENBERG] is recognized during morning business for 5 minutes.

Mr. KNOLLENBERG. Madam Speaker, I rise today to discuss one of the most disturbing aspects of the Clinton health care plan: employer mandates.

There is almost universal agreement that a mandate will cost thousands of American jobs. Even Laura Diandria Tyson who is President Clinton's Chief Economic Adviser admits that some 600,000 jobs will be lost under the Clinton plan as presently drafted. In fact, some studies show that as many as 3.8 million jobs could be lost.

The fact of the matter is that in this time of increasing regulatory burden for small businesses, mandates could very well be the "straw that broke the camel's back" and sends the U.S. economy into recession.

In a publication from the Heritage Foundation, Robert Moffit, I think, captures the essence of an employer mandate,

> Any mandate on employers to provide health insurance necessarily adds to the labor costs of firms that do not now offer health insurance or that offer a package less generous than the mandatory plan. Increased labor costs necessarily translate into higher prices for consumers for goods and services in the general economy or reduced compensation for employees in the form of wages or other benefits.
>
> Depending on the size and the resources of the firm, the increased labor costs will translate directly into lower wages or job loss.

What is interesting about universal coverage is that in areas where it has already been implemented it still only covers 91 or 92 percent of the population. In my State of Michigan, we have already covered 91 percent of the population. Therefore, the employer mandate would do nothing for my constituency but cost jobs.

There is also a question of subsidies to small businesses. Where is this money going to come from? How much will these subsidies cost 10 years from now? And, how much time and effort will entrepreneurs have to devote to obtain these subsidies?

Above all that, there is something inherently unsettling about the thought of employers having to go to the Government to beg for money.

I think that everyone in Congress who favors a mandate needs to visit the businessowners in their districts—and see how many of them struggle daily with the burden that the Government places on them. Then they should ask themselves, "do we really need to put the Government into another facet of the American business sector?"

Maybe we can just enact reform to our system of insurance on which there is wide bipartisan agreement and give it a couple of years and reevaluate them.

Let us do it—but let us do it right.

I believe that this is a prudent course and I urge my colleagues to consider it. The American people want health care reform, but they want it done right.

VIOLENCE AGAINST WOMEN

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentlewoman from California [Ms. WOOLSEY] is recognized during morning business for 5 minutes.

Ms. WOOLSEY. Madam Speaker, it is time for this Nation to take violence against women seriously, not just when it hits the evening news, but every day that this American tragedy continues.

Madam Speaker, acts of domestic violence occur every 18 seconds. Battering is the single major cause of injury to women; more frequent than car accidents, muggings, and rapes combined. Six million women are beaten each year by their husbands or boyfriends, Four thousand of them are killed.

Most of the time, these cases do not make headlines, but they are just as tragic and intolerable as those that do.

Madam Speaker, we know what to do. We must enact the violence against women act. To help stop the horror of crime aimed at women.

The Violence Against Women Act provides funding to aid policy, prosecutors, women's shelters, and community prevention programs. It is a comprehensive approach that is both tough on criminals and smart about crime prevention.

The Violence Against Women Act is now in conference committee as part of the crime bill. In the wake of the Nicole Simpson murder case, women across America are raising their voices about domestic violence and violence against women. Here in Congress, we must join this effort and raise our voices about the importance of final passage of the Violence Against Women Act—without weakening changes or reductions in funding.

We owe it to the millions of domestic violence victims across this Nation. Let us resolve never to be silent, never to let this issue out of the limelight, until women and girls—and all Americans—are safe once again.

INFORMING MEMBERS OF UPCOMING SOCIAL SECURITY TASK FORCE HEARING

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentleman from Wisconsin [Mr. ROTH] is recognized during morning business for 5 minutes.

Mr. ROTH. Madam Speaker, I rise to inform my colleagues about a Social Security task force hearing tomorrow morning at 11 a.m. I invite every Member who wants to strengthen our Social Security system to attend. The hearing's topic is the long-term security of the Social Security trust fund, a topic of vital interest to every American who is counting on a secure income during retirement. Without a stable Social Security system, today's workers and retirees face an uncertain future.

A future in which their retirement income is in jeopardy; 42 million senior citizens rely on their Social Security benefits to buy groceries, medication, and pay the bills.

Each year, millions of additional Americans retire and begin collecting the benefits they earned and planned for.

Congress needs to take bold steps to guarantee that their Social Security checks do not bounce some day in the future.

According to the Social Security trustees, that doomsday—the year the Social Security system goes bankrupt—moves closer and closer every year.

The latest trustees report predicts our Social Security system will become insolvent in the year 2029.

Only last year, the trustees report predicted the Social Security trust fund would be solvent until 2036.

That means in the past 12 months, the Social Security insolvency date advanced 7 years. And some independent analysts say the insolvency date could come even sooner. If Congress does not put Social Security's fiscal books in order, we will be mortgaging our childrens' future.

That is why Congress needs to stop spending the surplus funds that Social Security collects every year.

This year, for instance, Social Security will take in $59 billion more than it pays out. Every penny of that surplus will be spent by the Government on non-Social Security programs.

In other words, every week the big spenders in Congress spend more than a billion dollars of the people's Social Security money on other government programs, from food stamps to foreign aid. It is time for Congress to stop misusing the trust fund.

Social Security is not a piggy bank to be raided by the big spenders in Congress. Social Security funds must be used for Social Security purposes only.

Tomorrow's hearing will help this task force learn more about these issues. Additionally, we will explore ways to ensure the long term solvency of the Social Security trust fund, both for today's seniors and today's workers.

Eight expert witnesses will share their ideas and answer our questions.

Our witnesses include seniors advocates, a former Social Security Commissioner, an actuary, a taxpayers' advocate, and a representative for the Social Security Administration.

Madam Speaker, I urge Members to attend this hearing and help me work toward a fiscally sound Social Security system. We owe it to today's seniors, and to their grand children.

URGING THE STRONGEST POSSIBLE VERSION OF THE VIOLENCE AGAINST WOMEN ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentlewoman from New York [Mrs. MALONEY] is recognized during morning business for 2 minutes.

Mrs. MALONEY. Madam Speaker, this morning, I rise in support of the strongest possible version of the Violence Against Women Act.

Violence against women is one of the most horrendous and neglected problems facing our country. The men who batter 4 million women each year are often treated with a wink and a nod. This is intolerable and we must not stand for it.

Of 178,000 radio calls relating to domestic disputes in New York City, less than 7 percent result in arrests.

There is no difference between assaulting one's spouse and assaulting a stranger. The bruises are the same. The black eyes are the same. And the penalties ought to be the same.

Beating up a stranger gets you jailed. Beating up a wife gets you therapeutic treatment. We are no longer willing to coddle the batterers.

They must know that if they abuse their partners, they will be behind bars. It is unfortunate that it took a celebrity murder to bring this issue back to the Nation's attention.

If we can pass this bill, maybe we can protect the next Nicole Simpson from the actions of an abusive spouse. Domestic abuse is no longer a family matter.

A FAILED DRUG STRATEGY

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentleman from New York [Mr. GILMAN] is recognized during morning business for 5 minutes.

Mr. GILMAN. Madam Speaker, across the country, students have been taking their exams and receiving their grades for the school year. Here in Washington, mid-term exams for the Clinton administration will be held in November.

As a cofounder and vice chairman of the former Select Committee on Narcotics, I regrettably would have to give the Clinton administration a failing grade on narcotics if it were in my classroom. Let's look at the administration's record.

ON LEADERSHIP

The President and his Cabinet have been virtually absent from the war on drugs. An on-again off-again approach has permitted Congress to cut many of the vital anti-drug budgets without any significant executive protest.

Moreover, Madam Speaker, the administration abruptly ended intelligence sharing with Peru and Colombia—undercutting our interdiction of cocaine and leaving our allies in those countries furious—only to reverse course after an uproar in the Congress.

In Burma, heroin production is soaring but the administration has no comprehensive strategy to deal with it. Leadership gets a grade of "F."

WITH REGARD TO INTERDICTION

There are five major components in our war against drugs—eradication; interdiction; enforcement; education; and treatment and rehabilitation. All must be pursued simultaneously; none can be cut in favor of any other.

In addition to cutting off narcotics intelligence to Peru and Colombia—where the administration has belatedly admitted that drug flights have increased—they have sought to cut millions from overseas interdiction programs.

Reducing our interdiction efforts overseas inevitably leads to more and cheaper drugs on the streets of our cities. The administration gets an "F" for interdiction.

WITH REGARD TO COMMUNICATION

The President has communicated the wrong message on drugs. No opposition was voiced when the Department of Education's budget for safe and drug-free schools was suddenly cut.

The President has been silent while Dr. Joycelyn Elders—Surgeon General of the United States and the Nation's top public health official—has spoken openly and repeatedly in favor of studying the legalization of drugs.

In a recent interview in USA Weekend Magazine, she said the President told her, quote: "I keep up with you by everywhere you go and what you've been doing. I love it." Close quote. An "F" for communication.

IMPACT ON CRIME

The Administrator of the Drug Enforcement Agency estimates that illegal drugs account for one-third of the Nation's violent crime and half of the murders.

Putting more police on the streets of our cities under the proposed crime bill will have little effect as long as interdiction efforts overseas are neglected. More and cheaper drugs available means more abuse. The connection between abuse and crime and violence is well established.

The administration's impact on crime gets an incomplete grade because drug policy failures in other areas cannot yet be fully evaluated.

Illicit drugs add billions to our health care costs, such as caring for crack babies, drug treatment programs, the spread of HIV by needles, and the loss of productivity.

By neglecting the battle against illegal drugs, the President is undercutting the very cost savings he seeks through health care reform. Another incomplete grade on health care costs because they cannot yet be fully evaluated.

Madam Speaker, so far the Clinton administration has failed in its narcotics efforts. In so doing, it has left the American people more exposed than ever to the ravages of illicit drugs.

The administration has a lot to do to earn a passing grade in the November midterms.

□ 1110

FEEL THEIR FEAR

The SPEAKER pro tempore (Ms. CANTWELL). Under the Speaker's announced policy of February 11, 1994 and June 10, 1994, the gentlewoman from Colorado [Mrs. SCHROEDER] is recognized during morning business for 2 minutes.

Mrs. SCHROEDER. Madam Speaker, first I want to thank the gentlewoman from California [Ms. ROYBAL-ALLARD] for putting this together. She has had great leadership in dealing with domestic violence issues in the State of California, and she is bringing that here to the Congress, and I am honored to join my other colleagues in coming to the floor to talk about how important it is to have the strongest possible version of the Violence Against Women Act in the crime bill when the conferees meet.

Madam Speaker, domestic violence is the leading public health and safety problem facing American women. For the 3 to 4 million women who are battered in their homes every year, an ever intensifying cycle of violence is their day-to-day reality. A reality, which until recently has been largely ignored.

Domestic violence generates tremendous costs to society. More than 1.5 million battered women seek medical treatment for their injuries each year, costing $45 million in annual medical costs, and at least 175,000 days of absenteeism a year. In at least 50 percent of these homes the children are battered too.

For the victims, domestic violence is a life or death matter. One third of female homicide victims are killed by their husbands or boyfriends. The Violence Against Women Act is now in conference. To illustrate the dimensions of the problem, the members of the Congressional Caucus for Women's Issues will be reading the names of individuals who have lost their lives in domestic violence related incidents until the conference is finished. This list is by no means complete. Many States do not keep statistics on domestic violence-related homicides. We do know, however, that these lists will continue to grow unless we act.

COLORADO 1993

February 4, 1993: Pamela, 27, shot by ex-boyfriend in her living room. Children found mother dead.

February 16, 1993: Wade, 28, and Roy 60. Estranged husband shot wife's boyfriend. Threatened to kill his wife as well. Then shot himself.

March 1, 1993: Patricia 35, Dale 42. Dale shot Patricia then shot self. They had a history of domestic violence and two kids.

THE RUSSIAN MAFIA

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994 and June 10, 1994, the gentleman from California [Mr. ROYCE] is recognized during morning business for 3 minutes.

Mr. ROYCE. Madam Speaker, I rise today to address an issue of critical importance to our national security, to our foreign policy, and indeed, to our domestic tranquility. That issue is the growing threat of international organized crime, specifically, that emanating from within the former Soviet Union.

In recent weeks, we have heard from a large number of administration witnesses—the FBI Director, the CIA Director, and other experts on this growing problem.

We have also heard from Russian parliamentarians who have seen colleagues in Parliament, and other elected offices, gunned down by the new Mafia. President Yeltsin himself has warned that, in his words, "Russia has become a superpower of crime;" and that the corruption in ministries and law enforcement agencies "is extraordinarily dangerous for the nation."

Our newspapers have focused on this issue, and so have our constituents who have tried to do business there.

I believe it is important to take a few moments this morning to bring some of the highlights to the attention of our colleagues who might have missed some of these recent hearings. The statistics are awesome.

Director Woolsey testifying yesterday quoted the Russian Ministry of Internal Affairs to the effect that a majority of Russia's 2,000 banks are controlled by organized crime; he also stated that Russian criminal gangs operate in 29 countries, including the United States; murders have increased 47 percent in the past year, largely attributable to the Russian Mafia; and, Yeltsin says that 60 percent of all Russian companies are Mafia-infiltrated.

In Los Angeles alone, Russian organized crime has netted an estimated $1 billion in health-benefits fraud cases. Similar stories emanate from New York, and other large cities.

According to the International Security Subcommittee's report, criminal

groups in the former Soviet Union transferred $7 billion to Germany in 1992 alone; this exceeds the total of all United States aid to the region since 1990.

The main areas of threat are the illicit export of drugs and weapons—both conventional and unconventional—the smuggling of nuclear materials and technologies, and the support of international terrorism and rogue regimes.

Linking all of these is the increasing Mafia control of the Russian banking and financial transactions business. Put it all together and you have an over arching threat of instability created by the combination of these threats.

Internationally, alliances are developing, on a scale never seen before, between drug syndicates, financial swindlers, commodities thieves, arms dealers and shadowy political movements—all devoid of ideological or national loyalties.

In a vicious circle that threatens to outstrip the abilities of our police and intelligence agencies to monitor and counter, international gangs contract to kidnap industrialists for ransom or to pilfer nuclear weapons, to earn money for terrorist groups who in turn strive to overthrow democratically elected governments, so that drug kingpins can be sprung to freedom.

No longer scenarios from a Tom Clancy novel, these things are happening around the world today.

These concerns are very real, the danger is very present. I would urge this administration to redouble its efforts to identify and isolate these criminal elements, and to assist the democrats within the Russian Government in bringing these elements to justice.

As Director Woolsey implied, the model for comparative analysis of this criminal aspect is the KGB and its sister organs in the old Soviet Union. He noted yesterday that as we look now at some of these new organizations, in and out of the State, we see the old familiar elements.

My view is that rather than cutting back on the capacity of our intelligence community to deal with this challenge, we should realize its unique capacity and benefit from it.

We should also recognize that the complexity of the problem threatens each of our crosscutting aims of democracy, nonproliferation, and regional stability.

Democracy cannot prevail, markets cannot grow, and human and civil rights cannot be upheld in the face of such overwhelming and corrupting criminal activity.

Our aid should be conditioned on assurances from both Russia's Government, and our own, that all is being done that can be done in respect to monitoring and countering the growing threat of these crime syndicates before they can choke off the infant democratic experiment in the former Soviet Union. Many Russians are struggling against this menace daily and deserve our support.

In closing I want to stress that this is not just about crime in Russia, or marginal changes in our aid package—this is about countering a real threat to the chances for a successful transition in the former Soviet Union, and it is about stopping an international crime wave before it crests on our own shores, and, before it goes nuclear.

I would suggest that these thugs are of a different magnitude than those in Haiti with whom the President and his administration seem so obsessed, and I hope the President will find the wherewithal to deal with them more effectively.

De Toqueville reminded us that no time is as dangerous as the time of regime transition. We must be sober and vigilant about the challenges facing Russia, and the United States, during the transition; indifference and indecision will only encourage the antidemocratic forces at a time when they need our attention and support.

American University expert Louise Shelley has warned of a dim alternative to democracy in Russia if we fail:

* * * the pervasiveness of organized crime may lead to an alternative form of development—political clientism and controlled markets. The control will come from the alliance of former Communist Party officials with the emergent organized crime groups . . . groups that currently enjoy the preponderance of capital of the post-Soviet states.

Finally, I commend to my colleagues an excellent article on these matters in the European edition of the Wall Street Journal entitled: "Russia's Biggest Mafia is the KGB" by Dr. Michael Waller, which is attached to my statement, as follows:

RUSSIA'S BIGGEST "MAFIA" IS THE KGB

(By J. Michael Walles)

In partnership with the Russian government, the West is launching another Great Crusade: A mutual flight against organized crime. While stopping the spread of criminal syndicates from the former Soviet Union into Western Europe, Asia, and the Americas may well require cooperation with Russian authorities, such cooperation is fraught with dangers. Russia's organized criminals are not only rogue elements battling the authorities. In many, many instances, they are the authorities themselves.

The core of Russia's own battle against organized crime is the Federal Counterintelligence Service, the re-named internal security organs of the former KGB. Paradoxically, ex-KGB operatives also happen to be at the core of Russia's organized criminal underworld, with a grip on a great deal of business activity.

This should not be surprising. Since the Soviet secret police were founded in 1917 as the Cheka, they have acted as agents of corruption for the country's nomenkiatra ruling class. As the Bolsheviks consolidated power, the "Chekists" made house-to-house searches, stealing everything of value and stockpiling it in warehouses where the items were catalogued and ultimately distributed for use by the nomenkiatra, or sold abroad for hard currency. They then set up and operated big trading houses in the West.

In more recent years, the KGB procured contraband for the ruling elites, laundered Communist Party funds through investments in the West, smuggled narcotics from Central Asia to Europe, trafficked in weapons large and small, rubbed out opponents around the world, and engaged in bribery, blackmail, and extortion at home and abroad. It had sole authority to penetrate law enforcement and the armed services, a power that could either end the careers of police and military officers, or enhance them in exchange for cooperation.

THE ULTIMATE MAFIA

The KGB had vast banks of information at its disposal: files on millions of individuals, political and financial data, a global information-gathering and analysis operation staffed by some of the world's brightest minds, and a network of enforcers to match. Backed by the Soviet superstate, with branch offices in every town of the U.S.S.R. and nearly every country in the world, the KGB was the ultimate mafia.

As the Soviet Union collapsed, that mafia unshackled itself from the few civilian controls over it and began taking advantage of the opportunities opened up by privatization and the emergence of a market economy. It buttressed its political independence with the unmatched power to move money into and out of the country.

When Mikhail Gorbachev abolished the Communist Party's monopoly of power, the KGB rushed in to fill the political void as well. Prior to the 1991 elections for the Congresses of People's Deputies in Russia and the other Soviet republics, the KGB set up a special task force to organize and manipulate the electoral processes. It held political organization training courses for favored candidates, arming them with privileged information about their constituencies' problems, needs and desires. Admitted KGB officers, some 2,756 in all, ran in races for local, regional and federal legislatures across the U.S.S.R.; 56% won in the first round, according to a KGB internal newsletter.

The trends are similar in Russia's booming business community. Radio Liberty's Victor Yasanna reports that during perestroika, it was the KGB and the Komsomol that established the first stock and commodities exchanges, "private" banks, and trading houses through which the Soviets' strategic stockpiles of minerals, metals, fuel and either wealths were sold. The West would not allow the Soviets to damp these reserves on the open market for fear of depressing world prices, so the KGB took the alternative route of selling through organized criminal channels to get the hard currency Moscow desperately needed.

These networks were facilitated by the strategic placement of support personnel abroad. KGB Chairman Vladimir Kryuchkov's son, as station chief in Switzerland, was implicated by a parliamentary commission in a scam to bank fortunes in hard currency for the KGB and Communist Party leaders and their families. The son of former Soviet Prime Minister Valentin Pavlov, who worked in a Luxembourg bank, was implicated in the same scandal. Even as the Russian government went through the motions of tracking down such monies, foreign intelligence chief Yevgenly Primakov blocked the parliamentary investigations from looking further, and the matter was forgotten.

Meanwhile, Western businessmen who flocked to Russia actively pursued current and former KGB officers as business partners. The law at the time required all foreigners to have a Russian joint partner. A 1992 report in the Russian newspaper Gelos concluded that 89% of all joint ventures involved KGB officers. They occupy top positions in nearly 100% of all state and semi-state enterprises, where a deputy director's position traditionally has been reserved for a ranking KGB officer.

For Western businessmen, employing or otherwise retaining KGB men had distinct economic advantages. KGB officers and veterans are a tightly knit fraternity with unmatched access to inside information, personal contacts, and other mechanisms to get things done, including paying off bureaucrats and high-level officials. Few contracts in Russia have any legal basis, and the smothering bureaucracy makes special favors from the KGB a necessary component of successful business ventures. Some Western businessmen even justified their new partnerships by reasoning that helping turn secret policemen and spies into entrepreneurs would promote Russian reform.

These businessmen were wrong. Honest security officers suffered professionally for bringing cases of high-level corruption to President Yeltsin's attention. According to a former KGB general, Mr. Yeltsin's internal security chief, Viktor Ivanenko, "tried to tell the truth about certain colleagues to President Yeltsin, but he was ousted."

President Yeltsin authorized a new status called "active reserve" so that secret police and spies could go into business while in government service with all due privileges. No conflict of interest laws exist to stop massive organized corruption from taking place legally. The distinction between private enterprise, racketeering and the security services is now officially erased.

The largest and most visible symptom of the Chekists' new influence is the gigantic "Most" financial and construction group. Most's business strategy has been to hire between 800 and 1,000 former KGB and interior ministry officials to serve as analysts, dealmakers and enforcers, according to ex-KGB officials interviewed in Moscow. The firm's analytical department, which acts as the principal advisory body to CEO Vladimir Gassinsky, is headed by former KGB First Deputy Chairman Filipp Bobkov, once the right-hand man of KGB Chairman Kryuckev and a vocal supporter of the August 1991 coup attempt. Mr. Bobkov's department includes 80 KGB veterans, including former KGB Chairman Viktor Chebrikov, who advocated sending democratic activists to psychiatric hospitals; B.S. Shulatenko, who was in charge of the political police in Ukraine; and former head of the KGB's dissident-hunting unit for the entire Soviet Union, Gen. Ivanov, whose first name is a subject of some mystery.

The Most conglomerate is widely reported to be attempting to buy the loyalty of members of parliament who have opposed the Chekists. The company is also creating a media empire to influence public opinion, reaching out to young professionals who strongly support Western-style reform. In partnership with the Stolichny and National Credit banks, Most is a major backer of a new daily newspaper, Segodnya, and the popular Independent Television Network (NTV). Just a year old, Segodnya has a daily circulation of 100,000, while NTV reaches 40 million viewers. Both media cartels are politically quite liberal, but not to the extent of criticizing the activities of Most itself.

INFORMATION HIGHWAY ROBBERY

A new threat to legitimate businesses in Russia and the West is the Federal Agency by Government Communications and Information, known by its Russian initials as Fapsi, which comprises the high-tech units of the former KGB. Responsible for most forms of electronic spying, Fapsi is on the verge of taking control of Russia's telecommunications lines. A recent decree by deputy counterintelligence director Andrei Bykov, a 26-year veteran of the KGB technical operations department, placed all telephone switchboards and their electronic equivalents at the disposal of the security services. The decree ordered that each telecommunications transit point be equipped with eavesdropping devices.

Traditional-style gangsters also have gained power in Russia. Otari Kvantrishvill, a notorious Moscow mafioso who was assassinated in April, had positioned himself so well that, in the words of Moscow News, he "could successfully settle conflicts between Moscow officials, financiers, and representatives of the underworld."

According to the State Duena's committee on security, 80% of all enterprises are engaged in corruption, and up to 50% are controlled by organized crime syndicates. What has emerged from Russia's great economic reform is a huge parastaial system dominated by the former KGB, the bureaucracy and nomenkiatra and organized crime. Before the West commits to help Russia fight mafia activity with tradecraft and intelligence, it must first find institutional partners there that are clean.

□ 1120

DOMESTIC VIOLENCE

The SPEAKER pro tempore (Ms. CANTWELL). Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentlewoman from Connecticut [Ms. DELAURO] is recognized during morning business for 2 minutes.

Ms. DELAURO. Madam Speaker, as tragic as any one high-profile, domestic violence case may be, the truth is 2 million women in the United States are beaten by their partners every year—that's one woman beaten every 16 seconds. In my home State of Connecticut and nationwide, violence by male partners surpasses automobile accidents, muggings, and cancer deaths combined as the leading cause of injuries for women between the ages of 15 and 44. Clearly an epidemic of domestic violence is plaguing our Nation.

Domestic violence is not a family matter, it is a crime. And we have a responsibility to address it, as we would any other crime. We need to invest in smart prevention and tough punishment programs. We have a responsibility to create and fund effective prevention programs, to provide services to victims of domestic violence and to stiffen penalties so that domestic abusers are punished and serve time behind bars. That is what the Violence Against Women Act is all about.

The Violence Against Women Act contains the most ambitious and comprehensive proposals this body has ever passed regarding domestic violence. It will provide millions of dollars to State and local governments; it will help implement mandatory arrest programs and training programs for police and prosecutors; it will create a national toll free hotline to assist victims of domestic violence; and it will make interstate stalking and domestic violence a Federal crime.

These programs and penalties are ones that experts and victim advocates have been recommending for years. Their inclusion in the crime bill sends an strong message that Congress recognizes domestic violence as criminal and as the worst kind of violence because it is perpetuated against those who are the most vulnerable—women and children.

Madam Speaker, I urge the conference committee to send us a final bill that includes the Violence Against Women Act, so we can send it onto the President for his signature. If ever there was a time to make a difference in the lives of those victimized by domestic violence and to do something about preventing it, the time is now—while the Nation is watching. Let us not miss this crucial opportunity.

TIME FOR AN HONESTY CHECK

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentleman from Texas [Mr. SMITH] is recognized during morning business for 3 minutes.

Mr. SMITH of Texas. Madam Speaker, late last week President Clinton attacked radio talk show hosts for being too critical of his administration. This is strange behavior for someone who can generate news at will, who consistently receives favorable treatment by the big three network news programs, and who is supported by the largest daily newspapers in the country.

Maybe President Clinton wants a monopoly on media coverage just like he wants Government to have a monopoly on health care.

In his effort to stifle criticism, what Mr. Clinton may be overlooking is that the trust of the American people and the respect of political opponents must be earned.

Most Americans would agree that to earn their trust a President should possess a sense of honesty, a basic ability to tell the truth. Most Americans and even the media would forgive occasional lapses. To many citizens, though, the lapses of this President have become part of a pattern of behavior that began years ago and continues today.

A few recent examples might explain why the media have not been unanimous in extolling President Clinton:

He pledged a tax cut during the Presidential campaign. Instead, he delivered the largest tax hike in history.

He vowed to "shut down" the special interest money machine. Instead, he has helped raise $40 million to keep the old machine running smoothly.

He promised to "end welfare as we know it" in 40 percent of his campaign speeches. What he has proposed will cost $10 billion more over 5 years than the current welfare system.

Now he says to let the Government take over the health care system, and costs will go down.

Perhaps we should insist on an honesty check. And that's the point. Given Mr. Clinton's record, far from being concerned about radio talk show criticism, he should be grateful that the criticism is not louder and more widespread. It could still become so.

The President should realize that the problem results not from having the light turned on, but from the conduct that is exposed.

Americans want a President who is honest and a Government that is trustworthy. If this administration makes a sincere effort to live up to the high ideals held by the American people, then it will not have to worry about talk show commentary.

SUPPORT THE PRIVATE PROPERTY OWNER'S BILL OF RIGHTS

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, and June 10, 1994, the gentleman from Louisiana [Mr. TAUZIN] is recognized during morning business for 1 minute.

Mr. TAUZIN. Madam Speaker, how many of your constituents can afford a one-half million dollar trip to the Supreme Court to find out if the Government may take their property away without compensation? Not many.

Last Friday, in a landmark Supreme Court case, one citizen of Oregon completed that trip to the Supreme Court here in Washington, and was finally awarded a victory—a victory that now belongs to every property owner in America. On Friday, the Supreme Court ruled in Dolan versus the City of Tigard, that Government cannot force a property owner to give up part of their property in order to get a discretionary permit such as a building permit.

More importantly, the Court held that the 5th amendment protection against taking private property without compensation deserves the same protection as the 1st and 4th amendments of the Bill of Rights—that private property rights are as important as free speech.

But, will every small property owner have to go all the way to the Supreme Court to get the same justice Mrs. Dolan finally won last Friday.

One hundred and fifty Members of Congress have already signed on as protectors of private property rights. One hundred and fifty of you have cosponsored H.R. 3875—the private property owners bill of rights.

What are the rest of you waiting for?

RECESS

The SPEAKER pro tempore. Pursuant to clause 12, rule I, the Chair declares the House in recess until 12 noon.

Accordingly (at 11 o'clock and 27 minutes a.m.) the House stood in recess until 12 noon.

□ 1200

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 12 noon.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As the farmer plants the seed in the fertile ground, the Sun gives light, the rains come, and there is the miracle of growth, so may there be, O gracious God, a spiritual flowering that will lift our hearts and souls and minds in a way that allows our faith to stand with the difficulties of any day. May our spirits be open to Your spirit and our minds to Your mind, and our wills to Your will so we remember that we were created in Your image and likeness, and that image and likeness will be reflected in our thoughts, words, and deeds. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. The Chair will ask the gentleman from North Carolina [Mr. BALLENGER] if he would kindly come forward and lead the House in the Pledge of Allegiance.

Mr. BALLENGER led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will recognize 15 Members on each side for 1-minute requests.

HEALTH REFORM CONSENSUS ACT OF 1994

(Mr. ROWLAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROWLAND. Mr. Speaker, there is much disagreement about what needs to be done about the reform of our health care delivery system. However, there is much about which there is agreement.

Doesn't it seem logical to use as a starting point for our discussion the areas where there is agreement, and then make decisions about what we can achieve beyond that starting point.

That is exactly what H.R. 3955 does, it brings together from those plans out there, Republican and Democrat, the areas of agreement, in a bipartisan manner.

An issue that is so important, that involves about one-seventh of our gross domestic product, should be dealt with in a bipartisan manner.

We also try to reach more people, who now do not have access to care, through an expanded network of community health centers, that provide care in an efficient, cost effective basis.

MIKE BILIRAKIS and I invite Members from both sides of the aisle to look at our proposal.

REARRANGING THE DECK CHAIRS

(Mr. BALLENGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, yesterday, the President rearranged the deck chairs on his sinking ship of state. And today, Democrats will come to the floor denying that the ship is sinking at all. But, Mr. Speaker, the panic in the voices of our Democrat colleagues shows they are none too comfortable with Bill Clinton as their captain.

That explains why VIC FAZIO launched his bizarre broadside against Christian Republicans. His sad attempt to paint Republicans as being un-American showed how bad things are in the Democratic Party.

Rearranging personnel in the White House will not cure the problems of this administration. Rearranging policies will.

Instead of taxing more, the President should tax less. Instead of spending more, the White House should cut spending first. And instead of reinventing more health care bureaucrats, Mr. Clinton should support a commonsense health care reform bill.

Mr. Speaker, the Democrat policies of President Clinton have proved unpopular with the American people. He should rearrange those policies, and not merely the people implementing them.

THE ROWLAND-BILIRAKIS HEALTH CARE BILL

(Mr. PENNY asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. PENNY. Mr. Speaker, there is truly a need for bipartisanship in the health care debate. The Rowland-Bilirakis bill offers us a way out. The bill currently has 68 cosponsors, 34 Democrats and 34 Republicans, and it borrows ideas from other proposals on the table already.

It borrows from the Clinton plan, the Cooper plan, the Chafee plan, the Michel plan, and the Nickles plan. It takes areas which are in consensus in all of these various proposals.

For example, the Rowland-Bilirakis bill covers preexisting conditions, guarantees insurance portability, and restricts rate increases. It standardizes forms and reduces administrative redtape, reforms our antitrust laws by allowing small businesses to form purchasing groups. It has malpractice and liability reform.

In addition, it increases the self-employed tax deduction for health insurance costs from 25 percent to 100 percent, and uses existing Medicaid funds to make health care for the poor more accessible at community health clinics.

These are real reforms that enjoy bipartisan support. We should pass this package and give the American public the reform it seeks.

H.R. 3955, THE HEALTH REFORM CONSENSUS ACT

(Mr. BILIRAKIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BILIRAKIS. Mr. Speaker, the question on everyone's mind these days is will health legislation be enacted into law this year?

The answer is quite simple. Sensible and practical health reform legislation can become law this year, legislation that includes concepts that everyone agrees should be included in any health reform package.

The Rowland-Bilirakis Health Reform Consensus Act will provide health care to individuals now. Under our bill, people can receive coverage regardless of income level or health history—immediately.

For those who work, employers are required to offer, but not pay for, health insurance coverage. Community health networks are also created to provide preventative, primary and acute care to everyone, regardless of income level.

Our bill provides practical solutions to everyday problems people have encountered in our current health care system. Mr. Speaker, no one can argue that preexisting condition restrictions must be eliminated. Our bill would prohibit these restrictions.

And everyone agrees that insurance portability is necessary—people should not be afraid to switch jobs due to fear of losing their health insurance.

The consensus health bill is the most sensible and reasonable approach to reforming our Nation's health care system. It provides real-life solutions to real Americans now. I urge my colleagues to support this commonsense approach to health care reform.

THE BEAR THAT HAS EVERYTHING

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, sometimes you got the bear and sometimes the bear has got you. A zoo in New York is spending $25,000 to cure a neurotic bear. That is right, zoo officials said the neuroses of this carnivore is unbearable. A $1 million environment with sloped walls, a special pool, a cave, inflatable toys, new teddies, everything, including medication. This bear is on Prozac.

Unbelievable, Mr. Speaker, when a bear has a $1 million environment, free health care, free home, free drugs, and Congress cuts Head Start and education. That says it all. Beam me up.

REJECT EMPLOYER MANDATES AND TRIGGER OPTIONS

(Mr. THOMAS of Wyoming asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THOMAS of Wyoming. Mr. Speaker, the story about the bear was tough. It was grizzly.

I want to talk about health care actually. I want to talk about the debate in health care reform. As it continues, national attention has turned to employer mandates.

Republicans oppose employer mandates because of their adverse effect on small businesses, because they will cost millions of jobs, and because they translate into a payroll tax.

The President supports employer mandates because he believes they will lead to universal coverage. Democrats in Congress are divided, but many are intrigued by the concept of triggers.

Triggers are a form of mandates that go into effect when certain standards are not met in future years. But a trigger is an employer mandate by a different name. An employer mandate by any name hurts small business just as hard.

Mr. Speaker, I urge my colleagues to reject the employer mandates of the President's plan and the trigger options of other plans. We can reform our health care system without killing our small business sector.

DOMESTIC VIOLENCE IN AMERICA

(Mr. SANDERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SANDERS. Mr. Speaker, it is disturbing that the death of Nicole Simpson, a tragedy affecting the rich and the famous, should be necessary to force us to take notice of the horror of domestic violence.

Mr. Speaker, 80 percent of homicides in Vermont involved domestic partners or family members. All of the six women slain in Vermont during 1993, died at the hands of an intimate partner or family member.

□ 1210

Nationally, 3 out of every 10 women who are victims of homicide were murdered by a spouse or an intimate partner, and every 15 seconds a woman is battered by her husband or a boyfriend.

Mr. Speaker, we have 17 programs in Vermont that work with victims of domestic violence and sexual assault, and 92 percent of the people who provide those services are volunteers. These volunteers, most of whom are women, are doing an extraordinary job in counseling and supporting the victims of domestic violence. But they need help.

Mr. Speaker, I have a number of serious problems with the crime bill, but one part of it that I vigorously support is the Violence Against Women Act. We urgently need the $1.8 billion in this bill to combat the epidemic of violence against women on the streets and in the homes of America.

BIPARTISANSHIP: THE POPULAR WAY TO REFORM

(Mr. GOSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, a recent Newsweek poll shows that Americans overwhelmingly reject the Clinton-style health reforms now being pushed through Congress. They think the Clinton plan would raise costs, reduce choices, and lead to rationing. Even so some top Democrats have vowed to push through health care regardless of the views of the American people. This is ridiculous, we need to stop and listen to the people's legitimate fears. Americans know that health reform is a complex task. They want us to go slow and get it right. And they want us to work together. The Rowland-Bilirakis bill is a bipartisan approach toward reform. It targets the obvious problems with widely supported, commonsense solutions. Simply put, it is the popular and smart place to begin this debate.

So let us focus our efforts on Rowland-Bilirakis and let Clinton health care rest in peace.

IN SUPPORT OF ROWLAND-BILIRAKIS

(Mr. PARKER asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. PARKER. Mr. Speaker, in the final analysis, the consensus health care bill, which passes the Congress, must include rural America. The Rowland-Bilirakis bill addresses the urban versus rural question by establishing and expanding community health centers in rural and innercity areas.

Community health centers like private medical practices are staffed by physicians and other health care professionals. However, social services and public health education are provided.

Establishing new centers will allow more residents, regardless of their financial or insurance status, to be served. Patients who can pay, will pay on a sliding scale.

The centers will not offer episodic or second-class care. They will provide quality preventive and ongoing primary care, with referrals to local hospitals and specialty providers being allowed.

Further, the bill will provide education and training with internships on site in realistic training environments.

The community health care concept, with 1,200 centers already established, is a proven commodity which reduces the need for higher cost inpatient and emergency room treatments.

I support the Rowland-Bilirakis community health care bill and believe that it provides the framework for implementing health care reform within a realistic timeframe and must be a part of the final health care reform product the Congress passes.

FIRST, DO NO HARM

(Mr. HERGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HERGER. Mr. Speaker, the Hippocratic oath, which all doctors take, says, "first, do no harm."

As Congress considers health care reform, many Americans fear losing benefits, rationing, or being unable to choose their own doctor once reform is actually enacted.

They also oppose burdensome new taxes, or turning one-seventh of our entire U.S. economy over to the Government.

The public is telling Congress their top priority under reform is that we make the same commitment doctors make: first, do no harm.

Mr. Speaker, there is one plan that preserves what is right with our health care system, while fixing what is wrong with it.

The Rowland-Bilirakis plan allows insurance portability and ends discrimination against preexisting medical conditions. It provides real malpractice reform, combats fraud, and provides incentives to make private insurance more affordable. Let us take this chance to adopt consensus reforms we all agree on. Support Rowland-Bilirakis.

IN SUPPORT OF ROWLAND-BILIRAKIS

(Mr. LAUGHLIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAUGHLIN. Mr. Speaker, there is no reason why Congress cannot achieve very substantial reform of the country's health care delivery system this year.

The Rowland-Bilirakis bill is proof of this.

ROY ROWLAND and MIKE BILIRAKIS, with the advice and help of many of our colleagues in this body, have crafted legislation around reform proposals that just about everybody on both sides of the aisle can support.

It helps farmers and independent business people by providing 100 percent deductibility of health insurance for the self-employed.

It benefits small business by making private health insurance marketed to small employers more affordable and available regardless of an employee's health status and previous claims experience.

It reduces health care costs with malpractice liability reform, administrative streamlining, and antifraud reforms.

It expands care through insurance reforms and by paving the way for an expansion of community health care centers.

Nevertheless, the one criticism we hear about this plan is that it does not do enough.

This misses the point. Those who support this consensus approach have never said it is the be all and end all of health care reform. It is, instead, a starting point.

If you believe more can be achieved by getting people to begin working together in an environment of bipartisan cooperation, rather than one of political divisiveness, then the Rowland-Bilirakis bill provides a sound basis on which to focus the debate.

Mr. Speaker, I urge our colleagues to fully consider the consensus approach and make certain we achieve as much progress as possible in health care reform this year. Support the Rowland-Bilirakis bill.

IN SUPPORT OF ROWLAND-BILIRAKIS

(Mr. LINDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LINDER. Mr. Speaker, as a proud cosponsor of the Rowland-Bilirakis health care bill, I would like to note the unique approach taken. They looked at the problems that people have in health care and addressed the problems without trying to turn one-seventh of the economy over to the Federal Government. It addresses insurance reform, such as portability and permanence and pooling and preexisting conditions.

It has real legal reform, and one of the salient points of it is this, it expands from 1,200 to 3,600 the number of community health care centers in America. I have a community health care center in my district. They have about 25,000 patients on the payload. They see about 12,500 people every year. They are subsidized by the taxpayer, to the tune of $750,000 a year, about half their entire budget. That comes to $30 a year per patient. That is a burden that I believe Americans are willing to pay to help those who cannot afford insurance.

They treat the working poor, not Medicaid or Medicare, and anyone in this room can go into a community health center tomorrow and be treated and they will charge you something or nothing, depending on your ability to pay. It has the additional advantage of being able to place these communities' health centers in the rural areas and the inner cities where they are needed the most.

DOMESTIC VIOLENCE ISN'T JUST A PRIVATE MATTER

(Mr. KREIDLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KREIDLER. Mr. Speaker, the murder of Nicole Brown Simpson has raised important issues about violence against women.

Domestic violence is not just a family matter any more. It has become a public health emergency. Battering is the No. 1 cause of injury to women in this country.

Every year, more than 1 million women seek medical treatment for wounds inflicted by the men who supposedly love them.

I am pleased that Congress passed legislation I sponsored last year to develop a program at the Centers for Disease Control to address violence against women.

Funding for this program is included in the Labor-HHS appropriations bill we will be voting on this week.

In addition, we must pass the crime bill, which includes the Violence Against Women Act. But ending this violence requires a commitment from all of us—to speak out against abuse and to hold abusers accountable.

I urge my colleagues to support these efforts to help stop violence against women.

HEALTH CARE REFORM THAT THE AMERICAN PEOPLE WANT AND DESERVE

(Mr. GREENWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GREENWOOD. Mr. Speaker, the nationwide opinion polls tell us that the American people want health care reform. These same polls also demonstrate, however, that Americans do not want a bureaucratic, Government-driven, job-killing health care system that takes away their choices, jeopardizes the quality of their care, and piles on more deficit spending.

After months of public hearings and a full-scale national debate, it is now plainly evident that the President's proposal, even with modifications, is not supported by the public and cannot even attract enough support from congressional Democrats.

It is time for us to do what the American people want us to do: Pass sensible, reasonable health care reform that expands access, holds down costs, and yet preserves what is good about our health care system. That's why I am a cosponsor and strong supporter of H.R. 3955, the Health Reform Consensus Act of 1994, commonly referred to as the Rowland-Bilirakis proposal.

I believe this bipartisan initiative represents the best approach to reforming our health care system. It seeks to fix those elements of the system that actually need to be fixed, rather than creating an entirely new and costly Government bureaucracy.

We are running out of time. It is time to set aside our differences and accomplish the reforms upon which we agree. I urge the President and leaders of the House to pass Rowland-Bilirakis and give the country the kind of health care reform it really wants.

□ 1220

STAFF CHANGES STRENGTHEN THE WHITE HOUSE AND HEALTH CARE REFORM MEANS GUARANTEED COVERAGE

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, one Member of the minority referred to the White House staff changes as rearranging the deck chairs of the *Titanic*. Nothing could be farther from the truth. An already strong White House staff has been strengthened by yesterday's moves.

Mack McLarty has been extremely successful in his dealings with Congress. Specifically, on NAFTA, and with a number of positive initiatives on the President's economic plan, McLarty has proven his skill and worth. Now in his new position, he will have more time to comment to issues like these. Freed from the administrative aspects of his job, I believe McLarty will be even more invaluable to President Clinton.

In Leon Panetta, a former Member of Congress, we have someone who, like us, has represented ordinary people. He know the executive branch, the House of Representatives, and the Senate. He also knows budget issues, is politically able, and is a good administrator.

Mr. Speaker, the White House staff has been strengthened, but it is unfortunate that even administrative changes, staff changes, are politicized.

Additionally, Mr. Speaker, last week, President Clinton made it clear that guaranteed private insurance for every American was his bottom line on health care reform. It is his bottom line because without guaranteed coverage, there can be no real reform.

Guaranteed coverage is key because while we don't have guaranteed insurance today, we do have guaranteed coverage. What that means is that whenever somebody shows up at an emergency room for treatment, they get treated. Then, the middle class, those who are paying for health insurance, get saddled with the bill.

One insurance company executive said recently that uncompensated care accounted for almost one-half of last year's cost increases.

The losers in this game of cost-shifting are the hard-working families and employers who are currently paying for health insurance—both for themselves and for those without health insurance.

Mr. Speaker, only by creating a system where everybody is covered and pays their fair share can costs be spread fairly and evenly. Only by eliminating the free subsidies can we eliminate this invisible tax on the American middle class.

WHOSE FAULT IS IT THIS TIME?

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, today's Washington Post writes about its own latest poll results that "increasing numbers of Americans said Clinton was a mistake-prone leader lacking in decisiveness and losing his sense of the real problems facing families."

The poll reveals only half the public approves of the President's job performance; and when it comes to specifics, the message is even worse.

On the economy, 42 percent say it is getting worse and only 39 percent think it is getting better. And on health care, over half the population—53 percent—reject the President's plan.

The question all this bad news raises is: Whose fault is it this time? Last week, when confronted with bad news, the President and his defenders lashed out at the so-called Religious Right and the news media as being responsible for their failures.

Today, we find that the President is again reshuffling his staff.

With this White House, like a losing card player staring from behind his dwindling stack of chips, it always seems to be the cards that are the problem, rather than the problem being who holds the cards.

GUARANTEED UNIVERSAL COVERAGE IS AN ESSENTIAL PART OF HEALTH CARE REFORM

(Mr. FAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAZIO. Mr. Speaker, Democrats have made it clear that we will not accept health care reform without guaranteed coverage for every American. But some would have you believe that the only people who benefit from this approach are the poor and the uninsured.

However, if you look at the facts, it is clear that guaranteeing coverage for every American is not an act of charity—it is an act of necessity, for every working family.

However, the other side of the aisle just does not get it, again. Just recently, a distinguished Member of the other body threatened to filibuster and effectively block health care reform saying that, "The Clinton Plan and its clone the Kennedy plan, are in my view poison. They must be defeated, even at the cost of gridlock. Yes, filibuster, if that is what it takes * * *."

Hard-working, middle class families who have health insurance today would benefit from health care reform. Because they will not have to worry about their insurance being canceled, or their rates being raised through the roof.

Covering everybody is about leveling the playing field. It is about saving families money. And, it is about businesses not having to pay the hidden costs of the uninsured, saving billions of dollars that can be passed on to employees as wage increases or better job training.

The vast majority of Americans believe in the principle of universal private health insurance that can never be taken away. It is our duty as their representatives to make sure that they get it.

OPINION POLL SHOWS AMERICANS OPPOSED TO THE CLINTON HEALTH PLAN

(Mr. GINGRICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGRICH. Mr. Speaker, I listened with interest to the remarks of

the distinguished gentleman from California [Mr. FAZIO], and all I can say is that I frankly do not understand the Democratic leadership's current position on health care.

The poll in the Washington Post this morning says 53 percent of the country is opposed to the Clinton health plan, 53 percent are opposed. The latest report we have from the Committee on Ways and Means is that the new House Democratic leadership bill has a brandnew tax on our health insurance; that is, if we already have health insurance, we are going to have a brandnew tax imposed on us so we can pay a tax to go to the Government for the right of having our own health insurance, and this is supposedly going to somehow lower to cost to working Americans.

We have an example today coming to the floor of two big telecommunications bills we are going to pass on a bipartisan basis because we worked together with good faith in an honest, open way. Mr. Speaker, I beg the Democratic leadership to pull back from these big tax, big Government, big bureaucracy health bills, approach it in the same open, bipartisan way, work with the people who are sponsoring the Rowland-Bilirakis bill, which is a bipartisan bill; work with those of us on the Republican side who want to pass a bipartisan health bill, but please do not try to ram through and force on the American people a tax increase, big Government health bill.

THE AMERICAN PEOPLE SUPPORT MAJOR FEATURES OF HEALTH CARE REFORM

(Mr. KLECZKA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLECZKA. Mr. Speaker, I yield to the gentleman from California [Mr. FAZIO].

Mr. FAZIO. Mr. Speaker, I appreciate my colleague, the gentleman from Wisconsin [Mr. KLECZKA] yielding time to me.

I think it is important to understand what was really included in the poll that was reported in the Washington Post today. Mr. Speaker, it said that 58 to 38, people in this country think the health care system needs a major overhaul, not just a tuneup. An overwhelming majority are for the core principles of the President's plan, which are universal coverage and a mandate that makes all responsible for health care.

Seventy-eight to twenty, people agree with the President's bottom line, universal coverage. Seventy-two to twenty-seven percent say that employers should be required to provide health insurance for their full-time workers. Sixty-one percent to thirty-seven percent support charging people more for plans that provide a choice of doctors than those with assigned doctors. Seventy-five percent support some kind of controls on costs.

It seems to me that the people who have interpreted the news this morning have done so from their own perspective and have ignored the facts that are on the record. That is that the American people know there is something fundamentally wrong with our system, know they have a lot to gain to fix it, and are very willing, when we look at the components of the President's plan, to embrace the initiative that he has brought to Congress.

NO MORE SECRET HEALTH CARE REFORM PLANS

(Mr. WALKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALKER. Mr. Speaker, what is clear about the health care plan is that the longer it sticks around and people get to understand it, the more they get unhappy about what the Clinton plan is all about. What we know about the Clinton plan, Mr. Speaker, is it was written in secret by Mrs. Clinton's operation that went behind closed doors and drafted this health care plan, and after middle-class America became familiar with it, they decided that it was not exactly what they wanted in order to get reform.

Now what we find, Mr. Speaker, is that the Democratic leadership of the House of Representatives is about to pull the same thing, that once they get a bill out of the Committee on Education and Labor and one out of the Committee on Ways and Means, they are likely to go behind closed doors of the Committee on Rules and try to write a plan that also includes the Committee on Energy and Commerce, that cannot get one out of its own committee.

What we are going to have, Mr. Speaker, is another plan drafted in secret, and then there is going to be a hope that nobody will really know what is in it by the time we pass it. Mr. Speaker, that is what we cannot have happen. Middle-class America wants whatever health care plan emerges written in public, with the press present and with everybody understanding what the details of the plan are. Secret plans to reform 14 percent of the GNP and also to do something that will affect the lives of every American are not right. No health care plan should be written in secret.

□ 1230

SIMPLIFY FEDERAL TAX CODE

(Mr. DUNCAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DUNCAN. Mr. Speaker, the Washington Post has now reported that one of the agencies the worst at recordkeeping is the Internal Revenue Service itself.

The Post story was based on a report issued last week by the General Accounting Office.

The story says:

> The Internal Revenue Service, which demands that taxpayer be able to produce records to back up all claims of income and deductions, could not live up to that standard itself * * *

According to the GAO, the IRS has "ineffective internal controls and unreliable information."

There were so many missing records at the IRS that the GAO investigators said they "were unable to express an opinion of the reliability" of the IRS information.

Once again, we see the arrogance and ineptitude of big Government.

Senator JOHN GLENN said:

> It troubles me that G.A.O. could not issue an audit opinion on the I.R.S. financial statements because the I.R.S. can't get its own books in order. I, and American taxpayers, find this extremely unfair.

We need to greatly simplify our Federal Tax Code.

And we need to realize that if we really want effective government, instead of one filled with waste, fraud, and abuse, our best hope will be at the local level where the government is closer to the people.

The Federal Government seems to screw up almost everything it gets into.

SETTING THE RECORD STRAIGHT ON HEALTH CARE

(Mr. GLICKMAN asked and was given permission to address the House for 1 minute.)

Mr. GLICKMAN. Mr. Speaker, I yield to my colleague, the gentleman from Wisconsin [Mr. KLECZKA].

Mr. KLECZKA. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, there are two statements I think have to be responded to by two previous speakers:

No. 1 was the fact the health care bill being put together now by the Committee on Ways and Means contains a tax for health care benefits. That is totally false and the gentleman from Georgia [Mr. GINGRICH] knows that.

The second contention was that this bill is being written in private. However, every day for the last 2½ weeks, the committee has met in room 1100 with three or four cameras present, with a roomful of not only press people but, they know full well, tons of lobbyists opposing the legislation.

Mr. Speaker, the contention that this is being written in private is total nonsense. The gentleman from California [Mr. FAZIO] indicated 72 percent of the people of this country believe that the employer has some responsibility in this thing called health care.

I challenge my Republican colleagues who oppose employer mandates to give up their employer mandate and pay the full price instead of having the taxpayers pay 73 percent of their health care bill.

COOPERATION URGED IN HEALTH CARE REFORM

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, as we go into the home stretch before the August recess. I think it is time not for Members of the House to get into this, "Well, the Republicans are saying this, the Democrats are saying this." That is not what the people want to hear. What they want to hear is that we are going to do what is best and what is right. We may disagree, but that does not mean we are wrong, that does not mean we are bad. Let us find out what we agree on and put the best of the Republican ideas and the best of the Democrat ideas together.

Mr. Speaker, the Rowland-Bilirakis health care bill is a significant first step. It is something we can all go home with. No, it is not going to have universal coverage for every American. I think that is a great idea of the President, but the fact is we still have a $4.4 trillion debt we have to contend with and before we go and obligate a huge, massive new social program, we have got to say, this is what we are going to do about the debt.

Mr. Speaker, let us start out with the Roland-Bilirakis bill. It is a bipartisan bill that has antitrust reform, malpractice reform, and doing away with the preexisting illness conditions of a policy. It is a good start.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken after debate has concluded on all motions to suspend the rules.

JOHN F. KENNEDY CENTER ACT AMENDMENTS OF 1994

Mr. TRAFICANT. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 3567), to amend the John F. Kennedy Center Act to transfer operating responsibilities to the Board of Trustees of the John F. Kennedy Center for the Performing Arts, and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "John F. Kennedy Center Act Amendments of 1994".

SEC. 2. FINDINGS, BUREAU, BOARD OF TRUSTEES, AND ADVISORY COMMITTEE.

(a) FINDINGS.—Section 1 of the John F. Kennedy Center Act (20 U.S.C. 76h note) is amended—

(1) by striking "SECTION 1." and inserting the following:

"SECTION 1. SHORT TITLE AND FINDINGS.

"(a) SHORT TITLE.—"; and

(2) by adding at the end the following new subsection:

"(b) FINDINGS.—Congress finds that—

"(1) the late John Fitzgerald Kennedy served with distinction as President of the United States and as a Member of the Senate and the House of Representatives;

"(2) by the untimely death of John Fitzgerald Kennedy the United States and the world have suffered a great loss;

"(3) the late John Fitzgerald Kennedy was particularly devoted to education and cultural understanding and the advancement of the performing arts;

"(4) it is fitting and proper that a living institution of the performing arts, designated as the National Center for the Performing Arts, named in the memory and honor of this great leader, shall serve as the sole national monument to his memory within the District of Columbia and its environs;

"(5) such a living memorial serves all of the people of the United States by preserving, fostering, and transmitting the performing arts traditions of the people of the United States and other countries by producing and presenting music, opera, theater, dance, and other performing arts; and

"(6) such a living memorial should be housed in the John F. Kennedy Center for the Performing Arts, located in the District of Columbia.".

(b) EX OFFICIO TRUSTEES.—

(1) IN GENERAL.—Section 2 of such Act (20 U.S.C. 76h) is amended—

(A) by striking the section heading and all that follows before "There is hereby" and inserting the following:

"SEC. 2. BOARD OF TRUSTEES.

"(a) ESTABLISHMENT.—";

(B) in the first sentence, by inserting "as the National Center for the Performing Arts, a living memorial to John Fitzgerald Kennedy," after "thereof"; and

(C) in the second sentence—

(i) by striking "Chairman of the District of Columbia Recreation Board" and inserting "Superintendent of Schools of the District of Columbia"; and

(ii) by striking "three Members of the Senate" and all that follows before "ex officio" and inserting "the chairman and ranking minority member of the Committee on Public Works and Transportation of the House of Representatives and 3 additional Members of the House of Representatives appointed by the Speaker of the House of Representatives, and the chairman and ranking minority member of the Committee on Environment and Public Works of the Senate and 3 additional Members of the Senate appointed by the President of the Senate".

(2) EFFECTIVE DATES.—

(A) SUPERINTENDENT OF SCHOOLS OF THE DISTRICT OF COLUMBIA.—The amendment made by paragraph (1)(C)(i) shall take effect on the date of expiration of the term of the Chairman of the District of Columbia Recreation Board serving as a trustee of the John F. Kennedy Center for the Performing Arts on the date of enactment of this Act.

(B) MEMBERS OF CONGRESS.—The amendment made by paragraph (1)(C)(ii) shall take effect on the date of enactment of this Act.

(c) GENERAL TRUSTEES.—Subsection (b) of section 2 of such Act is amended to read as follows:

"(b) GENERAL TRUSTEES.—The general trustees shall be appointed by the President of the United States. Each trustee shall hold office as a member of the Board for a term of 6 years, except that—

"(1) any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of the term;

"(2) a member shall continue to serve until the successor of the member has been appointed; and

"(3) the term of office of a member appointed before the date of enactment of the John F. Kennedy Center Act Amendments of 1994 shall expire as designated at the time of appointment.".

(d) ADVISORY COMMITTEE ON THE ARTS.—Section 2(c) of such Act is amended—

(1) by inserting "ADVISORY COMMITTEE ON THE ARTS.—" before "There shall be";

(2) in the first sentence, by inserting "of the United States" after "President" the first place it appears;

(3) in the fifth sentence, by striking "cultural activities to be carried on in" and inserting "cultural activities to be carried out by"; and

(4) in the last sentence, by striking all that follows "compensation" and inserting a period.

SEC. 3. DUTIES OF THE BOARD.

Section 4 of the John F. Kennedy Center Act (20 U.S.C. 76j) is amended by striking the section heading and all that follows through the period at the end of subsection (a) and inserting the following:

"SEC. 4. DUTIES OF THE BOARD.

"(a) PROGRAMS, ACTIVITIES, AND GOALS.—

"(1) IN GENERAL.—The Board shall—

"(A) present classical and contemporary music, opera, drama, dance, and other performing arts from the United States and other countries;

"(B) promote and maintain the John F. Kennedy Center for the Performing Arts as the National Center for the Performing Arts—

"(i) by developing and maintaining a leadership role in national performing arts education policy and programs, including developing and presenting original and innovative performing arts and educational programs for children, youth, families, adults, and educators designed specifically to foster an appreciation and understanding of the performing arts;

"(ii) by developing and maintaining a comprehensive and broad program for national and community outreach, including establishing model programs for adaptation by other presenting and educational institutions; and

"(iii) by conducting joint initiatives with the national education and outreach programs of the Very Special Arts, an entity affiliated with the John F. Kennedy Center for the Performing Arts which has an established program for the identification, development, and implementation of model programs and projects in the arts for disabled individuals;

"(C) strive to ensure that the education and outreach programs and policies of the John F. Kennedy Center for the Performing Arts meet the highest level of excellence and reflect the cultural diversity of the United States;

"(D) provide facilities for other civic activities at the John F. Kennedy Center for the Performing Arts;

"(E) provide within the John F. Kennedy Center for the Performing Arts a suitable memorial in honor of the late President;

"(F) develop, and update annually, a comprehensive building needs plan for the features of the John F. Kennedy Center for the Performing Arts in existence on the date of enactment of the John F. Kennedy Center Act Amendments of 1994;

"(G) with respect to each feature of the building and site of the John F. Kennedy Center for the Performing Arts that is in existence on the date of enactment of the John F. Kennedy Center Act Amendments of 1994 (including a theater, the garage, the plaza, or a building walkway), plan, design, and construct each capital repair, replacement, improvement, rehabilitation, alteration, or modification necessary for the feature; and

"(H) provide—

"(i) information and interpretation; and

"(ii) with respect to each feature of the building and site of the John F. Kennedy Center for the Performing Arts that is in existence on the date of enactment of the John F. Kennedy Center Act Amendments of 1994 (including a theater, the garage, the plaza, or a building walkway), all necessary maintenance, repair, and alteration of, and all janitorial, security, and other services and equipment necessary for the operation of, the feature, in a manner consistent with requirements for high quality operations.

"(2) ADMINISTRATIVE POWERS AND DUTIES.—

"(A) AUTHORITY TO ENTER INTO CONTRACTS.—The Board, in accordance with applicable law, may enter into contracts or other arrangements with, and make payments to, public agencies or private organizations or other private persons in order to carry out the functions of the Board under this Act. The authority described in the preceding sentence includes utilizing the services and facilities of other agencies, including the Department of the Interior, the General Services Administration, and the Smithsonian Institution.

"(B) PREPARATION OF BUDGET.—The Board shall prepare a budget pursuant to sections 1104, 1105(a), and 1513(b) of title 31, United States Code.

"(C) USE OF AGENCY PERSONNEL.—The Board may utilize or employ the services of the personnel of any agency or instrumentality of the Federal Government or the District of Columbia, with the consent of the agency or the instrumentality concerned, on a reimbursable basis, and utilize voluntary and uncompensated personnel.

"(D) SELECTION OF CONTRACTORS.—In carrying out the duties of the Board under this Act, the Board may negotiate any contract for an environmental system for, a protection system for, or a repair to, maintenance of, or restoration of the John F. Kennedy Center for the Performing Arts with selected contractors and award the contract on the basis of contractor qualifications as well as price.

"(E) MAINTENANCE OF HALLS.—The Board shall maintain the Hall of Nations, the Hall of States, and the Grand Foyer of the John F. Kennedy Center for the Performing Arts in a manner that is suitable to a national performing arts center that is operated as a Presidential memorial and in a manner consistent with other national Presidential memorials.

"(F) MAINTENANCE OF GROUNDS.—The Board shall manage and operate the grounds of the John F. Kennedy Center for the Performing Arts in a manner consistent with National Park Service regulations and agreements in effect on the date of enactment of the John F. Kennedy Center Act Amendments of 1994. No change in the management and operation of the grounds may be made without the express approval of Congress and of the Secretary of the Interior.".

SEC. 4. OFFICERS AND EMPLOYEES; REVIEW OF BOARD ACTIONS.

(a) SOLICITATION AND ACCEPTANCE OF GIFTS.—Section 5 of the John F. Kennedy Center Act (20 U.S.C. 76k) is amended—

(1) by striking the section heading and all that follows through "(a)" and inserting the following:

"SEC. 5. POWERS OF THE BOARD.

"(a) SOLICITATION AND ACCEPTANCE OF GIFTS.—"; and

(2) in subsection (a), by striking "Smithsonian Institution" and inserting "John F. Kennedy Center for the Performing Arts, as a bureau of the Smithsonian Institution,".

(b) APPOINTMENT OF OFFICERS AND EMPLOYEES.—Subsection (b) of section 5 of such Act is amended to read as follows:

"(b) APPOINTMENT OF OFFICERS AND EMPLOYEES.—

"(1) CHAIRPERSON AND SECRETARY.—The Board shall appoint and fix the compensation and duties of a Chairperson of the John F. Kennedy Center for the Performing Arts, who shall serve as the chief executive officer of the Center, and a Secretary of the John F. Kennedy Center for the Performing Arts. The Chairperson and Secretary shall be well qualified by experience and training to perform the duties of their respective offices.

"(2) SENIOR LEVEL EXECUTIVE AND OTHER EMPLOYEES.—The Chairperson of the John F. Kennedy Center for the Performing Arts may appoint—

"(A) a senior level executive who, by virtue of the background of the individual, shall be well suited to be responsible for facilities management and services and who may, without regard to the provisions of title 5, United States Code, be appointed and compensated with appropriated funds, except that the compensation may not exceed the maximum rate of pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code; and

"(B) such other officers and employees of the John F. Kennedy Center for the Performing Arts as may be necessary for the efficient administration of the functions of the Board.".

(c) TRANSFERS; REVIEW OF BOARD ACTIONS.—Section 5 of such Act is amended by striking subsection (c) and inserting the following new subsections:

"(c) TRANSFER OF PROPERTY.—Not later than October 1, 1995, the property, liabilities, contracts, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions transferred from the Secretary of the Interior pursuant to the amendments made by the John F. Kennedy Center Act Amendments of 1994 shall be transferred, subject to section 1531 of title 31, United States Code, to the Board as the Board and the Secretary of the Interior may determine appropriate. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which, and subject to the terms under which, the funds were originally authorized and appropriated.

"(d) TRANSFER OF PERSONNEL.—

"(1) IN GENERAL.—Employees of the National Park Service assigned to duties related to the functions being undertaken by the Board shall be transferred with their functions to the Board not later than October 1, 1995.

"(2) RIGHTS AND BENEFITS.—Transferred employees shall remain in the Federal competitive service and retain all rights and benefits provided under title 5, United States Code. For a period of not less than 3 years after the date of transfer of an employee under paragraph (1), the transferred employee shall retain the right of priority consideration under merit promotion procedures or lateral reassignment for all vacancies within the Department of the Interior.

"(3) PARK POLICE.—All United States Park Police and Park Police guard force employees assigned to the John F. Kennedy Center for the Performing Arts shall remain employees of the National Park Service.

"(4) COSTS.—All usual and customary costs associated with any adverse action or grievance proceeding resulting from the transfer of functions under this section that are incurred before October 1, 1995, shall be paid from funds appropriated to the John F. Kennedy Center for the Performing Arts.

"(5) REORGANIZATION AUTHORITY.—Nothing contained in this section shall prohibit the Board from reorganizing functions at the John F. Kennedy Center for the Performing Arts in accordance with laws governing reorganizations.

"(e) REVIEW OF BOARD ACTIONS.—The actions of the Board relating to performing arts and to payments made or directed to be made by the Board from any trust funds shall not be subject to review by any officer or agency other than a court of law.

"(f) COLLECTIVE BARGAINING.—

"(1) DEFINITION.—As used in this subsection, the term 'theatrical employee' means a nonappropriated fund employee of the Board, who is engaged in a box office, performing, or theatrical trade that is the subject of a collective bargaining agreement as of January 1, 1994, including any change in the trade as a result of a technological advance.

"(2) COLLECTIVE BARGAINING.—

"(A) IN GENERAL.—For the purposes of the National Labor Relations Act (29 U.S.C. 151 et seq.) and the Labor-Management Relations Act, 1947 (29 U.S.C. 141 et seq.)—

"(i) each theatrical employee shall be considered to be an 'employee' within the meaning of section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)); and

"(ii) with respect to a theatrical employee, the Board shall be considered to be an 'employer' within the meaning of section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)).

"(B) RIGHTS AND OBLIGATIONS.—With respect to each theatrical employee, the theatrical employee and the Board shall have all of the rights and obligations specified in such Acts.".

SEC. 5. REVIEWS, AUDITS, AND CLAIMS.

Section 6 of the John F. Kennedy Center Act (20 U.S.C. 76l) is amended—

(1) in subsection (c), by striking "its operations" and inserting "the operations of the Board"; and

(2) by striking subsections (e) and (f) and inserting the following new subsections:

"(d) AUDIT OF ACCOUNTS.—Not less than once every 3 years, the Comptroller General shall review and audit the accounts of the John F. Kennedy Center for the Performing Arts for the purpose of examining expenditures of funds appropriated under the authority provided by this Act.

"(e) INSPECTOR GENERAL.—The functions of the Board funded by funds appropriated pursuant to section 12 shall be subject to the requirements for a Federal entity under the Inspector General Act of 1978 (5 U.S.C. App. 3). The Inspector General of the Smithsonian Institution is authorized to carry out the requirements of such Act on behalf of the Board, on a reimbursable basis when requested by the Board.

"(f) PROPERTY AND PERSONNEL COMPENSATION.—

"(1) IN GENERAL.—The Board may procure insurance against any loss in connection with the property of the Board and other assets administered by the Board. Each employee and volunteer of the Board shall be considered to be a

civil employee of the United States (within the meaning of the term 'employee' as defined in section 8101(1) of title 5, United States Code), except that the Board shall continue to provide benefits with respect to any disability or death resulting from a personal injury to a nonappropriated fund employee of the Board sustained while in the performance of the duties of the employee for the Board pursuant to the workers compensation statute of the jurisdiction in which the John F. Kennedy Center for the Performing Arts is located. The disability or death benefits referred to in the preceding sentence, whether under the workers compensation statute referred to in the preceding sentence or under chapter 81 of title 5, United States Code, shall continue to be the exclusive liability of the Board and the United States with respect to all employees and volunteers of the Board.

"(2) FEDERAL TORT CLAIMS.—For the purposes of chapter 171 of title 28, United States Code, an employee of the Board shall be considered to be an 'employee of the government' and the Board shall be considered to be a 'Federal agency'. No employee of the Board may bring suit against the United States or the Board under the Federal tort claims procedure of chapter 171 of title 28, United States Code, for disability or death resulting from personal injury sustained while in the performance of the duties of the employee for the Board.".

SEC. 6. TECHNICAL AMENDMENTS.

Section 10 of the John F. Kennedy Center Act (20 U.S.C. 76p) is amended—

(1) by striking "he" and inserting "the Secretary"; and

(2) by striking "his judgment" and inserting "the judgment of the Secretary".

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

The John F. Kennedy Center Act (20 U.S.C. 76h et seq.) is amended by adding at the end the following new section:

"SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

"(a) MAINTENANCE, REPAIR, AND SECURITY.—There are authorized to be appropriated to the Board to carry out section 4(a)(1)(H) $12,000,000 for each of fiscal years 1995 through 1999.

"(b) CAPITAL PROJECTS.—There are authorized to be appropriated to the Board to carry out subparagraphs (F) and (G) of section 4(a)(1) $9,000,000 for each of fiscal years 1995 through 1999.

"(c) LIMITATION ON USE OF FUNDS.—No funds appropriated pursuant to this section may be used for any direct expense incurred in the production of a performing arts attraction, for personnel who are involved in performing arts administration (including any supply or equipment used by the personnel), or for production, staging, public relations, marketing, fundraising, ticket sales, or education. Funds appropriated directly to the Board shall not affect nor diminish other Federal funds sought for any performing arts function and may be used to reimburse the Board for that portion of costs that are Federal costs reasonably allocated to building services and theater maintenance and repair.".

SEC. 8. DEFINITIONS.

The John F. Kennedy Center Act (20 U.S.C. 76h et seq.) (as amended by section 7) is further amended by adding at the end the following new section:

"SEC. 13. DEFINITIONS.

"As used in this Act, the terms 'building and site of the John F. Kennedy Center for the Performing Arts' and 'grounds of the John F. Kennedy Center for the Performing Arts' refer to the site in the District of Columbia on which the John F. Kennedy Center building is constructed and that extends to the line of the west face of the west retaining walls and curbs of the Inner Loop Freeway on the east, the north face of the north retaining walls and curbs of the Theodore Roosevelt Bridge approaches on the south, the east face of the east retaining walls and curbs of Rock Creek Parkway on the west, and the south curbs of New Hampshire Avenue and F Street on the north, as generally depicted on the map entitled 'Transfer of John F. Kennedy Center for the Performing Arts', numbered 844/82563, and dated April 20, 1994, which shall be on file and available for public inspection in the office of the National Capital Region, National Park Service, Department of the Interior.".

SEC. 9. RULES AND REGULATIONS.

(a) AUTHORITY TO PRESCRIBE.—Section 5(a) of the Act of October 24, 1951 (65 Stat. 634; chapter 559; 40 U.S.C. 193r(a)), is amended—

(1) by striking "Institution and" and inserting "Institution,"; and

(2) by inserting ", and the Trustees of the John F. Kennedy Center for the Performing Arts," after "National Gallery of Art".

(b) AUTHORITY TO SUSPEND.—Section 8 of such Act (40 U.S.C. 193u) is amended by striking "the Secretary of the Smithsonian Institution or the Trustees of the National Gallery of Art or" each place it appears and inserting "the Secretary of the Smithsonian Institution, the Trustees of the National Gallery of Art, the Trustees of the John F. Kennedy Center for the Performing Arts, or".

(c) BUILDINGS AND GROUNDS DEFINED.—Section 9 of such Act (40 U.S.C. 193v) is amended by adding at the end the following new paragraph:

"(3) The site of the John F. Kennedy Center for the Performing Arts, which shall be held to extend to the line of the west face of the west retaining walls and curbs of the Inner Loop Freeway on the east, the north face of the north retaining walls and curbs of the Theodore Roosevelt Bridge approaches on the south, the east face of the east retaining walls and curbs of Rock Creek Parkway on the west, and the south curbs of New Hampshire Avenue and F Street on the north, as generally depicted on the map entitled 'Transfer of John F. Kennedy Center for the Performing Arts', numbered 844/82563, and dated April 20, 1994, which shall be on file and available for public inspection in the office of the National Capital Region, National Park Service, Department of the Interior.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio [Mr. TRAFICANT] will be recognized for 20 minutes, and the gentleman from Tennessee [Mr. DUNCAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3567 is a bill which is long overdue. This bill would amend the John F. Kennedy Center Act to transfer operating responsibilities to the Board of Trustees of the John F. Kennedy Center for the Performing Arts. For the first time, the Center will control not only its day to day operations but also will develop, manage, and implement a capital improvement program.

By authorizing the Center to carry out these responsibilities, this bill corrects long-standing deficiencies in the management and operation of the Center. The bifurcated management structure, which divided these responsibilities between the National Park Service and the Kennedy Center, proved to be cumbersome, expensive, and unworkable. Working closely with the Subcommittee on National Parks, chaired by Chairman BRUCE VENTO, we have been successful in coordinating and consolidating overall management responsibility with the Kennedy Center Board of Trustees.

The Senate amendment, to which the committee does not object, makes every minor technical changes, and preserves the rights of non-appropriated fund employees to engage in collective bargaining.

Mr. Speaker, this bill reinvents and reinvigorates the management of the John F. Kennedy Center, one of our Nation's most cherished and beloved public buildings. I wish to thank Chairman VENTO and acknowledge the cooperation of his committee. I also wish to thank our very capable chairman, NORMAN MINETA, for his support and guidance. Finally, in the spirit of bipartisanship, I thank Congressman JOHN DUNCAN for his support on this bill.

Mr. Speaker, I urge my colleagues to concur in the Senate amendment to H.R. 3567, as amended.

Mr. Speaker, I reserve the balance of my time.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3567, an act to amend the John F. Kennedy Center for the Performing Arts Act. On May 10, 1994, the House passed H.R. 3567 by voice vote and sent this legislation to the other body for its consideration. On June 27, 1994, H.R. 3567 passed the Senate, with minor clarifying, technical, and grammatical changes to the House passed bill. The action today will accept those changes, thus clearing the measure for the President's signature.

These amendments are long overdue for the successful and efficient program of operation and maintenance, as well as making capital improvements to the Kennedy Center. This legislation provides for long term planning by the Board of the Kennedy Center, and provides for autonomy, consistent with applicable Federal procurement and acquisition law, for the Board to contract for work to be performed. A total of $105 million over the next 5 fiscal years is authorized: $12 million per fiscal year over the next 5 years for operations and maintenance, and $9 million per fiscal year over the next 5 years of capital improvements. These figures are less than the Center has been receiving in recent years, but testimony before the Subcommittee on Public Buildings and Grounds by Mr. James Wolfensohn, Chairman of the Kennedy Center, assured the Members that these figures are sufficient to meet the requirements of the Center. Additionally, Mr. Wolfensohn has expressed a willingness to be accountable for the successful completion of the 5-year program for capital improvements.

I am also supporting this legislation because of the willingness of Mr. Wolfensohn and the Kennedy Center to seek private funding for the Center, and not simply rely on tax dollars for the performing arts functions of the Center. Since becoming chairman in March 1990, Mr. Wolfensohn has been responsible for raising $71,265,000 in private and corporate donations. This successful effort is particularly noteworthy given the difficult economic times in which these funds were secured.

This legislation also calls for the transfer of some 55 National Park Service employees, who will retain all rights of Federal employment, and will have the right to return to the Department of Interior without a loss of seniority. I congratulate Mr. TRAFICANT and Mr. MINETA for their work on this bill.

Mr. Speaker, I urge enactment of these needed changes to law and I urge my colleagues to accept this legislation.

Mr. Speaker, I yield back the balance of my time.

□ 1240

Mr. TRAFICANT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge my colleagues to concur in the Senate amendment to H.R. 3567, as amended.

Mr. VENTO. Mr. Speaker, I rise in support of the bill. As members will recall, H.R. 3567 was approved by the House on May 10, 1994, after having been considered by both the Committee on Public Works and Transportation and the Committee on Natural Resources. The bill, as amended, will provide for a 5-year authorization for maintenance, repair, and capital projects at the John F. Kennedy Center for the Performing Arts in the District of Columbia. The bill also transfers all current National Park Service responsibilities and personnel to the Kennedy Center board of trustees. The center will function in the future as a bureau of the Smithsonian Institution, and funding for nonperforming arts purposes will be provided through an appropriation directly to the board of trustees.

I had some concerns about certain provisions of the bill as introduced, and the version approved by the Committee on National Resources made what I believe are significant improvements. First, the board of trustees will be required to provide for the center's management in a manner consistent with other National Presidential memorials. By law, and under this legislation, the center will remain a memorial to the late President. I believe we must have a clearly enunciated policy to ensure that the center meets the high standard fitting a National memorial.

Second, the bill requires the grounds to be managed consistent with current National Park Service regulations and agreements. While I agree that separation of powers is necessary and a positive step in accomplishing the required renovations, I remain concerned about the impact on surrounding National Park Service property. Because of the Kennedy Center's location amid heavily used and fragile National Park resources, I believe there should be continuity and consistency in the management of the grounds. The bill, as amended, requires the Kennedy Center to continue to manage the grounds according to current National Park Service regulations and agreements; any changes in such management must be approved by the secretary and enacted by Congress. This ensures the appropriate maintenance of both the building and the grounds while protecting the National Park Service interest in the surrounding property and open space.

Finally, the Committee on National Resources had included a provision referencing a map delineating the boundaries of the John F. Kennedy Center for the Performing Arts, which upon enactment would be under the jurisdiction of the board of trustees.

I understand that the Senate made some changes in the legislation, but I have reviewed their version, and am satisfied that the bill we are considering today retains those provisions advocated by the Committee on Natural Resources. I believe the version before us enables much needed improvements to be made to the Kennedy Center while protecting the interests of the National Park Service, and I urge my colleagues' support.

Mr. MINETA. Mr. Speaker, I rise in strong support of H.R. 3567, the John F. Kennedy Center Act Amendments of 1994, as amended. H.R. 3567 already passed the House on May 10, 1994. The Senate made some technical changes to the bill which we are concurring in at this time.

Mr. Speaker, today is indeed a historic occasion as this bill, by making significant changes to the John F. Kennedy Center Act, gives the Kennedy Center, for the first time, full responsibility for its own activities.

First of all, Mr. Speaker, I want to commend the gentleman from Ohio, the subcommittee chairman on Public Buildings and Grounds, Mr. TRAFICANT, and the subcommittee's ranking republican member, Mr. DUNCAN, for their fine leadership on this important measure. I would also like to recognize and thank the Committee on Natural Resources' Chairman GEORGE MILLER, ranking Republican DON YOUNG, Chairman BRUCE VENTO, and ranking Republican member JAMES HANSEN of their Subcommittee on Natural Parks, Forest, and Public Lands and their staffs for their cooperation and hard work on this measure. I am pleased that this bill enjoys such broad bipartisan support. It is truly a visionary piece of legislation.

H.R. 3567, the John F. Kennedy Center Act Amendments of 1994, as amended, represents months of sustained effort, coordination and hard work by both the Kennedy Center, primarily Mr. James Wolfensohn, chairman of the board at the John F. Kennedy Center for the Performing Arts, and his staff, and the Department of Interior, specifically Secretary Babbitt and the representatives from the National Park Service. They all deserve our praise and thanks.

The Kennedy Center, like the Smithsonian Institution and its other bureaus, is a unique trust instrumentality of the United States. The original Act establishes the Kennedy Center not only as a cultural arts center, but also charges it with the responsibility of administering a living memorial to President John F. Kennedy. Finally, it has a mandated mission to serve both the local and national community.

Currently, the management of operations and maintenance of the Kennedy Center is shared between the center's board of trustees and the National Park Service of the Department of Interior. Over the past 23 years since the building was constructed, there have been several building defects and maintenance problems. The Kennedy Center Board and the Park Service have tried to share responsibility for the nonperforming arts aspects of the Kennedy Center's operations. Unfortunately, this shared approach has not been as successful as both would have hoped.

This bill, as amended, addresses this fundamental issue by giving the Kennedy Center sole responsibility for its building and site. As such, the Center will receive directly the general fund appropriations necessary to fulfill its new responsibilities. Currently, the nonperforming arts functions of the Center are funded by appropriations to the Park Service.

With the passage of this historic bill, the Kennedy Center management will for the first time enjoy both the responsibility and accountability for its buildings, theaters, and its performing arts and education activities. But with the responsibility also comes the opportunity to set a vision for the future. The current Kennedy Center management welcomes its new challenge and we are proud to have helped frame its mandate.

Mr. Speaker, this legislation affirms once again the fundamental mission of the Nation's living memorial to President Kennedy and I strongly urge its adoption.

Mr. TRAFICANT. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Ohio [Mr. TRAFICANT] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3567.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. TRAFICANT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3567, the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

ANTITRUST AND COMMUNICATIONS REFORM ACT OF 1994

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3626) to supersede the Modification of Final Judgment entered August

24, 1982, in the antitrust action styled *United States* v. *Western Electric*, Civil Action No. 82-0192, U.S. District Court for the District of Columbia; to amend the Communications Act of 1934 to regulate the manufacturing of Bell operating companies, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3626

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLES; TABLE OF CONTENTS.

(a) SHORT TITLE OF THIS ACT.—This Act may be cited as the "Antitrust and Communications Reform Act of 1994".

(b) SHORT TITLE OF TITLE I OF THIS ACT.—Title I of this Act may be cited as the "Antitrust Reform Act of 1994".

(c) TABLE OF CONTENTS.—

Sec. 1. Short titles; table of contents.

TITLE I—SUPERSESSION OF THE MODIFICATION OF FINAL JUDGMENT

Sec. 101. Authorization for Bell operating company to enter competitive lines of business.
Sec. 102. Authorization as prerequisite.
Sec. 103. Limitations on manufacturing and providing equipment.
Sec. 104. Anticompetitive tying arrangements.
Sec. 105. Enforcement.
Sec. 106. Definitions.
Sec. 107. Relationship to other laws.
Sec. 108. Required regulatory actions.

TITLE II—REGULATION OF MANUFACTURING, ALARM SERVICES, AND ELECTRONIC PUBLISHING BY BELL OPERATING COMPANIES

Sec. 201. Regulation of manufacturing by Bell operating companies.
Sec. 202. Regulation of entry into alarm monitoring services.
Sec. 203. Regulation of electronic publishing.
Sec. 204. Privacy of customer information.
Sec. 205. Telemessaging services.
Sec. 206. Enhanced services safeguards.

TITLE III—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

Sec. 301. Authorization of appropriations.

TITLE I—SUPERSESSION OF THE MODIFICATION OF FINAL JUDGMENT

SEC. 101. AUTHORIZATION FOR BELL OPERATING COMPANY TO ENTER COMPETITIVE LINES OF BUSINESS.

(a) APPLICATION.—

(1) IN GENERAL.—After the applicable date specified in paragraph (2), a Bell operating company may apply to the Attorney General and the Federal Communications Commission for authorization, notwithstanding the Modification of Final Judgment—

(A) to provide alarm monitoring services, or

(B) to provide interexchange telecommunications services.

The application shall describe with particularity the nature and scope of the activity, and of each product market or service market, and each geographic market, for which authorization is sought.

(2) APPLICABLE DATES.—For purposes of paragraph (1), the applicable date after which a Bell operating company may apply for authorization shall be—

(A) the date of the enactment of this Act, with respect to providing interexchange telecommunications services, and

(B) the date that occurs 66 months after the date of the enactment of this Act, with respect to providing alarm monitoring services.

(3) INTERAGENCY NOTIFICATION.—Whenever the Attorney General or the Federal Communications Commission receives an application made under paragraph (1), the recipient of the application shall notify the other of such receipt.

(4) PUBLICATION.—Not later than 10 days after receiving an application made under paragraph (1), the Attorney General and the Federal Communications Commission jointly shall publish the application in the Federal Register.

(b) SEPARATE DETERMINATIONS BY THE ATTORNEY GENERAL AND THE FEDERAL COMMUNICATIONS COMMISSION.—

(1) COMMENT PERIOD.—Not later than 45 days after an application is published under subsection (a)(4), interested persons may submit written comments to the Attorney General, to the Federal Communications Commission, or to both regarding the application. Submitted comments shall be available to the public.

(2) INTERAGENCY CONSULTATION.—Before making their respective determinations under paragraph (3), the Attorney General and the Federal Communications Commission shall consult with each other regarding the application involved.

(3) DETERMINATIONS.—(A) After the time for comment under paragraph (1) has expired, but not later than 180 days after receiving an application made under subsection (a)(1), the Attorney General and the Federal Communications Commission each shall issue separately a written determination, on the record after an opportunity for a hearing, with respect to granting the authorization for which the Bell operating company has applied.

(B) Such determination shall be based on a preponderence of the evidence.

(C) Any person who would be threatened with loss or damage as a result of the approval of the authorization requested shall be permitted to participate as a party in the proceeding on which the determination is based.

(D)(i) The Attorney General shall approve the granting of the authorization requested in the application only to the extent that the Attorney General finds that there is no substantial possibility that such company or its affiliates could use monopoly power to impede competition in the market such company seeks to enter. The Attorney General shall deny the remainder of the requested authorization.

(ii) The Federal Communications Commission shall approve the granting of the requested authorization only to the extent that the Commission finds that granting the requested authorization is consistent with the public interest, convenience, and necessity. The Commission shall deny the remainder of the requested authorization.

(iii) Notwithstanding clauses (i) and (ii), not later than 180 days after the date of the enactment of this Act, the Attorney General and the Federal Communications Commission shall each prescribe regulations to establish procedures and criteria for the expedited determination and approval of applications for authorization to provide interexchange telecommunications services (other than services described in section 102(c)) that are incidental to the provision of another service which the Bell operating company may lawfully provide. Before prescribing such regulations, the Attorney General and the Commission shall consult with respect to such regulations, including consultation for the purpose of avoiding unnecessary inconsistencies in such regulations.

(E) In making its determination under subparagraph (D)(ii) regarding the public interest, convenience, and necessity, the Commission shall take into account—

(i) the probability that granting the requested authorization will secure reduced rates for consumers of the services that are the subject of the application, especially residential subscribers,

(ii) whether granting the requested authorization will result in increases in rates for consumers of exchange service,

(iii) the extent to which granting the requested authorization will expedite the delivery of new services and products to consumers,

(iv) the extent to which the Commission's regulations, or other laws or regulations, will preclude the applicant from engaging in predatory pricing or other anticompetitive economic practices with respect to the services that are the subject of the application,

(v) the extent to which granting the requested authorization will permit collusive acts or practices between or among Bell operating companies that are not affiliates of each other,

(vi) whether granting the requested authorization will result, directly or indirectly, in increasing concentration among providers of the service that is the subject of the application to such an extent that consumers will not be protected from rates that are unjust or unreasonable or that are unjustly or unreasonably discriminatory, and

(vii) in the case of an application to provide alarm monitoring services, whether the Commission has the capability to enforce effectively the regulations established pursuant to section 230 of the Communications Act of 1934 as added by this Act.

(F) A determination that approves the granting of any part of a requested authorization shall describe with particularity the nature and scope of the activity, and of each product market or service market, and each geographic market, to which approval applies.

(4) PUBLICATION.—Not later than 10 days after issuing a determination under paragraph (3), the Attorney General or the Federal Communications Commission, as the case may be, shall publish in the Federal Register a brief description of the determination.

(5) FINALITY.—A determination made under paragraph (3) shall be final unless a civil action with respect to such determination is timely commenced under subsection (c)(1).

(6) AUTHORIZATION GRANTED.—A requested authorization is granted to the extent that—

(A)(i) both the Attorney General and the Federal Communications Commission approve under paragraph (3) the granting of the authorization, and

(ii) neither of their approvals is vacated or reversed as a result of judicial review authorized by subsection (c), or

(B) as a result of such judicial review of either or both determinations, both the Attorney General and the Federal Communications Commission approve the granting of the requested authorization.

(c) JUDICIAL REVIEW.—

(1) COMMENCEMENT OF ACTION.—Not later than 45 days after a determination by the Attorney General or the Federal Communications Commission is published under subsection (b)(4), the Bell operating company that applied to the Attorney General and the

Federal Communications Commission under subsection (a), or any person who would be threatened with loss or damage as a result of the determination regarding such company's engaging in the activity described in such company's application, may commence an action in the United States Court of Appeals for the District of Columbia Circuit against the Attorney General or the Federal Communications Commission, as the case may be, for judicial review of the determination regarding the application.

(2) CERTIFICATION OF RECORD.—As part of the answer to the complaint, the Attorney General or the Federal Communications Commission, as the case may be, shall file in such court a certified copy of the record upon which the determination is based.

(3) CONSOLIDATION OF ACTIONS.—The court shall consolidate for judicial review all actions commenced under this subsection with respect to the application.

(4) JUDGMENT.—(A) The court shall enter a judgment after reviewing the determination in accordance with section 706 of title 5 of the United States Code.

(B) A judgment—

(i) affirming any part of the determination that approves granting all or part of the requested authorization, or

(ii) reversing any part of the determination that denies all or part of the requested authorization,

shall describe with particularity the nature and scope of the activity, and of each product market or service market, and each geographic market, to which the affirmance or reversal applies.

SEC. 102. AUTHORIZATION AS PREREQUISITE.

(a) PREREQUISITE.—Until a Bell operating company is so authorized in accordance with section 101, it shall be unlawful for such company, directly or through an affiliated enterprise, to engage in an activity described in section 101(a)(1).

(b) GENERAL EXCEPTIONS.—Except with respect to providing alarm monitoring services, subsection (a) shall not prohibit a Bell operating company from engaging, at any time after the date of the enactment of this Act—

(1) in any activity as authorized by an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the Modification of Final Judgment, if—

(A) such order was entered on or before the date of the enactment of this Act, or

(B) a request for such authorization was pending before such court on the date of the enactment of this Act,

(2) in providing intrastate interexchange telecommunications services if—

(A) after the date of the enactment of this Act, the State involved approves or authorizes such company to provide such services, after taking into account the potential effects of such approval or authorization on competition and the public interest,

(B) not less than 90 days before such company offers to provide such services, such company gives notice to the public and the Attorney General that such approval or authorization has been granted by such State, and appoints an agent for the purpose of receiving service of process,

(C) the Attorney General—

(i) fails to commence a civil action in accordance with subsection (d), not later than 90 days after the Attorney General receives the notice described in subparagraph (B), to enjoin such company from providing such services, or

(ii) so commences such civil action but—

(I) fails to obtain an injunction from the district court involved enjoining such company from providing such services, or

(II) such injunction issued by such court is vacated on appeal, and

(D) the Bell operating company is required by regulations prescribed by the Federal Communications Commission and such State, for the services subject to their respective jurisdictions, to pay a nondiscriminatory access charge to the local exchange carrier (including itself) that provides the Bell operating company with telephone exchange access, and

(3) in providing interexchange telecommunications services through resale of telecommunications services purchased from a person who is not an affiliated enterprise of such company if—

(A) such interexchange telecommunications services involve only telecommunications that originate in a State in which, on the date of the enactment of this Act, such company provided wireline telephone exchange services,

(B) such State has approved or authorized persons that are not affiliated enterprises of such company to provide intraexchange toll telecommunications services in such a manner that customers in such State have the ability to route automatically, without the use of any access code, their intraexchange toll telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such company),

(C) after the date of the enactment of this Act and not less than 90 days before such company offers to provide such interexchange telecommunications services, such company gives notice to the public and the Attorney General that such approval or authorization has been granted by such State, and

(D) the Attorney General—

(i) fails to commence a civil action in accordance with subsection (d), not later than 90 days after the Attorney General receives the notice described in subparagraph (C), to enjoin such company from providing such services, or

(ii) so commences such civil action but—

(I) fails to obtain an injunction from the district court involved enjoining such company from providing such services, or

(II) such injunction issued by such court is vacated on appeal.

(c) EXCEPTIONS FOR INCIDENTAL SERVICES.—Subsection (a) shall not prohibit a Bell operating company, at any time after the date of the enactment of this Act, from providing interexchange telecommunications services for the purpose of—

(1)(A) providing audio programming, video programming, or other programming services to subscribers to such services of such company,

(B) providing the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services, or

(C) providing to distributors audio programming or video programming that such company owns, controls, or is licensed by the copyright owner of such programming, or by an assignee of such owner, to distribute,

(2) providing a telecommunications service, using the transmission facilities of a cable system that is an affiliate of such company, between exchange areas within a cable system franchise area in which such company is not, on the date of the enactment of this Act, a provider of wireline telephone exchange service,

(3) providing commercial mobile services in accordance with section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) and with the regulations prescribed by the Commission pursuant to paragraph (7) of such section,

(4) providing a service that permits a customer that is located in one exchange area to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another exchange area,

(5) providing signaling information used in connection with the provision of exchange services to a local exchange carrier that, together with any affiliated local exchange carriers, has aggregate annual revenues of less than $100,000,000, or

(6) providing network control signaling information to, and receiving such signaling information from, interexchange carriers at any location within the area in which such company provides exchange services or exchange access.

(d) CIVIL ACTION.—(1) For the purpose of paragraph (2) or (3) of subsection (b), the Attorney General shall commence a civil action, not later than 90 days after receiving the notice required by paragraph (2)(B) or (3)(C) of such subsection, respectively, to enjoin such company from providing interexchange telecommunications services pursuant to such paragraph if the Attorney General determines that the standard specified in the first sentence of section 101(b)(3)(D)(i) is not satisfied with respect to providing such interexchange telecommunications services.

(2) With respect to a civil action commenced for the purpose of paragraph (2) or (3) of subsection (b), venue shall lie in any district court of the United States in the State that granted the approval or authorization referred to in such paragraph.

(3) If the Attorney General does not commence a civil action in accordance with paragraph (1) before the expiration of the 90-day period beginning on the date the Attorney General receives such notice, the Attorney General shall publish in the Federal Register a brief statement that the Attorney General has determined not to commence such civil action.

SEC. 103. LIMITATIONS ON MANUFACTURING AND PROVIDING EQUIPMENT.

(a) ABSOLUTE LIMITATION.—Until the expiration of the 1-year period beginning on the date of the enactment of this Act, it shall be unlawful for a Bell operating company, directly or through an affiliated enterprise, to manufacture or provide telecommunications equipment, or to manufacture customer premises equipment.

(b) QUALIFIED LIMITATION.—

(1) REQUIRED CONDITIONS.—After the expiration of the 1-year period beginning on the date of the enactment of this Act, it shall be lawful for a Bell operating company, directly or through an affiliated enterprise, to manufacture or provide telecommunications equipment, or to manufacture customer premises equipment, to the extent described in a notification to the Attorney General that meets the requirements of paragraph (2) and only if—

(A) such company submits to the Attorney General, at any time after the date of the enactment of this Act, the notification described in paragraph (2) and such additional material and information described in such paragraph as the Attorney General may request, and complies with the waiting period specified in paragraph (3), and

(B)(i) the waiting period specified in paragraph (3) expires without the commencement

of a civil action by the Attorney General in accordance with paragraph (4) to enjoin such company from engaging in the activity described in such notification, or

(ii) before the expiration of such waiting period, the Attorney General notifies such company in writing that the Attorney General does not intend to commence such a civil action with respect to such activity.

(2) NOTIFICATION.—The notification required by paragraph (1) shall be in such form and shall contain such documentary material and information relevant to the proposed activity as is necessary and appropriate for the Attorney General to determine whether there is no substantial possibility that such company or its affiliates could use monopoly power to impede competition in the market such company seeks to enter for such activity.

(3) WAITING PERIOD.—The waiting period referred to in paragraph (1) is the 1-year period beginning on the date the notification required by such paragraph is received by the Attorney General.

(4) CIVIL ACTION.—Not later than 1 year after receiving a notification required by paragraph (1), the Attorney General may commence a civil action in an appropriate district court of the United States to enjoin the Bell operating company from engaging in the activity described in such notification, if the Attorney General determines that there is a substantial possibility that such company or its affiliates could use monopoly power to impede competition in the market it seeks to enter with respect to such activity.

(c) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.—Subsections (a) and (b) shall not prohibit a Bell operating company from engaging, at any time after the date of the enactment of this Act, in any activity as authorized by an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the Modification of Final Judgment, if—

(1) such order was entered on or before the date of the enactment of this Act, or

(2) a request for such authorization was pending before such court on the date of the enactment of this Act.

SEC. 104. ANTICOMPETITIVE TYING ARRANGEMENTS.

A Bell operating company with monopoly power in any exchange service market shall not tie (directly or indirectly) in any relevant market the sale of any product or service to the provision of any telecommunications service, if the effect of such tying may be to substantially lessen competition, or to tend to create a monopoly, in any line of commerce.

SEC. 105. ENFORCEMENT.

(a) EQUITABLE POWERS OF UNITED STATES ATTORNEYS.—It shall be the duty of the several United States attorneys, under the direction of the Attorney General, to institute proceedings in equity in their respective districts to prevent and restrain violations of this title.

(b) CRIMINAL LIABILITY.—Whoever knowingly engages or knowingly attempts to engage in an activity that is prohibited by section 102, 103, or 104 shall be guilty of a felony, and on conviction thereof, shall be punished to the same extent as a person is punished upon conviction of a violation of section 1 of the Sherman Act (15 U.S.C. 1).

(c) PRIVATE RIGHT OF ACTION.—Any person who is injured in its business or property by reason of a violation of this title—

(1) may bring a civil action in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and

(2) shall recover threefold the damages sustained, and the cost of suit (including a reasonable attorney's fee).

The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under this title and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances.

(d) PRIVATE INJUNCTIVE RELIEF.—Any person shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of this title, when and under the same conditions and principles as injunctive relief is available under section 16 of the Clayton Act (15 U.S.C. 26). In any action under this subsection in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

(e) JURISDICTION.—(1) Subject to paragraph (2), the courts of the United States shall have exclusive jurisdiction to make determinations with respect to a duty, claim, or right arising under this title, other than determinations authorized to be made by the Attorney General and the Federal Communications Commission under section 101(b)(3).

(2) The United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction to review determinations made under section 101(b)(3).

(3) No action commenced to assert or enforce a duty, claim, or right arising under this title shall be stayed pending any such determination by the Attorney General or the Federal Communications Commission.

(f) SUBPOENAS.—In an action commenced under this title, a subpoena requiring the attendance of a witness at a hearing or a trial may be served at any place within the United States.

(g) APPLICABILITY OF OTHER LAWS TO ENFORCEMENT OF THIS TITLE.—

(1) SECTION 5 OF THE CLAYTON ACT.—Section 5 of the Clayton Act (15 U.S.C. 16) shall apply with respect to actions under this section brought by or on behalf of the United States.

(2) ANTITRUST CIVIL PROCESS ACT.—Section 2(a) of the Antitrust Civil Process Act (15 U.S.C. 1311(a)) is amended—

(A) in paragraph (1) by striking "and" at the end,

(B) in paragraph (2) by striking the period at the end and inserting "and", and

(C) by adding at the end the following:

"(3) title I of the Antitrust and Communications Reform Act of 1994.".

SEC. 106. DEFINITIONS.

For purposes of this title:

(1) AFFILIATE.—The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, to own refers to owning an equity interest (or the equivalent thereof) of more than 50 percent.

(2) ALARM MONITORING SERVICE.—The term "alarm monitoring service" means a service that uses a device located at a residence, place of business, or other fixed premises—

(A) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and

(B) to transmit a signal regarding such threat by means of transmission facilities of a Bell operating company or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat,

but does not include a service that uses a medical monitoring device attached to an individual for the automatic surveillance of an ongoing medical condition.

(3) ANTITRUST LAWS.—The term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et seq.), commonly known as the Robinson Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

(4) AUDIO PROGRAMMING.—The term "audio programming" means programming provided by, or generally considered comparable to programming provided by, a radio broadcast station.

(5) BELL OPERATING COMPANY.—The term "Bell operating company" means—

(A) Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company,

(B) any successor or assign of any such company, or

(C) any affiliate of any person described in subparagraph (A) or (B).

(6) CABLE SYSTEM.—The term "cable system" has the meaning given such term in section 602(7) of the Communications Act of 1934 (47 U.S.C. 522(7)).

(7) CARRIER.—The term "carrier" has the meaning given such term in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(8) COMMERCIAL MOBILE SERVICES.—The term "commercial mobile services" has the meaning given such term in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)).

(9) CUSTOMER PREMISES EQUIPMENT.—The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications, and includes software integral to such equipment.

(10) EXCHANGE ACCESS.—The term "exchange access" means exchange services provided for the purpose of originating or terminating interexchange telecommunications.

(11) EXCHANGE AREA.—The term "exchange area" means a contiguous geographic area

established by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the Modification of Final Judgment before the date of the enactment of this Act.

(12) EXCHANGE SERVICE.—The term "exchange service" means a telecommunications service provided within an exchange area.

(13) INFORMATION.—Except as provided in paragraph (17), the term "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols.

(14) INTEREXCHANGE TELECOMMUNICATIONS.—The term "interexchange telecommunications" means telecommunications between a point located in an exchange area and a point located outside such exchange area.

(15) MANUFACTURE.—The term "manufacture" has the meaning given such term under the Modification of Final Judgment.

(16) MODIFICATION OF FINAL JUDGMENT.—The term "Modification of Final Judgment" means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(17) OTHER PROGRAMMING SERVICES.—The term "other programming services" means information (other than audio programming or video programming) that the person who offers a video programming service makes available to all subscribers generally. For purposes of the preceding sentence, the terms "information" and "makes available to all subscribers generally" have the same meaning such terms have under section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)).

(18) PERSON.—The term "person" has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

(19) STATE.—The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, or any territory or possession of the United States.

(20) TELECOMMUNICATIONS.—The term "telecommunications" means the transmission of information between points by electromagnetic means.

(21) TELECOMMUNICATIONS EQUIPMENT.—The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide a telecommunications service, and includes software integral to such equipment.

(22) TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" means the offering for hire of transmission facilities or of telecommunications by means of such facilities.

(23) TRANSMISSION FACILITIES.—The term "transmission facilities" means equipment (including wire, cable, microwave, satellite, and fiber-optics) that transmits information by electromagnetic means or that directly supports such transmission, but does not include customer premises equipment.

(24) VIDEO PROGRAMMING.—The term "video programming" has the meaning given such term in section 602(19) of the Communications Act of 1934 (47 U.S.C. 522(19)).

SEC. 107. RELATIONSHIP TO OTHER LAWS.

(a) MODIFICATION OF FINAL JUDGMENT.—This title shall supersede the Modification of Final Judgment, except that this title shall not affect—

(1) section I of the Modification of Final Judgment, relating to AT&T reorganization,

(2) section II(A) (including appendix B) and II(B) of the Modification of Final Judgment, relating to equal access and nondiscrimination,

(3) section IV(F) and IV(I) of the Modification of Final Judgment, with respect to the requirements included in the definitions of "exchange access" and "information access",

(4) section VIII(B) of the Modification of Final Judgment, relating to printed advertising directories,

(5) section VIII(E) of the Modification of Final Judgment, relating to notice to customers of AT&T,

(6) section VIII(F) of the Modification of Final Judgment, relating to less than equal exchange access,

(7) section VIII(G) of the Modification of Final Judgment, relating to transfer of AT&T assets, including all exceptions granted thereunder before the date of the enactment of this Act, and

(8) with respect to the parts of the Modification of Final Judgment described in paragraphs (1) through (7)—

(A) section III of the Modification of Final Judgment, relating to applicability and effect,

(B) section IV of the Modification of Final Judgment, relating to definitions,

(C) section V of the Modification of Final Judgment, relating to compliance,

(D) section VI of the Modification of Final Judgment, relating to visitorial provisions,

(E) section VII of the Modification of Final Judgment, relating to retention of jurisdiction, and

(F) section VIII(I) of the Modification of Final Judgment, relating to the court's sua sponte authority.

(b) ANTITRUST LAWS.—Except as provided in section 105(g), nothing in this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

(c) FEDERAL, STATE, AND LOCAL LAW.—(1) Except as provided in paragraph (2), this title shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in this title.

(2) This title shall supersede State and local law to the extent that such law would impair or prevent the operation of this title.

(d) CUMULATIVE PENALTY.—Any penalty imposed, or relief granted, under this title shall be in addition to, and not in lieu of, any penalty or relief authorized by any other law to be imposed with respect to conduct described in this title.

SEC. 108. REQUIRED REGULATORY ACTIONS.

(a) REGULATIONS TO PROHIBIT CROSS-SUBSIDIES.—Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall review its regulations and revise such regulations to the extent necessary to prevent a Bell operating company from engaging in any improper cross-subsidization in connection with any of the services described in paragraphs (1) through (6) of section 102(c).

(b) MOBILE SERVICE ACCESS.—

(1) AMENDMENT.—Section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

"(7) MOBILE SERVICES ACCESS.—Within 180 days after the date of enactment of this paragraph, the Commission shall review its regulations with respect to the access to interexchange services provided to subscribers to commercial mobile services and revise such regulations to the extent necessary to protect the public interest, convenience, and necessity. In revising such regulations, the Commission—

"(A) shall, until January 1, 1998, and may thereafter (i) require that each provider of two-way commercial mobile services afford its subscribers nondiscriminatory access to a provider of interexchange services of the subscriber's choice, and (ii) establish geographic service areas within which providers of two-way commercial mobile services shall be exempt from the access obligation under clause (i);

"(B) may establish or revise technical interconnection requirements on providers of two-way commercial mobile services;

"(C) subject to section 104 of the Antitrust and Communications Reform Act of 1994, and the provisions of paragraph (1) of this subsection and subparagraph (A) of this paragraph and the regulations prescribed thereunder, may permit (with or without conditions) or prohibit the bundling of two-way commercial mobile services with interexchange services; and

"(D) shall not, in establishing any requirement under subparagraph (A), (B), or (C) establish different requirements—

"(i) for providers of two-way commercial mobile services that also are, or are affiliated with, providers of wireline telephone exchange service; and

"(ii) for providers of two-way commercial mobile services that are not, and are not affiliated with, providers of wireline telephone exchange service.

The regulations prescribed pursuant to this paragraph shall supersede any inconsistent requirements imposed by the Modification of Final Judgment (as such term is defined in section 106 of the Antitrust and Communications Reform Act of 1994). Nothing in this paragraph shall affect the Commission's authority to establish the terms and conditions under which providers of telephone exchange services provide access to the local exchange networks for commercial mobile services or interexchange services.".

(2) EFFECTIVE DATE CONFORMING AMENDMENT.—Section 6002(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1993 is amended by striking "section 332(c)(6)" and inserting "paragraphs (6) and (7) of section 332(c)".

TITLE II—REGULATION OF MANUFACTURING, ALARM SERVICES, AND ELECTRONIC PUBLISHING BY BELL OPERATING COMPANIES

SEC. 201. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

"SEC. 229. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES.

"(a) GENERAL AUTHORITY.—Subject to the requirements of this section and the regulations prescribed thereunder, but notwithstanding any restriction or obligation imposed before the date of enactment of this section pursuant to the Modification of Final Judgment on the lines of business in which a Bell operating company may engage, a Bell operating company, through an affiliate of that company, may manufacture and provide telecommunications equipment and manufacture customer premises equipment.

"(b) SEPARATE MANUFACTURING AFFILIATE.—Any manufacturing or provision authorized under subsection (a) shall be conducted only through an affiliate that is separate from any Bell operating company.

"(c) COMMISSION REGULATION OF MANUFACTURING AFFILIATE.—

"(1) REGULATIONS REQUIRED.—The Commission shall prescribe regulations to ensure that Bell operating companies and their affiliates comply with the requirements of this section.

"(2) BOOKS, RECORDS, ACCOUNTS.—A manufacturing affiliate required by subsection (b) shall—

"(A) maintain books, records, and accounts that are separate from the books, records, and accounts of its affiliated Bell operating company and that identify all financial transactions between the manufacturing affiliate and its affiliated Bell operating company, and

"(B) even if such manufacturing affiliate is not a publicly held corporation, prepare financial statements which are in compliance with financial reporting requirements under the Federal securities laws for publicly held corporations, file such statements with the Commission, and make such statements available for public inspection.

"(3) IN-KIND BENEFITS TO AFFILIATE.—Consistent with the provisions of this section, neither a Bell operating company nor any of its nonmanufacturing affiliates shall perform sales, advertising, installation, production, or maintenance operations for a manufacturing affiliate, except that—

"(A) a Bell operating company and its nonmanufacturing affiliates may sell, advertise, install, and maintain telecommunications equipment and customer premises equipment after acquiring such equipment from their manufacturing affiliate; and

"(B) institutional advertising, of a type not related to specific telecommunications equipment, carried out by the Bell operating company or its affiliates, shall be permitted.

"(4) DOMESTIC MANUFACTURING REQUIRED.—

"(A) GENERAL RULE.—Except as otherwise provided in this paragraph, a manufacturing affiliate required by subsection (b) shall conduct all of its manufacturing within the United States and all component parts of customer premises equipment manufactured by such affiliate, and all component parts of telecommunications equipment manufactured by such affiliate, shall have been manufactured within the United States.

"(B) EXCEPTION.—(i) Such affiliate may use component parts manufactured outside the United States if—

"(I) such affiliate first makes a good faith effort to obtain equivalent component parts manufactured within the United States at reasonable prices, terms, and conditions; and

"(II) for the aggregate of telecommunications equipment and customer premises equipment manufactured and sold in the United States by such affiliate, the cost of the components manufactured outside the United States contained in all such equipment does not exceed 40 percent of the sales revenue derived in any calendar year from such equipment.

"(ii) Subparagraph (A) shall apply except to the extent that any of its provisions are determined to be inconsistent with any multilateral or bilateral agreement to which the United States is a party.

"(C) CERTIFICATION REQUIRED.—Any such affiliate that uses component parts manufactured outside the United States in the manufacture of telecommunications equipment and customer premises equipment within the United States shall—

"(i) certify to the Commission that a good faith effort was made to obtain equivalent parts manufactured within the United States at reasonable prices, terms, and conditions, which certification shall be filed on a quarterly basis with the Commission and list component parts, by type, manufactured outside the United States; and

"(ii) certify to the Commission on an annual basis that such affiliate complied with the requirements of subparagraph (B)(ii), as adjusted in accordance with subparagraph (G).

"(D) REMEDIES FOR FAILURES.—(i) If the Commission determines, after reviewing the certification required in subparagraph (C)(i), that such affiliate failed to make the good faith effort required in subparagraph (B)(i) or, after reviewing the certification required in subparagraph (C)(ii), that such affiliate has exceeded the percentage specified in subparagraph (B)(ii), the Commission may impose penalties or forfeitures as provided for in title V of this Act.

"(ii) Any supplier claiming to be damaged because a manufacturing affiliate failed to make the good faith effort required in subparagraph (B)(i) may make complaint to the Commission as provided for in section 208 of this Act, or may bring suit for the recovery of actual damages for which such supplier claims such affiliate may be liable under the provisions of this Act in any district court of the United States of competent jurisdiction.

"(E) ANNUAL REPORT.—The Commission, in consultation with the Secretary of Commerce, shall, on an annual basis, determine the cost of component parts manufactured outside the United States contained in all telecommunications equipment and customer premises equipment sold in the United States as a percentage of the revenues from sales of such equipment in the previous calendar year.

"(F) USE OF INTELLECTUAL PROPERTY IN MANUFACTURE.—Notwithstanding subparagraph (A), a manufacturing affiliate may use intellectual property created outside the United States in the manufacture of telecommunications equipment and customer premises equipment in the United States. A component manufactured using such intellectual property shall not be treated for purposes of subparagraph (B)(ii) as a component manufactured outside the United States solely on the basis of the use of such intellectual property.

"(G) RESTRICTIONS ON COMMISSION AUTHORITY.—The Commission may not waive or alter the requirements of this paragraph, except that the Commission, on an annual basis, shall adjust the percentage specified in subparagraph (B)(ii) to the percentage determined by the Commission, in consultation with the Secretary of Commerce, pursuant to subparagraph (E).

"(5) INSULATION OF RATE PAYERS FROM MANUFACTURING AFFILIATE DEBT.—Any debt incurred by any such manufacturing affiliate may not be issued by its affiliated Bell operating company and such manufacturing affiliate shall be prohibited from incurring debt in a manner that would permit a creditor, on default, to have recourse to the assets of its affiliated Bell operating company.

"(6) RELATION TO OTHER AFFILIATES.—A manufacturing affiliate required by subsection (b) shall not be required to operate separately from the other affiliates of its affiliated Bell operating company, but if an affiliate of a Bell operating company becomes affiliated with a manufacturing entity, such affiliate shall be treated as a manufacturing affiliate of that Bell operating company (except for purposes of paragraph (3)) and shall comply with the requirements of this section.

"(7) AVAILABILITY OF EQUIPMENT TO OTHER CARRIERS.—A manufacturing affiliate required by subsection (b) shall make available, without discrimination or preference as to price, delivery, terms, or conditions, to any common carrier any telecommunications equipment that is used in the provision of telephone exchange service and that is manufactured by such affiliate only if such purchasing carrier—

"(A) does not manufacture telecommunications equipment, and does not have an affiliated telecommunications equipment manufacturing entity; or

"(B) agrees to make available, to the Bell operating company affiliated with such manufacturing affiliate or any common carrier affiliate of such Bell operating company, any telecommunications equipment that is used in the provision of telephone exchange service and that is manufactured by such purchasing carrier or by any entity or organization with which such purchasing carrier is affiliated.

"(8) SALES PRACTICES OF MANUFACTURING AFFILIATES.—

"(A) PROHIBITION OF DISCONTINUATION OF EQUIPMENT FOR WHICH THERE IS REASONABLE DEMAND.—A manufacturing affiliate required by subsection (b) shall not discontinue or restrict sales to a common carrier of any telecommunications equipment that is used in the provision of telephone exchange service and that such affiliate manufactures for sale as long as there is reasonable demand for the equipment by such carriers; except that such sales may be discontinued or restricted if such manufacturing affiliate demonstrates to the Commission that it is not making a profit, under a marginal cost standard implemented by the Commission by regulation, on the sale of such equipment.

"(B) DETERMINATIONS OF REASONABLE DEMAND.—Within 60 days after receipt of an application under subparagraph (A), the Commission shall reach a determination as to the existence of reasonable demand for purposes of such subparagraph. In making such determination the Commission shall consider—

"(i) whether the continued manufacture of the equipment will be profitable;

"(ii) whether the equipment is functionally or technologically obsolete;

"(iii) whether the components necessary to manufacture the equipment continue to be available;

"(iv) whether alternatives to the equipment are available in the market; and

"(v) such other factors as the Commission deems necessary and proper.

"(9) JOINT PLANNING OBLIGATIONS.—Each Bell operating company shall, consistent with the antitrust laws, (including title I of the Antitrust and Communications Reform Act of 1994), engage in joint network planning and design with other contiguous common carriers providing telephone exchange service, but agreement with such other carriers shall not be required as a prerequisite for the introduction or deployment of services pursuant to such joint network planning and design.

"(d) INFORMATION REQUIREMENTS.—

"(1) FILING OF INFORMATION ON PROTOCOLS AND TECHNICAL REQUIREMENTS.—Each Bell operating company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for

connection with and use of its telephone exchange service facilities. Each such company shall report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

"(2) FILING AS PREREQUISITE TO DISCLOSURE TO AFFILIATE.—A Bell operating company shall not disclose to any of its affiliates any information required to be filed under paragraph (1) unless that information is filed promptly, as required by regulation by the Commission.

"(3) ACCESS BY COMPETITORS TO INFORMATION.—The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers in competition with a Bell operating company's manufacturing affiliate have access to the information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities required for such competition that such company makes available to its manufacturing affiliate.

"(4) PLANNING INFORMATION.—Each Bell operating company shall provide, to contiguous common carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.

"(e) ADDITIONAL COMPETITION REQUIREMENTS.—The Commission shall prescribe regulations requiring that any Bell operating company which has an affiliate that engages in any manufacturing authorized by subsection (a) shall—

"(1) provide, to other manufacturers of telecommunications equipment and customer premises equipment that is functionally equivalent to equipment manufactured by the Bell operating company manufacturing affiliate, opportunities to sell such equipment to such Bell operating company which are comparable to the opportunities which such Company provides to its affiliates; and

"(2) not subsidize its manufacturing affiliate with revenues from telephone exchange service or telephone toll service.

"(f) COLLABORATION PERMITTED.—Nothing in this section (other than subsection (1)) shall be construed to limit or restrict the ability of a Bell operating company and its affiliates to engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

"(g) ACCESSIBILITY REQUIREMENTS.—

"(1) MANUFACTURING.—The Commission shall, within 1 year after the date of enactment of this section, prescribe such regulations as are necessary to ensure that telecommunications equipment and customer premises equipment designed, developed, and fabricated pursuant to the authority granted in this section shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, unless the costs of making the equipment accessible and usable would result in an undue burden or an adverse competitive impact.

"(2) NETWORK SERVICES.—The Commission shall, within 1 year after the date of enactment of this section, prescribe such regulations as are necessary to ensure that advances in network services deployed by a Bell operating company shall be accessible and usable by individuals whose access might otherwise be impeded by a disability or functional limitation, unless the costs of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations shall seek to permit the use of both standard and special equipment and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access.

"(3) COMPATIBILITY.—The regulations prescribed under paragraphs (1) and (2) shall require that whenever an undue burden or adverse competitive impact would result from the manufacturing or network services requirements in such paragraphs, the manufacturing affiliate that designs, develops, or fabricates the equipment or the Bell operating company that deploys the network service shall ensure that the equipment or network service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

"(4) DEFINITIONS.—As used in this subsection:

"(A) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether an activity would result in an undue burden, the following factors shall be considered:

"(i) the nature and cost of the activity;

"(ii) the impact on the operation of the facility involved in the manufacturing of the equipment or deployment of the network service;

"(iii) the financial resources of the manufacturing affiliate in the case of manufacturing of equipment, for as long as applicable regulatory rules prohibit cross-subsidization of equipment manufacturing with revenues from regulated telecommunications service or when the manufacturing activities are conducted in a separate subsidiary;

"(iv) the financial resources of the Bell operating company in the case of network services, or in the case of manufacturing of equipment if applicable regulatory rules permit cross-subsidization of equipment manufacturing with revenues from regulated telecommunications services and the manufacturing activities are not conducted in a separate subsidiary; and

"(v) the type of operation or operations of the manufacturing affiliate or Bell operating company as applicable.

"(B) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity would result in an adverse competitive impact, the following factors shall be considered:

"(i) whether such activity would raise the cost of the equipment or network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the equipment or network service profitable; and

"(ii) whether such activity would, with respect to the equipment or network service in question, put the manufacturing affiliate or Bell operating company, as applicable, at a competitive disadvantage in comparison with one or more providers of one or more competing products and services. This factor may only be considered so long as competing manufacturers and network service providers are not held to the same obligation with respect to access by persons with disabilities.

"(C) ACTIVITY.—For the purposes of this paragraph, the term 'activity' includes—

"(i) the research, design, development, deployment, and fabrication activities necessary to comply with the requirements of this section; and

"(ii) the acquisition of the related materials and equipment components.

"(5) EFFECTIVE DATE.—The regulations required by this subsection shall become effective 18 months after the date of enactment of this section.

"(h) PUBLIC NETWORK ENHANCEMENT.—A Bell operating company manufacturing affiliate shall, as a part of its overall research and development effort, establish a permanent program for manufacturing research and development of products and applications for the enhancement of the public switched telephone network and to promote public access to advanced telecommunications services. Such program shall focus its work substantially on developing technological advancements in public telephone network applications, telecommunication equipment and products, and access solutions to new services and technology, including access by (1) public institutions, including educational and health care institutions; and (2) people with disabilities and functional limitations. Notwithstanding the limitations in subsection (a), a Bell operating company and its affiliates may engage in such a program in conjunction with a Bell operating company not so affiliated or any of its affiliates. The existence or establishment of such a program that is jointly provided by manufacturing affiliates of Bell operating companies shall satisfy the requirements of this section as it pertains to all such affiliates of a Bell operating company.

"(i) RULEMAKING REQUIRED.—The Commission shall prescribe regulations to implement this section within 180 days after the date of enactment of this section.

"(j) ADMINISTRATION AND ENFORCEMENT AUTHORITY.—

"(1) COMMISSION REGULATORY AUTHORITY.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell operating company or any affiliate thereof as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

"(2) PRIVATE ACTIONS.—Any common carrier that provides telephone exchange service and that is injured by an act or omission of a Bell operating company or its manufacturing affiliate which violates the requirements of paragraph (7) or (8) of subsection (c), or the Commission's regulations implementing such paragraphs, may initiate an action in a district court of the United States to recover the full amount of damages sustained in consequence of any such violation and obtain such orders from the court as are necessary to terminate existing violations and to prevent future violations; or such regulated local telephone exchange carrier may seek relief from the Commission pursuant to sections 206 through 209.

"(k) EXISTING MANUFACTURING AUTHORITY.—Nothing in this section shall prohibit any Bell operating company from engaging, directly or through any affiliate, in any manufacturing activity in which any Bell operating company or affiliate was authorized to engage on the date of enactment of this section.

"(l) ANTITRUST LAWS.—Nothing in this section shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws (including title I of the Antitrust and Communications Reform Act of 1994).

"(m) DEFINITIONS.—As used in this section:

"(1) The term 'affiliate' means any organization or entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership with a Bell operating company. The terms 'owns', 'owned', and 'ownership' mean an equity interest of more than 10 percent.

"(2) The term 'Bell operating company' means those companies listed in appendix A of the Modification of Final Judgment, and includes any successor or assign of any such company, but does not include any affiliate of any such company.

"(3) The term 'customer premises equipment' means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

"(4) The term 'manufacturing' has the same meaning as such term has under the Modification of Final Judgment.

"(5) The term 'manufacturing affiliate' means an affiliate of a Bell operating company established in accordance with subsection (b) of this section.

"(6) The term 'Modification of Final Judgment' means the decree entered August 24, 1982, in United States v. Western Electric Civil Action No. 82-0192 (United States District Court, District of Columbia), and includes any judgment or order with respect to such action entered on or after August 24, 1982, and before the date of enactment of this section.

"(7) The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

"(8) The term 'telecommunications equipment' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

"(9) The term 'telecommunications service' means the offering for hire of telecommunications facilities, or of telecommunications by means of such facilities.".

SEC. 202. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES.

(a) AMENDMENT.—Title II of the Communications Act is amended by adding at the end the following new section:

"SEC. 230. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES.

"(a) REGULATIONS REQUIRED.—The Commission shall prescribe regulations—

"(1) to establish such requirements, limitations, or conditions as are (A) necessary and appropriate in the public interest with respect to the provision of alarm monitoring services by Bell operating companies and their affiliates, and (B) effective at such time as a Bell operating company or any of its affiliates is authorized to provide alarm monitoring services;

"(2) to prohibit Bell operating companies and their affiliates, at that or any earlier time after the date of enactment of this section, from recording or using in any fashion the occurrence or the contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of the Bell operating company, any of its affiliates, or any other entity; and

"(3) to establish procedures for the receipt and review of complaints concerning violations by such companies of such regulations, or of any other provision of this Act or the regulations thereunder, that result in material financial harm to a provider of alarm monitoring services.

"(b) EXPEDITED CONSIDERATION OF COMPLAINTS.—The procedures established under subsection (a)(3) shall ensure that the Commission will make a final determination with respect to any complaint described in such subsection within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, issue a cease and desist order to prevent the Bell operating company and its affiliates from continuing to engage in such violation pending such final determination.

"(c) REMEDIES.—The Commission may use any remedy available under title V of this Act to terminate and punish violations described in subsection (a)(2). Such remedies may include, if the Commission determines that such violation was willful or repeated, ordering the Bell operating company to cease offering alarm monitoring services.

"(d) RULEMAKING SCHEDULE.—The Commission shall prescribe the regulations required by subsection (a)(2) within 180 days after the date of enactment of this section and shall prescribe the regulations required by subsection (a)(1) and (a)(3) prior to the date on which any Bell operating company may commence providing alarm monitoring services pursuant to title I of the Antitrust and Communication Reform Act of 1994.

"(e) DEFINITIONS.—As used in this section:

"(1) BELL OPERATING COMPANY.—The term 'Bell operating company' has the meaning provided in subparagraphs (A) or (B) of section 106(5) of the Antitrust and Communication Reform Act of 1994.

"(2) ALARM MONITORING SERVICES.—The term 'alarm monitoring services' has the meaning provided in section 106(2) of such Act.

"(3) AFFILIATE.—The term 'affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, to own refers to owning an equity interest (or the equivalent thereof) of more than 10 percent.".

SEC. 203. REGULATION OF ELECTRONIC PUBLISHING.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 231. REGULATION OF ELECTRONIC PUBLISHING.

"(a) IN GENERAL.—

"(1) PROHIBITION.—A Bell operating company and any affiliate shall not engage in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

"(2) PERMITTED ACTIVITIES OF SEPARATED AFFILIATE.—Nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture from engaging in the provision of electronic publishing or any other lawful service in any area.

"(3) RULE OF CONSTRUCTION.—Nothing in this section shall prohibit a Bell operating company or affiliate from engaging in the provision of any lawful service other than electronic publishing in any area or from engaging in the provision of electronic publishing that is not disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

"(b) SEPARATED AFFILIATE OR ELECTRONIC PUBLISHING JOINT VENTURE REQUIREMENTS.—A separated affiliate or electronic publishing joint venture shall—

"(1) maintain books, records, and accounts that are separate from those of the Bell operating company and from any affiliate and that record in accordance with generally accepted accounting principles all transactions, whether direct or indirect, with the Bell operating company;

"(2) not incur debt in a manner that would permit a creditor upon default to have recourse to the assets of the Bell operating company;

"(3) prepare financial statements that are not consolidated with those of the Bell operating company or an affiliate, provided that consolidated statements may also be prepared;

"(4) file with the Commission annual reports in a form substantially equivalent to the Form 10-K required by regulations of the Securities and Exchange;

"(5) after 1 year from the effective date of this section, not hire—

"(A) as corporate officers, sales and marketing management personnel whose responsibilities at the separated affiliate or electronic publishing joint venture will include the geographic area where the Bell operating company provides basic telephone service;

"(B) network operations personnel whose responsibilities at the separated affiliate or electronic publishing joint venture would require dealing directly with the Bell operating company; or

"(C) any person who was employed by the Bell operating company during the year preceding their date of hire,

except that the requirements of this paragraph shall not apply to persons subject to a collective bargaining agreement that gives such persons rights to be employed by a separated affiliate or electronic publishing joint venture of the Bell operating company;

"(6) not provide any wireline telephone exchange service in any telephone exchange area where a Bell operating company with which it is under common ownership or control provides basic telephone exchange service except on a resale basis;

"(7) not use the name, trademarks, or service marks of an existing Bell operating company except for names, trademarks, or service marks that are or were used in common with the entity that owns or controls the Bell operating company;

"(8) have performed annually by March 31, or any other date prescribed by the Commission, a compliance review—

"(A) that is conducted by an independent entity that is subject to professional, legal, and ethical obligations for the purpose of determining compliance during the preceding calendar year with any provision of this section that imposes a requirement on such separated affiliate or electronic publishing joint venture; and

"(B) the results of which are maintained by the separated affiliate for a period of 5 years subject to review by any lawful authority;

"(9) within 90 days of receiving a review described in paragraph (8), file a report of any exceptions and corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being

used for purposes other than to enforce or pursue remedies under this section.

"(c) BELL OPERATING COMPANY REQUIREMENTS.—A Bell operating company under common ownership or control with a separated affiliate or electronic publishing joint venture shall—

"(1) not provide a separated affiliate any facilities, services, or basic telephone service information unless it makes such facilities, services, or information available to unaffiliated entities upon request and on the same terms and conditions;

"(2) carry out transactions with a separated affiliate in a manner equivalent to the manner that unrelated parties would carry out independent transactions and not based upon the affiliation;

"(3) carry out transactions with a separated affiliate, which involve the transfer of personnel, assets, or anything of value, pursuant to written contracts or tariffs that are filed with the Commission and made publicly available;

"(4) carry out transactions with a separated affiliate in a manner that is auditable in accordance with generally accepted auditing standards;

"(5) value any assets that are transferred to a separated affiliate at the greater of net book cost or fair market value;

"(6) value any assets that are transferred to the Bell operating company by its separated affiliate at the lesser of net book cost or fair market value;

"(7) except for—

"(A) instances where Commission or State regulations permit in-arrears payment for tariffed telecommunications services; or

"(B) the investment by an affiliate of dividends or profits derived from a Bell operating company,

not provide debt or equity financing directly or indirectly to a separated affiliate;

"(8) comply fully with all applicable Commission and State cost allocation and other accounting rules;

"(9) have performed annually by March 31, or any other date prescribed by the Commission, a compliance review—

"(A) that is conducted by an independent entity that is subject to professional, legal, and ethical obligations for the purpose of determining compliance during the preceding calendar year with any provision of this section that imposes a requirement on such Bell operating company; and

"(B) the results of which are maintained by the Bell operating company for a period of 5 years subject to review by any lawful authority;

"(10) within 90 days of receiving a review described in paragraph (9), file a report of any exceptions and corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under this section;

"(11) if it provides facilities or services for telecommunication, transmission, billing and collection, or physical collocation to any electronic publisher, including a separated affiliate, for use with or in connection with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, provide to all other electronic publishers the same type of facilities and services on request, on the same terms and conditions or as required by the Commission or a State, and unbundled and individually tariffed to the smallest extent that is technically feasible and economically reasonable to provide;

"(12) provide network access and interconnections for basic telephone service to electronic publishers at any technically feasible and economically reasonable point within the Bell operating company's network and at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing;

"(13) if prices for network access and interconnection for basic telephone service are no longer subject to regulation, provide electronic publishers such services on the same terms and conditions as a separated affiliate receives such services;

"(14) if any basic telephone service used by electronic publishers ceases to require a tariff, provide electronic publishers with such service on the same terms and conditions as a separated affiliate receives such service;

"(15) provide reasonable advance notification at the same time and on the same terms to all affected electronic publishers of information if such information is within any one or more of the following categories:

"(A) such information is necessary for the transmission or routing of information by an interconnected electronic publisher;

"(B) such information is necessary to ensure the interoperability of an electronic publisher's and the Bell operating company's networks; or

"(C) such information concerns changes in basic telephone service network design and technical standards which may affect the provision of electronic publishing;

"(16) not directly or indirectly provide anything of monetary value to a separated affiliate unless in exchange for consideration at least equal to the greater of its net book cost or fair market value, except the investment by an affiliate of dividends or profits derived from a Bell operating company;

"(17) not discriminate in the presentation or provision of any gateway for electronic publishing services or any electronic directory of information services, which is provided over such Bell operating company's basic telephone service;

"(18) have no directors, officers, or employees in common with a separated affiliate;

"(19) not own any property in common with a separated affiliate;

"(20) not perform hiring or training of personnel performed on behalf of a separated affiliate;

"(21) not perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; and

"(22) not perform research and development on behalf of a separated affiliate.

"(d) CUSTOMER PROPRIETARY NETWORK INFORMATION.—Consistent with section 232 of this Act, a Bell operating company or any affiliate shall not provide to any electronic publisher, including a separated affiliate or electronic publishing joint venture, customer proprietary network information for use with or in connection with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service that is not made available by the Bell operating company or affiliate to all electronic publishers on the same terms and conditions.

"(e) COMPLIANCE WITH SAFEGUARDS.—No Bell operating company or affiliate thereof (including a separated affiliate) shall act in concert with another Bell operating company or any other entity in order to knowingly and willfully violate or evade the requirements of this section.

"(f) TELEPHONE OPERATING COMPANY DIVIDENDS.—Nothing in this section shall prohibit an affiliate from investing dividends derived from a Bell operating company in its separated affiliate, and subsections (i) and (j) of this section shall not apply to any such investment.

"(g) JOINT MARKETING.—Except as provided in subsection (h)—

"(1) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate; and

"(2) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.

"(h) PERMISSIBLE JOINT ACTIVITIES.—

"(1) JOINT TELEMARKETING.—A Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher, provided that if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms, at compensatory prices, and subject to regulations of the Commission to ensure that the Bell operating company's method of providing telemarketing or referral and its price structure do not competitively disadvantage any electronic publishers regardless of size, including those which do not use the Bell operating company's telemarketing services.

"(2) TEAMING ARRANGEMENTS.—A Bell operating company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher provided that the Bell operating company only provides facilities, services, and basic telephone service information as authorized by this section and provided that the Bell operating company does not own such teaming or business arrangement.

"(3) ELECTRONIC PUBLISHING JOINT VENTURES.—A Bell operating company or affiliate may participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not any Bell operating company, affiliate, or separated affiliate to provide electronic publishing services, provided that the Bell operating company or affiliate has not more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. Officers and employees of a Bell operating company or affiliate participating in an electronic publishing joint venture may not have more than 50 percent of the voting control over the electronic publishing joint venture. In the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize the Bell operating company or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent. A Bell operating company participating in an electronic publishing joint venture may provide promotion, marketing, sales, or advertising personnel and services to such joint venture.

"(i) TRANSACTIONS RELATED TO THE PROVISION OF ELECTRONIC PUBLISHING BETWEEN A TELEPHONE OPERATING COMPANY AND ANY AFFILIATE.—

"(1) RECORDS OF TRANSACTIONS.—Any provision of facilities, services, or basic telephone service information, or any transfer of assets, personnel, or anything of commercial or competitive value, from a Bell operating company to any affiliate related to the provision of electronic publishing shall be—

"(A) recorded in the books and records of each entity;

"(B) auditable in accordance with generally accepted auditing standards; and

"(C) pursuant to written contracts or tariffs filed with the Commission or a State and made publicly available.

"(2) VALUATION OF TRANSFERS.—Any transfer of assets directly related to the provision of electronic publishing from a Bell operating company to an affiliate shall be valued at the greater of net book cost or fair market value. Any transfer of assets related to the provision of electronic publishing from an affiliate to the Bell operating company shall be valued at the lesser of net book cost or fair market value.

"(3) PROHIBITION OF EVASIONS.—A Bell operating company shall not provide directly or indirectly to a separated affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing that are not made available to unaffiliated companies on the same terms and conditions.

"(j) TRANSACTIONS RELATED TO THE PROVISION OF ELECTRONIC PUBLISHING BETWEEN AN AFFILIATE AND A SEPARATED AFFILIATE.—

"(1) RECORDS OF TRANSACTIONS.—Any facilities, services, or basic telephone service information provided or any assets, personnel, or anything of commercial or competitive value transferred, from a Bell operating company to any affiliate as described in subsection (i) and then provided or transferred to a separated affiliate shall be—

"(A) recorded in the books and records of each entity;

"(B) auditable in accordance with generally accepted auditing standards; and

"(C) pursuant to written contracts or tariffs filed with the Commission or a State and made publicly available.

"(2) VALUATION OF TRANSFERS.—Any transfer of assets directly related to the provision of electronic publishing from a Bell operating company to any affiliate as described in subsection (i) and then transferred to a separated affiliate shall be valued at the greater of net book cost or fair market value. Any transfer of assets related to the provision of electronic publishing from a separated affiliate to any affiliate and then transferred to the Bell operating company as described in subsection (i) shall be valued at the lesser of net book cost or fair market value.

"(3) PROHIBITION OF EVASIONS.—An affiliate shall not provide directly or indirectly to a separated affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing that are not made available to unaffiliated companies on the same terms and conditions.

"(k) OTHER ELECTRONIC PUBLISHERS.—Except as provided in subsection (h)(3)—

"(1) A Bell operating company shall not have any officers, employees, property, or facilities in common with any entity whose principal business is publishing of which a part is electronic publishing.

"(2) No officer or employee of a Bell operating company shall serve as a director of any entity whose principal business is publishing of which a part is electronic publishing.

"(3) For the purposes of paragraphs (1) and (2), a Bell operating company or an affiliate that owns an electronic publishing joint venture shall not be deemed to be engaged in the electronic publishing business solely because of such ownership.

"(4) A Bell operating company shall not carry out—

"(A) any marketing or sales for any entity that engages in electronic publishing; or

"(B) any hiring of personnel, purchasing, or production,

for any entity that engages in electronic publishing.

"(5) The Bell operating company shall not provide any facilities, services, or basic telephone service information to any entity that engages in electronic publishing, for use with or in connection with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, unless equivalent facilities, services, or information are made available on equivalent terms and conditions to all.

"(l) TRANSITION.—Any electronic publishing service being offered to the public by a Bell operating company or affiliate on the date of enactment of this section shall have one year from such date of enactment to comply with the requirements of this section.

"(m) SUNSET.—The provisions of this section shall not apply to conduct occurring after June 30, 2000.

"(n) PRIVATE RIGHT OF ACTION.—

"(1) DAMAGES.—Any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may file a complaint with the Commission or bring suit as provided in section 207 of this Act, and such Bell operating company, affiliate, or separated affiliate shall be liable as provided in section 206 of this Act; except that damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b)(8) or (c)(9) of this section and corrected within 90 days.

"(2) CEASE AND DESIST ORDERS.—In addition to the provisions of paragraph (1), any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may make application to the Commission for an order to cease and desist such violation or may make application in any district court of the United States of competent jurisdiction for an order enjoining such acts or practices or for an order compelling compliance with such requirement.

"(o) ANTITRUST LAWS.—Nothing in this section shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws (including title I of the Antitrust and Communications Reform Act of 1994).

"(p) EQUAL EMPLOYMENT OPPORTUNITIES.—Any Bell operating company, and any affiliate or joint venture or other business partner of a Bell operating company, that is engaged in the provision of electronic publishing shall be subject to the provisions of section 634 of this Act, except that the Commission shall prescribe by regulation appropriate job classifications in lieu of the job classifications in subsection (d)(3)(A) of such section.

"(q) DEFINITIONS.—As used in this section—

"(1) The term 'affiliate' means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, a Bell operating company. Such term shall not include a separated affiliate.

"(2) The term 'basic telephone service' means any wireline telephone exchange service, or wireline telephone exchange facility, provided by a Bell operating company in a telephone exchange area, except—

"(A) a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, and

"(B) a commercial mobile service provided by an affiliate that is required by the Commission to be a corporate entity separate from the Bell operating company.

"(3) The term 'basic telephone service information' means network and customer information of a Bell operating company and other information acquired by a Bell operating company as a result of its engaging in the provision of basic telephone service.

"(4) The term 'control' has the meaning that it has in 17 C.F.R. 240.12b–2, the regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or any successor provision to such section.

"(5)(A) The term 'electronic publishing' means the dissemination, provision, publication, or sale to an unaffiliated entity or person, using a Bell operating company's basic telephone service, of—

"(i) news,

"(ii) entertainment (other than interactive games),

"(iii) business, financial, legal, consumer, or credit material;

"(iv) editorials;

"(v) columns;

"(vi) sports reporting;

"(vii) features;

"(viii) advertising;

"(ix) photos or images;

"(x) archival or research material;

"(xi) legal notices or public records;

"(xii) scientific, educational, instructional, technical, professional, trade, or other literary materials; or

"(xiii) other like or similar information.

"(B) The term 'electronic publishing' shall not include the following network services:

"(i) Information access, as that term is defined by the Modification of Final Judgment.

"(ii) The transmission of information as a common carrier.

"(iii) The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing services, which do not affect the presentation of such electronic publishing services to users.

"(iv) Voice storage and retrieval services, including voice messaging and electronic mail services.

"(v) Level 2 gateway services as those services are defined by the Commission's Second Report and Order, Recommendation to Congress and Second Further Notice of Proposed Rulemaking in CC Docket No. 87–266 dated August 14, 1992.

"(vi) Data processing services that do not involve the generation or alteration of the content of information.

"(vii) Transaction processing systems that do not involve the generation or alteration of the content of information.

"(viii) Electronic billing or advertising of a Bell operating company's regulated telecommunications services.

"(ix) Language translation.

"(x) Conversion of data from one format to another.

"(xi) The provision of information necessary for the management, control, or operation of a telephone company telecommunications system.

"(xii) The provision of directory assistance that provides names, addresses, and telephone numbers and does not include advertising.

"(xiii) Caller identification services.

"(xiv) Repair and provisioning databases for telephone company operations.

"(xv) Credit card and billing validation for telephone company operations.

"(xvi) 911–E and other emergency assistance databases.

"(xvii) Any other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information.

"(xviii) Any upgrades to these network services that do not involve the generation or alteration of the content of information.

"(C) The term 'electronic publishing' also shall not include—

"(i) full motion video entertainment on demand; and

"(ii) video programming as defined in section 602 of the Communications Act of 1934.

"(6) The term 'electronic publishing joint venture' means a joint venture owned by a Bell operating company or affiliate that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

"(7) The term 'entity' means any organization, and includes corporations, partnerships, sole proprietorships, associations, and joint ventures.

"(8) The term 'inbound telemarketing' means the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.

"(9) The term 'own' with respect to an entity means to have a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.

"(10) The term 'separated affiliate' means a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

"(11) The term 'Bell operating company' means the corporations subject to the Modification of Final Judgment and listed in Appendix A thereof, or any entity owned or controlled by such corporation, or any successor or assign of such corporation, but does not include an electronic publishing joint venture owned by such corporation or entity.".

SEC. 204. PRIVACY OF CUSTOMER INFORMATION.

(a) PRIVACY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.—

(1) AMENDMENT.—Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 232. PRIVACY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.

"(a) DUTY TO PROVIDE SUBSCRIBER LIST INFORMATION.—Notwithstanding subsections (b), (c), and (d), a carrier that provides subscriber list information to any affiliated or unaffiliated service provider or person shall provide subscriber list information on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request.

"(b) PRIVACY REQUIREMENTS FOR COMMON CARRIERS.—A carrier—

"(1) shall not, except as required by law or with the approval of the customer to which the information relates—

"(A) use customer proprietary network information in the provision of any service except to the extent necessary (i) in the provision of common carrier communications services, (ii) in the provision of a service necessary to or used in the provision of common carrier communications services, including the publishing of directories, or (iii) to continue to provide a particular information service that the carrier provided as of March 15, 1994, to persons who were customers of such service on that date;

"(B) use customer proprietary network information in the identification or solicitation of potential customers for any service other than the service from which such information is derived;

"(C) use customer proprietary network information in the provision of customer premises equipment; or

"(D) disclose customer proprietary network information to any person except to the extent necessary to permit such person to provide services or products that are used in and necessary to the provision by such carrier of the services described in subparagraph (A);

"(2) shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer;

"(3) shall, whenever such carrier provides any aggregate information, notify the Commission of the availability of such aggregate information and shall provide such aggregate information on reasonable terms and conditions to any other service or equipment provider upon reasonable request therefor; and

"(4) except for disclosures permitted by paragraph (1)(D), shall not unreasonably discriminate between affiliated and unaffiliated service or equipment providers in providing access to, or in the use and disclosure of, individual and aggregate information made available consistent with this subsection.

"(c) RULE OF CONSTRUCTION.—This section shall not be construed to prohibit the use or disclosure of customer proprietary network information as necessary—

"(1) to render, bill, and collect for the services identified in subparagraph (A);

"(2) to render, bill, and collect for any other service that the customer has requested;

"(3) to protect the rights or property of the carrier;

"(4) to protect users of any of those services and other carriers from fraudulent, abusive, or unlawful use of or subscription to such service; or

"(5) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

"(d) EXEMPTION PERMITTED.—The Commission may, by rule, exempt from the requirements of subsection (b) carriers that have, together with any affiliated carriers, in the aggregate nationwide, fewer than 500,000 access lines installed if the Commission determines that such exemption is in the public interest or if compliance with the requirements would impose an undue economic burden on the carrier.

"(e) REGULATIONS.—The Commission shall prescribe regulations to carry out this section within 1 year after the date of its enactment.

"(f) DEFINITION OF AGGREGATE INFORMATION.—For purposes of this section, the term 'aggregate information' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.".

(2) CONFORMING AMENDMENT.—Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end the following:

"(gg) 'Customer proprietary network information' means—

"(1) information which relates to the quantity, technical configuration, type, destination, and amount of use of telephone exchange service or telephone toll service subscribed to by any customer of a carrier, and is made available to the carrier by the customer solely by virtue of the carrier-customer relationship;

"(2) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; and

"(3) such other information concerning the customer as is available to the local exchange carrier by virtue of the customer's use of the carrier's telephone exchange service or interexchange telephone services, and specified as within the definition of such term by such rules as the Commission shall prescribe consistent with the public interest; except that such term does not include subscriber list information.

"(hh) 'Subscriber list information' means any information—

"(1) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications, or any combination of such listed names, numbers, addresses, or classifications; and

"(2) that the carrier or an affiliate has published or accepted for future publication.".

(b) IMPACT OF CONVERGING COMMUNICATIONS TECHNOLOGIES ON CONSUMER PRIVACY.—

(1) PROCEEDING REQUIRED.—Within one year after the date of enactment of this Act, the Commission shall commence a proceeding—

(A) to examine the impact of the integration into interconnected communications networks of wireless telephone, cable, satellite, and other technologies on the privacy rights and remedies of the consumers of those technologies;

(B) to examine the impact that the globalization of such integrated communications networks has on the international dissemination of consumer information and the privacy rights and remedies to protect consumers;

(C) to propose changes in the Commission's regulations to ensure that the effect on consumer privacy rights is considered in the introduction of new telecommunications services and that the protection of such privacy rights is incorporated as necessary in the design of such services or the rules regulating such services;

(D) to propose changes in the Commission's regulations as necessary to correct any defects identified pursuant to subparagraph (A) in such rights and remedies; and

(E) to prepare recommendations to the Congress for any legislative changes required to correct such defects.

(2) SUBJECTS FOR EXAMINATION.—In conducting the examination required by paragraph (1), the Commission shall determine whether consumers are able, and, if not, the methods by which consumers may be enabled—

(A) to have knowledge that consumer information is being collected about them through their utilization of various communications technologies;

(B) to have notice that such information could be used, or is intended to be used, by the entity collecting the data for reasons unrelated to the original communications, or that such information could be sold (or is intended to be sold) to other companies or entities; and

(C) to stop the reuse or sale of that information.

(3) SCHEDULE FOR COMMISSION RESPONSES.—The Commission shall, within 18 months after the date of enactment of this Act—

(A) complete any rulemaking required to revise Commission regulations to correct defects in such regulations identified pursuant to paragraph (1); and

(B) submit to the Congress a report containing the recommendations required by paragraph (1)(C).

SEC. 205. TELEMESSAGING SERVICES.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 233. TELEMESSAGING SERVICES.

"(a) NONDISCRIMINATION.—A common carrier engaged in the provision of telemessaging services shall—

"(1) provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own telemessaging operations, on nondiscriminatory terms and conditions; and

"(2) not subsidize its telemessaging services with revenues from telephone exchange service.

"(b) EXPEDITED CONSIDERATION OF COMPLAINTS.—The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (a) or the regulations thereunder that result in material financial harm to a provider of telemessaging service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, order the common carrier and its affiliates to cease engaging in such violation pending such final determination.

"(c) DEFINITIONS.—As used in this section, the term 'telemessaging services' means voice mail and voice storage and retrieval services provided over telephone lines for telemessaging customers and any live operator services used to answer, record, transcribe, and relay messages (other than telecommunications relay services) from incoming telephone calls on behalf of the telemessaging customers (other than any service incidental to directory assistance).".

SEC. 206. ENHANCED SERVICES SAFEGUARDS.

Within 60 days after the date of the enactment of this Act, the Commission shall initiate a proceeding to reconsider its decision in the Report and Order In the Matter of Computer III Remand Proceedings, CC Docket No. 90-623, released December 20, 1993, relieving the Bell operating companies of the obligation to provide enhanced services through fully separate affiliates. Within 180 days after the date of the enactment of this Act, the Commission shall, to the extent it determines necessary or appropriate in the public interest, adopt regulations prescribing the structural or nonstructural safeguards, or both, with which local exchange carriers shall comply when providing enhanced services.

TITLE III—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) EFFECT ON FEES.—For purposes of section 9(b)(2) of the Communications Act of 1934 (47 U.S.C 159(b)(2)), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a) of such Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from New York [Mr. FISH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, I yield 10 minutes to the gentleman from Michigan [Mr. DINGELL], and, Mr. Speaker, I ask unanimous consent that the gentleman from Michigan may control that time and yield blocks of that time to other Members.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. FISH. Mr. Speaker, I yield 10 minutes of my time to the gentleman from California [Mr. MOORHEAD], and I ask unanimous consent that the gentleman from California be permitted to yield blocks of such time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am delighted to call up H.R. 3626, landmark telecommunications legislation, standing side-by-side with my good friend Chairman JOHN DINGELL. It is beyond understatement to say that bringing up a unified version of this type of legislation under suspension of the rules was not an easy achievement. As everyone in this Chamber well knows, both of us had originally approached the process from almost diametrically opposed philosophical points of view about the proper role of antitrust and regulatory oversight.

But during the past year and a half, we were able—working together—to fashion a bill that blended the strength and flexibility of fundamental antitrust principles with the need for public interest regulatory oversight. The result, I believe, is a delicate yet durable balance to ensure well into the next century a vibrant telecommunications industry, which must remain a strategic asset in this Nation's world economic position.

This is a far cry from last Congress when there was a fragmented policy orientation in the courts, throughout the enforcement agencies and, yes, even in the Halls of Congress. As we stand here today, the naysayers all across this fine city are in profound disbelief. Where once there was immovable jurisdictional gridlock, we are now moving with the momentum of a bipartisan consensus regarding this vital sector of the economy, perhaps for the first time in 60 years.

However, let us not forget for a moment where we were even as recently as the beginning of the 102d Congress. At that time, piecemeal, fragmented—and frankly, one-sided—solutions were being offered up as legislation for various interests in the telecommunications industry. If ever there was a prescription for disaster for this highly strategic U.S. industry, it was to follow the path of such narrow-sided proposals. I came to the decision that a comprehensive approach to maintaining a competitive and diverse industry was needed and that Congress must take responsibility for doing so.

In doing so, I cautioned that my decision to move a comprehensive piece of legislation was in no way to be construed as a referendum on the handling of the AT&T consent decree case by Judge Harold Greene. It was my view that Judge Greene had performed splendidly in this function, but that events—both in the private sector as well as in the Congress—might well short circuit his attempt to keep a unified view of competition as the central determinant in decisionmaking.

Moreover, as private business decisions continue to push the waiver process to the point of an overflowing court docket, there appeared a real possibility that delay in adjudicating these requests might become exacerbated to the detriment of all parties in their business planning. For all these reasons, I decided that it was essential that we move the forum from courtroom into the enforcement and regulatory agencies, while not abandoning the organizing principles behind the decree.

Thus, as I approached the legislation both in the last Congress and in this Congress, the two principles I held as irreducible were that, at the end of the day, the Department of Justice must have an independent role in reviewing Bell entry into now-prohibited sectors of the market; and that in reviewing such entry, the MFJ's antitrust entry test, the so-called 8(c) standard, must be applied. Finally, I insisted on an unambiguous antitrust savings clause so that even after entry by the Bells into

long distance, manufacturing or information services, the Department would have the full authority to pursue antitrust actions just as it would against any other industry where anticompetitiveness abuses might occur. I am grateful that these bedrock principles appear in the version of H.R. 3626 now before the House, and I give great credit to my good friend, Chairman JOHN DINGELL, for recognizing the value of antitrust in this historic effort even as he successfully made his own case to me that public interest determinations should also have an important and complementary role in the process.

There are many others who made achievement possible today. I want to especially commend the ranking member of my committee, Congressman HAMILTON FISH, for his excellent work throughout the entire process. In addition, the unflagging efforts of Congressman MIKE SYNAR, RICK BOUCHER, and JOHN BRYANT, to name just a few, helped build support for a reasonable and politically viable legislative product that could be supported in our respective committees and on the floor.

Chairman DINGELL and I were both determined to have this legislation come before the full House before the July 4th recess so that the other body would have the time and the inclination to act. We are hopeful that they will, and that the conference report can be sent to the President's desk for signature before Congress adjourns in October.

Mr. Speaker, I reserve the balance of my time.

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the Antitrust and Communications Reform Act of 1994, H.R. 3626. This legislation represents the most sweeping communications reform legislation to be considered in this House in 60 years. It will establish the ground rules for telecommunications policy in our Nation as we proceed into the 21st century. If enacted, this measure will have much to say about the future health of the American economy, America's international competitiveness and expanded job opportunities for American workers.

This legislation establishes a statutory framework under which the seven regional Bell telephone companies and their affiliates would be permitted to provide certain long distance services and engage in the manufacture of telecommunications equipment. The Bell operating companies are currently prohibited from entering these lines of business under the terms of the antitrust consent decree—the modification of final judgment or MFJ—which governed the breakup of the then-unified AT&T Bell system. That consent decree was entered into by AT&T and the Department of Justice in 1982 and became effective on January 1, 1984.

Thus, H.R. 3626 would supersede the MFJ and establish a new policy framework under which the Federal Communications Commission and the Justice Department would administer local telephone company business activities. Under its terms, the Bell operating companies could apply immediately upon enactment for permission to enter into manufacturing and would be permitted to engage in manufacturing within a year after the date of enactment. Similarly, the Bell companies can apply immediately after enactment to both the FCC and the Justice Department to be allowed to provide long distance services. The Bells may submit as many applications—broad or narrow in scope—as they choose.

The bill does not include general provisions concerning Bell company involvement in information services, since those MFJ-based restrictions were lifted by the courts in 1991. *U.S.* v. *Western Electric Co., et. al.*, 900 F.2d 283 (D.C. Cir., 1990), cert. den. 111 S. Ct. 283 (1990); *U.S.* v. *Western Electric Co.*, 767 F. Supp. (D.D.C., 1991). However, this legislation does include provisions governing Bell entry into alarm monitoring services, permitting Bell entry into that business 5½ years after the date of enactment. Similarly, electronic publishing—which is also a subset of information services—is treated in title II of this legislation. Those provisions would incorporate into law the terms of agreements made between the regional Bell operating companies and the representatives of the newspaper publishers.

As of the date of enactment, the Bells may apply to enter into the long distance business. (§101(a)(1)(B); §101(a)(2)(A).) Within 10 days after receipt, the applications must be published in the FEDERAL REGISTER. (§101(a)(4).) Not later than 45 days after publication, interested persons may submit comments to either or both agencies. (§101(b)(1).) Consultation between the two agencies regarding an application is required. (§101(b)(2).) The agencies must issue written determinations on the applications within 180 days after receipt. (§101(b)(3)(A).) In deciding on the merits of the application, the Justice Department will apply the same competitive standard that is contained in section VIII(C) of the MFJ, that is "no substantial possibility that such company or its affiliates could use monopoly power to impede competition in the market such company seeks to enter." (§101(b)(3)(D)(i).) The FCC will apply the "public interest, convenience and necessity" test contained in the Communications Act. (§101(b)(3)(D)(ii).) Their determinations are to be based on the "preponderance of the evidence". (§101(b)(3)(B).) Both agencies must approve an application for it to be finally approved. (§101(b)(6).)

Not later than 45 days after the final determination (that is final agency action) is published, "any person who would be threatened with loss or damage as a result of the determination" may bring an action for judicial review in the U.S. Court of Appeals for the District of Columbia to challenge the agencies' approval. (§101(c)(1).) This standing provision is patterned directly after section 16 of the Clayton Act. Under the Federal antitrust laws, actual injury or threatened loss or damage must be shown before persons can successfully gain access to a Federal court to challenge a particular action as anticompetitive. Thus, this is intended to be an exacting standing provision and not all interested persons would have standing to challenge the agencies' determination. under this provision, court challenges are reserved for those that can show a genuine likelihood of injury—threatened loss or damage. This provision is not intended to encourage what could be obstructionist or strategic litigation.

Unlike the bill (H.R. 5096) sponsored by Congressman BROOKS in the 102d Congress, there is no de novo trial on the merits of an agency determination. Instead, there will be an appellate review based on the standard contained in the Administrative Procedure Act. 5 U.S.C. (§706.) It should be further emphasized that determinations made by Justice and the FCC under section 101(b)(3) are to be considered finally agency decisions in the administrative law meaning of that term. (The use of the term "final" in section 101(b)(5) should not be taken to mean "final agency action" for administrative law purposes. Rather, it means that if no civil action is filed under subsection (c), these determinations are no longer subject to appeal or review.) Bell entry into the authorized service would be lawful while the determination is the subject of an appeal under section 101(c). A Bell operating company can continue to provide this service until such time as one or both of the approvals is vacated or reversed as a result of judicial review. (§101(b)(6)(ii).) Of course, a party could seek a preliminary injunction under the normal Federal civil rules, seeking to enjoin the provision of the authorized services pending the outcome of the judicial review action.

Generally speaking, before the Bell operating companies can enter into the long distance business, they must follow the application procedure set down in section 101 of the bill. There are, however, some significant exceptions to this general requirement. For example, section 101(b)(3)(D)(iii) directs Justice and the FCC to jointly prescribe regulations establishing procedures for the expedited determination and approval of applications for proposed long-distance services that are incidental to the provisions of another, already lawful service. These incidental

telecommunications services are in addition to those specified and authorized under section 102(c) of this bill.

Also exempt from the applicant requirement is any activity authorized by an order entered by the U.S. District Court for the District of Columbia under section VII or section VIII(C) of the Modification of Final Judgment prior to the date of enactment, or any waiver request pending on the date of enactment and subsequently approved by the District Court. §102(b)(1).

Further, the Bell companies are not required to apply seeking prior Federal authorization to offer intrastate long distance services—services provided within the boundaries of a single state. (§102(b)(2)(A).) So, the Bell companies would seek to receive State public utility—or public service—commission approval for providing intrastate interexchange telecommunications services. In doing so, they would be made subject to FCC and State regulations which require it to charge itself an access fee in the same manner it charges long-distance companies seeking access to the local exchanges. (§102(b)(2)(D).) However, under the terms of subsection 102(b)(2)(B), the Department of Justice would be given 90 days notice by a Bell company of its intent to provide such intrastate long-distance telecommunications services. The Justice Department would then have the option to request a preliminary injunction in a U.S. district court within those 90 days, with respect to such services if it believes a Bell entry would be anticompetitive. (§102(b)(2)(C).) If the Department brings no such civil action, or fails to obtain a preliminary injunction from the district court, it is fully lawful for the Bell company to begin providing those State-authorized services.

From the enactment of the Communications Act in 1934—until the AT&T consent decree took effect on January 1, 1984—all long-distance services within the States were regulated under the jurisdiction of the various state public utilities commissions [PUC's]. So, section 102(b)(2) of H.R. 3626 merely would return to the States their authority over all long-distance services delivered within their States. It should be understood that the States currently regulate long-distance services provided by the Bell companies within each LATA (that is, Local Access Transport Area). Every State has an agency that regulates public telephone companies. In my own State of New York it is known as the New York State Public Service Commission. They issue the "certificates of convenience and necessity" that authorize the local exchange companies and long-distance carriers to do business. They regulate the rates charged for local and interexchange telephone service. They make the decisions on the tariffs filed regarding new services to be offered or the abandonment of any service or facility.

It should be emphasized that this legislation directs the States to take "into account the potential effects of such approval or authorization on competition and the public interest". (§102(b)(2)(A).) Of course, as noted earlier, the Justice Department would give 90 days to review the State's decision and seek an injunction if necessary. Again, if no injunction is sought, or if the request for an injunction is denied by the district court, then the Bell company may offer these services.

Also, the Bell companies would not be required to seek Federal pre-approval for long distance services that are provided through so-called resale services. (§102(b)(3).) That is, long-distance services which are purchased from another entity. This exception would apply only to services purchased from a nonaffiliate of the Bell company and only in those States where "1+ dialing" has been ordered. (§102(b)(3)(B).) As with intrastate long distance, the Department of Justice would have 90 days to review the competitive impact of Bell company resale services and the opportunity to seek an injunction when it determines that such entry would, in fact, be anticompetitive. (§102(b)(3)(D).)

Another major exception to the overall general rule requiring the Bell companies to apply to DOJ and FCC for permission, has to do with incidental services. Section 102(c) of the bill allows the Bell operating companies at any time after the date of enactment to provide interexchange telecommunications services which are deemed to be incidental to an otherwise lawful activity. So, for example, the bill identifies a number of activities to be exempt incidental services including, cable services and the distribution of cable programming, telephone service provided through cable companies outside of a Bell service area, interactive services, cellular telephone services, the transmission and retrieval of certain computer information, and the transmission of certain telephone network signaling information. (§102(c)(1)–(6).) As mentioned earlier, the bill requires the Justice Department and the FCC within 6 months of the date of enactment to establish procedures for the expedited consideration of applications by the Bell companies to provide other incidental long distance services. (§101(b)(3)(D)(iii).)

The bill generally permits the regional Bell companies and their operating affiliates to manufacture equipment, beginning a year after enactment, unless the Justice Department acts to stop them. (§103.) This bill creates a 1-year waiting period, during which the Department would review the company's plans and determine whether there is "no substantial possibility" that the company or its affiliates could use monopoly power to impede competition in the market the company intends to enter. (§103(b)(2).) If the Department takes no action within that time, the company would be free to engage in the activity at the end of the 1 year. The Department would be permitted to shorten this waiting period by providing early notice to the Bell company that it does not intend to initiate any legal action. (§103(b)(1)(B)(ii).)

The bill includes numerous safeguards to prevent manufacturing affiliates from unfairly benefiting from their affiliation with Bell companies and vice versa. Under the measure, Bell operating companies must conduct their manufacturing activities through separate affiliates having their own financial books, records, and accounts, and it generally prohibits the Bell companies from providing any in-kind benefits such as advertising, sales, or maintenance. (§201.) Bell companies would be specifically prohibited from subsidizing their manufacturing affiliates with telephone revenues. The measure also requires manufacturing affiliates to sell their products to all telephone companies at prices and terms equal to the prices and terms it sells its equipment to its parent Bell company.

Section 201 of the bill contains a "domestic content" provision which sets down the general rule that a manufacturing affiliate must conduct all of its operations within the United States and that all component parts must also be of domestic manufacture. There is, however, an exception to this. Foreign manufactured component parts may be utilized if a good faith effort fails to secure equivalent parts manufactured within the United States, provided their cost does not exceed 40 percent of the sales revenue derived in any calendar year from the manufactured product. Furthermore, and most significantly, the general rule does not apply to the extent any of its provisions are determined to be inconsistent with any multilateral or bilateral agreement to which the United States is a party, such as a Bilateral Investment Treaty, the North American Free Trade Agreement, or GATT. This is an enlightened and fair resolution of a difficult problem—balancing competing interests.

Beginning 5½ years after enactment, the regional Bell companies and their operating affiliates are permitted to file applications to the Federal Government to provide alarm monitoring services. (§101(a)(1)(A).) As with Bell applications to provide long-distance services, the Justice Department and FCC would have to make separate determinations within 6 months whether the provisions of alarm services by a Bell company would impede competition or serve the public interest. The

measure requires the FCC to issue rules regulating Bell company provision of alarm monitoring services, and it permits the FCC to penalize Bell companies that violate FCC regulations—including ordering a company to cease providing such services. (§ 202.)

The measure establishes certain rules under which the Bell companies may provide electronic publishing services, including the dissemination, publication, or sale over telephone lines of news, business and financial reports, editorials, columns, sports reporting, features, advertising, photos or images, research material, legal notices and public records, and other such information. (§ 203.) These rules would expire June 30, 2000.

Section 203 would add a new section 231 to the Communications Act of 1934. It establishes a number of safeguards to ensure equal access to interconnections for all electronic publishers. Under its terms, the Bell companies would be permitted to provide electronic publishing services over their own telephone lines only if such services are provided through a separate affiliate or a joint venture with an electronic publisher. Furthermore, joint ventures between the Bell companies and newspaper publishers would be encouraged, and joint ventures between the Bells and small, local electronic publishers are encouraged in particular. The separate affiliates or joint ventures would be required to maintain their own books, records, and accounts, and could not engage in any joint sales, advertising, or marketing activities with affiliated Bell companies.

When the House Judiciary Committee considered this matter in March, I offered an amendment dealing with the definition of "electronic publishing." My concern focused on the fact that the definition in the bill as introduced appeared to be almost exclusively newspaper oriented. The problem, of course, is that a number of non-newspaper entities are engaged in the electronic publishing business. For example, the Economic and Commercial Law Subcommittee received testimony from the President of the West Publishing Co., who expressed the view that all content-based information should be included within this definition.

So, I felt that the protections contained in section 203 should extend to a novel, textbook, or scientific journal, as well as a newspaper. Similarly, magazines should be covered as well as electric legal research tools such as Westlaw and Lexis. Consequently, the legislation that comes to the floor of the House contains an expanded definition of the term "electronic publishing." For example, my amendment added "legal, consumer or credit material", "research material" and "public records." In addition, it clarified that electronic publishing includes "scientific, educational, instructional, technical, professional, trade or other literary materials." It is important to note that the term "electronic publishing" does not include any of the out-of-region activities of a Bell company, nor does it include wireless or cellular services, or cable television.

Obviously, Mr. Speaker, this is very important legislation. If this bill is enacted, seven strong competitors will enter into new telecommunications markets, providing a broad range of additional products and services to their customers. This is justified because the boundaries between local service and long distance have blurred and, in some places, the local telephone exchange is no longer a monopoly. We need to provide the Bell companies with incentives to invest in their local networks. This bill replaces judicial oversight of national telecommunications policy with a sensible regulatory structure. At the same time, the legislation protects basic antitrust principles.

Given the lateness of the session and the importance of having this legislation enacted this year, the committees decided to go forward under the expedited procedure of suspension of the rules. It is my hope that the other body will give this important measure serious and prompt consideration. I strongly urge an "aye" vote on the part of my colleagues.

□ 1250

Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank my good friend, JACK BROOKS, for yielding.

Mr. Speaker, I rise in strong support of H.R. 3626. I urge my colleagues to join me in voting for this important piece of legislation. This legislation ends years of bitter and divisive wrangling between industry, between committees in the Congress and between individuals.

The compromise is not the one which I would necessarily sponsor nor that which my dear friend from Texas, Mr. BROOKS, would have sponsored. I want to commend him for the fine way in which he worked with me, express my gratitude and appreciation to him and tell the House that this is an extraordinary example of the cooperation that can exist between industries, communities, and between committees and Members of this body.

The bill we bring to the House today memorializes the compromises, is a fair and balanced bill and deserves the support of the House.

But I would also like to commend the distinguished and able chairman of the Subcommittee on Telecommunications of the Committee on Energy and Commerce, Mr. MARKEY, for his extraordinary leadership in the joint handling of this and the other legislation that will be before this body today. He has held 7 hearings, moved the bill out of the committee expeditiously, and saw to it that it passed our committee with an overwhelming vote. I commend him for his efforts.

Equal gratitude goes to my dear friends, the ranking minority member of the committee, Mr. MOORHEAD, Mr. FIELDS, and Mr. OXLEY, two of the more valuable members of this committee for whom I have great respect.

At this time I would like to again express my thanks to my dear friend, Mr. BROOKS, and engage in a brief colloquy with him.

I want to clarify with my coauthor of the legislation the intent behind those provisions in section 102 concerning the responsibility of the Department of Justice if it seeks to enjoin a Bell company from entering into the business of intra-state interexchange telecommunications services after a State has granted permission to such company under that section.

Does my dear friend the gentleman from Texas agree that the intent behind this provision is to require the Department to seek in its complaint when commencing a civil action not only a permanent injunction but also a temporary or preliminary injunctive relief if it desires to prevent a Bell company from offering the services authorized by the State?

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. DINGELL. I yield to my friend, the gentleman from Texas.

Mr. BROOKS. I thank the gentleman for yielding.

Mr. Speaker, yes, the intent behind those provisions is to require the Attorney General to seek all customary and available forms of injunctive relief as provided under the Antitrust laws and under the Federal Rules of Civil Procedure. Such relief would include temporary restraining orders, preliminary injunctions, as well as permanent injunctions.

Indeed, it is the usual and customary practice of the Department of Justice in antitrust cases seeking to enjoin anticompetitive activity to request preliminary as well as permanent injunctions. In implementing this provision, the Department will proceed in the same fashion under the applicable provisions of section 102 as it customarily does in other areas, such as merger enforcement, and will therefore request preliminary as well as permanent injunctions.

Mr. DINGELL. I thank the gentleman.

Thus, Mr. Speaker, as Chairman BROOKS and I have agreed, section 102 provides that a Bell operating company may provide intrastate interexchange telecommunications service that has been authorized by a State if the Attorney General fails to commence a civil action to enjoin the company

from so doing or brings such a civil action but fails to obtain an injunction. If the Attorney General fails to seek or obtain temporary or preliminary injunctive relief, the Bell operating company can proceed to offer the service pending a trial on the merits in which the court would decide whether or not to issue a permanent injunction.

Mr. Speaker, H.R. 3626 is one of the most important pieces of telecommunications legislation that I can recall coming to the House floor.

Together with its companion bill offered by our dear friends, Mr. MARKEY and Mr. FIELDS and Mr. OXLEY, it will provide a whole new and updated framework for the development and implementation of telecommunications policy. I urge my colleagues to support both of these important bills.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3626, the Antitrust and Communications Reform Act of 1994. This bill is critical because it returns important telecommunications policy authority from the courts to Congress where it belongs and it transfers the powers of overseeing the activities of the Bell operating companies from the Federal courts to the Federal Communications Commission and the Department of Justice.

Since 1984, when the Bell operating companies were restricted from entering various lines of businesses as a result of the consent decree entered into in an antitrust case, the industry has undergone significant changes. As a result of these changes, the restrictions imposed by the consent decree are no longer necessary and now serve as barriers to real competition.

H.R. 3626 sets out the policy standards, limitations, and procedures for the entry by Bell operating companies into previously restricted businesses, including manufacturing, alarm monitoring and long distance as well as the guidelines for providing information services.

These are complicated issues which were carefully considered by the energy and Commerce Committee and the committee reported the bill on a voice vote.

Mr. Speaker, we have all heard and spoken of the benefits the information superhighway will bring. H.R. 3626, together with H.R. 3636, will lay the foundation for the construction of this highway by removing unnecessary regulatory barriers and allowing for competition to flourish.

I am pleased to be a cosponsor of this legislation and urge my colleagues to support H.R. 3626.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield myself such time as required in order to have a couple of colloquies with the distinguished chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL].

Mr. Speaker, I would like to engage the gentleman from Michigan in a brief colloquy on the savings clause inserted into the so-called domestic content provisions of the manufacturing section of the bill as found in section 201. As the gentleman knows, the savings clause was inserted to mitigate any concerns of the Office of the U.S. Trade Representative that these provisions might undermine the international obligations of the United States with respect to bilateral and multilateral agreements entered into with other countries.

Specifically, who will make the determination called for by the savings clause?

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. BROOKS. I yield to the distinguished chairman.

Mr. DINGELL. I thank the gentleman for yielding.

Mr. Speaker, in general, the President and the U.S. Trade Representative have responsibility for carrying out the trade laws and ensuring that our actions are consistent with our international obligations. This language envisions that any determination is subject to review by Federal court.

Mr. BROOKS. I thank the gentleman for this clarification. Mr. Speaker, I would like to engage the distinguished chairman of the Committee on Energy and Commerce in a colloquy regarding the exceptions for incidental services set forth in H.R. 3626.

The bill permits a Bell operating company or an affiliate thereof to provide interexchange telecommunications that are incidental to its offering of other services, such as cable television or cellular radio. The exceptions for incidental interexchange services are intended to be narrowly construed and are not a back door for the Bell operating companies or their affiliates to provide interexchange telecommunications services or their functional equivalents without going through the approval procedures specified in the bill.

Mr. DINGELL. Mr. Speaker, the gentleman from Texas is correct.

Mr. BROOKS. In this regard, the storage-and-retrieval exception would not cover any service that established a direct connection between end users, any real time voice and data transmission, or any service that is the functional equivalent of or substitute for an interexchange telecommunications service.

Only storage-and-retrieval services in which the customer initiates the storage or retrieval of information would be included under this exception. Thus, voice, data, or facsimile distribution services in which the Bell operating company or affiliate forwards customer-supplied information to customer- or carrier-selected recipients would not fall within the exception. Likewise, the exception would not include any service in which the Bell operating company or affiliate searches for and connects with the intended recipient of information, e.g. roving or automatic forward-and-connect services, or any service in which the Bell operating company or affiliate automatically forwards stored voicemail or other information to the intended recipient. For a storage-and-retrieval service to qualify under this exception, the recipient must act affirmatively to initiate the retrieval of the information from the storage facility.

Mr. DINGELL. The gentleman is correct. Storage-and-retrieval services that include the kinds of end-to-end capabilities you have described are, or could become, substitutable for interexchange telecommunications services. A Bell operating company or affiliate wishing to offer such storage-and-retrieval services could seek authorization to do so from the Department of Justice, the FCC, and the appropriate State, as the case may be.

□ 1300

Mr. BROOKS. Mr. Speaker, that is correct, and I want to thank the gentleman from Michigan [Mr. DINGELL] for this colloquy.

Mr. Speaker, I reserve the balance of my time.

Mr. FISH. Mr. Speaker, I yield 4 minutes to the gentleman from Wisconsin [Mr. PETRI].

Mr. PETRI. Mr. Speaker, it is hard to imagine a subject more consequential to the future of the American economy than that of regulation—or deregulation of telecommunications. The ability of companies in this field to compete and collaborate freely, with a minimum of Government second-guessing and direction, is vital to American leadership in high technology.

It is also hard to imagine, therefore, any subject less fit for the suspension calendar than this one. The law we pass here, if we do not fully explore its provisions and consider its potential costs, will be a law operating in subordinance to that other and eternal law of this place—the law of unintended consequences. Have the Members so exhausted themselves with study and debate on the issues raised by H.R. 3626 and H.R. 3636 that they are already prepared to put their names down in support of it? I do not think so.

I know the sponsors worked hard on these bills. I know they mean well and feel they have done the best they can. But these bills were produced in their present written form only this past weekend; they are complicated and lengthy—almost 200 pages.

Of much greater concern, their sweeping economic provisions appear

to constitute what Bruce Chapman of Discovery Institute, in a Washington Post article yesterday, called a Rube Goldberg industrial policy—that is—sure to make the public as well as the business community unhappy before long.

How many Members could stand up here and discuss these many provisions, let alone debate them?

How many of us are prepared to be grilled about these bills by our constituents this fall if awkward questions are raised?

People involved in technology often are not people involved in politics—until, that is, they figure out what their elected officials have done to them. That is beginning to happen on these bills. For example, the Internet is busy with conjecture about the haste with which this weighty subject is being addressed by the House.

For example, on a telecom electronic roundtable called the Federal Information News Syndicate, Vigdor Schreibman, editor, reported the following yesterday:

> A number of citizens have expressed outrage that such an important legislative initiative that will change the global civilization would go to a vote without adequate consideration of the language of the measures.* * *

I could have told Mr. Schreibman that I personally have heard similar reactions—amounting to incredulity—around this building, too.

One of the Nation's top experts on telecommunications policy, George Gilder, told several of us the other evening that he was appalled that so serious and sobering a set of measures might be adopted with so little understanding and discussion by this body. The results could be disastrous.

Privately, many of the lobbyists on various sides of these measures also acknowledge that this is very seriously flawed legislation with the potential to backfire upon its supporters, however well-intentioned. Remember the Cable Act of 1992, which among other unintended consequences is giving us higher rather than lower rates in many areas and knocking C-SPAN off of the sets of millions of Americans?

Remember catastrophic health insurance—a different sort of topic, except for the common feature of an inordinate rush to passage?

What shall we tell the mayors, county commissioners, and other local officials who are protesting these bills? The National League of Cities, the U.S. Conference of Mayors, and the National Association of Counties have all urged a "no" vote because they say that—

> The bill, as drafted, virtually gives away local authority over local infrastructure, and does so without real or monetary compensation to local communities.

Maybe they are wrong, but how will we be able to explain our position to them if we have not even debated this bill?

Most importantly, what about the theme of reregulation that runs through these bills, even while they pretend to deregulate? In a dynamic field like high technology, which is doubling its costs effectiveness every year and is seeing the entry of scores of new and often unexpected competitors, why is this body about to endorse a return to railroad era monopoly control models? I would think that any friend of the market economy would be very cautious about heading down such a path.

Why instead do we not follow the more contemporary models of computers and software? In these models, it is the relative absence of Government controls and regulation that has allowed the United States to soar ahead of the whole world and has reinvigorated an otherwise somewhat anemic economy. Renewed monopoly is the wrong model for an economy where wireless communication, satellite, all optical fiber networks and other technologies are all coming on line to compete with the cable and telephone companies.

Do we really want to kid ourselves and our constituencies into believing that this body—with so little discussion before and no debate at all—is ready to second-guess not only the market but the technology itself and to design a whole new, heavily regulated, and indirectly taxed telecommunications regime for America?

I do not pretend to any expertise of the subject of high technology, but I do know something about the House of Representatives. And I think I know something about what the voters expect from us. They expect us to deliberate upon the great and weighty and historic issues of the time. At times like this they do not expect us to surrender our judgment.

Let us have these bills properly discussed and properly debated. They are too important to the future of our country and its economy to be dispatched without such care and attention.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. MARKEY], the distinguished chairman of the subcommittee, with thanks for having handled this bill so well.

Mr. MARKEY. Mr. Speaker, I rise in support of H.R. 3626, the Antitrust and Communications Reform Act of 1994.

This bill, which was approved unanimously by both the Subcommittee on Telecommunications and Finance and the full Committee on Energy and Commerce, coupled with H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994, represents the most comprehensive communications legislation brought to the House since the original Communications Act of 1934. This bill represents a carefully crafted compromise by the Energy and Commerce and the Judiciary Committees to balance the important regulatory and antitrust issues facing the telecommunications industry today. This compromise encompasses a myriad of different interests and perspectives both public and private—both in and out of Congress. Furthermore, this bill embodies countless hours of work on proper telecommunications reform by Congress over the last several years. The dawn of the Information Age has come and this bill will ensure that it is an age marked by fair competition and consumer protection.

It was Samuel Morse in 1844 who raised the curtain on the Information Age with a telegraphic message sent from Baltimore to Washington. Morse was an inventor, but he had the instinct of a talk show host. With a series of electric blips he asked Washington this question, "What hath God wrought?"

One hundred and fifty years later, we meet on the House floor to ask a less cosmic, but still compelling, question. "Whither the Information Age?"

God hath wrought the most innovative, competitive, remarkable industry in the world today, and we in Congress have the responsibility for accelerating this unrivaled capacity for reinvention and growth. The jobs of the future, the hopes of our children for expanding opportunities and a better life, ride on the passage of these bills today.

If we pass this bill, Congress will send its own message to the world, not in Morse Code, but in plain English over miles and miles of tiny strands of glass and digitally-compressed spectrum. We will send the message that America is placing its hopes and dreams in the ingenuity of its information entrepreneurs, and it is confident of its future.

H.R. 3626 lifts many of the restrictions placed on the Bell companies in the so-called modified final judgment [MFJ], a consent decree struck between AT&T and the Justice Department in 1982. The bill frees the Bell operating companies to compete in businesses from which they were previously barred under the consent decree, after winning State and Federal approval. For the past 12 years a single district court has carried the burden of shaping the development of communications law and the communications industry, simply by adjudicating the AT&T consent decree. This bill culminates a long effort over that time to set forth a comprehensive national policy on how telephone companies should participate in the future of the communications world. Now, rather than place the onus of deciding the evolution of the communications industry in the hands of the court, the Federal Communications Commission and the Department of Justice will serve as the guiding

legal and regulatory arms in determining the Bell companies' role in the Information Age.

Specifically, the Antitrust and Communications Reform Act of 1994 allows the Bell companies to enter the long distance and manufacturing businesses at certain junctures and sets new safeguards for their participation in the provision of information services.

In the long distance market the act would allow the seven regional Bell operating companies to enter various long distance markets over time as long as permission has been granted by the Justice Department and the Federal Communications Commission. In particular, the Bells would be permitted to enter four submarkets:

In the intrastate long distance market the bill grants authority to the State to regulate the provision of long distance service. Thus, a State would have the authority to decide whether a Bell company may enter the long distance business for the purpose of providing long distance service for calls that originate and terminate in the same State. The Department of Justice is granted 90 days to review any decision made by the State to grant service in this market.

In the interstate long distance market, H.R. 3626 permits the Bell companies to petition the Department of Justice and the Federal Communications Commission to utilize their own networks to provide interstate long distance service throughout their service region. The Department of Justice and the Federal Communications Commission would have to find that there is no substantial possibility that a Bell company could hinder competition by offering the service in order to block them from doing so.

Third, the bill allows the Bell companies to petition the Justice Department and the FCC to provide interstate resale services 18 months after the date of enactment. This provision permits a Bell company to purchase, in bulk, and resell to subscribers on a retail basis, capacity on networks owned by other carriers.

Finally, H.R. 3626 allows the Bell companies, 5 years after enactment of the bill, to petition the FCC and the Department of Justice to build and operate networks outside of their regions.

H.R. 3626 also sets important new guidelines for the regional Bell operating companies' participation in the provision of information services. Specifically, the act contains significant safeguards in the industries of electronic publishing, alarm monitoring, and burglar alarm services.

In providing electronic publishing services, a Bell company would only be permitted to engage in electronic publishing through a separate affiliate or joint venture. Such separate affiliates or joint ventures would maintain books, records, and accounts separate from its affiliated Bell company. Bell companies must provide to any separate affiliate all facilities, services, or information available to unaffiliated entities on the same terms and conditions. All of these rules would expire in 6 years.

Most significantly, the legislation puts in place much-needed privacy protections for American consumers in this area by: First, prohibiting any common carrier from providing customer proprietary network information [CPNI] to any other person unless it is expressly permitted. And by second, developing a "privacy bill of rights" for all communications media to protect consumers whenever they use electronic networks. The three core principles of the privacy bill of rights, which the FCC will regulate with the flexibility to promulgate additional protections in a technology-specific manner as warranted, are as follows: First, consumers get knowledge that information is being collected about them; second consumers get notice that the recipient intends to reuse or sell that information; and third consumers have the right to say "NO" and curtail or prohibit such reuse or sale of personal information.

While the consent decree served a necessary purpose over the last 10 years, and the diligence of Judge Greene deserves note, it no longer serves the public interest at this dynamic time in the evolution of the communications industry. With expert agencies such as the Department of Justice and the Federal Communications Commission allowed to administer a new Federal policy, a policy which will promote competition and innovation while protecting consumers, America will ensure its preeminence in this quickly evolving telecommunications marketplace. The Antitrust and Communications Reform Act of 1994 will open up markets to help establish a competitive, fair, and ever-growing information infrastructure while providing necessary safeguards to protect competition and consumer interests. I urge all Members to join me in supporting this critical legislation.

Mr. MOORHEAD. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. FIELDS], the distinguished ranking member of the subcommittee.

Mr. FIELDS of Texas. Mr. Speaker, I rise in strong support of H.R. 3626, the Antitrust and Communications Reform Act of 1994. This legislation removes barriers to entry imposed on the Bell Telephone companies as part of the 1982 court decision to divest local telephone service from AT&T. While those prohibitions might have made sense 10 years ago, they increasingly have little relevance in the rapidly changing and evolving telecommunications landscape we see today.

H.R. 3626, which has been sponsored by the chairman and ranking members of both committees that have jurisdiction over it, as well as the Telecommunications Subcommittee chairman and myself, sets out the ground rules for Bell company entry into long distance, information services, and telecommunications equipment manufacturing. The bill recognizes that the Bell companies enter these markets from a historic, if somewhat crumbling, position of monopoly in the local telephone market.

For that reason safeguards, both structural and nonstructural, are necessary to ensure that the threat of discrimination and cross-subsidies remain just that—a threat, not a reality.

Mr. Speaker, I want to commend the primary sponsors, the gentleman from Michigan [Mr. DINGELL], the gentleman from Texas [Mr. BROOKS], the gentleman from New York [Mr. FISH], and the gentleman from California [Mr. MOORHEAD] for their perseverance and hard work in ensuring that the delicate and the careful balance needed in this legislation has been struck and that after our conference with the Senate that every segment of the industry affected by this legislation will be in a more competitive, a more strengthened, position, and once again I want to commend the sponsors of this initiative for their hard work.

I urge all of my colleagues to support the passage of this legislation, and I say, particularly to my Republican colleagues, this is a deregulatory, procompetitive piece of legislation, a piece of legislation that should be supported by both sides of the aisle of this particular House.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. EDWARDS], the ranking member of the Committee on the Judiciary.

Mr. EDWARDS of California. Mr. Speaker, I rise today in support of the compromise version of H.R. 3626, the Antitrust and Communications Reform Act. I commend my chairman, JACK BROOKS, and Chairman DINGELL for their work in drafting a bill that will foster continued growth in the U.S. telecommunications market.

I especially want to express my support for the provisions of H.R. 3626 which maintain the Justice Department's authority to review all potential entries by the regional bell companies into the long distance and manufacturing markets. Since we are allowing the regional phone companies, which operate currently as virtual monopolies in their service areas, into new markets, we must have in place safeguards against any abuse of such market power. The Justice Department's antitrust expertise will be put to good use in making certain that consumers will always have the benefit of true competition.

Again, I commend my fellow members of the Judiciary Committee as well as the members of the Energy and Commerce Committee for their work on this bill, and I urge my colleagues to vote for H.R. 3626.

Mr. Speaker, the gentleman from Michigan [Mr. BONIOR], referred to a 1993 WEFA study

funded by the regional Bell operating companies. This study purports to show dramatic job growth and other economic benefits if current antimonopoly rules restraining the RBOC's are lifted. Among the claims are 3.6 million new jobs nationally, an increase in the GDP of $247 billion, a reduction in the Federal budget deficit of $150 billion, a $33 billion improvement in the U.S. balance of trade and a full 1 percent reduction in both the inflation rate and long-term interest rates over 10 years. This "economic miracle" includes an assumption of $490 billion savings for American consumers in long distance alone. Forecasts like these are especially incredible given the fact that the long distance market which the RBOC's desire to enter produced only $59 billion in annual revenue in 1992, the most recent year for which full data are available.

My concern is that these unbelievable forecasts were developed by using unbelievable assumptions, which have little or no basis in fact. For example, BellSouth forecasts a potential BellSouth price of $.37 for a 5 minute long distance call from Kingsport, TN, to Washington, DC. Comparing this hypothetical price to a price of $.99 for AT&T, they claim a dramatic 63 percent savings. Since the Bell companies currently charge AT&T approximately $.45 for local access costs, it's hard to understand how BellSouth could assume a charge of only $.37 for this call, less than their own charges.

A general assumption in the analysis is that long distance rates would be reduced by 50 percent immediately upon RBOC entry. The report fails to explain how this would be accomplished. The long distance market is already competitive, with studies showing a 66 percent decline in real rates since 1984. Further, with local access costs amounting to $.45 of every long distance dollar, it is hard to imagine what miracles the RBOC's could perform to reduce the remaining $.55 to $.05. Only two possible explanations come to mind. The RBOC's could discriminate against long distance companies by failing to include long distance access costs in their own rates, or the RBOC long distance could be priced absurdly low with the lost revenue made up by higher local telephone rates.

The RBOC's also assume that average real telecommunications service prices will fall by 42 percent over the 10-year period. Again, no basis for this assumption is established. It is also in sharp contrast to actual RBOC increases in local telephone rates during the past 10 years.

Finally, the RBOC's portray this questionable report as a finding of WEFA [Wharton Econometric Forecasting Associates], a leading international forecasting firm. In fact, WEFA, under contract, simply provided the RBOC's with access to its econometric computer model of the U.S. economy. This computer model forecasts results based exclusively on whatever set of assumptions is supplied. In this case, assumptions were supplied by the RBOC's and their consultants. The results, of course, are equally questionable. WEFA performed no independent analysis of the RBOC's assumptions.

Mr. Speaker, a better analysis of the long distance industry was prepared by Stanford Prof. Robert E. Hall and his group, Applied Economics Partners of Menlo Park in my California district. A summary of that study, Long Distance: Public Benefits From Increased Competition, follows:

EXECUTIVE SUMMARY

Important structural changes have taken place in the long-distance industry in the last two decades. The industry has moved from a tightly regulated monopoly to active competition among a number of rival firms. Key steps in the transition were:

The establishment of the legal right to compete with AT&T,

The structural separation of local and long distance accomplished by divestiture of the Bell System in 1984, and

The requirement of equal access by local telephone subscribers to alternative long-distance providers.

Economic analysis predicts that enhanced competition will drive prices down to a new, lower level. Lower prices are a primary way that the public benefits from pro-competitive policies. After the transition to lower prices, competition delivers continuing low prices. These predictions aptly describe actual events in long distance:

Between 1985 and 1988, according to government price indices, the price of long distance relative to the general price level fell by 30 percent.

Between 1988 and 1992, the price fell by about another 17 percent.

The average revenue per minute earned by the three largest carriers fell 63 percent relative to the general price level from 1985 to 1992.

Net of access charges paid to local telephone companies, the revenue per minute of the three largest long-distance carriers fell by 66 percent between 1985 and 1992 after adjustment for inflation.

Since 1989, AT&T's price for regular long-distance calls has fallen by three percent per year net of access charges, after adjustment for inflation.

The transition to competition has also seen a remarkable growth in the quality, variety, and technical capabilities of long-distance services:

Reductions of noise, cross-talk, echoes, and dropped calls have made the usefulness of one minute of telephone conversation rise at the same time that the price of that minute has fallen.

Fiber optics now carry the bulk of long-distance traffic, at lower cost and higher quality than the earlier microwave technology. The transmission speed of state-of-the-art fiber has doubled every three or four years since fiber was introduced.

Long-distance carriers have led the way in digital switching and common channel signaling.

The long-distance industry has developed software methods for providing efficient private network services for large businesses, using common physical facilities.

The industry has created innovative new types of long-distance service to improve the efficiency of communication for consumers and businesses, large and small.

Competition has worked in long distance because the nature of the product and the technology for producing it are suited to competition and because regulation has fostered conditions conducive to competition:

The success of equal access has shown that it is practical and effective to give every telephone user free choice among long-distance carriers.

No customer is a captive of a long-distance carrier. If one carrier provides poor service or overprices its products, the customer can easily switch to another carrier.

There are no artificial barriers to entry in long distance. Although it would be expensive to reproduce an entire national network of the type operated by AT&T, MCI, and Sprint, that investment would pay off if there were much overpricing of service by those national carriers. Moreover, effective entry could occur without construction of any new networks, by leasing capacity from owners of subnational fiber networks and by reselling services from other carriers.

An important part of the evidence that competition has worked in the long-distance market is the lack of monopoly profits among the carriers. The return on assets by the three largest carriers recently has been below the rate of return allowed by regulators for local telephone service.

Proposals have been made to lift the line-of-business restriction and thus permit the Regional Bell Operating Companies [RBOCs] to control long distance carriers. That move would be harmful to long-distance customers because:

The principle of separate ownership of local and long-distance service is sound as a matter of economics; it is the most effective way to ensure reliable, efficient long-distance service and to give customers a free choice among long-distance carriers.

RBOC entry would not increase the number of long-distance carriers in the long run.

Experience has shown that regulators cannot prevent all the methods that a local carrier can use to reduce the efficiency of its rivals and to divert business to its own competitive service, when that service is dependent on the local telephone network. This danger is particularly important for long distance.

Regulation also cannot guarantee that costs for a competitive business, such as long distance, are not reported as costs of a related regulated monopoly business, such as local service.

Overall conclusions from this review of the structure and performance of the contemporary long-distance industry are:

The active competition made possible by divestiture in 1984 rapidly drove prices downward.

Price declines have continued because of rapid productivity growth and declining costs.

Prices have declined by much more than just the decrease in access charges.

Competition has proven a highly effective policy approach for the long-distance industry.

Permitting the RBOCs to control long-distance carriers would clearly be harmful. The line-of-business restriction on long distance is sound policy.

In addition, Mr. Speaker, I would note that, section 102(c)(3) provides for an exception to the general rule that the Bell operating companies may not provide interexchange telecommunications without DOJ and FCC approvals. This provision grants authority to provide incidental long distance for the purpose of providing commercial mobile services. Such an exception should not be viewed as a "blank check" to provide long distance telecommunications services without proper review and oversight. Rather, the bill is intended to authorize a subset of long distance telecommunications services that are in incidental to the provision cellular radio or other wireless services. Nothing in this "incidental services" exception should be understood to limit the

authority under existing law of the Federal Communications Commission, the Department of Justice, or other appropriate body to regulate or condition Bell operating company provision of these services to protect the public interest or to prevent anticompetitive conduct. In particular, section 108(a) of the bill should be understood explicitly to authorize the Federal Communications Commission to adopt such appropriate conditions and safeguards. In this regard, I note that the Department of Justice has recently proposed some safeguards that should accompany Bell operating company provision of wireless long distance services in connection with a pending MFJ waiver request.

□ 1310

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. WASHINGTON].

Mr. WASHINGTON. Mr. Speaker, I thank the chairman of the committee for yielding time to me.

I thank the gentleman and also the chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], for their hard work in putting this legislation together. I am pleased to give the legislation my strong support.

Mr. Speaker, I rise in support of the motion to suspend the rules and adopt H.R. 3626. This bill is the result of an enormous effort by Chairmen JACK BROOKS and JOHN DINGELL. As leaders of two great committees of this House, on which I am privileged to serve, the chairmen have shown extraordinary skill and wisdom in moving this measure to the House floor. I urge its adoption.

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Oklahoma [Mr. SYNAR], chairman of the subcommittee.

Mr. SYNAR. Mr. Speaker, I rise today in support of H.R. 3626, the Antitrust Communications Reform Act of 1994.

Since the Industrial Revolution, our country has benefited from the marriage of technology and the free market to achieve two key goals: First, ensuring the economic prosperity of our citizens; second, maximizing the quality of our citizens lives.

I maintain that telecommunications reform, if it is to truly serve the public interest, must rely on three classic regulatory concepts: First, an across-the-board competitive entry test; second, adequate post-entry competitive safeguards; and third, vigorous, well-financed enforcement of the competitive marketplace.

Let me state what we all know: competition works. The bill we ultimately adopt must give competition a proper chance to work for the benefit of all consumers.

One final important note. This bill will further propel growth in the telecommunications industry and that means both jobs and consumer benefits for our Nation. That is good news for my constituents in Oklahoma and all Americans.

Mr. Speaker, I rise today in support of H.R. 3626, the Antitrust Communications Reform Act of 1994. Since the Industrial Revolution, our country has benefited from the marriage of technology and the free market to achieve two key goals: ensuring the economic prosperity of our citizens while maximizing the quality of their lives. Over the last decade, we have witnessed the growing power of the telecommunications industry in our economy, to the tune of nearly $300 billion in revenue this year, and seen the innovative, and sometimes mind-bending application of this technology in our schools, libraries, hospitals, and homes.

This bill will further propel our Nation's telecommunications progress, and it is good news for my State of Oklahoma. We estimate this legislation will create 3.6 million new jobs for metal, factory, and construction workers. Oklahoma is well-positioned, both geographically and with its workforce, to lead the way as a high-technology, high-wage State in a dynamic global economy that now depends on information technology. I know that by the year 2000, these jobs will anchor communities in northeastern Oklahoma, transforming the job base and helping our young people to get a solid start on their future.

As Congress wrestles with the challenge of overhauling our telecommunications policy, we must not forget the policies and principles that made us a world leader in this industry. For more than 80 years, the antitrust laws have interacted with telecommunications regulatory policy to ensure product and service diversity and price competition to the benefit of consumers. The dual roles for antitrust law and communications law must be preserved and strengthened if we are to advance our Nation's telecommunications industry into the next century.

I have maintained that any reform legislation, if it is to truly serve the public interest over time, must rest on three classic regulatory concepts: an across-the-board entry test, adequate safeguards, and vigorous enforcement. Let me address each of these in the context of H.R. 3626. First, I am pleased that this legislation acknowledges that the Department of Justice has a critical role to play in ensuring that the playing field is level and that competitors compete fairly. By applying the competitive entry test across-the-board to all lines of business, we have codified a tough antitrust standard that must be met before new markets can be opened to players that could use their monopoly power to their competitive advantage.

However, I am concerned that the sequencing of the review process in this legislation is less than desirable if we are to guarantee that consumers benefit immediately competition in the local loop. Currently, the regional Bell operating companies' lock on the local exchange prohibits effective competition. We have seen instances when RBOC's delay competition by denying access to the switch, overcharging for the use of their facilities, and cross-subsidizing local service from monopoly revenues. This bill, while it applies the right standard to judge the potential impact of the regional Bell operating companies' entry into a market, uses that standard as a backstop instead of a threshold test to forestall competitive harm. I look forward to working on this aspect of the bill as we move through conference toward final passage.

Second, I recognize that the bill contains post-entry safeguards to protect certain segments of the telecommunications industry from unfair and rapid encroachment by monopoly firms that could rapidly dominate the market. These safeguards, including extended waiting periods for certain lines of business, both separate subsidiary and separate affiliate requirements, restrictions on the use of Consumer Proprietary Network Information, certain joint activities, and teaming and business arrangements. However, as I expressed during hearings on this subject with representatives of the electronic publishing and alarm industry, safeguards that are deemed right and fair for specific segments of the industry should be applied to all. I believe Senator HOLLINGS' bill, currently under review in the Senate, addresses this issue in an equitable manner.

Third, I am heartened that this legislation actually includes a mechanism through which we can guarantee that its enforcement will be carried out over time. This is no small task. The FCC currently has only approximately 18 auditors to cover 256 audit areas. An amendment I successfully offered during committee consideration of H.R. 3626, allows the Federal Communications Commission to use its authority under the 1993 Omnibus Budget Reconciliation Act to collect fees for the express purpose of beefing up its auditing functions and cost allocation tracking efforts. We need to provide the Commission the right tools and resources to get the job done, and this amendment is the first step in this process.

I would also like to say a word about the term "affiliated enterprise," a term used in the MFJ to describe the full range of business relationships—including contractual relationships—that can create vested interests and thereby give rise to monopolistic temptations. I am pleased that the bill before us today follows the bill reported by the Judiciary Committee by incorporating this crucial term throughout the legislation's entry test provisions. Although the bill does not include a technical amendment passed unanimously by the full committee that would have alerted readers to the full meaning of the term in the statute itself, the Judiciary Committee report fully explains the term.

Just as this term is not explicitly defined in the bill before us today, it is not explicitly defined in the MFJ. Instead, the meaning of this term is explained in the case law—specifically, in *United States* v. *Western Electric Co.,* Civil Action No. 82–0192 (D.D.C. Jan. 21, 1992), *aff'd,* 12 F.3d 225 (D.C. Cir. 1993).

I am also pleased that the Attorney General's authority to enjoin entry into intrastate interexchange telecommunications services and the resale of interexchange telecommunications services as provided in section 102(b)(2), section 102(b)(3) and section 102(d)(1) contemplates the full range of injunctive authority. In order for H.R. 3626's entry test to properly protect telecommunications consumers, the Department of Justice must have available the full complement of injunctive remedies to ensure that there is no substantial possibility that those who seek to

enter the long distance telephone business could use their monopoly power to impede competition in the markets they seek to enter. Any other reading of the Attorney General's injunctive authority would be inconsistent with the plain language of the bill, the clear intent of the Congress, and the traditional law enforcement role of the Attorney General.

Lastly, I would like to express my disappointment about the nature of the debate we have had over the last 6 months on this legislation. While I commend the two chairmen and the ranking members for the depth and quality of the hearings held, I am disturbed by the lack of participation by Members from both sides of the aisle in the actual formulation of the legislation we have today. Congress can accede to its duty to make decisions only if we have an open, deliberative process that informs the final debate over the letter of the law.

Finally, let me state what we all know: competition works. The bill we ultimately adopt must give competition a proper chance to work for the benefit of all consumers. I look forward to participating further in these issues as we move toward final passage of the legislation.

Mr. FISH. Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. BONIOR], our distinguished majority whip.

Mr. BONIOR. Mr. Speaker, I rise in strong support of H.R. 3626, the Antitrust and Communications Reform Act of 1994. I would like to commend the chairmen of the Judiciary and Energy and Commerce Committees, Mr. BROOKS and Mr. DINGELL, and also Mr. FISH and Mr. MOORHEAD, for delicately crafting the legislation before us today.

Nearly 1 year ago, I submitted to the House a study by the Wharton Econometric Forecasting Associates Group predicting that 3.6 million new jobs would be created over the next 10 years if the manufacturing and long distance restrictions were lifted on the regional Bell companies.

Over that period, the study found that $247 billion would be added to our gross domestic product. In addition, consumers would save more than $30 billion from reduced local and long-distance telephone rates.

The study still makes sense today and H.R. 3626 makes complete sense now. Through this legislation, we can rebuild the framework to support America's communications needs well into the 21st century, stimulate the economy, create millions of high quality jobs, reassert our international competitiveness, and provide a strong future for our children.

Mr. Speaker, H.R. 3626 is an excellent bill whose time has come. I urge my colleagues to vote "yes" on its passage.

Mr. MOORHEAD. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Ohio [Mr. OXLEY], who has been very active on this legislation.

Mr. OXLEY. Mr. Speaker, I rise in strong support of the Antitrust and Communications Reform Act of 1994. I wish to commend Chairman DINGELL and our ranking Republican, Mr. MOORHEAD, for their indispensable leadership, and I want to thank our colleagues on the other committee of jurisdiction for their efforts as well.

As Members know, the Brooks-Dingell-Fish-Moorhead bill sets the terms for the Bell companies' entry into long-distance service, manufacturing, and information services. I have sponsored legislation to allow the Bells to enter manufacturing in years past, and I support allowing Bell provision of long-distance service today. What I want to stress to my fellow Republicans is that this is essentially deregulatory legislation, and as such can only serve to expedite the development of the information superhighway. The concept of a more competitive telecommunications marketplace is one that all Republicans can heartily endorse.

What I want to stress to the House and to the public at large is the bipartisan nature of support for this measure, as evidenced by the decision to place the bill on the suspension calendar. While there may be a few issues that I would have resolved differently—chief among these being the domestic manufacturing and content provisions—I am pleased to say that the majority has been quite open to Republican ideas overall.

One example of this was the acceptance in full committee of an amendment I offered regarding the imputation of access charges. Today, long-distance carriers pay access charges to local telephone companies or their competitors in order to reach customers. The Oxley-Barton amendment will require the regional Bell companies to pay a nondiscriminatory access charge when providing long-distance service.

Regarding domestic content, while I feel that these provisions are protectionist and I would have preferred that they be removed from the bill altogether, I do believe that they have been improved significantly following input from the U.S. Trade Representative, and I am hopeful that they will be further improved in the Senate and in conference.

Mr. Speaker, I include with my remarks a letter on this subject from the U.S. Trade Representative, Ambassador Kantor, as follows:

U.S. TRADE REPRESENTATIVE,
Washington, DC, June 13, 1994.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR CHAIRMAN DINGELL AND CHAIRMAN BROOKS: I am pleased that, with the capable help of your staff, we were able to address the concerns that I expressed about H.R. 3626 in my letter to Chairman Dingell and Chairman Markey in February. I believe that the language agreed upon will resolve the difficulties presented by the domestic manufacturing and content provisions in the bill and enable us to carry on with our trade agenda.

As I have repeatedly stated, that agenda includes expanding job opportunities for U.S. workers by bringing down barriers to U.S. exports. In the telecommunications sector, United States worldwide exports increased by 24% in 1993, to a record total of $9.7 billion. These exports are mainly high-end, sophisticated equipment in which United States companies and workers are world leaders. We are making this progress because of the competitiveness of U.S. companies and workers, as well as through bilateral and multilateral agreements and by enforcing our existing agreements.

In this context, the acknowledgment of our international obligations now included in H.R. 3626 is important for our continued progress in opening foreign markets.

Please thank your staff for their hard work in resolving this issue.

Sincerely,

MICHAEL KANTOR.

In any case, Mr. Speaker, I do not feel that the domestic content conflict should be a barrier to passage of this landmark legislation, the most important rewrite of telecommunications law in 60 years. I urge all Members to support the bill.

The SPEAKER pro tempore (Mr. MONTGOMERY). The Chair wishes to inform the Members that the gentleman from Texas [Mr. BROOKS] has 2½ minutes remaining, the gentleman from New York [Mr. FISH] has 2 minutes remaining, the gentleman from Michigan [Mr. DINGELL] has 3 minutes remaining, and the gentleman from California [Mr. MOORHEAD] has 4 minutes remaining.

Mr. MOORHEAD. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Speaker, I rise in support of the substitutes to both H.R. 3626 and H.R. 3636. The 1934 Communications Act has served us well, but it is clearly time to make some changes. Technology has advanced dramatically over the past 60 years. Our predecessors in the 73d Congress could not have imagined the present state of telecommunications—pocket phones, wireless fax machines, electronic mail. Both substitutes to H.R. 3626 and H.R. 3636 address the future telecommunication needs of our Nation. Passage of these bills will help us build the information highway of the 21st century.

I commend the authors of this legislation for writing law which delicately balances the various interests and concerns of the telecommunications industry. Nevertheless, I must express concern with provisions in H.R. 3626 requiring regional Bell operating companies [RBOC's] to conduct all of their manufacturing in the United States and use at least 60 percent domestically produced components in their manufacturing.

For legislation which is generally forward looking, such domestic manufacturing and content restrictions are uncharacteristically protectionist. Concerns that the restrictions violates the terms of the North American Free-Trade Agreement [NAFTA] and the General Agreement on Tariffs and Trade [GATT] have been only slightly allayed by a waiver in cases where it's determined to be inconsistent with any multilateral or bilateral agreement to which the United States is a party. But the bill does not specify who or what government entity is responsible for determining whether or not this situation exists.

If this provision becomes law, it is likely to be challenged in court, a process which could drag on for years. Our international competitors would use the opportunity to establish similar standards, thus closing the door to U.S. exports of telecommunications equipment. The real effect of this provision is to isolate U.S. telecommunications manufacturers, a dull-knife approach to international competition. I would hope that we can resolve this issue if not in the other body, then certainly in conference.

The substitute to H.R. 3626 also takes a necessary first step toward addressing serious concerns about RBOC maketing practices for enhanced services, such as telemessaging. In addition to requiring the nondiscriminatory offering of telecommunications services and facilities associated with a carrier's telemessaging operations, these provisions would also prohibit cross-subsidization between telephone exchange service and telemessaging. It is my understanding that this cross-subsidization restriction would serve to prohibit the exchange of funds as well as valuable information between affiliated telephone and telemessaging operations. While I believe these provisions are a good start, stronger safeguards are needed to ensure a level playing field in the telemessaging market.

Telemessaging bureaus provide telephone answering services to the American public which ensure that important and even critical information is relayed to medical personnel and other customers 24 hours a day. This industry has been providing the public with, and has helped to develop, the latest telecommunications technology for over 50 years. There are approximately 3,000 telemessaging service bureaus operating nationwide serving some 1 million customers. The majority of these small businesses are female-owned and employ less than 20 people.

Stronger provisions that provide specific safeguards on the RBOCs' ability to joint market telemessaging and other services, to use customer proprietary network information, and to cross-subsidize among services will help ensure long-term competition in the telemessaging market. Such provisions are essential to permit independent providers of enhanced services to continue to pursue a livelihood and to allow small businesses to play a viable role in the creation of the Nation's information super highway. I appreciate the willingness of Chairman DINGELL to work with ranking Member MOORHEAD and me on this issue. But it is my hope that as this legislation moves toward enactment there will be an opportunity for such stronger measures to be added.

I wish to thank Mike Regan, of the minority staff, and David Leach of the Chairman's staff, for their help in reaching a level of agreement on the telemessaging amendment to H.R. 3626. I support H.R. 3626 and urge my colleagues to support it as well.

As an original cosponsor of H.R. 3636, I strongly support its passage. I would simply add my thoughts regarding an amendment which was adopted during the full Energy and Commerce Committee markup. My amendment, which I offered at the request of the gentleman from California [Mr. HUNTER] addressed the problem of signal leakage associated with pay-per-view cable programming, specifically adult pay-per-view programming. Earlier this year, we were made aware of cases where cable subscribers who had not purchased adult pay-per-view programming were still receiving partially scrambled video signals and full audio signals over the designated channel setting. Mr. HUNTER and I wish to ensure that both the audio and video signals for obscene or indecent programming are effectively and entirely blocked. H.R. 3636 provides for such safeguards by requiring the FCC to issue new rules on this matter. Furthermore, the bill reinforces the 1984 Cable Act provision regarding blocking devices which parents can use to control viewing of cable service by requiring cable companies to regularly inform subscribers of their right to request and obtain this equipment.

Adult programming is in many cases a profitable line of business for cable operators. It is, however, also programming which is offensive to many cable subscribers. The amendment that I have drafted and which has been included in this legislation allows cable operators to provide adult programming to those cable subscribers who desire it, but protects those cable subscribers who do not wish to receive adult programming from receiving any type of audio or video signal.

I would like to thank Chairman MARKEY and his staff and ranking Member FIELDS and his staff for their assistance on the signal leakage language. In particular, I would like to thank Cathy Reid, of the minority staff, for her invaluable help in reaching a final solution to this issue.

In conclusion, though I have expressed concerns regarding domestic content and telemessaging services in H.R. 3626, I urge its passage. I am pleased with the changes that have been made in H.R. 3636 with respect to the issue of signal leakage, particularly of adult programming or pornography on cable television. I urge passage of H.R. 3636.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to my distinguished friend, the gentleman from Louisiana [Mr. TAUZIN], who has been extremely helpful in getting this legislation to the point where it is today.

Mr. TAUZIN. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, let me remind our friends that the chairman of our subcommittee, the gentleman from Massachusetts [Mr. MARKEY], quoted Mr. Morse, who at the beginning of the telecommunications age in America, asked: "What hath God wrought?"

For the last 10 years the question has been: What have the Federal courts and Judge Green wrote? Because telecommunications policy has not been in the hands of the people of the United States through this legislative body; it has been in the hands of the Federal courts.

This enormous effort today, remarkably coming up under suspension, by broad bipartisan agreement, with the remarkable work of many of our committees, particularly the Committee on the Judiciary and the Committee on Energy and Commerce, for which the two chairmen deserve enormous credit, is remarkable by the fact that we have come together and for the first time in so many years decided to return telecommunications policy back to the House where the people govern, and we are doing it in a way that opens up competition, not just across lines drawn on a map artificially by judges years ago. We are opening it up also in the local loop so that cross competition will benefit no one else in America no more importantly than the consumer.

The consumer is the big winner today. The process by which we govern here is a big winner today. The American people are the big winner today when telecommunications policy is returned to this body and when for the first time we open up the great possibilities for the information super highway.

Mr. FISH. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. BLILEY].

Mr. BLILEY. Mr. Speaker, I thank the gentleman for yielding time to me.

Today we are considering important legislation. For too long the entire debate surrounding the information highway has gone on without congressional action. With Congress on the sidelines, we have watched the courts and the regulatory bodies make national policy in piecemeal fashion. Due in great part to the diligence of Chairmen DINGELL

and BROOKS and the efforts of Messrs FIELDS, MARKEY, MOORHEAD, and FISH, Congress will no longer be on the sidelines. And that is the way it should be—this legislation is not just some esoteric exercise, the bill before us will help create jobs, determine the competitiveness of our economy, and to some extent is vital to our national security.

During full committee consideration I offered an amendment that addressed a serious deficiency in the bill that would have allowed regional Bell companies to use their monopoly status in the local loop to disadvantage their competitors. Unfortunately, this amendment was defeated but I am pleased that the negotiators noted my concerns. The competition-based test of the MFJ for Bell company entry into all aspects of long distance and manufacturing incorporated into this bill is a giant step in the right direction. This test requires that an RBOC show no substantial possibility of using monopoly power to impede competition prior to entry. The certainty of this requirement has led to the emergence of over 500 long distance providers and thousands of small manufacturers in the United States, companies which are highly competitive and which, through their aggressive attempts to sell products and services, have generated enormous benefits for the American consumer.

While these changes dramatically improve the bill I do not think that this bill is perfect. I think work needs to be done to close what may be a loophole that gives instate long distance calling to the RBOC's while they still have their monopoly. Also, in my view, the incidental services exception is overly broad and could permit an RBOC to construct nationwide interexchange landline and radio-based telecommunications networks without obtaining prior authorization. It is my hope that I will have the cooperation of Chairman DINGELL to continue to address these issues as the legislation moves through the process.

□ 1320

Mr. BROOKS. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. Mr. Speaker, I rise in support of and to discuss the particularly important Department of Justice role in this compromise bill we are considering—H.R. 3626.

This legislation provides that a Bell operating company may offer intrastate interexchange services and interexchange services through resale if, among other restrictions, the Attorney General either "fails to commence a civil action * * * to enjoin" the Bell company from offering such services, or if, having brought such an action, the Attorney General (I) "fails to obtain an injunction from the district court" or (II) obtains an injunction but the injunction is "vacated on appeal".

The obvious point of these parallel provisions is to ensure that if the Attorney General determines that a Bell company proposal to offer intrastate or resale interexchange services violates the strict antitrust standard prescribed by the bill, the Bell company cannot offer such services until and unless the Attorney General's injunction action is dismissed after a full evaluation of all pertinent evidence at trial or after the injunction is vacated on appeal.

In other words, the bill requires that no Bell company can override the Attorney General's determination of illegality until the Attorney General has had her day in court, on a motion for a permanent injunction—after a full and thorough hearing in accordance with standard antitrust procedure, not a rush to judgment.

Because courts may—and frequently do—enter permanent injunctions in cases where they have earlier denied motions for a preliminary injunction, it makes no sense to interpret the word "injunction" in this bill as referring to a preliminary injunction.

Moreover, it is difficult to conceive of circumstances under this particular legislation in which the Attorney General will find it useful or necessary to seek preliminary or temporary relief pending the outcome of a trial. A Bell company's attempt to offer intrastate or resale interexchange services will be lawful only if (among other things) the Attorney General has failed to file for an injunction.

Once the Attorney General has filed a lawsuit seeking such an injunction, this essential precondition will be absent, and so offering the prohibited service will be unlawful, until and unless the suit fails—after trial or on appeal. The Attorney General will not need to seek temporary pretrial relief from the court, because the statute itself makes such relief unnecessary.

Unlike a stay, the restriction imposed by this legislation is an absolute bar that would render any contrary conduct by the Bell company unlawful—until all of the mandatory conditions spelled out for lawful entry into the specified service areas are met. There is no authority under the bill for a district court or court of appeals to relax, pending a final decision on the merits, the prohibition against the Bell company's offering of the service or services determined to be unlawfully anticompetitive by the Attorney General.

Finally, there is nothing in these provisions that could be a basis for, and we have no intention of, divesting courts hearing cases brought under this measure of their traditional equitable powers. For example, if after trial, the Attorney General's request for a permanent injunction is denied, district courts, appeals courts, and even the Supreme Court, retain full authority to stay the order denying the injunction if they conclude that such a stay is warranted under the circumstances.

Mr. Speaker, I rise to discuss the particularly important Department of Justice role in this extremely well-balanced bill we are considering—H.R. 3626. I also ask unanimous consent to revise and extend my remarks.

Subsections 102(b)(2) and (3) of this legislation provide that a Bell operating company may offer intrastate interexchange services and interexchange services through resale if, among other restrictions, the Attorney General either [Subsection (i) of §102(b)(2)(C) and also of §102(3)(D)] "fails to commence a civil action * * * to enjoin" the Bell company from offering such services, or [Subsection (ii) of the above two provisions] if, having brought such an action, the Attorney General (I) "fails to obtain an injunction from the district court" or (II) obtains an injunction but the injunction is "vacated on appeal".

The obvious point of these parallel provisions is to ensure that if the Attorney General determines that a Bell company proposal to offer intrastate or resale interexchange services violates the strict antitrust standard prescribed by the bill [Section 101(b)(3)(D)], the Bell Co. cannot offer such services until and unless the Attorney General's injunction action is dismissed after a full evaluation of all pertinent evidence at trial or after the injunction is vacated on appeal.

In other words, the bill requires that no Bell company can override the Attorney General's determination of illegality until the Attorney General has had her—or his—day in court, on a motion for a permanent injunction—after a full and thorough hearing in accordance with standard antitrust procedure, not a rush to judgment.

It is perfectly clear in the context of the overall provision that the injunction referred to in subsection (ii)(I) is precisely the same permanent injunction which is the objective of the suit the Attorney General is authorized to undertake in subsection (i)—not a mere temporary or preliminary order or injunction that she or he, or another party or court—might find appropriate as an interim measure.

Because courts may—and frequently do—enter permanent injunctions in cases where they have earlier denied motions for a preliminary injunction, it makes no sense to interpret the word "injunction" in subsection (ii)(I) as referring to a preliminary injunction.

Moreover, it is difficult to conceive of circumstances under this particular legislation in which the Attorney General will find it useful or necessary to seek preliminary or temporary relief pending the outcome of a trial. Under Sections 102(b)(2) and (3), a Bell companies' attempt to offer intrastate or resale interexchange services will be lawful only if (among other things) the Attorney General has failed to file for an injunction.

Once the Attorney General has filed a lawsuit seeking such an injunction, this essential precondition will be absent, and so offering the prohibited service will be unlawful, until and unless the suite fails after trial or on appeal. The Attorney General will not need to seek

temporary pretrial relief from the court, because the statute itself makes such relief unnecessary.

Unlike a stay, the restriction imposed by sections 102(b) and (3) is an absolute bar that would render any contrary conduct by the Bell company unlawful—until all of the mandatory conditions spelled out by sections 101 and 102 for lawful entry into the specified service areas are met. There is no authority under the bill for a district court or court of appeals to relax, pending a final decision on the merits, the prohibition against the Bell companies' offering of the service or services determined to be unlawfully anticompetitive by the Attorney General.

Finally, I note one additional point. There is nothing in these provisions that could be a basis for, and we have no intention of, divesting courts hearing cases brought under section 102 of their traditional equitable powers. For example, if after trial the Attorney General's request for a permanent injunction is denied, district courts, the court of appeals, and for that matter the Supreme Court, retain full authority to stay the order denying the injunction if they conclude that such a stay is warranted under the circumstances.

I would call to your attention the attached letter to Energy and Commerce Chairman DINGELL from the National Association of Attorneys General urging us to pass this legislation incorporating "basic antitrust principles to ensure existing competition is preserved and that no player is permitted to use market power to tilt the playing field to the detriment of competition and consumers."

NATIONAL ASSOCIATION OF
ATTORNEYS GENERAL,
Washington, DC, June 6, 1994.

Hon. JOHN DINGELL,
Chairman, Energy and Commerce Committee,
U.S. House of Representatives, Washington, DC.
RE: Telecommunications Legislation.

DEAR CHAIRMAN DINGELL: The undersigned Attorneys General are writing to urge you to adopt a telecommunications reform package that incorporates basic antitrust principles to ensure that existing competition is preserved and that no player is permitted to use market power to tilt the playing field to the detriment of competition and consumers. By protecting competition, the anitrust laws promote efficiency, innovation, low prices, better management, and greater consumer choice. Additionally, we urge you to recognize the strong role of the States in ensuring that their citizens have universal and affordable access to the telecommunications network, which is so important in this information society. When antitrust principles and the state role are jointly recognized in legislation, all of our citizens can look forward to an advanced, efficient and innovative information network.

Telecommunications reform is a vital national and state interest. Last year, the National Association of Attorneys General Antitrust Committee established a Telecommunications Working Group to analyze and develop policy positions, where appropriate, on significant issues involving competition in the telecommunications industry.

The rapid evolution of telecommunications technology has given rise to complex issues relating to competition policy requiring sophisticated analysis. In general, however a competitive telecommunications market at all levels—e.g., long-distance service, local exchange service, equipment manufacturing—would best serve the interests of our citizens. It is important to clarify that this consumer interest is promoted only by "effective" competition, i.e., that there be a sufficient amount of competition to ensure that prices are driven to competitive levels. Although we hope that this type of competition will emerge eventually in every part of the information superhighway, the reality today is that local exchange markets are not yet competitive nor are they likely to be in the near term.

The emerging competition in telecommunications markets must be evaluated against the backdrop of the Modification of Final Judgment ["MFJ"], the court-approved agreement that ended the United States Department of Justice's antitrust case against American Telephone & Telegraph Company ["AT&T"]. The MFJ, which went into effect in 1982, allowed AT&T to compete in new markets while mandating that it divest its local telephone service business. The MFJ created the seven regional Bell operating companies ["RBOCs"] and placed certain limits on their activities in the telecommunications arena. Among other things, the RBOCs are prohibited from providing long-distance and equipment manufacturing services. At the same time, however, the MFJ provides a process for RBOCs to obtain waivers to the lines-of-business restrictions contained in the decree. Under the MFJ, waivers can be granted by the decree-supervising federal district court when such factors as new technology and emerging market forces demonstrate "no substantial possibility" of anticompetitive conduct by the applying RBOC in the market it seeks to enter.

While the information services "lines-of-business" restriction has been lifted under this waiver process during the last seven years, considerable debate and attention continues to focus on whether the other lines-of-business restrictions should be lifted. Some argue that the remaining lines-of-business restrictions should not be removed because they fear that the RCOCs will use their regulated, monopoly power in the local telephone service markets to obtain an unfair advantage in the more competitive long-distance market. One of the major concerns in this regard is that the RBOC local monopolies may "cross-subsidize," that is, extract unwarranted profits by overpricing long-distance services. Similarly, the RBOCs could also discriminate against their utility customers who are also their competitors by setting unfair prices and terms for, and designing technical incompatibility into, their utility services. Others argue, on the other hand, the RBOC entry into the long-distance market would facilitate more effective competition in the long-distance market, because that market is currently composed predominantly of only three facilities-based carriers.

Because of these conflicting competitive concerns, we believe that the existing competitive safeguards contained in the MFJ should be incorporated in H.R. 3626. Under the MFJ, the RBOCs are permitted to enter presently prohibited markets only after showing that their monopoly control of local exchange services will not permit them an unfair competitive advantage in the market into which they seek to enter. As William F. Baxter, President Reagan's Assistant Attorney General and Stanford Law Professor, recently stated:

"The monopoly on local service held today by the Regional Bell Operating Companies, or RBOCs, is every bit as tight as the monopoly held by AT&T before the Bell breakup. Legislating away the antitrust protections of the Modified Final Judgment (which I negotiated on behalf of the Reagan administration) while the RBOCs hold this monopoly would be a setback to competition in long distance and, indeed, in a large number of other "information services" dependent upon access to the local switch. Restoration of the two-level monopoly would jeopardize the introduction of advance information services just when they are needed most.

"As I see it, Congress has but one course that will avoid such abuses [e.g., cross-subsidization, discrimination] and expedite the benefits of advanced information technology. It should pass legislation that incorporates the competitive safeguards of the Modified Final Judgment. . . . We should not fall into the trap of thinking that just because local competition is imaginable, it's already here. It's not."

In addition, the states' role in developing and implementing telecommunications policy should be continued. Among the strongest of state telecommunications polices is that of encouraging universal service. The States must retain the ability to ensure that all of its citizens, urban and rural, rich and poor, continue to have access to reasonably priced telephone services.

In considering H.R. 3626 and H.R. 3636 we urge you to address a number of key issues to ensure that consumers benefit in the long term from the creation of this information superhighway.

Because competition in the local exchange will not be introduced in every portion of the country simultaneously, the legislation should empower both state and federal regulators to deregulate their telephone utilities where justified by the amount of competition in a particular local market. We note that the current Communications Act of 1934 provides for shared regulatory authority. Because of the central role of the states in local service regulation, therefore, any preemption of state authority should be approached very cautiously.

Any legislation must preserve and promote universal telephone service at fair, reasonable and affordable rates and also provide a clear, broad definition of universal service.

Consistent with the MFJ, any legislation must not permit RBOC entry into other markets (e.g., long distance) unless the RBOCs can demonstrate that the RBOCs dominant position in relevant local markets would not permit it to monopolize those markets or to leverage its market power to the detriment of competition in the markets to be opened. State regulators should be empowered to investigate allegations of RBOC cross-subsidy by RBOC competitors.

Cross ownership of telephone companies and cable companies operating within the same service area should be generally prohibited, and exceptions, if allowed, should be drafted narrowly to prevent the telephone companies from extending their monopoly.

No new antitrust exemptions should be created in the telecommunications industry.

There should be adequate consumer representation on the proposed Federal-State Joint Board or any similar board. In addition, a consumer advocate office should be created in the Federal Communications Commission.

Number portability should be mandated as soon as technically feasible.

In conclusion, while supporting your efforts to make a competitive information superhighway a reality, we urge you to abide

by the basic competitive concepts which underlie our antitrust laws and which have been instrumental in this country's economic success. These competitive principles, as embodied in the breakup of AT&T ten years ago, have been instrumental in fostering innovation and efficiency, and reducing prices in the United States telecommunications field. Further, the state's role in telecommunications regulation and policy should be maintained in order to ensure that all citizens retain effective and affordable access to telecommunications products and services. Any telecommunications legislation should incorporate these antitrust and state regulation principles.

Thank you for considering our views.

Very truly yours,

Jimmy Evans, Attorney General of Alabama;
Grant Woods, Attorney General of Arizona;
Winston Bryant, Attorney General of Arkansas;
Charles M. Oberly, III, Attorney General of Delaware:
Vanessa Ruiz, D.C. Corporation Counsel;
Robert A. Butterworth, Attorney General of Florida;
Robert A. Marks, Attorney General of Hawaii;
Ronald W. Burris, Attorney General of Illinois;
Robert T. Stephan, Attorney General of Kansas;
Chris Gorman, Attorney General of Kentucky;
Richard P. Ieyoub, Attorney General of Louisiana;
Michael E. Carpenter, Attorney General of Maine;
J. Joseph Curran, Jr., Attorney General of Maryland;
Scott Harshbarger, Attorney General of Massachusetts;
Frank J. Kelley, Attorney General of Michigan;
Hubert H. Humphrey, III, Attorney General of Minnesota;
Jeremiah W. Nixon, Attorney General of Missouri;
Joseph P. Mazurek, Attorney General of Montana;
Tom Udall, Attorney General of New Mexico;
Frankie Sue Del Papa, Attorney General of Nevada;
G. Oliver Koppell, Attorney General of New York;
Michael F. Easley, Attorney General of North Carolina;
Lee Fisher, Attorney General of Ohio;
Susan Loving, Attorney General of Oklahoma;
Theodore R. Kulongoski, Attorney General of Oregon;
Ernest D. Preate, Jr., Attorney General of Pennsylvania;
Jeffrey B. Pine, Attorney General of Rhode Island;
Dan Morales, Attorney General of Texas;
Jan Graham, Attorney General of Utah;
Rosalie Simmonds Ballentine, Attorney General of the Virgin Islands;
James S. Gilmore III, Attorney General of Virginia;
James E. Doyle, Attorney General of Wisconsin; and,
Christine O. Gregoire, Attorney General of Washington.

Also, Mr. Chairman, I would like to comment on the separate subsidiary provisions for electronic publishing.

The separate subsidiary requirement for electronic publishing is extremely significant. It will go a long way to ensuring that the regional Bell operating companies do not exploit their monopolies to unfairly disadvantage competitors in the electronic publishing field. That requirement sunsets in June of 2000. The committee believed that that date—June 2000—would be a reasonable estimate of when competition in the local loop would be sufficient so that a separate subsidiary requirement wouldn't be necessary. If for any reason local competition does not sufficiently exist at that stage, and a threat to competition from the monopoly power of the local exchange continues to exist, the FCC is free to—and should—promulgate regulations to continue the separate subsidiary requirement as appropriate.

Mr. MOORHEAD. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. HASTERT].

Mr. HASTERT. Mr. Speaker, this legislation represents a truly historic moment for the 103d Congress. H.R. 3626, the Antitrust and Communications Reform Act of 1994, is a sweeping rewrite of 60 years of telecommunications policy in the United States that will responsibly lead the telecommunications industry into the 21st century.

Of particular significance, this legislation has been crafted in such a way—with the acquiescence and support of all major industries—both friends and foes—to be placed on the suspension calendar. Indeed, who would have believed, even as recently as 3 months ago when everyone seemed to be poles apart, that AT&T, MCI, Sprint, and the seven Bell companies would stand united in support of the provisions regarding Bell entry into long distance that are provided for today in H.R. 3626?

And, who would have believed that the Bell companies and the newspaper publishers, as well as the burglar alarm industry, would come together as they have under this bill to enact good public policy?

Indeed, this is truly historic. But, beyond that, today we have achieved in the House the vision that I have strived for throughout my tenure in elected office—first in the Illinois General Assembly and now as a member of the Telecommunications Subcommittee—competition among all entrants in the marketplace—fair and open competition without the burdensome regulatory restraints now in existence. When there is real competition, the people win.

Mr. Speaker, H.R. 3626 represents responsible and progressive telecommunications policy. I rise in strong support of H.R. 3626 and urge my colleagues to pass it overwhelmingly.

Mr. MOORHEAD. Mr. Speaker, I yield 1 minute to the gentleman from South Carolina [Mr. RAVENEL].

Mr. RAVENEL. Mr. Speaker, American consumers today want more competition and more choice in cable TV and video services, and they want that choice in competition now. Legislation was passed in 1992, and the Federal Communications Commission, the FCC, has tried to regulate the cable business since then. But many think the rates are still too high and the choices too skimpy.

Under these bills, cable companies can come in and rent video transmission facilities from the phone companies, but phone companies do not have reciprocal rights, namely to rent channels from the cable companies. It is unclear so far whether competing video services can be started up right now, or whether there should be some lengthy delay while all the various safeguards are put into place. It seems to me like these two bills address these problems, and I am certainly happy today to take a minute to endorse both the bill we are on and the subsequent one that will be up in just a minute.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, I rise in strong support of this historically important legislation.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Washington [Mr. KREIDLER].

Mr. KREIDLER. Mr. Speaker, we have before us the most comprehensive communications legislation considered by this body since the Communications Act of 1934. Obviously, much has changed in the world of communications since then.

Thanks to Chairman DINGELL, Chairman MARKEY, Chairman BROOKS, and ranking minority member Mr. FIELDS, the Congress is now finally able to catch up with those changes.

The framework we are developing today will bring enormous benefits tomorrow and in the future, including: new high-skilled jobs for U.S. workers, exciting new services for the American public; globally competitive telecommunications technologies; and much needed competition in the telecommunications marketplace.

I am particularly pleased by the compromise achieved in H.R. 3626 regarding entry by the RBOC's into the long distance market. The revised bill does a better job of putting appropriate lines of authority and standards in place to enhance regulatory oversight and protect consumers.

I would also like to thank Chairman MARKEY for accepting my amendment in committee to make sure that higher education institutions will have a voice when the FCC sets rules for public access to the information highway.

In closing, Mr. Speaker, let me just say that America's future as a leader in telecommunications technologies and services depends on these bills. I urge my colleagues to support H.R. 3626 and H.R. 3636.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to my distinguished friend, the

gentleman from Washington [Mr. SWIFT].

Mr. SWIFT. Mr. Speaker, there was a silly column in the Washington Post yesterday which criticized this bill for being rushed through the Congress. Mr. Speaker, my hair has turned gray while we have been rushing this bill through the Congress.

The 1934 Communications Act was really an extraordinary piece of legislation that has served this country well for a very long time. But technology and new realities of competition have stretched it farther than it can go. And this legislation today I think will be seen in years ahead as historic as the 1934 act, as it adds to that act and gives it the flexibility and the elasticity it needs to serve this country in the new realities.

I cannot think of two committees who could have done a better job, because tied up in this legislation are legitimate concerns about antitrust, and about anticompetitive behavior, and about predatory behavior, and so forth. The Committee on the Judiciary has stood tall on those. The Committee on Energy and Commerce has looked at the telecommunications policy that is so important to the economic future of our country, and together they have turned out a remarkable piece of legislation.

□ 1330

Mr. BROOKS. Mr. Speaker, to conclude the debate, I yield the balance of my time to the gentleman from Virginia [Mr. BOUCHER], a leader in formulating this resolution.

Mr. BOUCHER. Mr. Speaker, the Antitrust Reform Act will bring much-needed competition to the markets for long distance and for telecommunications equipment. As we remove the barriers to competition of the local telephone exchange, it is only fair that we also free the seven Bell operating companies to compete in the market for long distance and the manufacture of equipment. But more than fairness to these companies underlies this reform. The public deserves the benefits that new competition will bring to the long distance and equipment markets.

As we forecast lower prices and new services arising from new competition, we also have confidence that anticompetitive conduct will not occur, as Bell companies offer their own long-distance service while continuing to connect other long-distance providers to their local exchange customers.

That confidence arises from the carefully constructed provisions of the legislation that require that before Bell companies offer long distance, they satisfy the U.S. Department of Justice that there is no substantial possibility of anticompetitive harm from their entry into the market.

For service within a given State, they must gain the approval of the State's public service commission before offering long distance statewide. And the U.S. Department of Justice is accorded an opportunity to review the State decision to ensure that other long-distance providers receive fair access to the Bell companies' customers.

These protections, Mr. Speaker, strike exactly the right balance. They offer to the public the benefits of increased competition in both the long-distance market and the manufacture of equipment, a lucrative market in long distance which today is dominated by three large carriers.

At the same time they contain stringent safeguards to ensure that Bell companies not use their local networks in such a manner as to restrict access to their subscribers for other long-distance companies.

Some would argue that the U.S. Department of Justice is not up to the job of protecting consumers in this circumstance. They would prevent the public from getting the benefit of added competition in long distance until the local exchange is fully competitive, a circumstance which will not arise in many parts of the Nation until well into the next century. The Justice Department is up to the job. We can have the early benefits of added long-distance competition while assuring that anticompetitive harm will not occur.

Mr. Speaker, I commend the gentleman from Texas [Mr. BROOKS] and the gentleman from Michigan [Mr. DINGELL] for their thoughtful work and for the balance their measure contains. I am pleased to support their reform and urge its passage.

Mr. BROOKS. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Arkansas [Ms. LAMBERT].

Ms. LAMBERT. Mr. Speaker, I rise in support of H.R. 3626. Mr. Speaker, I am extremely pleased to join the supporters of this legislation and its companion bill (H.R. 3636) to advance the information superhighway. I congratulate Mr. DINGELL, Mr. BROOKS, Mr. MARKEY, and Mr. FIELDS for their vision in realizing the vast technological opportunities that lie ahead.

These bills are especially important for rural areas like the First District of Arkansas. Rural consumers will benefit from highly progressive technology while being protected from unreasonably high rates. Together, we have ensured that folks in Possum Grape, AR, will have access to the same telecommunications advances that are made in New York City.

I would like to thank Chairman MARKEY for working with me to draft amendments to ensure that small- and medium-sized phone companies will receive equal footing when competing against the big guys. These smaller companies could have been vulnerable to "cherry picking" by large telephone carriers that have the resources and revenues which dwarf those of independent phone companies. "Cherry picking" would have threatened the viability of independent phone companies by taking away their largest customers like universities and major corporations, leaving high cost small business and residential customers that rely upon subsidies provided by larger customers to ensure universal access.

In addition, I would like to thank Mr. MARKEY for working with me to ensure that phone rates charged in rural areas match rates charged in urban areas. We have helped maintain our current system under which long-distance providers average the costs associated with providing service to both rural and urban areas and charge all residents that same rate. For example, the rate charged from Washington, DC, to rural Arkansas is about the same as the rate from Washington, DC, to Minneapolis or West Palm Beach. Together, we have made sure that as new competitors enter the long-distance markets they will not be able to de-average their rates. We have protected customers who live in less populated areas.

One additional component of these bills that will help rural areas is a National Newspaper Association-sponsored ARC provision. This section of H.R. 3626 will assure that community newspapers, including the 36 weeklies and 11 dailies in the First Congressional District, have a place on the information highway. It assures them fair access, fair rates, and fair competition.

Mr. Speaker, in hometowns like mine, people still look forward to sending their dogs out to pick up the weekly paper with pictures of Little League teams and church socials. Whatever form that news may take in the future—whether it is digital bits or bytes—it is essential that we make sure our community newspapers will have a place in the 21st century.

With sincere respect for the bipartisan effort and years of negotiation that have gone into these two bills, I am proud to stand in support of them today.

Mr. KING. Mr. Speaker, I rise today in support of H.R. 3626, legislation that would help pave the road to the information superhighway for all Americans, including people with disabilities.

Mr. Speaker, people with disabilities have a particularly strong interest in seeing the rapid and healthy development of an information superhighway, since many of the benefits will directly improve their lives.

H.R. 3626 will allow all players to fully compete in the telecommunications marketplace, which will make services available to all Americans to enrich their lives. This legislation contains provisions of particular importance to people with disabilities because it will enhance their participation in professional, social and entertainment activities, and increase their job opportunities.

Mr. Speaker, people with disabilities have been underserved in the areas of telecommunications equipment and services. This legislation will ensure that they are no longer left out in the cold. The bill requires the Federal Communications Commission to prescribe regulations that will ensure telecommunications equipment manufactured by a Bell company and network services provided by Bell companies are accessible and usable by people with disabilities. This will be a vast improvement for this segment of the population.

H.R. 3626 supports people with disabilities so I urge my colleagues to support this bill. Vote "yes" on H.R. 3626.

Mr. RICHARDSON. Mr. Speaker, today, I rise to support H.R. 3626, even though I have lingering concerns about the consequences that this legislation will have on competition in the telecommunications industry and on the rates that consumers pay for phone service. H.R. 3626 signals a fundamental shift in the way that the bulk of the telecommunications industry is regulated. H.R. 3626 frees the regional Bell companies to offer services prohibited under the terms of the 1982 modified final judgment consent decree. I am hopeful that a flexible and competitive telecommunications policy will result from our work on H.R. 3626.

I was pleased the committee incorporated language to hold electronic publishers, that enter into a joint venture with a Bell company, to the same EEO standards as other telecommunications entities. This is a case of industry parity and it is essential that we harmonize our policies, so that there is no mistaking congressional intent in ensuring equal opportunity for all Americans.

On domestic content, I am pleased that the committee has moved to resolve an issue which concerned me, the administration, and our trading partners. I believe that we are on the right track on domestic content and I look forward to seeing the final version of this when it emerges from conference.

I am pleased that the committee has begun to seriously address the problems regarding consumers and competition. I am concerned that consumers will end up paying the price of deregulation. I believe that the bill before us today goes a long way toward protecting consumers and ensuring a healthy competitive atmosphere. However, I remain concerned over the power that the regional Bell companies now wield in local markets and the effect deregulation will have on other market entrants and ultimately consumers. I look forward to working with the committee to thoroughly resolve these critical issues.

Mr. Speaker, this bill reverses years of Government regulation of an industry that should now be freed to compete. We may wrangle over the details but it is critical that we pass this legislation resoundingly. I urge my colleagues to vote in favor of H.R. 3626.

Mr. DELAY. Mr. Speaker, I rise today to address the social and economic benefits of H.R. 3626, the Antitrust and Communications Reform Act. This legislation will lift restrictions on telecommunications services that can be offered across artificial boundaries and expedite investment in our telecommunications infrastructure while encouraging lower rates. The result is that Americans will pay less for more.

Increased competition through deregulation accomplishes several important things. it spurs the creation of new technology, making the United States more competitive internationally. It also allows the marketplace to work freely, resulting in lower prices. Therefore, perhaps the best news about H.R. 3626 is that not only will it result in more choices for consumers, but it will do so at affordable prices. Competition will keep phone rates low and quality high, which will provide consumers a greater opportunity to realize the benefits of the information age.

H.R. 3626's promotion of greater competition and technological advances will aid in the development of the information superhighway. Examples of such advances include an enhancement of medical services and procedures through telecommunications applications, as well as greater access to education and training materials, regardless of the location of the user. Telecommuting could reduce air pollution and traffic congestion.

With H.R. 3626, these benefits will become more accessible to anyone with a telephone, bringing them fully into the information age marketplace. Without this bill, only a privileged few will enjoy the benefits of the rapidly changing telecommunications arena.

I urge my colleagues to pass H.R. 3626 so that all consumers, not a select few, will be able to afford the new services available through enhanced technology.

Mr. BLILEY. Mr. Speaker, I understand that there were suggestions earlier that the long-distance carriers supported entry by the Bell companies into long-distance under the conditions specified in H.R. 3626. That is not my understanding. They did support moving the bill through the House. The long-distance companies have been quite clear and consistent, however, in saying that they support a "no substantial possibility" of anticompetitive effects test across the board in long-distance, one that specifically incorporates an effective competition test in the local telephone market.

There remain loopholes in the bill that weaken the entry test in the area of intrastate and resale, and potentially overboard authority to offer incidental long-distance services. As I said earlier, it is my hope that we can have Chairman DINGELL'S cooperation in addressing these problems as the bill moves through the process. Attached for the RECORD is a study by former Secretary of Labor Ray Marshall that outlines the potential problems.

BUILDING THE INFORMATION SUPERHIGHWAY: GETTING THE COMPETITION RIGHT—SUMMARY

(By Ray Marshall)

INTRODUCTION

The National Information Infrastructure (NII), or the "information highway," is at the heart of America's future; it will provide the path to improved education, health care, productivity, economic growth, and participation in community and public affairs. Indeed, it is hard to imagine an undertaking with greater significance for the quality of our lives. The Clinton administration stresses the need for public-private cooperation in constructing the NII. Legislative proposals before Congress are driven by the goal of establishing competition in communications markets. Private investors governed by competitive market forces will be primarily responsible for completing the construction of this infrastructure, but the government would provide the framework for universal access, remove antiquated regulatory barriers to competitive markets, establish policies to achieve and maintain competitive market conditions, and provide incentives for private investment and innovation.

While there is good reason to rely heavily on competitive markets, the proposals to allow the Regional Bell Operating Companies (RBOCs) to enter competitive industries before local telecommunications markets are fully competitive would harm competition, reduce the growth of output, employment, and technological innovation; potentially cripple the NII; and raise prices to consumers. The sequence of authorizing competitive entry into local market, subjecting that entry to a market test to determine whether effective competition can develop, and then allowing RBOCs into long distance when effective local competition has in fact developed, is the key to consumer benefits, economic growth, and technological innovation.

This paper explores these propositions in greater depth, discusses the conditions needed to ensure the proper evolution to competitive markets, and suggests some of the tests needed to determine whether or not competition has been achieved.

THE IMPORTANCE OF THE NII

There is little doubt about the importance of the NII. Information technology has become an infrastructure at least as important to national and personal welfare in the "Information Age" as highways and railroads were in the past. It would, moreover, be hard to think of an activity with greater economic importance. As Peter Drucker observed recently, "few things stimulate economic growth as the rapid development of information, whether telecommunication, computer data, computer networks or entertainment media." The development of leading-edge technology is the key to economic success and national well-being in more competitive knowledge-intensive national and global economies. Technological progress, in turn, involves using information to improve quality, productivity and flexibility—the essential determinants of economic success under competitive conditions. Information, in addition, improves individual, business and public decision making, as well as the delivery of public and private services. Telecommunications is a technology driver, as well as the heart of the national information infrastructure, and probably has larger multiplier effects for the whole economy than any other industry. Information networks consequently have become major determinants of economic performance, as well as of personal and national welfare.

REGULATORY BACKGROUND

As noted, however, the health of the telecommunications industry depends heavily on establishing effective competition. Because they had increasing returns to scale and therefore declining costs, telecommunications companies were assumed to be "natural monopolies" throughout most of this century. This changed in the early 1980s, when long distance, manufacturing, and information services were separated from the local telephone monopolies as part of the Modification of Final Judgment (MFJ). That consent decree broke up the Bell System, based on the realization that structural separation was the only effective way to prevent abuse of power by the telephone monopolies.

Before the MFJ, economists and policy makers attempted, without much success, to prevent the abuse of monopoly power and approximate competitive outcomes for consumers through regulations. Regulating

"natural" monopolies was always problematic at best, but became increasingly more difficult in dynamic telecommunications markets where technological change intensified the complexity and competitiveness of markets, improved the information and choices available to people, widened the geographic scope of markets, and accelerated the pace of change.

A particularly serious problem for regulators was that these changes created a greater potential for competition in some markets than others. After the MFJ, for example, the RBOCs retained "natural" monopoly power for most local exchange services because it still was inefficient for several companies to duplicate ubiquitous telephone lines and facilities in the same local area. Regulators therefore subjected the RBOCs to rate-of-return regulation. This meant, however, that these companies had both the incentive and the ability to increase their profits by using their monopoly control of local facilities to gain economic advantages in more competitive markets (e.g., long distance, information services, and equipment manufacturing). For example, the RBOCs could cross-subsidize, or charge prices lower than actual costs in competitive markets and make up for these losses by inflating the costs they passed on to rate payers in regulated markets. These practices place more efficient competitors at a disadvantage, raise competitors' costs, or even make it impossible for them to survive. As one regulatory expert put it, what happened in connection with the processes that led to the MFJ "was the result of a poisonous synergy created by. . .regulation and monopoly power combined with the provision of competitive services. The outcome was discrimination and cross-subsidization extremely damaging to the competitive process and ultimately to consumers. And, because these same conditions exist today, notwithstanding divestiture, similar anticompetitive activities will happen again if we let them."[1]

Because of the strong incentives for monopolies to abuse their power, and the subtle, invisible nature of business decisions, regulators and courts concluded that the only solution to this problem was the structural separation of monopolies, which would continue to be regulated, from businesses that had greater potential for competition. This was precisely the reasoning behind the MFJ.

The problem for the courts and regulators, of course, was not only to physically separate the RBOCs, whose control of local telephone facilities gave them monopoly power, from long distance, information services, and manufacturing, but also to monitor the transition in order to prevent these companies from using their residual monopoly power to stifle the transition to competition.

OBSTACLES TO THE DEVELOPMENT OF THE INFORMATION HIGHWAY

Despite the attention created by futuristic descriptions of the "superhighway" and interactive information technologies, the future is not as clear or certain as some of these descriptions imply. The natural history of technology suggests a tendency to exaggerate short-term effects and to underestimate the long-term impacts. Since the outcomes of the use of technology are determined by public and private policies and actions, they are not predetermined, and progress is more likely to be measured in decades than years. There are many bottlenecks in these systems which must be overcome. In addition, there are many important technical obstacles to the construction of this infrastructure, which will require the development of interconnected, easily accessible networks to move unprecedented amounts of information. We should note, however, that the challenges in constructing the information infrastructure are probably more political, financial and organizational than technical.

IMPORTANCE OF PROPER SEQUENCES IN THE TRANSITION TO COMPETITION

There is little doubt that the consequences of the MFJ confirmed the validity of competitive theory. There is overwhelming analytical and factual evidence that competition in long distance markets has been a remarkable success. In many states, obsolete regulations have vanished, competition has exploded as hundreds of new firms have entered the market, inflation-adjusted long distance rates have dropped by more than half, technological and product innovations have accelerated, productivity has improved, employment has expanded, and American companies have strengthened their competitive position in global markets.

There also is general agreement that constructing the NII requires the transformation of local and regional telecommunications markets, where competition could do for these markets what it did for long distance. Today, while all customers have at least three choices for long distance service (and most have many more), nobody has more than one choice for basic local telephone service. Clearly, moreover, while technological and market changes have created the potential for competition in these local markets, this potential is largely prospective and these markets remain over 99 percent closed to outside competition.

The MFJ experience demonstrates, however, that the transition to competition must be carefully managed in order to deny the RBOCs the incentive and ability to use their monopoly power to impair competition in long distance, manufacturing, or other markets. Removing the MFJ restraints on the RBOCs in the proper sequence is absolutely essential to this transformation. It can be demonstrated that lifting these restrictions prematurely would create the same problems that led to the MFJ in the first place. On the other hand, the sequence which insists first on authorizing competitive entry along with proper standards and monitoring, followed by a market test to ensure that the ensuing competition is effective before allowing the RBOCs into long distance, could bring the benefits of competition to local and regional telecommunications markets. We would, with this sequence, realize results in higher employment, output, innovation, and economic efficiency. We should note, moreover, that both the negative and positive changes would have economy-wide multiplier effects.

This policy prescription has been confirmed by econometric evidence which shows that the proper sequence—ensuring completion in local networks before removing the constraints—would cause output to grow by $37 billion and employment by 478,000 over ten years. By contrast, prematurely lifting the MFJ restraints on the RBOCs would reduce productivity by making it possible for less efficient RBOC monopolies to use their monopoly power to displace more efficient competitive firms, thereby increasing prices for consumers and restricting output by $24.4 billion and employment by 322,000 over ten years.

Studies that purport to show that removing the MFJ restraints immediately would raise output and employment are based on the unrealistic assumption that monopolists would increase efficiency by entering long distance markets that these analysts assume are not already highly competitive. This is contrary to all credible evidence and logic. Other than their monopoly control over access to end users, it is hard to see what advantage the RBOCs would have in competitive markets. It is, therefore, much more realistic, as well as more compatible with economic principles, to assume that premature elimination of the MFJ restraints would produce inefficiencies in local, regional, and long distance markets. Ignoring the necessity for proper sequencing has short and long term negative economic implications.

In advocating premature relief for the RBOCs, some analysts argue that the long distance market is not competitive because AT&T still accounts for 60 percent of the market and only has two major competitors, MCI and Sprint, which account for an additional 27 percent. However, this argument confuses market share with market power. It is possible that firms with large and declining market shares might have very little market power. The keys are whether there are barriers to entry and whether customers have and exercise a choice to change carriers. By these standards there is little doubt that long distance markets are competitive today. Sixteen million subscribers, an average of 44,000 people a day, switched carriers during 1992.

Unfortunately, some of the proposals before the Congress, while recognizing most of what is required to achieve competitive conditions, would unwisely permit immediate entry by the RBOCs into state and regional long distance markets without any accompanying provision for first allowing competition to develop in bottleneck local markets that today are virtually closed. As noted, opening competitive markets to the RBOCs now would not bring competition to local and regional telecommunications markets. The wrong sequencing of events would allow monopolies to restrict competition instead of enhancing it, thus diminishing productivity, jobs, and national output. Among existing proposals, only the Hollings bill pays enough attention to the proper sequence for lifting the MFJ restrictions. And one of the leading proposals—the Brooks-Dingell bill—while making constructive contributions to the extension and preservation of competition, has some perverse sequences because the RBOCs would be allowed to enter long distance markets before establishing and testing competition and would be allowed into markets where they have the greatest market power, without adequate safeguards. It is hoped that proper sequencing will be included before the various bills to establish telecommunications policy become law.

IMPORTANCE OF MARKET TESTS FOR COMPETITION

Proper sequencing, including markets tests for competition, is required for two major reasons: (1) the local and regional telecommunications monopolies have both the incentive and the ability to block the transformation to competitive markets and (2) it is difficult, if not practically impossible, for regulators to prevent abuses by hybrid entities operating simultaneously in monopolistic and competitive markets. The kind of abuses that could restrict competition include raising rivals' costs by delaying access

[1] Testimony of Philip L. Verveer before the Subcommittee on Economic and Commercial Law, Committee on the Judiciary, U.S. House of Representatives, January 26, 1994, p. 6.

to monopolized lines, requiring costly forms of interconnections, discriminatory pricing, and degrading technology; requiring the purchase of unneeded services; and arrangements (like the lack of portability of telephone numbers, and the prevention of the sharing and resale of long distance services within the calling area) that make it difficult for competitors to enter and compete in monopolistic markets. A careful examination of deregulation proposals from the RBOCs suggests that these companies have come to accept such practices as the only way to do business.

A test to determine if a market is competitive would prevent the continuation of these anti-competitive practices and therefore would facilitate the transition to competitive markets. And with regulatory constraints on the monopolistic local exchange carriers, private investments needed to maintain an efficient, open, flexible, responsive and innovative information infrastructure would be encouraged. The minimum essential preconditions of a market test for competition include: removing restrictive state laws; making it possible for consumers to have effective options for long distance and local telephone service; implementing number portability; unbundling network services in order to allow consumers to select only those components they need, as well as to permit providers to compete for these services; establishing real cost-based pricing arrangements, including the imputation of all charges to the local monopoly telephone exchanges that are already being paid by competitive carriers; preventing restrictions on resale and sharing; establishing uniform technical and interconnect standards; providing equal access to conduits and rights of way; permitting separate interconnections for each unbundled network service; granting alternative providers cocarrier status; and explicitly identifying and fairly implementing a system to allocate universal service costs.

Conditions like these are necessary to ensure the transition to adequate competition, but additional tests must be applied to determine when markets have become adequately competitive. In general, adequate competition exists when consumers have numerous choices, when no firm has enough market power to effectively raise prices without eliciting supply or price responses from actual and potential rivals, and when there are no artificial barriers to entry. However, precise measures would clarify and give greater precision to this definition, creating clear goals for RBOCs and regulators, as well as clear signals for potential investors. Examples of the kinds of measures that might be used to determine when local markets are adequately competitive for the purpose of removing the line-of-business restrictions are the following, proposed by AT&T in response to Senators John Danforth and Daniel Inouye:

1. All legal, regulatory and technical barriers must have been eliminated.
2. Seventy-five percent of the customers served by RBOCs can get telephone service from two or more alternative additional providers.
3. At least 30 percent of customers obtain exchange access service exclusively from an alternate provider.

While there is room for debate on the precise measures used to determine when local markets have become competitive, there is little doubt about the desirability of having such measures.

CONCLUSION

Proper sequencing—authorizing competitive entry, followed by a market test to determine whether effective local competition has developed—would require a willingness to change and compromise by all parties concerned, but the transformation to competition would have enormous benefits for the RBOCs, long distance companies, business and residential consumers, regulators, and, most important, the American public. With these safeguards the NII would establish an advanced, unified information infrastructure, unified by competitive market forces rather than "natural monopoly." This competitive information infrastructure within the framework of fair, transparent, simplified and flexible rules to prevent abuses and encourage innovations and efficiency would have enormous economic, social and political benefits. It is hard to think of anything more important for our nation's future.

Ms. MOLINARI. Mr. Speaker, today's question facing the House is: How can we improve our economic, social, and international footing, without spending taxpayers money, and without hurting any particular industry? I believe the answer is H.R. 3626.

H.R. 3626 is a bill that makes sense, common sense and dollar cents. The common sense in H.R. 3626 points to advances in technology that will improve education, health care, transportation, business, and the environment. The dollar cents reveals 3.6 million new jobs with private industries, not taxpayers, taking the cost while also fostering a competitive edge in markets abroad.

For once, in a long time, industries can agree that H.R. 3626 has benefits for everyone. The multimedia market will have the ability to expand to its fullest potential. This cannot happen until multiple users across the country can interact with each other. Information providers need and welcome the partnerships, new capital, technology, and mass market capabilities that would result from competition. In fact, one hundred of the "Fortune 500" companies have endorsed the bill because they recognize that lower telecommunication costs will increase their own competitiveness.

I support the simple answer that America has been waiting for, H.R. 3626.

Mr. FRANKS of Connecticut. Mr. Speaker, I rise today in support for H.R. 3636 and H.R. 3626, legislation reported out of the Energy and Commerce Committee, on which I serve, and which will lead our Nation's telecommunications industry into the 21st century.

These bills will promote competition and bring new goods and services to consumers by removing the court-imposed restrictions on the Bell operating companies, by opening up the local telephone system to competition and by permitting our telephone companies to offer cable television services.

H.R. 3636 and H.R. 3626 will help our country's economy and will greatly assist in creating jobs for Americans. A study by the independent econometric forecasting firm, the WEFA Group, demonstrated that full competition in the telecommunications industry, including Bell Company relief from restrictions that currently bar them from certain markets and including full competition at the local level, would create 3.6 million new jobs in the United States over the next 10 years in a wide variety of industries and in every State in the Union. In my home State of Connecticut, over 45,000 new jobs over the next 10 years would be created in a fully competitive marketplace.

These measures have a wide range of support from a variety of organizations including senior citizens groups, education associations, labor unions, minority interests, and small business coalitions. These bills reflect years of work by the House Telecommunications Subcommittee and contain compromises to ensure that all competitors are treated fairly and equally.

I urge my colleagues to support both H.R. 3636 and H.R. 3626.

Mr. HUGHES. Mr. Speaker, I rise in support of H.R. 3626, the Antitrust and Communications Reform Act of 1994. I would like to commend my colleagues, Chairman BROOKS, Chairman DINGELL, and Chairman MARKEY for the excellent work they have done to facilitate this measure being brought to the floor today for a vote.

As our country faces the challenges of maintaining its place as a predominant player in the development of the information superhighway, it is imperative that we establish a fair and competitive environment in which American companies may thrive. The passage of H.R. 3626 is a fundamental step which we must take in order to establish such an environment.

H.R. 3626 sets forth a clear process for lifting the current restrictions placed on the Bell operating companies so they may play a greater role in creating and competing in our developing information-rich society. Notwithstanding the increased entry into new areas of the telecommunications industry provided for in H.R. 3626, it is important to note that this measure ensures that the safeguards established in our current antitrust law remain strong. This careful balance of increased access to the telecommunications market coupled with strong safeguards against anticompetitive behavior will facilitate a fair and open competitive market and, in turn, foster growth in the job market as well as in the telecommunications market as a whole.

One of the most significant aspects of H.R. 3626 is the administrative structure which it establishes. This structure, which replaces the 1982 modified final judgment [MFJ] consent decree agreement between the Department of Justice and AT&T, establishes an appropriate framework under which the seven regional Bell operating companies and their affiliates will be permitted to provide services which they are currently barred from providing pursuant to the MFJ.

Essentially, this structure sets forth a well-balanced process by which the appropriate Federal agencies and State regulatory bodies may review a Bell company's request to enter into other lines of business. Specifically, the measure establishes a specific time frame within which a Bell company may provide long-distance services, information services, and manufacture telecommunications equipment.

Pursuant to H.R. 3626, both the Department of Justice [DOJ] and the Federal Communications Commission [FCC] will be involved in the review process for determining how and when the Bell companies may enter new areas of the telecommunication industry. The DOJ and the FCC will also carefully review when the Bell companies are authorized to enter into the intrastate long distance market.

Another important provision in this measure is the recognition of those consumers who are disabled. That is, this measure establishes requirements that new equipment and services must be fully accessible and usable by those persons who may have special needs. Moreover, the bill incorporates consumer privacy protections which will prohibit Bell operating companies from using unsolicited information about their own telephone subscribers to market potential customers for other services provided by the company or its affiliates.

Moreover, I am very pleased that this measure specifically addresses the concerns of both the alarm monitoring and electronic publishing markets. H.R. 3626 provides that the regional Bell companies and their operating affiliates may file—beginning 5½ years after enactment of this measure—applications to the Federal Government to enter into the alarm monitoring market.

Likewise, this measure allows the Bell companies to enter into the electronic publishing business, while adhering to important safeguards protecting against the development of any unfair competitive advantage in providing these services. That is, Bell companies would be permitted to provide electronic publishing services over its own telephone lines only if such services are provided through a separate affiliate or a joint venture with an electronic publisher.

I urge my colleagues to support H.R. 3626. It is a comprehensive, well-balanced bill which will encourage the growth of fair competition in the telecommunications marketplace, while ensuring that America maintains her rightful position as a leader in the rapidly developing information superhighway.

Mr. KYL. Mr. Speaker, I rise in support of H.R. 3626, the Antitrust Reform Act, and the next bill on the agenda, H.R. 3636, the National Communications Competition and Information Infrastructure Act.

I am voting for these bills today to keep them moving through the legislative process. However, while both represent steps in the right direction—toward greater competition in the telecommunications industry—I believe both are still fraught with far too much Government regulation and oversight.

Our goal here should not be to carve out new turf for Government bureaucrats, or to carve up pieces of the telecommunications market for various competing interests. The communications policy we adopt should be focused on competition—consumer choice—and not on allocating markets or furthering Government intrusion, via regulation, into the communications industry.

While everyone should have an opportunity to compete, no one is entitled to prevail in the marketplace. The Federal Government's responsibility is only to ensure that the conduct of competitors, once they have entered new lines of business, does not impede competition and is not in violation of antitrust laws. The goal is fair competition, recognizing that the essence of competition is that some will succeed—others will fail—based on how well—or how poorly—they serve their customers.

A very simple way to measure the effectiveness of any communications policy is to determine how long it will take before this proposal achieves the stated goal of communications competition. If the answer is 5 years, 7 years, 10 years or more, then we ought to try again. The marketplace ought to be opened up as promptly as possible so that the American people can benefit from the wealth of new technologies that are becoming available, as well as improvements in price and quality of services that competition is sure to provide. And those benefits will be substantial.

According to a recent Wharton Economic Forecasting Associates [WEFA] Group study, consumers stand to save as much as $63 billion a year. As many as 3.6 million new jobs will be created in the United States in the next decade.

As I see it, the communications policy debate is about consumer choice and opportunity. If we permit long distance companies, local telephone companies, cable companies and others to compete on a level playing field, we'll give consumers that choice and business the opportunity to grow and prosper and create new jobs.

I urge yes votes on these bills today to keep them moving to the Senate and conference. I am hopeful, however, that before the legislation is put to a final vote, the Senate and the conference committee will work to minimize Government regulation of the industry.

Mr. SLATTERY. Mr. Speaker, I rise today in strong support of H.R. 3626 and H.R. 3636. These landmark bills are essential in aiding our Nation as we travel down the information superhighway. I congratulate Chairman DINGELL and Chairman BROOKS, along with Subcommittee Chairman MARKEY and their staffs, for their diligence in bringing this legislation to the floor.

H.R. 3626 would allow the regional Bell Telephone Companies gradually to enter the long-distance business. The companies could also enter into telecommunications equipment manufacturing, based on legislation I authored, and could provide information services. This legislation includes important provisions requiring future Bell manufacturing affiliates to operate in the United States and to make every possible effort to buy component parts from U.S. companies.

I am pleased that H.R. 3626 also includes an amendment I offered to help thousands of community newspapers across the country have a better chance to get on board the information superhighway.

The National Newspaper Association, the oldest and largest newspaper trade association in the United States, believes this could be the most important legislation to affect community newspapers throughout the Nation. By guaranteeing them fair access, fair rates, and fair competition, this legislation gives them nothing less than a license to the future. Without it, they could be ignored or actually driven off the information superhighway.

These newspapers often provide the social, political, and economic ties that bind communities together. Many are going through tough times. They face competition and disappearing ad revenue everywhere they look. Now at least they can face the electronic future with confidence that if this bill becomes law, they're bound to get a fair shake. The law requires no less.

I also want to call attention to the provisions of this legislation which address access by the disabled. In the past, most technological innovations in the area of information and telecommunication services have been developed without considering the needs of individuals with disabilities.

In keeping with the spirit of the Americans With Disabilities Act mandate to bring about the complete integration of individuals with disabilities into the mainstream of our society, H.R. 3636 and H.R. 3626 would ensure that advances in network services deployed by local exchange carriers, and advances in telecommunications equipment and customer premises equipment developed by Bell manufacturing affiliates, will be accessible and usable by individuals with disabilities, unless the costs of providing such access would result in an undue burden or an adverse competitive impact.

H.R. 3636 directs the Federal Communications Commission to undertake inquiries regarding the provision of both closed captioning and video description services of video services, and further directs the Commission to establish regulations to require an appropriate schedule of deadlines for the provision of closed captioning.

We have finally set the stage for full access—access which is long overdue—to video programming for these populations.

Additionally, I worked with my colleagues on the House Energy and Commerce Committee to include provisions which will help to provide a fair and equitable marketplace for small cable operators.

For example, the legislation would promote competition by removing State and local barriers for new telecommunications services. It would also allow joint ventures, mergers, and acquisitions to occur in areas with population of 10,000 or less, or when the cable system or systems in the aggregate serve less than 10 percent of the households in a Telco's service area. Representatives of small cable operators have advised me of additional issues that need to be addressed as this legislation moves forward. For example, there is a need to require all providers of cable services to comply with the same franchise requirements as local cable operators. Furthermore, certification of compliance with the interconnection and access requirements should be demonstrated through a public process.

I look forward to working with my colleagues in the Senate to resolve these outstanding issues so we can ensure that rural America has full access to the information superhighway.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill, H.R. 3626, as amended.

The question was taken.

Mr. PETRI. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

The Chair announces that this vote will be taken after the next suspension.

GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan.

There was no objection.

NATIONAL COMMUNICATIONS COMPETITION AND INFORMATION INFRASTRUCTURE ACT OF 1994

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3636) to promote a national communications infrastructure to encourage deployment of advanced communications services through competition, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3636

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 "National Communications Competition and Information Infrastructure Act of 1994".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—TELECOMMUNICATIONS INFRASTRUCTURE AND COMPETITION

Sec. 101. Policy; definitions.
Sec. 102. Equal access and network functionality and quality.
Sec. 103. Telecommunications services for educational institutions, health care institutions, and libraries.
Sec. 104. Discriminatory interconnection.
Sec. 105. Expedited licensing of new technologies and services.
Sec. 106. New or extended lines.
Sec. 107. Pole attachments.
Sec. 108. Civic participation.
Sec. 109. Competition by small business and minority-owned business concerns.

TITLE II—COMMUNICATIONS COMPETITIVENESS

Sec. 201. Cable service provided by telephone companies.
Sec. 202. Review of broadcasters' ownership restrictions.
Sec. 203. Review of statutory ownership restriction.
Sec. 204. Broadcaster spectrum flexibility.
Sec. 205. Interactive services and critical interfaces.
Sec. 206. Video programming accessibility.
Sec. 207. Public access.
Sec. 208. Automated ship distress and safety systems.
Sec. 209. Exclusive Federal jurisdiction over direct broadcast satellite service.
Sec. 210. Technical amendments.
Sec. 211. Availability of screening devices to preclude display of encrypted programming.

TITLE III—PROCUREMENT PRACTICES OF TELECOMMUNICATIONS PROVIDERS.

Sec. 301. Findings.
Sec. 302. Purpose.
Sec. 303. Annual plan submission.
Sec. 304. Sanctions and remedies.
Sec. 305. Definitions.

TITLE IV—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

Sec. 401. Authorization of appropriations.

TITLE I—TELECOMMUNICATIONS INFRASTRUCTURE AND COMPETITION

SEC. 101. POLICY; DEFINITIONS.

(a) POLICY.—Section 1 of the Communications Act of 1934 (47 U.S.C. 151) is amended—

(1) by inserting "(a)" after "SECTION 1."; and

(2) by adding at the end thereof the following new subsection:

"(b) The purposes described in subsection (a), as they relate to common carrier services, include—

"(1) to preserve and enhance universal telecommunications service at just and reasonable rates;

"(2) to encourage the continued development and deployment of advanced and reliable capabilities and services in telecommunications networks;

"(3) to make available, so far as possible, to all the people of the United States, regardless of location or disability, a switched, broadband telecommunications network capable of enabling users to originate and receive affordable high quality voice, data, graphics, and video telecommunications services;

"(4) to ensure that the costs of such networks and services are allocated equitably among users and are constrained by competition whenever possible;

"(5) to ensure a seamless and open nationwide telecommunications network through joint planning, coordination, and service arrangements between and among carriers; and

"(6) to ensure that common carriers' networks function at a high standard of quality in delivering advances in network capabilities and services.".

(b) DEFINITIONS.—Section 3 of such Act (47 U.S.C. 153) is amended—

(1) in subsection (r)—

(A) by inserting "(A)" after "means"; and

(B) by inserting before the period at the end the following: ", or (B) service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service within a State but which does not result in the subscriber incurring a telephone toll charge"; and

(2) by adding at the end thereof the following:

"(gg) 'Information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

"(hh) 'Equal access' means to afford, to any person seeking to provide an information service or a telecommunications service, reasonable and nondiscriminatory access on an unbundled basis—

"(1) to databases, signaling systems, poles, ducts, conduits, and rights-of-way owned or controlled by a local exchange carrier, or other facilities, functions, or information (including subscriber numbers) integral to the efficient transmission, routing, or other provision of telephone exchange services or telephone exchange access services;

"(2) that is at least equal in type, quality, and price to the access which the carrier affords to itself or to any other person; and

"(3) that is sufficient to ensure the full interoperability of the equipment and facilities of the carrier and of the person seeking such access.

"(ii) 'Open platform service' means a switched, end-to-end digital telecommunications service that is subject to title II of this Act, and that (1) provides subscribers with sufficient network capability to access multimedia information services, (2) is widely available throughout a State, (3) is provided based on industry standards, and (4) is available to all subscribers on a single line basis upon reasonable request.

"(jj) 'Local exchange carrier' means any person that is engaged in the provision of telephone exchange service or telephone exchange access service. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireline telephone exchange service within such State.

"(kk) 'Telephone exchange access service' means the offering of telephone exchange services or facilities for the purpose of the origination or termination of interexchange telecommunications services to or from an exchange area.

"(ll) 'Telecommunications' means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

"(mm) 'Telecommunications service' means the offering, on a common carrier basis, of telecommunications facilities, or of telecommunications by means of such facilities. Such term does not include an information service.".

SEC. 102. EQUAL ACCESS AND NETWORK FUNCTIONALITY AND QUALITY.

(a) AMENDMENT.—Section 201 of the Communications Act of 1934 (47 U.S.C. 201) is amended by adding at the end thereof the following new subsections:

"(c) EQUAL ACCESS.—

"(1) OPENNESS AND ACCESSIBILITY OBLIGATIONS.—

"(A) COMMON CARRIER OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to interconnect with the facilities and equipment of other providers of telecommunications services and information services in accordance with such regulations as the Commission may prescribe as necessary or desirable in the public interest with respect to the openness and accessibility of common carrier networks.

"(B) ADDITIONAL OBLIGATIONS OF LOCAL EXCHANGE CARRIERS.—The duty under subsection (a) of a local exchange carrier includes the duty—

"(i) to provide, in accordance with the regulations prescribed under paragraph (2), equal access to and interconnection with the facilities of the carrier's networks to any other carrier or person providing telecommunications services or information services reasonably requesting such equal access and interconnection, so that such networks are fully interoperable with such telecommunications services and information services; and

"(ii) to offer unbundled features, functions, and capabilities whenever technically feasible and economically reasonable, in accordance with requirements prescribed by the Commission pursuant to this subsection and other laws.

"(2) EQUAL ACCESS AND INTERCONNECTION REGULATIONS.—

"(A) REGULATIONS REQUIRED.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations that require reasonable and nondiscriminatory equal access to and interconnection with the facilities of a local exchange carrier's network at any technically feasible and economically reasonable point within the carrier's network on reasonable terms and conditions, to any other carrier or person offering telecommunications services requesting such access. The Commission shall establish such regulations after consultation with the Joint Board established pursuant to subparagraph (D). Such regulations shall provide for actual collocation of equipment necessary for interconnection for telecommunications services at the premises of a local exchange carrier, except that the regulations shall provide for virtual collocation where the local exchange carrier demonstrates that actual collocation is not practical for technical reasons or because of space limitations.

"(B) COMPENSATION.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations requiring just and reasonable compensation to the exchange carrier providing such equal access and interconnection pursuant to subparagraph (A). Such regulations shall include regulations to require the carrier, to the extent it provides a telecommunications service or an information service, to impute such access and interconnection charges to itself as the Commission determines are reasonable and nondiscriminatory.

"(C) EXEMPTIONS AND MODIFICATIONS.—Notwithstanding paragraph (1) or subparagraph (A) of this paragraph, a rural telephone company shall not be required to provide equal access and interconnection to another local exchange carrier. The Commission shall not apply the requirements of this paragraph or impose requirements pursuant to paragraph (1)(B)(ii) to any rural telephone company, except to the extent that the Commission determines that compliance with such requirements would not be unduly economically burdensome, unfairly competitive, technologically infeasible, or otherwise not in the public interest. The Commission may modify the requirements of this paragraph for any other local exchange carrier that has, in the aggregate nationwide, fewer than 500,000 access lines installed, to the extent that the Commission determines that compliance with such requirements (without such modification) would be unduly economically burdensome, technologically infeasible, or otherwise not in the public interest. The Commission may include, in the regulations prescribed pursuant to paragraph (1)(B), modified requirements for any feature, function, or capability that the Commission determines is generally available to competing providers of telecommunications services or information services at the same or better price, terms, and conditions.

"(D) JOINT BOARD ON EQUAL ACCESS AND INTERCONNECTION STANDARDS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of preparing a recommended decision for the Commission with respect to the equal access and interconnection regulations required by this paragraph.

"(E) ENFORCEMENT OF EXISTING REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this subsection in fulfilling the requirements of this subsection, to the extent that such regulations are consistent with the provisions of this subsection.

"(F) DEFINITION OF RURAL TELEPHONE COMPANY.—For the purpose of subparagraph (C) of this paragraph, the term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity—

"(i) provides common carrier service to any local exchange carrier study area that does not include either—

"(I) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recent available population statistics of the Bureau of the Census; or

"(II) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

"(ii) provides telephone exchange service, including telephone exchange access service, to fewer than 50,000 access lines; or

"(iii) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines.

"(3) PREEMPTION.—

"(A) LIMITATION.—Notwithstanding section 2(b), no State or local government may, after one year after the date of enactment of this subsection—

"(i) effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service, or impose any restriction or condition on entry into the business of providing any such service;

"(ii) prohibit any carrier or other person providing interstate or intrastate telecommunications services or information services from exercising the access and interconnection rights provided under this subsection; or

"(iii) impose any limitation on the exercise of such rights.

"(B) PERMITTED TERMS AND CONDITIONS.—Subparagraph (A) shall not be construed to prohibit a State from imposing a term or condition on providers of telecommunications services or information services if such term or condition does not effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service and is necessary and appropriate to—

"(i) protect public safety and welfare;

"(ii) ensure the continued quality of intrastate telecommunications;

"(iii) ensure that rates for intrastate telecommunications services are just and reasonable; or

"(iv) ensure that the provider's business practices are consistent with consumer protection laws and regulations.

"(C) NORMAL CONSTRUCTION PERMITS PERMITTED.—Subparagraph (A) shall not be construed to prohibit a local government from requiring a person or carrier to obtain ordinary and usual construction or similar permits for its operations if (i) such permit is required without regard to the nature of the business, and (ii) requiring such permit does not effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service.

"(D) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(3) shall apply in lieu of the provisions of this paragraph.

"(E) PARITY OF FRANCHISE AND OTHER CHARGES.—Notwithstanding section 2(b), no local government may, after 1 year after the date of enactment of this subsection, impose or collect any franchise, license, permit, or right-of-way fee or any assessment, rental, or any other charge or equivalent thereof as a condition for operating in the locality or for obtaining access to, occupying, or crossing public rights-of-way from any provider of telecommunications services that distinguishes between or among providers of telecommunications services, including the local exchange carrier. For purposes of this subsection, a franchise, license, permit, or right-of-way fee or an assessment, rental, or any other charge or equivalent thereof does not include any imposition of general applicability which does not distinguish between or among providers of telecommunications services, or any tax.

"(4) TARIFFS.—

"(A) GENERALLY.—Within 18 months after the date of enactment of this subsection, a local exchange carrier shall prepare and file tariffs in accordance with this Act with respect to the services or elements offered to comply with the equal access and interconnection regulations required under this subsection. The costs that a carrier incurs in providing such services or elements shall be borne solely by the users of the features and functions comprising such services or elements or of the feature or function that uses or includes such services or elements. The Commission shall review such tariffs to ensure that—

"(i) the charges for such services or elements are cost-based; and

"(ii) the terms and conditions contained in such tariffs unbundle any separable services, elements, features, or functions in accordance with paragraph (1)(B)(ii) and any regulations thereunder.

"(B) SUPPORTING INFORMATION.—A local exchange carrier shall submit supporting information with its tariffs for equal access and interconnection that is sufficient to enable the Commission and the public to determine the relationship between the proposed charges and the costs of providing such services or elements. The submission of such information shall be pursuant to regulations adopted by the Commission to ensure that similarly situated carriers provide such information in a uniform fashion.

"(5) PRICING FLEXIBILITY.—

"(A) ESTABLISHMENT OF CRITERIA.—Within 270 days after the date of enactment of this subsection, the Commission, by regulation, shall establish criteria for determining—

"(i) whether a telecommunications service or provider of such service has become, or is substantially certain to become, subject to competition, either within a geographic area or within a class or category of service;

"(ii) whether such competition will effectively prevent rates for such service that are unjust or unreasonable or that are unjustly or unreasonably discriminatory; and

"(iii) appropriate flexible pricing procedures that can be used in lieu of the filing of tariff schedules, or in lieu of other pricing procedures established by the Commission, and that are consistent with the protection of subscribers and the public interest, convenience, and necessity.

"(B) DETERMINATIONS.—The Commission, with respect to rates for interstate or foreign communications, and State commissions,

with respect to rates for intrastate communications, shall, upon application—

"(i) render determinations in accordance with the criteria established under clauses (i) and (ii) of subparagraph (A) concerning the services or providers that are the subject of such application; and

"(ii) upon a proper showing, establish appropriate flexible pricing procedures consistent with the criteria established under clause (iii) of such subparagraph.

The Commission shall approve or reject any such application within 180 days after the date of its submission.

"(C) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(1) shall apply in lieu of the provisions of this paragraph.

"(6) JOINT BOARD TO PRESERVE UNIVERSAL SERVICE.—

"(A) ESTABLISHMENT; FUNCTIONS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of recommending actions to the Commission and State commissions for the preservation of universal service. As a part of preparing such recommendations, the Joint Board shall survey providers and users of telephone exchange service and consult with State commissions in order to determine the pecuniary difference between the cost of providing universal service and the prices determined to be appropriate for such service.

"(B) PRINCIPLES.—The Joint Board shall base policies for the preservation of universal service on the following principles:

"(i) A plan adopted by the Commission and the States should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

"(ii) Such plan should define the nature and extent of the services encompassed within carriers' universal service obligations. Such plan should seek to promote access to advanced telecommunications services and capabilities, including open platform service, for all Americans by including access to advanced telecommunications services and capabilities in the definition of universal service while maintaining just and reasonable rates. Such plan should seek to promote reasonably comparable services for the general public in urban and rural areas.

"(iii) Such plan should establish specific and predictable mechanisms to provide adequate and sustainable support for universal service.

"(iv) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to preservation of universal service.

"(v) Such plan should permit residential subscribers to continue to receive only basic voice-grade local telephone service, for a period of not more than 5 years, equivalent to the service generally available to residential subscribers on the date of enactment of this subsection, at just, reasonable, and affordable rates. Determinations concerning the affordability of rates for such services shall take into account the rates generally available to residential subscribers on such date of enactment and the pricing rules established by the States. If the plan would result in any increases in the rates for such services for residential subscribers that are not attributable to changes in consumer prices generally, such plan should include a requirement that a rate increase shall be permitted in any proceeding commenced after March 16, 1994, only upon a showing that such increase is necessary to prevent competitive disadvantages for one or more service providers and is in the public interest. Such plan should provide that any such increase in rates shall be minimized to the greatest extent practical and shall be implemented over a time period of not less than 5 years after the date of enactment of this subsection.

"(vi) To the extent that a common carrier establishes advanced telecommunications services, such plan should include provisions to promote public access to advanced telecommunications services, other than a video platform, at a preferential rate that will recover only the added costs of providing such service, for public service institutions, both as producers and users of services, as soon as technically feasible and economically reasonable. Such plan shall provide that such preferential rates should only be made available to such institutions for the purpose of providing noncommercial information services or telecommunications services to the general public and not for the internal telecommunications needs or commercial use of such institutions.

"(vii) Such plan should determine and establish mechanisms to ensure that rates charged by a provider of interexchange telecommunications services for services in rural areas are maintained at levels no higher than those charged by the same carrier to subscribers in urban areas.

"(viii) Such plan should, notwithstanding any other provision of law, require common carriers serving more than 1,800,000 access lines in the aggregate nationwide, to be subject to alternative or price regulation, and not cost-based rate-of-return regulation, for services that are subject to the jurisdiction of the Commission or the States, as applicable, when such carrier's network has been made open to competition as a result of its implementation of the equal access, interconnection, and accessibility provisions of this subsection.

"(ix) Such other principles as the Board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of this Act.

"(C) DEFINITION OF UNIVERSAL SERVICE; ACCESS TO ADVANCED SERVICES.—In defining the nature and extent of the services encompassed within carriers' universal service obligations under subparagraph (B)(ii), the Joint Board shall consider the extent to which—

"(i) a telecommunications service has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

"(ii) denial of access to such service to any individual would unfairly deny that individual educational and economic opportunities;

"(iii) such service has been deployed in the public switched telecommunications network; and

"(iv) inclusion of such service within carriers' universal service obligations is otherwise consistent with the public interest, convenience, and necessity.

The Joint Board may, from time to time, recommend to the Commission modifications in the definition proposed under subparagraph (B).

"(D) REPORT; COMMISSION RESPONSE.—The Joint Board convened pursuant to subparagraph (A) shall report its recommendations within 270 days after the date of enactment of this subsection. The Commission shall complete any proceeding to act upon such recommendations within one year after such date of enactment. A State may adopt regulations to implement the Joint Board's recommendations, except that such regulations shall not, after 18 months after such date of enactment, be inconsistent with regulations prescribed by the Commission to implement such recommendations.

"(E) DEFINITION OF PUBLIC SERVICE INSTITUTION.—For the purposes of this paragraph, the term 'public service institution' means—

"(i) an agency or instrumentality of Federal, State, or local government;

"(ii) a nonprofit educational institution, health care institution, public library, public museum, or public broadcasting station or entity;

"(iii) a charitable organizations that (I) is exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986; (II) provides public services in conjunction with an agency, instrumentality, institution, or entity described in clause (i) or (ii); and (III) provides information that is useful to the public and that is related to the work of such an agency, instrumentality, institution, or entity.

"(7) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

"(A) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing telecommunications services, information services, or video programming services by the common carrier or affiliate; and

"(B) ensure such competing telecommunications services, information services or video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing telecommunications services, information services, or video programming services.

"(8) RESALE.—The resale or sharing of telephone exchange service (or unbundled services, elements, features, or functions of telephone exchange service) in conjunction with the furnishing of a telecommunications service or an information service shall not be prohibited nor subject to unreasonable conditions by the carrier, the Commission, or any State.

"(9) TELECOMMUNICATIONS NUMBER PORTABILITY.—The Commission shall prescribe regulations to ensure that—

"(A) telecommunications number portability shall be available, upon request, as soon as technically feasible and economically reasonable; and

"(B) an impartial entity shall administer telecommunications numbering and make such numbers available on an equitable basis.

The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. For the purpose of this paragraph, the term 'telecommunications number portability' means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one provider of telecommunications services to another.

"(10) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every three years, the Commission shall—

"(A) conduct a proceeding in which interested parties shall have an opportunity to

comment on whether the standards and requirements established by or under this subsection have opened the networks of carriers to reasonable and nondiscriminatory access by providers of telecommunications services and information services;

"(B) review the definition of, and the adequacy of support for, universal service, and evaluate the extent to which universal service has been protected and access to advanced services has been facilitated pursuant to this subsection and the plans and regulations thereunder; and

"(C) submit to the Congress a report containing a statement of the Commission's findings pursuant to such proceeding, and including an identification of any defects or delays observed in attaining the objectives of this subsection and a plan for correcting such defects and delays.

"(11) STUDY OF RURAL PHONE SERVICE.—Within 1 year after the date of enactment of this subsection, the Commission shall initiate an inquiry to examine the effects of competition in the provision of telephone exchange access service and telephone exchange service on the availability and rates for telephone exchange access service and telephone exchange service furnished by rural exchange carriers.

"(d) NETWORK FUNCTIONALITY AND QUALITY.—

"(1) FUNCTIONALITY AND RELIABILITY OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to furnish that service in accordance with such regulations of functionality and reliability as the Commission may prescribe as necessary or desirable in the public interest pursuant to this subsection.

"(2) COORDINATED PLANNING FOR INTEROPERABILITY AND OTHER PURPOSES.—The Commission shall establish—

"(A) procedures for the conduct of coordinated network planning by common carriers and other providers of telecommunications services or information services, subject to Commission supervision, for the effective and efficient interconnection and interoperability of public and private networks; and

"(B) procedures for Commission oversight of the development by appropriate standards-setting organizations of—

"(i) standards for the interconnection and interoperability of such networks;

"(ii) standards that promote access to network capabilities and services by individuals with disabilities; and

"(iii) standards that promote access to information services by subscribers to telephone exchange service furnished by a rural telephone company (as such term is defined in subsection (c)(2)(F)).

"(3) OPEN PLATFORM SERVICE.—

"(A) STUDY.—Within 90 days after the date of enactment of this subsection, the Commission shall initiate an inquiry to consider the regulations and policies necessary to make open platform service available to subscribers at reasonable rates based on the reasonably identifiable costs of providing such service, utilizing existing facilities or new facilities with improved capability or efficiency. The inquiry required under this paragraph shall be completed within 180 days after the date of its initiation.

"(B) REGULATIONS.—On the basis of the results of the inquiry required under subparagraph (A), the Commission shall prescribe and make effective such regulations as are necessary to implement the inquiry's conclusions. Such regulations may require a local exchange carrier to file, in the appropriate jurisdiction, tariffs for the origination and termination of open platform service as soon as such service is economically and technically feasible. In establishing any such regulations, the Commission shall take into account the proximate and long-term deployment plans of local exchange carriers.

"(C) TEMPORARY WAIVER.—The Commission shall also establish a procedure to waive temporarily specific provisions of the regulations prescribed under this paragraph if a local exchange carrier demonstrates that compliance with such requirement—

"(i) would be economically or technically infeasible, or

"(ii) would materially delay the deployment of new facilities with improved capabilities or efficiencies that will be used to meet the requirements of open platform services.

Such petitions shall be decided by the Commission within 180 days after the date of its submission.

"(D) COST ALLOCATION.—Any such regulations shall provide for the allocation of all costs of facilities jointly used to provide open platform service and telephone exchange service or telephone exchange access services.

"(E) STATE AUTHORITY.—Nothing in this paragraph shall be construed to limit a State's authority to continue to regulate any services subject to State jurisdiction under this Act.

"(F) COMMISSION INQUIRY.—Within 2 years after the date of enactment of this paragraph, the Commission shall conduct an inquiry concerning the deployment of open platform service and other advanced telecommunications network capabilities, including switched, broadband telecommunications facilities. In conducting such inquiry, the Commission shall seek to develop information concerning—

"(i) the availability of such network capabilities to all Americans;

"(ii) the availability of such network capabilities to different regions, States, and classes of subscribers;

"(iii) the availability of advanced network technology needed to deploy such network capabilities; and

"(iv) likely deployment schedules for such network capabilities by region, State, and classes of subscribers.

The Commission shall submit a report to the Congress on the results of such inquiry within 270 days after the commencement of such inquiry, and annually thereafter for the succeeding 5 years.

"(4) ACCESSIBILITY REGULATIONS.—

"(A) REGULATIONS.—Within 1 year after the date of enactment of this section, the Commission shall prescribe such regulations as are necessary to ensure that advances in network services deployed by local exchange carriers shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, unless the cost of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations shall seek to permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access. Throughout the process of developing such regulations, the Commission shall coordinate and consult with representatives of individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

"(B) COMPATIBILITY.—Such regulations shall require that whenever an undue burden or adverse competitive impact would result from the requirements in subparagraph (A), the local exchange carrier that deploys the network service shall ensure that the network service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

"(C) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the activity necessary to comply with the requirements of this paragraph would result in an undue burden, the factors to be considered include the following:

"(i) The nature and cost of the activity.

"(ii) The impact on the operation of the facility involved in the deployment of the network service.

"(iii) The financial resources of the local exchange carrier.

"(iv) The type of operations of the local exchange carrier.

"(D) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity necessary to comply with the requirements of this paragraph would result in adverse competitive impact, the following factors shall be considered:

"(i) Whether such activity would raise the cost of the network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the network service profitable.

"(ii) Whether such activity would, with respect to the network service in question, put the local exchange carrier at a competitive disadvantage. This factor may be considered so long as competing network service providers are not held to the same obligation with respect to access by persons with disabilities.

"(E) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every 3 years, the Commission shall conduct a proceeding in which interested parties shall have an opportunity to comment on whether the regulations established under this paragraph have ensured that advances in network services by providers of telecommunications services and information services are accessible and usable by individuals with disabilities.

"(F) EFFECTIVE DATE.—The regulations required by this paragraph shall become effective 18 months after the date of enactment of this subsection.

"(5) QUALITY RULES.—

"(A) MEASURES OR BENCHMARKS REQUIRED.—The Commission shall designate or otherwise establish network reliability and quality performance measures or benchmarks for common carriers for the purpose of ensuring the continued maintenance and evolution of common carrier facilities and service. Not later than 180 days after the date of enactment of this subsection, the Commission shall initiate a rulemaking proceeding to establish such performance measures or benchmarks.

"(B) CONTENTS OF REGULATIONS.—Such regulations shall include—

"(i) quantitative network reliability and service quality performance measures or benchmarks;

"(ii) procedures to monitor and evaluate common carrier efforts to increase network reliability and service quality; and

"(iii) procedures to resolve network reliability and service quality complaints.

"(C) COORDINATION AND CONSULTATION.—Throughout the process of developing network reliability and service quality performance measures or benchmarks, as required by subparagraphs (A) and (B), the Commission shall coordinate and consult with service and equipment providers and users and State regulatory bodies to ensure their concerns and interests are given full consideration in such process.

"(6) RURAL EXEMPTION.—The Commission may modify, or grant exemptions from, the requirements of this subsection in the case of a common carrier providing telecommunications services in a rural area.

"(e) INFRASTRUCTURE SHARING.—

"(1) REGULATIONS REQUIRED.—Within one year after the date of enactment of this subsection, the Commission shall prescribe regulations that require local exchange carriers to make available to qualifying carriers such public switched telecommunications network technology and information and telecommunications facilities and functions as may be requested by such a qualifying carrier for the purpose of enabling that carrier to provide telecommunications services, or to provide access to information services, in the geographic area in which that carrier has requested and obtained designation as the qualifying carrier.

"(2) QUALIFYING CARRIERS.—For purposes of paragraph (1), the term 'qualifying carrier' means a local exchange carrier that—

"(A) lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this subsection; and

"(B) is a common carrier which offers telephone exchange service, telephone exchange access service, and any other service that is within the definition of universal service, to all customers without preference throughout one or more exchange areas in existence on the date of enactment of this subsection.

"(3) TERMS AND CONDITIONS OF REGULATIONS.—The regulations prescribed by the Commission pursuant to this subsection—

"(A) shall not require any local exchange carrier to take any action that is economically unreasonable or that is contrary to the public interest or to provide telecommunications facilities and functions to any qualifying carrier that is not reasonably proximate to such local exchange carrier;

"(B) shall permit, but shall not require, the joint ownership or operation of public switched telecommunications network facilities, functions, and services by or among the local exchange carrier and the qualifying carrier;

"(C) shall ensure that a local exchange carrier shall not be treated by the Commission or any State commission as a common carrier for hire, or as offering common carrier services, with respect to any technology, information, facilities, or functions made available to a qualifying carrier pursuant to this subsection;

"(D) shall ensure that local exchange carriers make such technology, information, facilities, or functions available to qualifying carriers on fair and reasonable terms and conditions that permit such qualifying carriers to fully benefit from the economies of scale and scope of the providing local exchange carrier, as determined in accordance with guidelines prescribed by the Commission in such regulations;

"(E) shall establish conditions that promote cooperation between local exchange carriers and qualifying carriers; and

"(F) shall not require any local exchange carrier to engage in any infrastructure sharing agreement for any geographic area where such carrier is required to provide services subject to State regulation.

"(4) INFORMATION CONCERNING DEPLOYMENT OF NEW SERVICES AND EQUIPMENT.—Any local exchange carrier that has entered into an agreement with a qualifying carrier under this subsection shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including software integral to such telecommunications services and equipment, including upgrades.".

(b) PREEMPTION OF FRANCHISING AUTHORITY REGULATION OF TELECOMMUNICATIONS SERVICES.—

(1) TELECOMMUNICATIONS SERVICES.—Section 621(b) of the Communications Act of 1934 (47 U.S.C. 541(c)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) To the extent that a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

"(i) such cable operator or affiliate shall not be required to obtain a franchise under this title; and

"(ii) the provisions of this title shall not apply to such cable operator or affiliate.

"(B) A franchising authority may not impose any requirement that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

"(C) A franchising authority may not order a cable operator or affiliate thereof—

"(i) to discontinue the provision of a telecommunications service, or

"(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this title with respect to the provision of such telecommunications service.

"(D) A franchising authority may not require a cable operator to provide any telecommunications service or facilities as a condition of the initial grant of a franchise or a franchise renewal.".

(2) FRANCHISE FEES.—Section 622(b) of the Communications Act of 1934 (47 U.S.C. 542(b)) is amended by inserting "to provide cable services" immediately before the period at the end of the first sentence thereof.

(c) CONFORMING AMENDMENT.—Section 2(b) of the Communications Act of 1934 (47 U.S.C.152(b)) is amended by inserting "201(c) and (d)," after "Except as provided in sections".

SEC. 103. TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS, HEALTH CARE INSTITUTIONS, AND LIBRARIES.

Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 229. TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS, HEALTH CARE INSTITUTIONS, AND LIBRARIES.

"(a) PROMOTION OF DELIVERY OF ADVANCED SERVICES.—In fulfillment of its obligation under section 1 to make available to all the people of the United States a rapid, efficient, nationwide, and worldwide communications service, the Commission shall promote the provision of advanced telecommunications services by wire, wireless, cable, and satellite technologies to—

"(1) educational institutions;

"(2) health care institutions; and

"(3) public libraries.

"(b) ANNUAL SURVEY REQUIRED.—The National Telecommunications and Information Administration shall conduct a nationwide survey of the availability of advanced telecommunications services to educational institutions, health care institutions, and public libraries. The Administration shall complete the survey and release publicly the results of such survey not later than one year after the date of enactment of this section. The results of such survey shall include—

"(1) the number of educational institutions and classrooms, health care institutions, and public libraries;

"(2) the number of educational institutions and classrooms, health care institutions, and public libraries that have access to advanced telecommunications services; and

"(3) the nature of the telecommunications facilities through which such educational institutions, health care institutions, and public libraries obtain access to advanced telecommunications services.

The National Telecommunications and Information Administration shall update annually the survey required by this section. The survey required under this subsection shall be prepared in consultation with the Department of Education, Department of Health and Human Services, and such other Federal, State, and local departments, agencies, and authorities that may maintain or have access to information concerning the availability of advanced telecommunications services to educational institutions, health care institutions, and libraries.

"(c) RULEMAKING REQUIRED.—Within one year after the date of enactment of this section, the Commission shall issue a notice of proposed rulemaking for the purpose of adopting regulations that—

"(1) enhance, to the extent technically feasible and economically reasonable, the availability of advanced telecommunications services to all educational institutions and classrooms, health care institutions, and public libraries by the year 2000;

"(2) ensure that appropriate functional requirements or performance standards, or both, including interoperability standards, are established for telecommunications systems or facilities that interconnect educational institutions, health care institutions, and public libraries with the public switched telecommunications network;

"(3) define the circumstances under which a carrier may be required to interconnect its telecommunications network with educational institutions, health care institutions, and public libraries;

"(4) provide for either the establishment of preferential rates for telecommunications services, including advanced services, that are provided to educational institutions, health care institutions, and public libraries, or the use of alternative mechanisms to enhance the availability of advanced services to these institutions; and

"(5) address such other related matters as the Commission may determine.

"(d) FEASIBILITY STUDY.—The Commission shall assess the feasibility of including post-secondary educational institutions in any regulations promulgated under this section.

"(e) DEFINITIONS.—For purposes of this section—

"(1) the term 'educational institutions' means elementary and secondary educational institutions; and

"(2) the term 'health care institutions' means not-for-profit health care institutions, including hospitals and clinics.".

SEC. 104. DISCRIMINATORY INTERCONNECTION.

Section 208 of the Communications Act of 1934 is amended by adding at the end thereof the following new subsection:

"(c) EXPEDITED REVIEW OF CERTAIN COMPLAINTS.—The Commission shall issue a final order with respect to any complaint arising from alleged violations of the regulations and orders prescribed pursuant to section 201(c) within 180 days after the date such complaint is filed.".

SEC. 105. EXPEDITED LICENSING OF NEW TECHNOLOGIES AND SERVICES.

Section 7 of the Communications Act of 1934 (47 U.S.C. 157) is amended by adding at the end thereof the following new subsection:

"(c) LICENSING OF NEW TECHNOLOGIES.—

"(1) EXPEDITED RULEMAKING.—Within 24 months after making a determination under subsection (b) that a technology or service related to the furnishing of telecommunications services is in the public interest, the Commission shall, with respect to any such service requiring a license or other authorization from the Commission, adopt and make effective regulations for—

"(A) the provision of such technology or service; and

"(B) the filing of applications for the licenses or authorizations necessary to offer such technology or service to the public, and shall act on any such application within 24 months after it is filed.

"(2) REVIEW OF APPLICATIONS.—Any application filed by a carrier under this subsection for the construction or extension of a line shall also be subject to section 214 and to any necessary approval by the appropriate State commissions.".

SEC. 106. NEW OR EXTENDED LINES.

Section 214 of the Communications Act of 1934 is amended by adding at the end the following new subsection:

"(e) Any application filed under this section for authority to construct or extend a line shall address the means by which such construction or extension will meet the network access needs of individuals with disabilities.".

SEC. 107. POLE ATTACHMENTS.

Section 224 of the Communications Act of 1934 (47 U.S.C. 244) is amended—

(1) in subsection (a)(4), by inserting after "system" the following: "or a provider of telecommunications service";

(2) in subsection (c)(2)(B), by striking "cable television services" and inserting "the services offered via such attachments";

(3) by redesignating subsection (d)(2) as subsection (d)(4); and

(4) by striking subsection (d)(1) and inserting the following:

"(d)(1) For purposes of subsection (b) of this section, the Commission shall, no later than 1 year after the date of enactment of the National Communications Competition and Information Infrastructure Act of 1994, prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments provided to all providers of telecommunications services, including such attachments used by cable television systems to provide telecommunications services (as defined in section 3(mm) of this Act). Such regulations shall—

"(A) recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit to all attachments to the pole, duct, conduit, or right-of-way and therefore apportion the cost of the space other than the usable space equally among all such attachments,

"(B) recognize that the usable space is of proportional benefit to all entities attached to the pole, duct, conduit, or right-of-way and therefore apportion the cost of the usable space according to the percentage of usable space required for each entity, and

"(C) allow for reasonable terms and conditions relating to health, safety, and the provision of reliable utility service.

"(2) The final regulations prescribed by the Commission pursuant to subparagraphs (A), (B), and (C) of paragraph (1) shall not apply to a pole attachment used by a cable television system solely to provide cable service as defined in section 602(6) of this Act. The rates for pole attachments used for such purposes shall assure a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct, conduit, or right-of-way capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

"(3) For all providers of telecommunications services except members of the exchange carrier association established in 47 C.F.R. 69.601 as of December 31, 1993, upon enactment of this paragraph and until the Commission promulgates its final regulations pursuant to subparagraphs (A), (B), and (C) of paragraph (1), the rate formula contained in any joint use pole attachment agreement between the electric utility and the largest local exchange carrier having such a joint use agreement in the utility's service area, in effect on January 1, 1994, shall also apply to the pole attachments in the utility's service area, but if no such joint use agreement containing a rate formula exists, then the pole attachment rate shall be the rate applicable under paragraph (2) to cable television systems which solely provide cable service as defined in section 602(6) of this Act. Disputes concerning the applicability of a joint use agreement shall be resolved by the Commission or the States, as appropriate.".

SEC. 108. CIVIC PARTICIPATION.

(a) POLICIES TO ENHANCE CIVIC DIALOGUE.—The Commission, in consultation with the National Telecommunications and Information Administration, shall study policies that will enhance civic participation through the national information infrastructure. The study shall request and record public comments on Federal policies that would enhance and expand democratic dialogue through national computer and data networks. The study shall examine, but not be limited to, the social benefits of flat rate pricing for access to computer and data networks, the policies which will determine how access to computer networks will be priced, including the access needs of individuals with disabilities, and the appropriate role of common carriers in the development of national computer and data networks. The Commission shall receive comments in both paper and electronic formats and shall establish an online discussion group accessed through the national information infrastructure to encourage citizen participation in the study.

(b) PARTICIPATION IN REGULATORY AFFAIRS.—The Commission, in consultation with the Office of Consumer Affairs, shall conduct a study of how to encourage citizen participation in regulatory issues and, within 120 days from the date of enactment of this Act, report to Congress on the results of the study.

SEC. 109. COMPETITION BY SMALL BUSINESS AND MINORITY-OWNED BUSINESS CONCERNS.

Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 230. POLICY AND RULEMAKING TO PROMOTE DIVERSITY OF OWNERSHIP.

"(a) FINDINGS.—The Congress finds that—

"(1) in furtherance of the purposes of this Act to make available to all people of the United States a rapid and efficient communications service, and for the purposes of promoting a diversity of opinion in the broadcasting service, the Commission has established regulations and policies to promote ownership of broadcasting services by members of minority groups;

"(2) these regulations have served to promote more vigorous communications on public issues, to broaden the number and variety of stakeholders in the American economy, and to promote innovation by and creativity by Americans of different cultures and national origins, and thereby have served to build a more cohesive and productive society;

"(3) while the Commission has adopted regulations to promote participation by businesses owned by members of minority groups and women, and small businesses, in auctions for certain spectrum-based services which promote diversity of ownership in those services, no other regulations have been established to promote such diversity of participation in the provision of common carrier services or in the provision of other telecommunications and information services;

"(4) the goals of competitively priced services, service innovation, employment, and diversity of viewpoint can be advanced by promoting marketplace penetration by small business concerns, business concerns owned by women and members of minority groups, and nonprofit entities; and

"(5) it should be the policy of the Commission to promote whenever possible diversity of ownership in the provision of information services and telecommunication services by such concerns and entities.

"(b) RULEMAKING REQUIRED.—Within 1 year after the date of enactment of this section, the Commission, in consultation with the National Telecommunications and Information Administration, shall initiate a rulemaking proceeding for the purpose of lowering market entry barriers for small business, business concerns owned by women and members of minority groups, and nonprofit entities that are seeking to provide telecommunication services and information services. The proceeding shall seek to provide remedies for, among other things, lack of access to capital and technical and marketing expertise on the part of such concerns and entities. Consistent with the broad policy and finding set forth in subsection (a), the Commission shall adopt such regulations and make such recommendations to Congress as the Commission deems appropriate. Not later than 2 years after the date of enactment of this section, the Commission shall complete the proceeding required by this subsection.".

TITLE II—COMMUNICATIONS COMPETITIVENESS

SEC. 201. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.

(a) GENERAL REQUIREMENT.—

(1) AMENDMENT.—Section 613(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended to read as follows:

"(b)(1) Subject to the requirements of part V and the other provisions of this title, any

common carrier subject in whole or in part to title II of this Act may, either through its own facilities or through an affiliate owned, operated, or controlled by, or under common control with, the common carrier, provide video programming directly to subscribers in its telephone service area.

"(2) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may provide channels of communications or pole, line, or conduit space, or other rental arrangements, to any entity which is directly or indirectly owned, operated, or controlled by, or under common control with, such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in its telephone service area.

"(3) Notwithstanding paragraphs (1) and (2), an affiliate that—

"(A) is, consistent with section 656, owned, operated, or controlled by, or under common control with, a common carrier subject in whole or in part to title II of this Act, and

"(B) provides video programming to subscribers in the telephone service area of such carrier, but

"(C) does not utilize the local exchange facilities or services of any affiliated common carrier in distributing such programming,

shall not be subject to the requirements of part V, but shall be subject to the requirements of this part and parts III and IV.".

(2) CONFORMING AMENDMENT.—Section 602 of the Communications Act of 1934 (47 U.S.C. 531) is amended—

(A) in paragraph (6)(B), by inserting "or use" after "the selection";

(B) by redesignating paragraphs (18) and (19) as paragraphs (19) and (20) respectively; and

(C) by inserting after paragraph (17) the following new paragraph:

"(18) the term 'telephone service area' when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provides telephone exchange service as of November 20, 1993, but if any common carrier after such date transfers its exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier;".

(b) PROVISIONS FOR REGULATION OF CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.—Title VI of the Communications Act of 1934 (47 U.S.C. 521 et seq.) is amended by adding at the end the following new part:

"PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

"SEC. 651. DEFINITIONS.

"For purposes of this part—

"(1) the term 'control' means—

"(A) an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest; or

"(B) if no single entity directly or indirectly has the right to vote more than 50 percent of the outstanding common stock or other ownership interest, actual working control, in whatever manner exercised, as defined by the Commission by regulation on the basis of relevant factors and circumstances, which shall include partnership and direct ownership interests, voting stock interests, the interests of officers and directors, and the aggregation of voting interests; and

"(2) the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area.

"SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.

"(a) IN GENERAL.—Except as provided in subsection (d) of this section, a common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such video programming is provided through a video programming affiliate that is separate from such carrier.

"(b) BOOKS AND MARKETING.—

"(1) IN GENERAL.—A video programming affiliate of a common carrier shall—

"(A) maintain books, records, and accounts separate from such carrier which identify all transactions with such carrier;

"(B) carry out directly (or through any nonaffiliated person) its own promotion, except that institutional advertising carried out by such carrier shall be permitted so long as each party bears its pro rata share of the costs; and

"(C) not own real or personal property in common with such carrier.

"(2) INBOUND TELEMARKETING AND REFERRAL.—Notwithstanding paragraph (1)(B), a common carrier may provide telemarketing or referral services in response to the call of a customer or potential customer related to the provision of video programming by a video programming affiliate of such carrier. If such services are provided to a video programming affiliate, such services shall be made available to any video programmer or cable operator on request, on nondiscriminatory terms, at just and reasonable prices, and subject to regulations of the Commission to ensure that the carrier's method of providing telemarketing or referral and its price structure do not competitively disadvantage any video programmer or cable operator, regardless of size, including those which do not use the carrier's telemarketing services.

"(3) JOINT TELEMARKETING.—Notwithstanding paragraph (1)(B), a common carrier may petition the Commission for permission to market video programming directly, upon a showing that a cable operator or other entity directly or indirectly provides telecommunications services within the telephone service area of the common carrier, and markets such telecommunications services jointly with video programming services. The common carrier shall specify the geographic region covered by the petition. Any such petition shall be granted or denied within 180 days after the date of its submission.

"(c) BUSINESS TRANSACTIONS WITH CARRIER SUBJECT TO REGULATION.—Any contract, agreement, arrangement, or other manner of conducting business, between a common carrier and its video programming affiliate, providing for—

"(1) the sale, exchange, or leasing of property between such affiliate and such carrier,

"(2) the furnishing of goods or services between such affiliate and such carrier, or

"(3) the transfer to or use by such affiliate for its benefit of any asset or resource of such carrier,

shall be pursuant to regulation prescribed by the Commission, shall be on a fully compensatory and auditable basis, shall be without cost to the telephone service ratepayers of the carrier, shall be filed with the Commission, and shall be in compliance with regulations established by the Commission that will enable the Commission to assess the compliance of any transaction.

"(d) WAIVER.—

"(1) CRITERIA FOR WAIVER.—The Commission may waive any of the requirements of this section for small telephone companies or telephone companies serving rural areas, if the Commission determines, after notice and comment, that—

"(A) such waiver will not affect the ability of the Commission to ensure that all video programming activity is carried out without any support from telephone ratepayers;

"(B) the interests of telephone ratepayers and cable subscribers will not be harmed if such waiver is granted;

"(C) such waiver will not adversely affect the ability of persons to obtain access to the video platform of such carrier; and

"(D) such waiver otherwise is in the public interest.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"(3) CONTINUED APPLICABILITY OF SECTION 659.—In the case of a common carrier that obtains a waiver under this subsection, any requirement that section 659 applies to a video programming affiliate shall instead apply to such carrier.

"SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.

"(a) COMMON CARRIER OBLIGATIONS.—

"(1) IN GENERAL.—Any common carrier subject to title II of this Act, and that provides video programming directly or indirectly to subscribers in its telephone service area, shall establish a video platform.

"(2) IDENTIFICATION OF DEMAND FOR CARRIAGE.—Any common carrier subject to the requirements of paragraph (1) shall, prior to establishing a video platform, submit a notice to the Commission of its intention to establish channel capacity for the provision of video programming to meet the bona fide demand for such capacity. Such notice shall—

"(A) be in such form and contain such information as the Commission may require by regulations pursuant to subsection (b);

"(B) specify the methods by which any entity seeking to use such channel capacity should submit to such carrier a specification of its channel capacity requirements; and

"(C) specify the procedures by which such carrier will determine (in accordance with the Commission's regulations under subsection (b)(1)(B)) whether such request for capacity are bona fide.

The Commission shall submit any such notice for publication in the Federal Register within 5 working days.

"(3) RESPONSE TO REQUEST FOR CARRIAGE.—After receiving and reviewing the requests for capacity submitted pursuant to such notice, such common carrier shall, subject to approval of a certificate under section 214, establish channel capacity that is sufficient to provide carriage for—

"(A) all bona fide requests submitted pursuant to such notice,

"(B) any additional channels required pursuant to section 659, and

"(C) any additional channels required by the Commission's regulations under subsection (b)(1)(C).

"(4) RESPONSES TO CHANGES IN DEMAND FOR CAPACITY.—Any common carrier that establishes a video platform under this section shall—

"(A) immediately notify the Commission and each video programming provider of any

delay in or denial of channel capacity or service, and the reasons therefor;

"(B) continue to receive and grant, to the extent of available capacity, carriage in response to bona fide requests for carriage from existing or additional video programming providers;

"(C) if at any time the number of channels required for bona fide requests for carriage may reasonably be expected soon to exceed the existing capacity of such video platform, immediately notify the Commission of such expectation and of the manner and date by which such carrier will provide sufficient capacity to meet such excess demand; and

"(D) construct, subject to approval of a certificate under section 214, such additional capacity as may be necessary to meet such excess demand.

"(5) DISPUTE RESOLUTION.—The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may award damages sustained in consequence of any violation of this section to any person denied carriage, or require carriage, or both. Any aggrieved party may seek any other remedy available under this Act.

"(b) COMMISSION REGULATIONS.—

"(1) IN GENERAL.—Within one year after the date of the enactment of this section, the Commission shall prescribe regulations that—

"(A) consistent with the requirements of section 659, prohibit a common carrier from discriminating among video programming providers with regard to carriage on its video platform, and ensure that the rates, terms, and conditions for such carriage are just, reasonable, and nondiscriminatory;

"(B) prescribe definitions and criteria for the purposes of determining whether a request shall be considered a bona fide request for purposes of this section;

"(C) establish a requirement that video platforms contain a suitable margin of unused channel capacity to meet reasonable growth in bona fide demand for such capacity;

"(D) extend to video platforms the Commission's regulations concerning network nonduplication (47 C.F.R. 76.92 et seq.) and syndicated exclusivity (47 C.F.R. 76.151 et seq.);

"(E) require the video platform to provide service, transmission, interconnection, and interoperability for unaffiliated or independent video programming providers that is equivalent to that provided to the common carrier's video programming affiliate;

"(F)(i) prohibit a common carrier from discriminating among video programming providers with regard to material or information provided by the common carrier to subscribers for the purposes of selecting programming on the video platform, or in the way such material or information is presented to subscribers;

"(ii) require a common carrier to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers; and

"(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

"(G) prohibit a common carrier from excluding areas from its video platform service area on the basis of the ethnicity, race, or income of the residents of that area, and provide for public comments on the adequacy of the proposed service area on the basis of the standards set forth under this subparagraph.

"(2) EXTENSION OF REGULATIONS TO OTHER HIGH CAPACITY SYSTEMS.—The Commission shall extend the requirements of the regulations prescribed pursuant to this section, in lieu of the requirements of section 612, to any cable operator of a cable system that has installed a switched, broadband video programming delivery system, except that the Commission shall not extend the requirements of the regulations prescribed pursuant to subsection (b)(1)(D) or any other requirement that the Commission determines is clearly inappropriate.

"(c) COMMISSION INQUIRY.—The Commission shall conduct a study of whether it is in the public interest to extend the requirements of subsection (a) to any other cable operators in lieu of the requirements of section 612. The Commission shall submit to the Congress a report on the results of such study not later than 2 years after the date of enactment of this section.

"SEC. 654. EQUAL ACCESS COMPLIANCE.

"(a) CERTIFICATION REQUIRED.—

"(1) IN GENERAL.—A common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such carrier has certified to the Commission that such carrier is in compliance with the requirements of paragraphs (1) and (2) of section 201(c) of this Act, and regulations prescribed pursuant to such paragraphs.

"(2) EXCEPTION.—Notwithstanding paragraph (1), a common carrier subject to title II of this Act may provide video programming directly to subscribers in its telephone service area during any period prior to the date the Commission first prescribes final regulations pursuant to paragraphs (1) and (2) of section 201(c) of this Act if such carrier has certified to the Commission that such carrier is in compliance with State laws and regulations concerning equal access, interconnection, and unbundling that are substantially similar to and fully consistent with the requirements of such paragraphs or if there is no statutory prohibition against such carrier providing video programming directly to subscribers in its telephone service area on the date of enactment of this section. A common carrier that is permitted to provide video programming under this paragraph prior to the effective date of such regulations shall not be exempt from the requirements of paragraph (1) after the effective date of such final regulations.

"(b) CERTIFICATION AND APPLICATION APPROVAL.—A common carrier that submits a certification under paragraph (1) or (2) of subsection (a) shall be eligible to provide video programming to subscribers in accordance with the requirements of this part, subject to the approval of any necessary application under section 214 for authority to establish a video platform. An application under section 214 may be filed simultaneously with the filing of such certification or at any time after the date of enactment of this section, and the Commission shall act to approve (with or without modification) or reject such application within 180 days after the date of its submission. If the Commission acts to approve such an application prior to the filing of such certification, such approval shall not be effective until such certification is filed.

"SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.

"(a) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

"(1) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing video programming services by the common carrier or affiliate; and

"(2) ensure such competing video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing video programming services.

"(b) CABLE OPERATOR PROHIBITIONS.—The Commission shall prescribe regulations to prohibit a cable operator from engaging in any practice that results in improper cross-subsidization between its regulated cable operations and its provision of telecommunications service, either directly or through an affiliate.

"SEC. 656. PROHIBITION ON BUYOUTS.

"(a) GENERAL PROHIBITION.—No common carrier that provides telephone exchange service, and no entity owned by or under common ownership or control with such carrier, may purchase or otherwise obtain control over any cable system that is located within its telephone service area and is owned by an unaffiliated person.

"(b) EXCEPTIONS.—Notwithstanding subsection (a), a common carrier may—

"(1) obtain a controlling interest in, or form a joint venture or other partnership with, a cable system that serves a rural area;

"(2) obtain, in addition to any interest, joint venture, or partnership obtained or formed pursuant to paragraph (1), a controlling interest in, or form a joint venture or other partnership with, any cable system or systems if—

"(A) such systems in the aggregate serve less than 10 percent of the households in the telephone service area of such carrier; and

"(B) no such system serves a franchise area with more than 35,000 inhabitants, except that a common carrier may obtain such interest or form such joint venture or other partnership with a cable system that serves a franchise area with more than 35,000 but not more than 50,000 inhabitants if such system is not affiliated (as such term is defined in section 602) with any other system whose franchise area is contiguous to the franchise area of the acquired system;

"(3) obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of such a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission; or

"(4) obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as 'the subject cable system'), if—

"(A) the subject cable system operates in a television market that is not in the top 25 markets, and that has more than 1 cable system operator, and the subject cable system is not the largest cable system in such television market;

"(B) the subject cable system and the largest cable system in such television market held on March 1, 1994, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

"(C) the subject cable system is not owned by or under common ownership or control of

any one of the 50 largest cable system operators as existed on March 1, 1994; and

"(D) the largest system in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as existed on March 1, 1994.

"(c) WAIVER.—

"(1) CRITERIA FOR WAIVER.—The Commission may waive the restrictions in subsection (a) of this section only upon a showing by the applicant that—

"(A) because of the nature of the market served by the cable system concerned—

"(i) the incumbent cable operator would be subjected to undue economic distress by the enforcement of such subsection; or

"(ii) the cable system would not be economically viable if such subsection were enforced; and

"(B) the local franchising authority approves of such waiver.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"SEC. 657. PENALTIES.

"If the Commission finds that any common carrier has knowingly violated any provision of this part, the Commission shall assess such fines and penalties as it deems appropriate pursuant to this Act.

"SEC. 658. CONSUMER PROTECTION.

"(a) JOINT BOARD REQUIRED.—Within 30 days after the date of enactment of this part, the Commission shall convene a Federal-State Joint Board under the provisions of section 410(c) for the purpose of recommending a decision concerning the practices, classifications, and regulations as may be necessary to ensure proper jurisdictional separation and allocation of the costs of establishing and providing a video platform. The Board shall issue its recommendations to the Commission within 270 days after the date of enactment of this part.

"(b) COMMISSION REGULATIONS REQUIRED.—The Commission, with respect to interstate switched access service, and the States, with respect to telephone exchange service and intrastate interexchange service, shall establish such regulations as may be necessary to implement section 655 within one year after the date of the enactment of this part.

"(c) NO EFFECT ON CARRIER REGULATION AUTHORITY.—Nothing in this section shall be construed to limit or supersede the authority of any State or the Commission with respect to the allocation of costs associated with intrastate or interstate communication services.

"SEC. 659. APPLICABILITY OF FRANCHISE AND OTHER REQUIREMENTS.

"(a) IN GENERAL.—Any provision that applies to a cable operator under—

"(1) sections 613, 616, 617, 628, 631, 632, and 634 of this title, shall apply,

"(2) sections 611, 612, 614, and 615 of this title, and section 325 of title III, shall apply in accordance with the regulations prescribed under subsection (b), and

"(3) parts III and IV (other than sections 628, 631, 632, and 634) of this title shall not apply,

to any video programming affiliate established by a common carrier in accordance with the requirements of this part.

"(b) IMPLEMENTATION OF REQUIREMENTS.—

"(1) REGULATIONS.—The Commission shall prescribe regulations to ensure that a video programming affiliate of a common carrier shall provide (A) capacity, services, facilities, and equipment for public, educational, and governmental use, (B) capacity for commercial use, (C) carriage of commercial and non-commercial broadcast television stations, and (D) an opportunity for commercial broadcast stations to choose between mandatory carriage and reimbursement for retransmission of the signal of such station. In prescribing such regulations, the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in subsection (a)(2) of this section. Such regulations shall also require that, if a common carrier establishes a video platform but does not provide or ceases to provide video programming through a video programming affiliate, such carrier shall comply with the regulations prescribed under this paragraph and with the provisions described in subsection (a)(1) in the operation of its video platform.

"(2) FEES.—A video programming affiliate of any common carrier that establishes a video platform under this part, and any multichannel video programming distributor offering a competing service using such video platform (as determined in accordance with regulations of the Commission), shall be subject to the payment of fees imposed by a local franchising authority, in lieu of the fees required under section 622. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the same service area.

"SEC. 660. RURAL AREA EXEMPTION.

"The provisions of sections 652, 653, 654, and 656 shall not apply to video programming provided in a rural area by a common carrier that provides telephone exchange service in the same area.".

SEC. 202. REVIEW OF BROADCASTERS' OWNERSHIP RESTRICTIONS.

Within one year after the date of enactment of this Act, the Commission shall, after a notice and comment proceeding, prescribe regulations to modify, maintain, or remove the ownership regulations on radio and television broadcasters as necessary to ensure that broadcasters are able to compete fairly with other information providers while protecting the goals of diversity and localism.

SEC. 203. REVIEW OF STATUTORY OWNERSHIP RESTRICTION.

Within one year after the date of enactment of this Act, the Commission shall review the ownership restriction in section 613(a)(1) of the Communications Act of 1934 (47 U.S.C. 553(a)(1)) and report to Congress whether or not such restriction continues to serve the public interest.

SEC. 204. BROADCASTER SPECTRUM FLEXIBILITY.

(a) REGULATIONS REQUIRED.—If the Commission determines to issue additional licenses for advanced television services, and initially limits the eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both), the Commission shall adopt regulations that allow such licensees or permittees to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

(b) CONTENTS OF REGULATIONS.—In prescribing the regulations required by subsection (a), the Commission shall—

(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is indivisible from the use of such designated frequency for the provision of advanced television services;

(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

(3) treat any such ancillary or supplementary services for which the licensee or permittee solicits and receives compensation in return for transmitting commercial advertising as broadcast services for the purposes of the Communications Act of 1934 and the Children's Television Act of 1990 (47 U.S.C. 303a), and the Commission's regulations thereunder, including regulations promulgated pursuant to section 315 of the Communications Act of 1934 (47 U.S.C. 315);

(4) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person;

(5) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, including regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

(6) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

(c) RECOVERY OF LICENSE.—

(1) CONDITIONS REQUIRED.—If the Commission limits the eligibility for licenses to provide advanced television services in the manner described in subsection (a), the Commission shall, as a condition of such license, require that, upon a determination by the Commission pursuant to the regulations prescribed under paragraph (2), either the additional license or the original license held by the licensee be surrendered to the Commission in accordance with such regulations for reallocation or reassignment (or both) pursuant to Commission regulation.

(2) REGULATIONS.—The Commission shall prescribe regulations establishing criteria for rendering determinations concerning license surrender pursuant to license conditions required by paragraph (1). Such regulations shall—

(A) require such determinations to be based on whether the substantial majority of the public have obtained television receivers that are capable of receiving advanced television services; and

(B) not require the cessation of the broadcasting if such cessation would render the television receivers of a substantial portion of the public useless, or otherwise cause undue burdens on the owners of such television receivers.

(d) FEES REQUIRED.—

(1) SERVICES TO WHICH FEES APPLY.—If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency—

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish by regulation a program to assess and collect an annual fee or royalty payment.

(2) CRITERIA FOR REGULATIONS.—The regulations required by paragraph (1) shall—

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that is, to maximum extent feasible, equal (over the term of the license) to the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) and the Commission's regulations thereunder; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

(3) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), all proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

(4) REPORT.—Within 5 years after the date of the enactment of this section, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

(e) EVALUATION REQUIRED.—Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include—

(1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;

(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees in order to issue additional licenses for the provision of advanced television services.

(f) DEFINITIONS.—As used in this section:

(1) ADVANCED TELEVISION SERVICES.—The term "advanced television services" means television services provided using digital or other advanced technology to enhance audio quality and video resolution, as further defined in the opinion, report, and order of the Commission entitled "Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service", MM Docket 87-268, adopted September 17, 1992, and successor proceedings.

(2) DESIGNATED FREQUENCIES.—The term "designated frequency" means each of the frequencies designated by the Commission for licenses for advanced television services.

(3) HIGH DEFINITION TELEVISION.—The term "high definition television" refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally available on the date of enactment of this section, as further defined in the proceedings described in paragraph (1) of this subsection.

SEC. 205. INTERACTIVE SERVICES AND CRITICAL INTERFACES.

(a) FINDINGS.—The Congress finds that—

(1) the convergence of communications, computing, and video technologies will permit improvements in interoperability between and among those technologies;

(2) in the public switched telecommunications network, open protocols and technical requirements for connection between the network and the consumer, and the availability of unbundled customer equipment through retailers and other third party vendors, have served to broaden consumer choice, lower prices, and spur competition and innovation in the customer equipment industry;

(3) set-top boxes and other interactive communications devices could similarly serve as a critical gateway between American homes and businesses and advanced telecommunications and video programming networks;

(4) American consumers have benefited from the ability to own or rent customer premises equipment obtained from retailers and other vendors and the ability to access the network with portable, compatible equipment;

(5) in order to promote diversity, competition, and technological innovation among suppliers of equipment and services, it may be necessary to make certain critical interfaces with such networks open and accessible to a broad range of equipment manufacturers and information providers;

(6) the identification of critical interfaces with such networks and the assessment of their openness must be accomplished with due recognition that open and accessible systems may include standards that involve both nonproprietary and proprietary technologies;

(7) such identification and assessment must also be accomplished with due recognition of the need for owners and distributors of video programming and information services to ensure system and signal security and to prevent theft of service;

(8) whenever possible, standards in dynamic industries such as interactive systems are best set by the marketplace or by private sector standard-setting bodies; and

(9) the role of the Commission in this regard is—

(A) to identify, in consultation with industry groups, consumer interests, and independent experts, critical interfaces with such networks (i) to ensure that end users can connect information devices to such networks, and (ii) to ensure that information service providers are able to transmit information to end users, and

(B) as necessary, to take steps to ensure these networks and services are accessible to a broad range of equipment manufactures, information providers, and program suppliers.

(b) INQUIRY REQUIRED.—Within 6 months after the date of the enactment of this Act, the Commission shall commence an inquiry—

(1) to examine the impact of the convergence of technologies on cable, telephone, satellite, and wireless and other communications technologies likely to offer interactive communications services;

(2) to ascertain the importance of maintaining open and accessible systems in interactive communications services;

(3) to examine the costs and benefits of maintaining varying levels of interoperability between and among interactive communications services;

(4) to examine the costs and benefits of establishing open interfaces (A) between the network provider and the set-top box or other interactive communications devices used in the home or office, and (B) between network providers and information service providers, and to determine how best to establish such interfaces;

(5) to determine methods by which converter boxes or other interactive communications devices may be sold through retailers and other third party vendors and to determine the vendors' responsibilities for ensuring that their devices are interoperable with interactive networks;

(6) to assess how the security of cable, satellite, and other interactive systems or their services can continue to be ensured with the establishment of an interface between the network and a converter box or other interactive communications device, including those manufactured and distributed at retail by entities independent of network providers and information service providers, and to determine the responsibilities of such independent entities for assuring network security and for conforming to signal interference standards;

(7) to ascertain the conditions necessary to ensure that any critical interface is available to information and content providers and others who seek to design, build, and distribute interoperable devices for these networks so as to ensure network access and fair competition for independent information providers and consumers;

(8) to assess the impact of the deployment of digital technologies on individuals with disabilities, with particular emphasis on any regulatory, policy, or design barriers which would limit functionally equivalent access by such individuals;

(9) to assess current regulation of telephone, cable, satellite, and other communications delivery systems to ascertain how best to ensure interoperability between those systems;

(10) to assess the adequacy of current regulation of telephone, cable, satellite, and other communications delivery systems with respect to bundling of equipment and services and to identify any changes in unbundling regulations necessary to assure effective competition and encourage technological innovation, consistent with the finding in subsection (a)(6) and the objectives of paragraph (6) of this subsection, in the market for converter boxes or interactive communications devices and for other customer premises equipment;

(11) to solicit comment on any changes in the Commission's regulations that are necessary to ensure that diversity, competition, and technological innovation are promoted in communications services and equipment; and

(12) to prepare recommendations to the Congress for any legislative changes required.

(c) REPORT TO CONGRESS.—Within 12 months after the date of the enactment of this Act, the Commission shall submit to the Congress a report on the results of the inquiry required by subsection (b). Within 6 months after the date of submission of such report, the Commission shall prescribe such changes in its regulations as the Commission determines are necessary pursuant to subsection (b)(10).

(d) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this section shall be construed as limiting, superseding, or otherwise

modifying the existing authority and responsibilities of the Commission or National Institute of Standards and Technology.

SEC. 206. VIDEO PROGRAMMING ACCESSIBILITY.

(a) INQUIRY REQUIRED.—Within 180 days after the date of enactment of this section, the Federal Communications Commission shall complete an inquiry to ascertain the level at which video programming is closed captioned. Such inquiry shall examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved, or any other related factors. The Commission shall submit to the Congress a report on the results of such inquiry.

(b) CONTENTS OF REGULATIONS.—Within 18 months after the date of enactment, the Commission shall prescribe such regulations as are necessary to implement this section. Such regulations shall ensure that—

(1) video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions, except as provided in subsection (d); and

(2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions, except as provided in subsection (d).

(c) CONTENTS OF REGULATIONS.—Such regulations shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming.

(d) EXEMPTIONS.—Notwithstanding subsection (b)—

(1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of close captioning would be economically burdensome to the provider or owner of such programming;

(2) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with contracts in effect on the date of enactment of this Act, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and

(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.

(e) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the closed captions necessary to comply with the requirements of this paragraph would result in an undue economic burden, the factors to be considered include—

(1) the nature and cost of the closed captions for the programming;

(2) the impact on the operation of the provider or program owner;

(3) the financial resources of the provider or program owner; and

(4) the type of operations of the provider or program owner.

(f) ADDITIONAL PROCEEDING ON VIDEO DESCRIPTIONS REQUIRED.—Within 6 months after the date of enactment of this Act, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate. Following the completion of such inquiry, the Commission may adopt regulation it deems necessary to promote the accessibility of video programming to persons with visual impairments.

(g) MODEL PROGRAM.—The National Telecommunications and Information Administration shall establish and oversee, and (to the extent of available funds) provide financial support for, marketplace tests of video descriptions on commercial and noncommercial video programming services.

(h) VIDEO DESCRIPTION.—For purposes of this section, "video description" means the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

SEC. 207. PUBLIC ACCESS.

Within one year after the date of enactment of this Act, the Federal Communications Commission shall prescribe regulations to reserve appropriate capacity for the public at preferential rates on cable systems and video platforms.

SEC. 208. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

Notwithstanding any provision of the Communications Act of 1934, a ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention shall not be required to be equipped with a radio station operated by one or more radio officers or operators.

SEC. 209. EXCLUSIVE FEDERAL JURISDICTION OVER DIRECT BROADCAST SATELLITE SERVICE.

Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

"(v) Have exclusive jurisdiction over the regulation of the direct broadcast satellite service.".

SEC. 210. TECHNICAL AMENDMENTS.

(a) RETRANSMISSION.—Section 325(b)(2)(D) of the Communications Act of 1934 (47 U.S.C. 325(b)(2)(D)) is amended to read as follows:

"(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if (i) the customers served by the cable operator or other multichannel video programming distributor reside outside the originating station's television market, as defined by the Commission for purposes of section 614(h)(1)(C); (ii) such signal was obtained from a satellite carrier or terrestrial microwave common carrier; and (iii) and the origination station was a superstation on May 1, 1991.

(b) MARKET DETERMINATIONS.—Section 614(h)(1)(C)(i) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C)(i)) is amended by striking out "in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991," and inserting "by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns,".

SEC. 211. AVAILABILITY OF SCREENING DEVICES TO PRECLUDE DISPLAY OF ENCRYPTED PROGRAMMING.

(a) CUSTOMER NOTICE.—Section 624(d)(2)(A) of the Communications Act of 1934 (47 U.S.C. 544(d)(2)(A)) is amended by adding at the end the following new sentence: "Upon beginning service to any new subscriber and not less frequently than once each calendar year for current subscribers, the cable operator shall inform subscribers of the right to request and obtain such device.".

(b) SIGNAL LEAKAGE.—Section 624(d)(2) of such Act is further amended by adding at the end the following new subparagraph:

"(C) The Commission shall prescribe regulations to require, to the extent technically feasible, the transmission of programming described in subparagraph (A) by means of encrypted signals that permit subscribers to effectively and entirely prevent the display of both the audio and video portions of such programming with or without the use of a device described in subparagraph (A).".

TITLE III—PROCUREMENT PRACTICES OF TELECOMMUNICATIONS PROVIDERS

SEC. 301. FINDINGS.

The Congress finds the following:

(1) It is in the public interest for business enterprises owned by minorities and women to participate in procurement contracts of all providers of telecommunications services.

(2) The opportunity for full participation in our free enterprise system by business enterprises that are owned by minorities and women is essential if this Nation is to attain social and economic equality for those businesses and improve the functioning of the national economy.

(3) It is in this Nation's interest to expeditiously improve the economically disadvantaged position of business enterprises that are owned by minorities and women.

(4) The position of these businesses can be improved through the development by the providers of telecommunications services of substantial long-range and annual goals, which are supported by training and technical assistance, for the purchase, to the maximum practicable extent, of technology, equipment, supplies, services, material and construction from minority business enterprises.

(5) Procurement policies which include participation of business enterprises that are owned by minorities and women also benefit the communication industry and its consumers by encouraging the expansion of the numbers of suppliers for procurement, thereby encouraging competition among suppliers and promoting economic efficiency in the process.

SEC. 302. PURPOSE.

The purposes of this title are—

(1) to encourage and foster greater economic opportunity for business enterprises that are owned by minorities and women;

(2) to promote competition among suppliers to providers of telecommunications services and their affiliates to enhance economic efficiency in the procurement of telephone corporation contracts and contracts of their State commission-regulated subsidiaries and affiliates;

(3) to clarify and expand a program for the procurement by State and federally-regulated telephone companies of technology, equipment, supplies, services, materials and construction work from business enterprises that are owned by minorities and women; and

(4) to ensure that a fair proportion of the total purchases, contracts, and subcontracts for supplies, commodities, technology, property, and services offered by the providers of

telecommunications services and their affiliates are awarded to minority and women business enterprises.

SEC. 303. ANNUAL PLAN SUBMISSION.

(a) ANNUAL PLANS REQUIRED.—

(1) IN GENERAL.—The Commission shall require each provider of telecommunications services to submit annually a detailed and verifiable plan for increasing its procurement from business enterprises that are owned by minorities or women in all categories of procurement in which minorities are under represented.

(2) CONTENTS OF PLANS.—The annual plans required by paragraph (1) shall include (but not be limited to) short- and long-term progressive goals and timetables, technical assistance, and training and shall, in addition to goals for direct contracting opportunities, include methods for encouraging both prime contractors and grantees to engage business enterprises that are owned by minorities and women in subcontracts in all categories in which minorities are under represented.

(3) IMPLEMENTATION REPORT.—Each provider of telecommunications services shall furnish an annual report to the Commission regarding the implementation of programs established pursuant to this title in such form as the Commission shall require, and at such time as the Commission shall annually designate.

(4) REPORT TO CONGRESS.—The Commission shall provide an annual report to Congress, beginning in January 1995, on the progress of activities undertaken by each provider of telecommunications services regarding the implementation of activities pursuant to this title to develop business enterprises that are owned by minorities or women. The report shall evaluate the accomplishments under this title and shall recommend a program for enhancing the policy declared in this title, together with such recommendations for legislation as it deems necessary or desirable to further that policy.

(b) REGULATIONS AND CRITERIA FOR DETERMINING ELIGIBILITY OF MINORITY BUSINESS ENTERPRISES FOR PROCUREMENT CONTRACTS.—

(1) IN GENERAL.—The Commission shall establish regulations for implementing programs pursuant to this title that will govern providers of telecommunications services and their affiliates.

(2) VERIFYING CRITERIA.—The Commission shall develop and publish regulations setting forth criteria for verifying and determining the eligibility of business enterprises that are owned by minorities or women for procurement contracts.

(3) OUTREACH.—The Commission's regulations shall require each provider of telecommunications services and its affiliates to develop and to implement an outreach program to inform and recruit business enterprises that are owned by minorities or women to apply for procurement contracts under this title.

(4) ENFORCEMENT.—The Commission shall establish and promulgate such regulations necessary to enforce the provisions of this title.

(c) WAIVER AUTHORITY.—The requirements of this section may be waived, in whole or in part, by the Commission with respect to a particular contract or subcontract in accordance with guidelines set forth in regulations which the Commission shall prescribe when it determines that the application of such regulations prove to result in undue hardship or unreasonable expense to a provider of telecommunications services.

SEC. 304. SANCTIONS AND REMEDIES.

(a) FALSE REPRESENTATION OF BUSINESSES; SANCTIONS.—

(1) IN GENERAL.—Any person or corporation, through its directors, officers, or agent, which falsely represents the business as a business enterprise that are owned by minorities or women in the procurement or attempt to procure contracts from telephone operating companies and their affiliates pursuant to this article, shall be punished by a fine of not more than $5,000, or by imprisonment for a period not to exceed 5 years of its directors, officers, or agents responsible for the false statements, or by both fine and imprisonment.

(2) HOLDING COMPANIES.—Any provider of telecommunications services which falsely represents its annual report to the Commission or its implementation of its programs pursuant to this section shall be subject to a fine of $100,000 and be subject to a penalty of up to 5 years restriction from participation in lines of business activities provided for in this title.

(b) INDEPENDENT CAUSE OF ACTION, REMEDIES, AND ATTORNEY FEES.—

(1) DISCRIMINATION PROHIBITED.—No otherwise qualified business enterprise that are owned by minorities or women shall solely, by reason of its racial, ethnic, or gender composition be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in procuring contracts from telephone utilities.

(2) CIVIL ACTIONS AUTHORIZED.—Whenever a qualified business enterprise that is owned by minorities or women has reasonable cause to believe that a provider of telecommunications services or its affiliate is engaged in a pattern or practice of resistance to the full compliance of any provision of this title, the business enterprise may bring a civil action in the appropriate district court of the United States against the provider of telecommunications services or its affiliate requesting such monetary or injunctive relief, or both, as deemed necessary to ensure the full benefits of this title.

(3) ATTORNEYS' FEES AND COSTS.—In any action or proceeding to enforce or charge of a violation of a provision of this title, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs.

SEC. 305. DEFINITIONS.

For the purpose of this title, the following definitions apply:

(1) The term "business enterprise owned by minorities or women" means—

(A) a business enterprise that is at least 51 percent owned by a person or persons who are minority persons or women; or

(B) in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more persons who are minority persons or women, and whose management and daily business operations are controlled by one or more of those persons.

(2) The term "minority person" means persons who are Black Americans, Hispanic Americans, Native Americans, Asian Americans, and Pacific Americans.

(3) The term "control" means exercising the power to make financial and policy decisions.

(4) The term "operate" means the active involvement in the day-to-day management of the business and not merely being officers or directors.

(5) The term "Commission" means the Federal Communications Commission.

(6) The term "telecommunications service" has the meaning provided in section 3(mm) of the Communications Act of 1934 (as added by this Act).

TITLE IV—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) EFFECT ON FEES.—For purposes of section 9(b)(2) of the Communications Act of 1934 (47 U.S.C. 159(b)(2)), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a) of such Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes, and the gentleman from Texas [Mr. FIELDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today, I rise to bring before the House a bill that represents what I believe to be the Nation's roadmap for the information superhighway.

The purpose of this bill is to help consumers by promoting a national communications and information infrastructure. This legislation seeks to accomplish that goal by encouraging the deployment of advanced communications services and technologies through competition, by safeguarding ratepayers and competitors from potential anticompetitive abuses, and by preserving and enhancing universal service.

This bill has three key components. First, the bill will preserve and enhance the goal of providing to all Americans high-quality phone service at just and reasonable rates. This goal of universal service is one of the proudest achievements of our Nation during the 20th century, and this legislation will ensure it endures beyond the year 2000.

Second, the legislation will promote and accelerate competition to the cable television industry by permitting telephone companies to compete in offering video programming. Specifically, the bill would rescind the statutory ban on telephone company ownership and delivery of video programming. Telephone companies would be permitted, through a separate subsidiary, to provide video programming to their subscribers so long as they establish an open system to permit others to use their video platforms. But they must enter the business the old fashion way: by building a new system and not just buying up an existing system.

Third, the legislation will promote competition in the local telephone market. This market is one of the last monopoly markets in the entire telecommunications universe. We all have

witnessed how the long-distance market and the telecommunications equipment market has benefited tremendously from competition. Just 10 years ago, you had one choice in long distance—AT&T—and one choice for a phone—black rotary dial. Through Federal policies, hundreds of equipment makers and long distance companies now exist, proving rigorous competition. We can see those same benefits in the local telephone market, and they benefit consumers by giving them more choice at lower prices.

The bill before the House reflects a handful of changes that have been made to the bill to reflect a number of minor issues that have been raised. At this time I ask unanimous consent that a joint statement explaining these changes appear in the RECORD after my remarks.

In conclusion, this legislation has benefited tremendously from the close working relationship among all the members of the Committee on Energy and Commerce. We have succeeded, I believe, in crafting a bill that addresses many of the tough issues and strikes a fair balance on a number of difficult issues.

I strongly urge all Members to support this bill.

JOINT EXPLANATION OF H.R. 3636

The bill considered by the House today contains several changes that address issues brought to the attention of the Members since the bill was reported out of committee. We want to take this opportunity to explain those changes.

Section 201(c)(3)(B) also has been altered to make certain that States can adopt provisions relating to the public safety and welfare and for other reasons enumerated in clauses (i)–(iv), if such term or conditions does not effectively prohibit any person or carrier from providing a telecommunications service. This language clarifies that States can establish terms and conditions, consistent with subparagraph (A), so long as such terms and conditions do not amount to an effective prohibition. This standard was borrowed from subparagraph (A), and is consistent with the overarching goal of enabling States to impose necessary and appropriate terms and conditions so long as they do not amount to an effective prohibition on entry into the telecommunications business.

Section 201(c)(3)(C) has been added to make clear that the language preempting State and local entry barriers shall not be construed to prohibit a local government from requiring a carrier or other person to obtain ordinary and usual construction or similar permits for its operations. This provision is intended to make certain that local governments have authority to oversee street closings and excavations and related activity as may be necessary in the ordinary course of constructing telecommunications facilities.

Subparagraph (C) also makes clear that this language does not give local governments the power to use construction and other permits to impose conditions that effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service. This should be treated as the same standard as set forth in subparagraph (A) and (B).

Section 201(d)(3)(F) contains a broader directive to the Commission to study how open platform service and other advanced network capabilities, including broadband telecommunications facilities, have been deployed. Thus, the Commission will seek information concerning how open platform service and other similar advanced network capabilities have been deployed throughout the country, consistent with the information enumerated in clauses (i)–(iv).

Section 201(e)(3) was amended to direct the Commission to establish regulations on infrastructure sharing between large local exchange carriers [LEC] and "qualifying carriers" so that a large LEC would not be required to share its facilities with a qualifying carrier that is not reasonably proximate to the large telephone company. This limiting principle was added so that a large LEC would not face requests, or demands, for infrastructure sharing from qualifying carriers across the country, but only from carriers that were "reasonably proximate" to the large LEC. Without this limiting principle, there was a legitimate concern that this open-ended requirement could have acted as a disincentive to large LEC's to deploy advanced capabilities.

Section 108 has been amended to direct the Commission to receive comments in electronic formats and to establish an online method of conducting some of its business. This requirement helps the Commission stay current with the burgeoning telecommunications industry. In addition, this section now contains references to the "national information infrastructure," which is a broader term than "Internet," which was in the committee bill.

Section 109 contains additional congressional findings recognizing rules the Commission has adopted to promote participation by minority groups and women, and small businesses. This language should not be construed to confer any approval or disapproval on regulations the Commission has adopted with respect to promoting minority participation in communications services.

In title II, section 210(a) clarifies that the obligation not to retransmit the signal of a broadcasting station without consent of the originating station does not extend to retransmission of superstation signals by microwave common carrier. Section 210(a) also restricts the exemption in section 325(b)(2)(D) to retransmission of superstation signals to customers outside of the originating station's television market.

Section 210(b) eliminates the existing statutory basis for determining television markets, as used in this title, and instead grants the Commission authority to choose an appropriate definition based on commercial publications. The Commission is directed to determine television markets by regulation or order to give interested parties appropriate notice and opportunity to comment.

Section 653 has been amended to make clear that any common carrier subject to title II of the Communications Act of 1934, and that provides video programming directly or indirectly to its subscribers, shall establish a video platform and otherwise comply with the requirements contained in section 653. This change clarifies that all common carriers that seek to provide video programming to their subscribers, directly or indirectly, must adhere to the important safeguards that have been built into this section.

Section 656(b)(4) has been narrowly expanded to permit joint ventures, or purchases, of cable systems in unique circumstances. The intent behind this amendment is to promote implementation of facilities-based competition in the delivery of video programming in a narrow class of circumstances where such a goal may be impeded by the general provisions of section 656. The test set forth in paragraph (4) requires that the "subject cable system" operates in a television market that is not in the top 25 markets, and that the market is characterized by at least 2 systems, where the largest cable system in the market is owned or controlled or under common ownership of any of the top 10 largest multiple system operators [MSO's]. In addition, paragraph (4) requires that the "subject cable system" is not owned or controlled by any of the 50 largest MSOs. Finally, the language in subparagraph (B) describes the situation where the largest cable system and the subject cable system both held franchises, as of March 1, 1994, from the largest municipality in the television market, and that each franchisee could offer cable service in the entirety of the franchise area of the other cable system. In that sense, each had a nonexclusive franchise from the largest municipality.

In light of these narrow and exceptional circumstances, it is my view that the two-wire goal actually would be advanced by permitting a telephone company to invest in the subject cable company.

Section 654(a)(2) has been clarified to make certain that all local exchange carriers must comply with the certification requirement contained in section 654(a)(1), regardless of whether they were permitted provide video programming by virtue of State laws and regulations on interconnection and equal access that were substantially similar to the requirements of section 201(c), or by virtue of a court holding that the cable/telco prohibition was not applicable to a particular carrier. Thus, all carriers must certify compliance with section 201(c) after the effective date of the regulations promulgated pursuant to such section.

THE NATIONAL COMMUNICATIONS COMPETITION AND INFORMATION INFRASTRUCTURE ACT OF 1994

Mr. Speaker, it is with great pleasure that I rise today to offer to my colleagues in the full U.S. House of Representatives H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994. This legislation represents a comprehensive reform package that will facilitate the most extensive legislative overhaul in the telecommunications industry since passage of the Communications Act of 1934. This bill, in combination with H.R. 3626, the Antitrust Reform Act of 1993, will serve as the blueprint for the development of the information superhighway, and will encourage the deployment of advanced digital communications to homes and businesses throughout the Nation.

In presenting this legislation today, I am joined by a bipartisan majority of the Subcommittee on Telecommunications and Finance, the subcommittee of origin for H.R. 3636. I am also pleased to acknowledge the endorsement of Vice President Gore and representatives of the Clinton administration.

I offer this legislation to my colleagues on the floor today with one goal in mind: to benefit consumers by facilitating competition between and among the cable and telephone industries in the delivery of video services. H.R. 3636 will fulfill this goal by establishing the guidelines that will allow telephone companies to offer multichannel video programming in competition with traditional cable companies. It will create competition in the local telephone exchange by requiring telephone companies to offer interconnection and equal access to their networks. And, most important, H.R. 3636 embraces the fundamental philosophy of universal service embodied in our communications policy which is to ensure that all Americans have access to basic telephone service at affordable rates. Together, these principles will promote and accelerate advances in, and access to, new and improved telecommunications capabilities.

In the short term, the advent of competition between these billion-dollar industries will translate into fast-paced job growth within the communications, electronics, and programming fields. Traditional cable companies, recognizing the potential competitive threat, will speed up their efforts to increase bandwidth by converting their systems to a digital-based fiber network, thereby increasing their channel capacity and facilitating their emergence into the realm of interactive communications. Expanded channel capacity will stimulate demand for the creation of new programming, initially in the form of traditional cable programming and new cable channels, and, eventually, in the form of interactive video services.

The anticipation surrounding the enormous lucrative potential for the development of these new, interactive services—ranging from interactive videogame channels to at-home banking availability—has fueled the drive toward passage of this bill. Already, the demand for channel capacity has outpaced the availability of channel program offerings. This demand, in fact, has led to a proliferation of announcements of cable channels and new video services planned for future deployment: an interactive TV-game-show channel; pay-per-view movie channels where the consumer may choose from an on-screen display of options; or the SegaChannel, providing interactive videogames for at-home play. In the long term, we can expect that the convergence of these behemoth communications industries will spawn the development of entire new industries.

As we vote today on H.R. 3636, we are endowed with an abundance of information on the consequences and implications of a decision to support the convergence of the cable and telephone industries in today's marketplace. This extensive record of knowledge has been gathered by my subcommittee through a total of 11 hearings throughout the 103d Congress. In February of this year, the subcommittee held seven hearings on the issue of H.R. 3636 and H.R. 3626, the Antitrust and Communications Reform Act of 1994. We heard testimony from more than 50 witnesses, representing such diverse fields as set-top box manufacturers, Federal- and State-level government agencies, the small cable industry, regional and rural telephone companies, the Communications Workers of America, academics, and members from the public interest arena.

I strongly believe that this legislation crafted out of these hearings represents a balanced and pragmatic response to these competing voices. While H.R. 3636 may not resolve each conflicting concern of all affected industries, there is no debating the fact that every American and every industry engaged in the business of communications stands to benefit from this bill. Let me explain how competition between these industries will evolve.

In passing legislation to promote competition between the cable and telephone industries, we are establishing a blueprint which will facilitate the development of a vast communications infrastructure, often referred to as the information superhighway. As part of this effort to promote competition to communications monopolies, information providers will be granted the right to compete with the local telephone company and to use its facilities. Such competitors, be they in the form of cable companies, independent phone companies, or others, will be allowed equal access to, and interconnection with, the facilities of the local phone company so that consumers are assured of the seamless transmission of telephone calls between carriers and between jurisdictions. Title I of the bill requires local telephone companies to provide nondiscriminatory access to their facilities and interconnection to their networks. It also directs the FCC to prescribe rules that will compensate local exchange carriers for interconnection and equal access, exempting rural telephone companies from these interconnection requirements. We include language which targets those telephone companies which serve low density areas and ensures that toll rates for rural customers remains comparable for urban customers.

This section gives the Commission the necessary powers to implement this legislation, which the Commission apparently lacks under current law.

On June 10, 1994, in *Bell Atlantic* v. *FCC,* the DC Circuit Court of Appeals severely curtailed the FCC's attempts to pave a procompetition and proconsumer information superhighway. The Court of Appeals struck down an FCC order compelling local telephone companies to open up their facilities to—or physically collocate with—other providers of telecommunications and information services.

The court suggested that an FCC order mandating physical collocation may amount to a taking. The fifth amendment dictates that no property shall be taken by the Government without the payment of reasonable and just compensation. Since compensation for takings are generally drawn from the Treasury coffers, which is the sole province of the legislature, any congressionally unauthorized draw upon that resource is deemed invalid. The *Bell Atlantic* court pointed out that the Communications Act of 1934 does not grant the FCC explicit power to order taking of property, which, of course, requires compensation. Therefore, the physical collocation regulatory scheme required to spur competition and limit costs is not available to the FCC under its current Congressional grant of authority.

This lack of FCC authority has been anticipated by the committee in HR 3636. In language which predates the *Bell Atlantic* holding, the bill explicitly empowers the FCC to direct these carriers to allow other information providers to physically interconnect with their facilities. Such interconnection will provide consumers with a far more diverse range of telecommunications services and will spur competition to ensure that the costs of these services are reasonable. The bill also directs the FCC to establish regulations requiring just and reasonable compensation to the local telephone company providing these interconnection services.

The *Bell Atlantic* case highlights the necessity of this legislation and the immediacy of the problem. Without the congressional grants of authority which H.R. 3636 endows, the FCC lacks the tools needed to pave a high quality and affordable information superhighway.

H.R. 3636 creates a national communications policy whereby all States face the same regulatory regime in the provision of local telecommunications service. This is facilitated by prohibiting States or local governments from imposing regulations that would be contrary to the creation of competition in the local telephone loop. H.R. 3636 does, however, respect the States' important role in the oversight of intrastate telecommunications policy by allowing them to impose terms or conditions necessary to protect consumer protection laws, public safety concerns, and equitable rates.

H.R. 3636 also directs the FCC to develop rules to establish a Federal-State Joint Board to preserve and enhance universal service at just and reasonable rates. The goal of universal service has been at the core of communications policy since the passage of the Communications Act of 1934, and refers to the availability and accessibility of basic telephone service at reasonable rates, for all Americans. H.R. 3636 recognizes the concern that some consumers may want to simply subscribe to the same plain old telephone service or a comparable service to which they subscribe now. It is our intent to avoid advocating a particular or extravagant service; therefore, the bill directs the Board to examine varying services, the extent to which various telecommunications services are subscribed by customers, and to locate areas where denial of such services unfairly affects educational and economic opportunities of those customers.

The bill also directs the Joint Board to examine a number of issues as they formulate a plan to preserve and enhance universal service. Of course, the considerations outlined in paragraph (6) are not binding on the Commission or the States, since they have the ultimate decisionmaking authority. Instead, as part of the normal Federal-State Joint Board process, there will be recommendations that the Federal and State regulators can either accept or reject in whole or in part.

One of the issues the Joint Board will address is the issue of alternative or price regulations. It is worth noting that a majority of

States choose some form of rate of return regulation for its citizens. In addition, by distinguishing alternative and price regulation from cost-based rate of return regulation, the committee recognizes that alternative regulation encompasses a variety of regulatory schemes, including pricing flexibility, incentive regulation and sharing of excess profits, all of which allow regulated telephone companies to price services and not return on costs.

The bill also directs the Commission to establish pricing flexibility regulations, which can serve as a transition from a regulated market to a competitive market, and can be used in proportion with the level of competition that exists in a particular market. The bill requires that these pricing flexibility regulations only can be used when a telephone company faces competition, and, most importantly, other forms of regulations are not needed to protect consumers. Thus, if the local exchange carrier faces sufficient competition so as to enable the Commission to conclude that competition will protect consumers from unjust or unreasonable rates, then the Commission may adopt a flexible pricing procedure.

H.R. 3636 directs the FCC to conduct a study on open platform service, taking into account existing facilities as well as new facilities with improved capacity. It is important to note that it is our intent to remain technologically neutral in our efforts to promote the deployment of advanced technologies and services.

Section 103 of H.R. 3636 contains provisions to survey the Nation's elementary and secondary schools and classrooms, public libraries, and health care institutions and report on the availability of advanced telecommunications services to these institutions.

The bill also empowers the FCC to define the circumstances under which a carrier may be required to interconnect its telecommunications network with educational institutions, health care institutions, and public libraries. Moreover, it directs the Commission to provide for the establishment of preferential rates for telecommunications services, including advanced services, provided to such institutions or the use of alternative mechanisms to enhance the availability of advanced services to these institutions.

I believe that there is perhaps no more important societal benefit to upgrading our Nation's information infrastructure than uplifting the hopes, dreams, and aspirations of millions of schoolchildren through increased access to information in America's elementary and secondary schools.

Getting phone jacks and/or cable links into every classroom won't be a quick fix for educational restructuring, but it is the sine qua non for allowing children to move beyond the physical barriers of the classroom to a host of potentially rich resources, mentors, and friends that can be accessed remotely. In my view, technology in the classroom is not meant to be a substitute for good teachers, but rather, it allows a teacher to shift from presenting talk to chalk to facilitating learning and encouraging a child's exploration of ideas by utilizing modern, information age tools.

I feel strongly that it is important to get these needed learning links established to schools because it can help mitigate against what I see is a widening gap between information-halves and have-nots. I believe that telecommunications technology can become a great equalizer in American education. Though a child may not have access to information age appliances in the home, may not have parents who subscribe to cable or own a computer, the school can help give them the tools they will need to compete for jobs in a knowledge-based economy. For this reason, I believe it is vitally important that we maximize the benefits that this legislation can bring to young children at school. I also want to include in the record at the end of my statement a letter from the Committee on Education and Labor reporting this section.

In addition, title I of H.R. 3636 addresses local authority over the rights-of-way, including language which asserts the right of city and local governments to maintain their rights-of-way. The municipalities stand to benefit greatly from the promotion of a communications infrastructure, and I believe that it is our responsibility to ensure that city and local governments are positioned to take advantage of the benefits. We include express language within this to ensure that a municipalities inherent authority to regulate their public rights-of-way is fully preserved within this legislation.

The bill also contains section 107 which amends the Pole Attachment Act. Under that amendment, a cable operator that did not offer telecommunications services would still be entitled to a pole attachment rate under the "just and reasonable" standard set forth under existing law. A cable operator that offered telecommunications services as well as cable service would be required to pay a pole attachment rate as established under the standard added to the Pole Attachment Act by the amendment.

Thus, this section does not require a cable operator to pay twice for a single pole attachment, if the operator is providing cable and telecommunications services. Moreover, a cable operator would only be required to pay for a single attachment—albeit under the new standard rather than the one set forth under current law—if the operator offers cable and telecommunications services through a single wire, or if the operator incorporates two wires at a single attachment, or if the operator overlashes a second wire for telecommunications services on the operator's existing cable plant. All of these are examples of a single pole attachment. If the operator can provide cable and telecommunications services using a single pole attachment, the operator would only be required to pay for a single attachment.

In fostering the goal of universal service, H.R. 3636 includes specific language designed to encourage the deployment of communications capabilities to underserved areas and populations. Title I of the legislation includes provisions which direct the FCC to examine the accessibility of telecommunications services in rural areas, and grants the Commission the ability to modify any of the open platform obligations if they prove economically or technically infeasible. Furthermore, the Commission is directed to promulgate regulations expressly designed to promote access to the network for disabled persons, small business and minority business interests, as well.

Title II of H.R. 3636 is designed to promote competition to the cable television industry by permitting telephone companies to compete in the provision of video programming and services. Under current law, telephone companies are prohibited from offering cable service within their telephone service area. This restriction, established in 1970 Commission regulations and codified under the 1984 Cable Act, stems from the tradition of favoring policies which encourage a wide variety of ownership of media sources. We credit these ownership restrictions, in part, for facilitating the deployment of two wires to each home, an outcome which will help to promote more effective competition between and among telephone and cable companies.

When these initial restrictions were adopted in the 1970's, cable television was a nascent industry. The establishment and implementation of ownership rules was a necessary step to protect against encroaching telephone companies who, at the time, controlled the only wire to the home. Since that time, the cable industry has flourished, able to now claim 65 percent national penetration.

In a recent court challenge to the FCC's video dial-tone proceeding, a Federal district court in Virginia overturned the statutory cross-ownership provision in the 1984 Cable Act, a decision currently under appeal. A district court in Seattle, WA reached a similar result. Without legislation, therefore, the entrenched regional and local telephone networks may be allowed to deliver cable service before proper protections are put in place to ensure that the information superhighway develops in an open, competitive environment for the benefit of consumers as well as for a diversity of producers of programming and services. This is an important point, and must be considered as we debate passage of this legislation.

Title II establishes the guidelines through which telephone companies may engage in the business of video delivery. To advance the goal of unrestricted competition, H.R. 3636 allows telephone companies to offer multichannel video programming through a separate affiliate, and on a common carrier basis. The separate affiliate must construct a video platform capable of meeting all bona fide channel capacity and carriage demands of video programmers, and must include a suitable margin of unused channel capacity to accommodate a reasonable growth in demand. We include language which requires the affiliate to petition for approval with the FCC, thereby granting them the authority to require carriage and award damages in the event of a violation of these requirements.

In order to protect against media concentration, and to promote a more fully competitive marketplace, H.R. 3636 prohibits telephone companies from buying cable systems within their telephone service territory. We include limited exceptions to foster the expansion of competition within rural and underpopulated areas, and with small markets.

Any affiliate interested in offering programming on its video platform must also adhere to the same public interest and general franchise obligations mandated under the Cable Act of 1992. These rules oblige all competitors interested in providing video services to comply with all consumer protection provisions, program access requirements, rules governing

the carriage of public, educational and governmental channels, and equal employment opportunity requirements.

This section also clarifies the right of a local government to collect fees from the video programming affiliate of a common carrier, or any other competitor wishing to offer multichannel video programming. Currently, franchise authorities only receive franchise fees from cable operators, a right granted to them in the Cable Act of 1984. If a telephone company or any other provider of video delivery chooses to compete with a cable operator in the delivery of video service, H.R. 3636 ensures that the telephone company and others will pay the exact same level of fees as cable operators.

This also applies to a telephone company's obligations to provide public, educational and governmental [PEG] access channels. H.R. 3636 requires telephone companies to meet the exact same level of PEG access as the local cable operator and as a cable operator's PEG obligations may increase in the course of franchise or other negotiations, a local telephone company's obligations should increase correspondingly.

This section also maps out the process through which a common carrier may obtain approval by the FCC to deliver video services. We include language which requires the FCC to ensure that video platforms comply with equal access and interconnection standards. The FCC is also instructed to ensure that restricts a common carrier from including, within the basic telephone rate, any expenses associated with the provision of video programming; and which prohibit cable operators from including in the cost of cable service any expenses associated with the provision of telephone service. We do not intend, in any way, for telephone ratepayers or cable subscribers to subsidize the independent business endeavors of their telephone or cable company.

H.R. 3636 also contains several provisions affecting television broadcasters that are designed to help broadcasters to compete more fully in developing the information superhighway. This includes a review of the ownership restrictions promulgated by the Commission over the years. While such a review is warranted, H.R. 3636 does not direct the Commission to undertake wholesale elimination of these rules which have done so much to ensure diversity and localism in our broadcast media. And while broadcasters should be able to compete fairly with other information providers H.R. 3636 does not adopt the relatively high concentrations of ownership in the cable television or the telephone industries as a standard for the Commission's review of these rules.

One of the areas of the bill that represents a significant new addition to communications policy is the section dealing with broadcaster spectrum flexibility. Above all, H.R. 3636 is careful to leave the Commission a great deal of room in which to determine many as yet unresolved issues. It does not preclude the Commission's previous efforts at developing standards for high definition television services that will represent a major improvement in the quality of television service, nor do we even mandate the current proposed allocation of spectrum. If the Commission chooses to proceed, however, we have set a series of important conditions on the allocation of new spectrum. For example, the terms ancillary and supplementary necessarily imply that such services are connected with and dependent on the main channel signal and should not predominate over this primary use of the spectrum. The bill also requires that ancillary and supplementary uses of broadcasters' spectrum be indivisible from its use for advanced television services. Thus, ancillary and supplementary uses must be transmitted in direct conjunction with the licensee's main channel signal and not offered on spectrum that is distinct or separated from the spectrum used for the main signal.

An essential component of the competitive endeavor of H.R. 3636 is to provide consumers with more choice. I believe that it is important to ensure that in the same way consumers will be provided with a variety of options between telecommunications providers and cable operators, they deserve to be offered a variety of standardized communications equipment, as well. I want to be sure that, similar to the equipment compatibility requirements of the Cable Act of 1992 which mandated standardized cable equipment, all consumers can benefit from a wide array of choices and suppliers at reasonable, market-driven cost. H.R. 3636 requires the FCC to commence an inquiry to examine the importance of open and accessible systems in interactive communications. This section, often referred to as the set-top box provision, instructs the commission to prescribe changes in its unbundling regulations to ensure that interactive communications devices are available from third party vendors and retail outlets. As my colleagues are aware, the set-top box could soon become the gateway through most, if not all, information enters the American home.

Most technological innovations in the area of information and telecommunications services have been developed without considering the needs of individuals with disabilities. The consequence has been that many of these innovations have been useless for individuals with disabilities. Indeed, the general failure to consider access for the disabled during the initial stages of telecommunications product and service development has actually led to a reduction in access for persons with disabilities.

The national information infrastructure promises to bring information, health care, banking, shopping, and other services within easy reach at home or in the office through information services and products. In keeping with the spirit of the Americans with Disabilities Act's goal of fully integrating people with disabilities into the mainstream of society, the current legislation is designed to ensure access for the disabled as new telecommunications technologies and services are developed. Our legislation will ensure that advances in network services deployed by local exchange carriers and advances in telecommunications equipment will be accessible to people with disabilities where it would not result in an undue economic burden or an adverse competitive impact.

In addition, H.R. 3636 directs the FCC to undertake inquiries for the provision of both closed captioning and video description services, and further directs the Commission to establish a schedule for the provision of closed captioning. The legislation aims to provide disabled Americans with access to advanced communications networks and the opportunities for independence, productivity, and integration that will result from these new services and products.

Section 206 directs the Commission to establish a schedule or timetable for the implementation of closed captioning. It requires that new programming be made accessible through captioning and previously produced programming be made accessible to the maximum extent possible. The legislation also provides for exemptions from captioning requirements based on several factors. While much of prime time broadcast programming is now captioned, reports to the committee from the National Center for Law and Deafness indicate that less than 10 percent of basic cable programming is captioned. This section would require that all video programming be captioned where economically feasible.

During subcommittee consideration, questions were raised regarding the constitutionality of this section. I have attached a review of this issue from the Georgetown University Law Center which clearly finds that the section is constitutionally sound. I concur with the analysis which finds that the requirement is an incidental restriction subject to review under the standard set forth in United States versus O'Brien.

In directing the Commission to establish a schedule for the provision of closed captioning, the committee intends that programming be made accessible to the 24 million Americans who are hearing impaired where it would not be unduly burdensome to the provider of the programming. The committee does not intend that programming not be aired due to the requirement for captioning. However, the committee has stated its clear goal that access for the disabled be considered and pursued at the outset of the development of new products and services.

This provision is consistent with the first amendment because it is content neutral, and it is narrowly tailored to serve a compelling governmental interest. That interest is to make communications available, as far as possible, to all the people of the United States.

As more information essential to functioning in society moves onto advanced communications networks, it is critical that all citizens have access to this information. Many new services and products will be available over communications networks in video form, including health care services, library resources, educational information, financial and governmental data. Access to vital governmental information carried on these networks is critical to an informed electorate. Much of this information is necessary to full participation in work, school, and all aspects of life. As this information begins to be provided in video form, it is the goal of the committee that the 24 million Americans who are hearing impaired have full access to these products and services.

H.R. 3636 strives to ensure that public broadcasters are also guaranteed a strong position in the development of the information superhighway. Public broadcasters, in my opinion, should be heralded as a preeminent example of innovative and responsible news media, fulfilling a critical role by providing

quality programming and important community service to all facets of American society. They have been in the forefront of numerous technological innovations and have spearheaded a variety of educational projects that have benefited all Americans. In this tradition, I strongly believe that public broadcasters will continue to play a crucial role in the development of the national communications infrastructure. The language we have included in the legislation recognizes the limited resources available to this community, and requires the FCC to prescribe regulations to reserve appropriate capacity for the public at preferential rates on the video platform.

Title III of this bill is designed to encourage economic opportunities for business enterprises owned by minorities and women. It requires each telecommunications provider interested in offering video services to submit to the FCC a plan which outlines procurement proposals from businesses owned by women and minorities.

Title IV authorizes appropriations for the FCC to fulfill its obligations under the National Communications Competition and Information Infrastructure Act of 1994.

In closing, I would like to extend my deepest gratitude to my fellow colleagues, JACK FIELDS, and Representatives BOUCHER, OXLEY, RALPH HALL, RICK LEHMAN, JOE BARTON, and other colleagues who helped craft a solid piece of legislation. This bill has become a model of consensus politics, and I thank each one of you for your contributions. I would also like to thank the staff on the subcommittee, Gerry Waldron, David Moulton, David Zesiger, Colin Crowell, Mark Horan, Kristan Van Hook, Karen Colannino, Steven Popeo, and Winnie Loeffler of my staff, Mike Regan and Cathy Reid, Gail Giblin, and Christy Strawman of JACK FIELDS' office who, together, worked many hard hours to develop the legislation we will vote on today.

I urge you to support this H.R. 3636 and I yield back the balance of my time.

GEORGETOWN UNIVERSITY LAW CENTER,
Washington, DC, June 8, 1994.

Hon. EDWARD J. MARKEY,
Chairman, Subcommittee on Telecommunications and Finance, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE MARKEY: As you know, Section 206 of H.R. 3636, The National Communications Competition and Information Infrastructure Act of 1994, requires the Federal Communications Commission to conduct an inquiry to determine the extent to which video programming is closed captioned and to ascertain other information relevant to closed captioning. §206(a). It then directs the FCC to adopt regulations to ensure that video programming produced after the effective date is fully accessible through closed captioning and to maximize access to video programming produced prior to the effective date. §206(b). The statute also provides for exemptions to the captioning requirement where the provision of captioning would be unduly burdensome to the provider or owner of the programming. §206(d).

The constitutionality of these provisions has been questioned by the Media Institute. See Letter of The Media Institute to Rep. Moorhead, March 11, 1994 ("Media Institute Letter"); The ACLU has also raised some concerns about these provisions. See Letter of ACLU to Rep. Richardson, March 15, 1994 ("ACLU Letter"). The ACLU acknowledges that the closed captioning requirement is merely an "incidental restriction" subject to intermediate review under *United States* v. *O'Brien*, 391 U.S. 367 (1968). It believes that the outcome of such review is unclear. ACLU Letter at 4–5. The Media Institute, however, asserts that Section 206 is content-based, and thus would be subject to strict scrutiny. Media Institute Letter at 3. Both the ACLU and Media Institute letters express concern that the statute invests unconstitutionally broad discretion with the FCC. *Id.* at 5; ACLU Letter at 5.

We have carefully studied these contentions and concluded that the closed captioning requirement itself is constitutional and that the statute gives constitutionally adequate guidance to the FCC for its implementation.

Let us observe at the outset, that if Section 206 were to be challenged on First Amendment grounds, the challengers would face two threshold obstacles. First, the canons of statutory construction direct that a statute must be construed, if fairly possible, to avoid the conclusion that it is unconstitutional. See *Rust* v. *Sullivan*, 111 S.Ct. 1759, 1771 (1991) and cases cited therein. Second, a facial challenge is "the most difficult challenge to mount successfully since the challenger must establish that no set of circumstances exists under which the Act would be valid." *Id.* at 1767, quoting *United States* v. *Salerno*, 481 U.S. 739, 745 (1987). We do not believe that such a showing could be made here.

Were someone to challenge Section 206 as violating the First Amendment, the courts would undoubtedly find that Section 206 is a content-neutral regulation subject to intermediate scrutiny under the *O'Brien* test. Section 206 makes no distinctions on the basis of content. Indeed, the only distinction made is between programming produced before and after the effective date of the statute. Moreover, the criteria for exemptions involve economic factors, not content. Additionally, closed captioning does not require the creation of new and different content; it merely requires that the already produced verbal content be put in a form accessible to persons with impaired hearing.

Nor, should Section 206 be subject to strict scrutiny because it "forces" speech. Relying on cases such as *Wooley* v. *Maynard*, 430 U.S. 705, 714 (1977), *Miami Herald Pub. Co.* v. *Tornillo*, 418 U.S. 241 (1974), and *Pacific Gas & Electric Co.* v. *Public Utilities Comm'n*, 475 U.S. 1, 9 (1986) (*PG&E*), the Media Institute and ACLU argue that Section 206 requires unconstitutional forced speech. Media Institute Letter at 1–3; ACLU Letter at 2–3. However, these cases involved situations which imposed burdens on speech, in contrast to Section 206.

In *Wooley* v. *Maynard*, the Court found that a state may not constitutionally compel an individual to display the slogan "Live Free or Die" on his license plate if he found it morally objectionable. 430 U.S. at 714–15. In *Miami Herald*, the Court struck down a right of reply statute that required newspapers that criticized a political candidate to publish a reply. 418 U.S. at 256–58. In *PG&E*, the Court found it unconstitutional to force a utility company to include in its billing envelopes the speech of a group with whom the company disagrees. 475 U.S. at 9–16.

What each of these cases have in common is that they involved a regulation that compelled a speaker to make utterances with which he or she disagreed. Section 206, however, does not require anyone to say something that he or she disagrees with. It merely requires video programmers to make the speech they freely chose to make available for public distribution accessible to persons with impaired hearing.

Nor, does *Riley* v. *Nat'l Federation of the Blind*, 487 U.S. 781, 797 (1988) provide any support for ACLU's position. In *Riley*, the Court found it unconstitutional to require professional fundraisers to disclose the percentage of charitable contributions actually turned over to charity because such "compelled disclosure will almost certainly hamper the legitimate efforts of professional fundraisers to raise money for the charities they represent" and discriminates against small charities which must usually rely on professional fundraisers. *Id.* at 799. Here, unlike in *Riley*, however, where the provision of captioning would be unduly burdensome, an exemption is available.

Thus, Section 206 is clearly content neutral and should be evaluated under the *O'Brien* test. Under this test, content neutral regulations will be upheld if they are "narrowly tailored" to serve an "important or substantial governmental interest." 391 U.S. at 377.

Here, closed captioning furthers the government's long standing interest as expressed in the FCC's universal service obligation: to make communications "available, so far as possible, to all the people of the United States." Communications Act of 1934, §1, 47 U.S.C. §151. Congress has furthered this interest by passing numerous pieces of legislation designed to increase the access of persons with impaired hearing to communications. See, e.g., Telecommunications for the Disabled Act of 1982, P.L. 97–410, codified at 47 U.S.C. §610, as amended (1988) (insuring reasonable access to telephone service by persons with impaired hearing); Hearing Aid Compatibility Act of 1988, P.L 100–394, codified at 47 U.S.C. §610 (1988) (finding that hearing impaired persons should have equal access to the national telecommunications network to the fullest extent possible and requiring the FCC to enact rules to require that telephones manufactured or imported after August 1989 be hearing aid compatible); Americans with Disabilities Act of 1990, 47 U.S.C. §2215, *et seq.* (requiring telephone companies to provide relay services to enable individuals who use TDDs to communicate with anyone, at any time, over the telephone); Television Decoder Circuitry Act of 1990, 47 U.S.C. §§303(u), 330(b) (1991) (requiring all television sets with screens 13 inches or larger which are manufactured or imported after July 1, 1993 to be capable of displaying closed captioned television programs).

In the Television Decoder Circuitry Act of 1990, Congress specifically found that "closed captioned television transmissions have made it possible for thousands of deaf and hearing-impaired people to gain access to the television medium, thus significantly improving the quality of their lives" and that "closed-captioned television will provide access to information, entertainment and a greater understanding of our Nation and the world to over 24,000,000 people in the United States who are deaf or hearing impaired. P.L. Law 101–431, §§2(2) & 2(3). Now that more television sets are able to display closed-captioned programming, requiring video programming to be closed-captioned will likewise further these important government interests.

Closed captioning benefits not just people who are deaf or hard of hearing, but also children learning to read, persons for whom English is a second language, and adults who are illiterate or remedial readers. See H.R.

Rep. No. 767, 101st Cong., 2d Sess. 5–6; S. Rep. 398, 101st Sess., 2d Sess. 1–2. It is estimated that nearly 100 million Americans can benefit from television captioning. Thus, there can be no question that Section 206 furthers a substantial governmental purpose.

Furthermore, Section 206 is narrowly tailored to achieve those government purposes. To be narrowly tailored, the regulation need not be the least restrictive; the government need only show that its interest would be achieved less effectively absent the regulation. *Ward* v. *Rock Against Racism*, 491 U.S. at 799–800 (1989). Here, it is clear that the governmental purpose of making programming accessible would not be achieved without the requirements of Section 206. While some types of video programming are already captioned (approximately 75 percent of television network programming is closed captioned), the vast majority of video programming (especially programming available on basic cable channels) is not and is unlikely to be captioned in the foreseeable future absent the proposed legislation. Moreover, exemptions are available to provide relief where closed captioning will be unnecessarily burdensome.

Nor is Section 206 constitutionally suspect because it gives the FCC overly broad discretion to grant exemptions. Media Institute Letter at 5; ACLU Letter at 5. Citing *Lakewood* v. *Plain Dealer Publishing Co.*, 486 U.S. 750, 757 (1988), the Media Institute claims that the Section 206 would vest unbridled discretion with the FCC, permitting it to exempt from Section 206's captioning requirement "the programming it favors and to deny exemptions to programming it disfavors." Media Institute Letter at 5.

This reasoning is surely backwards. First, it erroneously assumes the FCC is entitled to exercise its discretion in an unconstitutional way. Second, it makes the unfounded assumption that the FCC actually favors certain programming. Third, even if we were to accept this peculiar notion, would not the FCC want that favored programming to receive wider distribution, i.e., to require captioning, rather than the other way around?

But fortunately, Section 206 does not give unbridled discretion to the FCC. Indeed, unlike the statute in *Lakewood*, which contained no explicit limits on the mayor's discretion to grant or deny permits for news racks, Section 206 provides explicit criteria for the FCC to use in considering exemptions. First, the FCC may by regulation exempt "programs, classes of programs or services" if it finds that closed captioning would be "*economically burdensome* to the provider or owner of such programming." §206(d)(1) (emphasis added). Second, a video programming provider or owner may petition the Commission for an exemption, and the Commission may grant it upon a showing that adhering to closed captioning requirements would result in an "undue burden." §206(d)(3). "Undue burden" is defined as "significant difficulty or expense." §206(d). In determining whether compliance would entail undue burden, the FCC is directed to consider specific factors: the nature and cost of the closed captions for the programming; the impact on the operation of the provider or program owner; the financial resources of the provider or program owner; and the type of operations of the provider or program owner.

Section 206's definition of "undue burden" is patterned after use of this term in the Americans With Disabilities Act ("ADA"). See, e.g., ADA §301(b)(2)(A)(iii). "Undue burden" in the ADA, in turn, was patterned after the term "undue hardship," as that term has been used in the implementation of the Rehabilitation Act since 1973. S. Rep. No. 116, 101st Cong, 1st Sess. at 63 & 35–36. Agency interpretations of both of these terms—"undue burden" and "undue hardship"—have consistently relied on economic criteria, allowing waivers only after consideration of the cost to an applicant of a particular accommodation and the relative resources of the applicant. Id. at 36. Moreover, Department of Justice regulations implementing the ADA also define "undue burden" to mean "significant difficulty or expense." 28 C.F.R. §36.104. The regulations list five factors to be considered in determining whether an action would result in "undue burden." These factors closely track the factors listed in Section 206(d). Thus, the term "undue burden" in Section 206 brings with it a long history of being a well-defined, content-neutral standard for granting exemptions from captioning and other requirements.

By no stretch of the imagination can one conclude that Section 206 leaves the FCC free to grant waivers on the basis of whether or not it favors particular programming. Rather it limits the relevant factors for FCC consideration to the costs of providing access and the ability of the affected entity to afford those costs. It clearly meets the requirement established in *Grayned* v. *City of Rockford*, 408 U.S. 104, 108 (1972), that laws affecting free speech provide explicit standards for those who apply them.

The ACLU understands that undue burden is "defined largely on the basis of its financial or other impact on the service provider." ACLU Letter at 5. Specifically, it expresses the concern that "a smaller provider might be exempted for programming that is intended to reach a wider audience than a larger, more well-heeled provider who has made a conscious effort to reach a specific, more narrow audience." *Id.* It suggests that discrimination between speakers merely on the basis of financial ability is constitutionally suspect because it "favors certain classes of speakers over others." *Id.* citing *Home Box Office v. FCC*, 657 F.2d 9, 48 (D.C. Cir.) (per curiam), *cert. denied*, 434 U.S. 829 (1977) ("*HBO*").

ACLU's reasoning, however, is both legally and factually flawed. Whether the intended audience is broad or narrow is irrelevant—in either case, it will contain viewers who would benefit from closed captioning. While the size of the provider may be relevant to its ability to pay for the cost of captioning, there is no reason to assume that content provided by smaller providers is somehow distinct from content provider by wealthier providers. In *HBO*, the D.C. Circuit suggested that regulations favoring certain classes of speakers were constitutionally suspect only where the Government's intent was to curtail expression. 567 F.2d at 47–48. Here, there is no constitutional problem because there is no basis to believe that financial resources is somehow being utilized as a proxy for certain types of expression that the government wishes to curtail. Rather, the government's purpose is merely to make as much programming as possible available to as large an audience as possible. And as the Supreme Court has observed "a regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward* v. *Rock Against Racism*, 491 U.S. at 791.

ACLU next expresses concern that the FCC might exempt news programming from the captioning requirement because there would be no time to incorporate closed captioning into breaking news stories. In fact, this assumption is wrong. The ACLU is apparently unfamiliar with "real time captioning" in which captions are simultaneously created and transmitted, using stenotypists and specialized computer software. Real time captioning is already being used by all national news programs and almost 200 local news programs.

Finally, the fact that Section 206 vests some discretion in the FCC does not make the provision unconstitutional. In responding to a similar challenge in *Ward*, the Supreme Court observed: "While these standards are undoubtedly flexible, and the officials implementing them will exercise considerable discretion, perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity." 491 U.S. at 794. It is appropriate for Congress to assume that the FCC will implement Section 206 in a constitutional manner. It is a long-standing and well-accepted practice of Congress to leave the applications of such standards to administrative agencies. Indeed, Congress has routinely delegated to the FCC the responsibility to adopt implementing regulations and to grant exemptions with much more potential to influence content than Section 206. See, e.g., Communications Act of 1934, a amended, §315(a), 47 U.S.C. §315(a) (FCC to determine which programs are bona fide news programs exempt from equal opportunities for political candidates); *Id.* §223(b)(3) (directing FCC to prescribe procedures by regulation for restricting access to indecent communications that will constitute a defense to prosecution for violation of law prohibiting indecent communications by telephone); *Id.* §532(c)(4)(B) (directing the FCC to establish rules for determining the maximum rates, terms and conditions under which unaffiliated programmers can lease channels on cable systems).

In the unlikely event that the FCC were to interpret or apply Section 206 in an unconstitutional manner, judicial review would be available at that time. However, even if the agency's interpretation or application of a provision were found to be unconstitutional, this would not necessarily mean that the statute itself was unconstitutional. See *Rust* v. *Sullivan*, 111 S. Ct. at 1771.

In sum, the concerns that Section 206 violates the First Amendment are unfounded. The requirement that the FCC adopt regulations to require closed captioning is a content-neutral regulation narrowly tailored to serve a substantial government interest. It would easily pass scrutiny under the *O'Brien* test, and given the substantial nature of the governmental interest and lack of alternative means, would even likely survive strict scrutiny. Moreover, Section 206 is not vague, and provides adequate standards to believe that the FCC will implement it in a constitutional manner.

We appreciate the opportunity of providing this analysis to you and hope that it will be helpful.

Sincerely,

ANGELA J. CAMPBELL,
Associate Professor of Law, Georgetown University Law Center.

STEVEN H. SHIFFRIN,
Professor of Law, Cornell University.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC, March 15, 1994.

Representative JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce.

DEAR MR. CHAIRMAN: We understand the Committee on Energy and Commerce expects to mark up H.R. 3636, the National Communications and Information Infrastructure Act of 1993, this week. We are pleased that section 103 of the bill proposes to provide preferential telephone rates to elementary and secondary schools as well as to public libraries as a part of the overhauling of our national telecommunications policy. If enacted, these provisions could make access to the national superhighway affordable for all students and users of public libraries, regardless of a community's wealth or geographic location. All too often schools and libraries, the fundamental underpinnings of our communities, are left on the sidelines of the technological revolution. The bill helps to correct this problem. The preferential rate provisions of H.R. 3636 could complement several technology-related programs incorporated into H.R. 6, a bill to reauthorize the Elementary and Secondary Education Act, which is presently pending before the House.

We laud your efforts, and that of Chairman Markey, on behalf of schools and libraries. We would urge, however, that you also consider extending the preferential rates to "libraries which the public may access", rather than the more narrowly framed wording of the bill, "public libraries", and to educational institutions at all levels. We are concerned, for example, that there are many postsecondary education institutions, including two-year community colleges and many others which will simply not be able to afford full participation in the network, unless basic telephone rates are sufficiently low. At the very least, we would urge that there be a feasibility study by the Federal Communications Commission to expand preferential rates for these other categories.

We would appreciate inclusion of this letter in your Committee's report on H.R. 3636, to recognize the Education and Labor's jurisdictional interest in H.R. 3636.

Sincerely,

WILLIAM D. FORD,
Chairman.
WILLIAM F. GOODLING,
Ranking Republican.

□ 1340

Mr. Speaker, I reserve the balance of my time.

Mr. FIELDS of Texas. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in strong support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1993. This legislation, like its companion measure H.R. 3626, which we have just considered, is more than just a telecommunications reform bill, it is legislation that will impact the future of this country—it will foster economic growth, create new jobs in a high tech industry, and spur greater U.S. competitiveness in the global telecommunications market.

Unquestionably the rapid changes in the telecommunications world will revolutionize the way all Americans live their lives. What we are doing today is simply saying that there should be a road map—some national principles—that guide the manner in which that revolution occurs.

Presently we have no single guiding light on telecommunications policy. We have a patchwork of court decisions, consent decrees, a 60-year-old Federal statute based on railroad laws, and similar State utility laws that, taken in toto, dampens incentives and opportunities for U.S. telecommunications companies to build the information superhighway. Today we begin the process of setting policy on course toward building that highway to the future.

What we recognize today is that all telecommunications are converging, the traditional bright lines that separated telephone companies from cable companies from broadcast companies no longer exist or make any sense. Recognizing this fact, Congress passed legislation last year to reform the world of wireless communications, to treat mobile, paging and other wireless services in the same manner when they are providing similar services. Today we are engaged in a similar process for the wired world: telephone companies providing cable and cable and others providing local telephone service.

H.R. 3636 recognizes that the traditional monopolies of cable and local telephone service make no sense any longer. This infrastructure bill will tear down the legal and regulatory barriers that have perpetuated those monopolies and allow competition to flourish. Healthy competition in these markets is the best guarantor we can have that the telecommunications products and services of the future will be brought as swiftly and fairly priced to all Americans as possible.

There has been a significant amount of discussion throughout this process about creating the proverbial level playing field for all industry participants, and we have endeavored to ensure that the field is level. But as Members of Congress, our first duty is to create a level playing field for our constituents, the American public. As we enter the information age, our first responsibility is to ensure that all Americans—regardless of their demographics, regardless of their economic status, and regardless of their racial or ethnic make-up, have equal access to the information age. The overarching, and most important, objective of this bill is to ensure that this level playing field exists.

Therefore, I strongly urge my colleagues to join me in supporting H.R. 3636. I want to comment my good friend the subcommittee chairman, Mr. MARKEY, for his leadership and vision in bringing us to this historic day. I might add, we have had 40 meetings in negotiating this legislation. I want to thank Messers. BOUCHER and OXLEY for their invaluable contributions to this effort as well as the many other committee members who contributed to producing this critically important legislation. Finally, I want to thank the full committee chairman and ranking member, Messrs. DINGELL and MOORHEAD, for their hard work and persistence in bringing this measure before the House.

Mr. Speaker, I want to commend my good friend, the gentleman from Massachusetts [Mr. MARKEY], chairman of the subcommittee. As he has mentioned, we have had 2 years of meetings. He told me just a moment ago that we have had 40 personal meetings. I appreciate the fact that this piece of legislation has been handled in a bipartisan way and that we have had this level of discussion.

Mr. Speaker, I want to commend the chairman for his leadership and his vision in this important matter. It brings us to this historic day. I also want to thank the gentleman from Virginia [Mr. BOUCHER] and the gentleman from Ohio [Mr. OXLEY] for their invaluable contributions to this effort, as well as many of our other subcommittee members, in producing what I think is a critical and a bipartisan piece of legislation.

Finally, Mr. Speaker, I want to thank the gentleman from Michigan [Mr. DINGELL], the chairman, for the atmosphere he has provided on working on this, again in a bipartisan manner. When people criticize Congress, they cannot criticize the efforts of the Committee on Energy and Commerce, particularly on this piece of legislation.

Mr. Speaker, I also want to thank the ranking minority member, the gentleman from California [Mr. MOORHEAD] for his leadership in again providing us with the atmosphere in which to negotiate a very delicate balance with a number of competing interests, and I hold this out to my colleagues as one of the best pieces of legislation that will come before this House this year, and thus far in my career, a piece of legislation that all of us should be proud of and support.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. DINGELL], chairman of the Committee on Energy and Commerce.

Mr. DINGELL. Mr. Chairman, I thank my dear friend, the gentleman from Massachusetts, for yielding me this time.

Mr. Speaker, I rise to commend the gentleman from Massachusetts [Mr. MARKEY], chairman of the subcommittee, the distinguished gentleman from Texas [Mr. FIELDS], the ranking minority member of the subcommittee, the ranking minority member of the full committee, the gentleman from California [Mr. MOORHEAD], the gentleman from Ohio [Mr. OXLEY], and a large number of other Members who have worked very hard.

Mr. Speaker, complaint was made that this legislation and the prior legislation, H.R. 3626, are going through

too fast. The hard fact is that we are getting this legislation through in something like 80 minutes after about 30 years of hard work in getting it in order. The effort to present this legislation to the floor has been bipartisan in its entirety.

The members of the full committee, the subcommittee, and of the leadership of both of those institutions deserve great credit for the hard work, for the effective, capable, dedicated, and decent way in which this legislation has been assembled.

Mr. Speaker, the country deserves to know of the work of these wonderful men and women, and also deserves to have the opportunity to express the thanks that they properly should feel for milestone legislation which is going to restructure the entirety of American telecommunications for the benefit of all the people. This is a day which we should celebrate, and I commend my colleagues. I thank them for the hard work which they have done.

Mr. FIELDS of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. MOORHEAD], our ranking minority member.

Mr. MOORHEAD. Mr. Speaker, I rise in strong support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994. This legislation is an important step in bringing a 60-year-old communications statute—the Communications Act of 1934—into the 21st century.

H.R. 3636 provides the statutory framework for the provision of new and advanced telecommunications services to the American people. In short, it lays the groundwork for the much talked-about information superhighway.

The bill accomplishes this goal by promoting competition and deregulating where appropriate. First, H.R. 3636 opens up local exchange telephone service to competition.

By opening up the local loop, H.R. 3636 brings an end to monopolies in the local telephone market. Consistent with this action, the bill also declares an end to monopoly regulation by mandating the abolition of rate-of-return regulation for local telephone service.

H.R. 3636 also achieves competition in the video marketplace by permitting telephone companies to provide video programming within their service areas. The bill also encourages the development of a vibrant video programming market in other ways. For example, the bill gives broadcasters the flexibility to use their assigned spectrum in a variety of ways.

Finally, the bill encourages access to the information superhighway to all program providers on reasonable terms and conditions. The bill also seeks to promote the provision of advanced telecommunications services to all Americans seeking such services.

Mr. Speaker, this bill is an example of the kind of legislation the American people expect us to pass. From the very start, the complicated issues underlying this bill were addressed in a bipartisan and orderly manner. The Subcommittee on Telecommunications and Finance, under the leadership of Chairman MARKEY and Congressman FIELDS held seven hearings, receiving testimony from over 50 witnesses. The subcommittee and full committee examined over 200 amendments.

Through bipartisan cooperation, this bill was reported unanimously out of the Energy and Commerce Committee on a 44-to-0 vote. This vote reflects the hard work put in by Chairman DINGELL, Chairman MARKEY, Congressmen FIELDS, OXLEY, BOUCHER, and others in drafting the bill and perfecting it during the committee process.

Mr. Speaker, for all these reasons, I urge my colleagues to join me in supporting H.R. 3636.

□ 1350

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. BOUCHER].

Mr. BOUCHER. Mr. Speaker, with the passage of these bills we will enact the largest reform in telecommunications law and policy in the 60-year history of the 1934 Communications Act.

One of our goals is to bring competition to industries that are now monopolies.

Telephone companies will be free to offer cable TV inside their telephone service territories.

Cable companies and others will be granted the right to offer local telephone service, bringing to consumers the same choices in local telephone services that they have today with long distance.

The Brooks-Dingell measure will make noncompetitive the markets for more long distance and the manufacture of equipment.

This new competition will produce tangible benefits:

Consumers of Cable TV and telephone services will receive the benefit of better prices set by a competitive market.

The ration will receive the benefit of a vastly improved network, as telephone and cable companies deploy fiber optic lines, other broadband technology and more capable switches to facilities the simultaneous offering of voice, television and data over the same lines.

And this is the means by which we will obtain deployment in the Nation of the world's most modern network. The rational information infrastucture will be deployed not through the expenditure of government funds but by giving private companies the business reasons to put new networks in place.

The legislation we will pass today provides those business reasons. It brings down the barriers that have preserved monolopies and inhibited competition.

The result will be an avalanche of new business investment, as communications companies install new networking technology to bring entertainment, information, and new business opportunities to homes and offices throughout the Nation.

Another of our goals is to preserve the concept of universal service, the structure of which is threatened as competition comes to local telephone service. By imposing a proportionate universal since funding responsibility on all local telephone competitors, we sustain for the future a proud American tradition in which 96 percent of our citizens have local telephone service.

A third important goal is to create a fair and level arena for all communications companies. We are freeing television stations to offer voice and data as well as TV services. We encourage wireless technology as a full participant in the provision of multimedia services, and we create a fair pale attachment rate equally applicable to all competitors.

I have been honored to work with the members of the Telecommunications Subcommittee in creating these reforms. I particularly want to commend the gentleman from Massachusetts, [Mr. MARKEY] for his leadership, guidance, and persistence. It is not easy to create a broad consensus involving issues of this complexity, but he has presided over a highly constructive process that has achieved that goal.

I also want to commend my friends JACK FIELDS and MIKE OXLEY for their excellent work. The superb bi-partisan cooperation which they have provided is yet another reason that the Energy and Commerce Committee is so successful in crafting for reaching reforms that come to the floor without controversy.

For 3 years, Mr. OXLEY and I have worked to remove the barriers to competition in the cable TV industry, and as we pass the bill which accomplishes that result, I thank him for his splendid cooperation.

Mr. Speaker, I am pleased to cosponsor these constructive reforms and to urge their passage by the House.

They will create millions of jobs, stimulate billions of dollars of investment, and bring to the United States the world's finest communications network.

Mr. MARKEY. Mr. Speaker, will the gentleman yield?

Mr. BOUCHER. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Speaker, section 107 of H.R. 3636 amends the Pole Amendment Act (47 U.S.C. 224). This amendment is intended to ensure that all attachments bear an equitable share of the costs of a pole or conduit. In its current form, however, the formula mandated by section 107 requires more than a proportionate share of the

costs from those who are not owners or co-owners of the poles and conduits. I would like the agreement of the ranking minority member of the Telecommunications Subcommittee and the gentleman from Virginia to work with me to fashion an amendment that reflects this distinction.

Mr. FIELDS of Texas. Mr. Speaker, will the gentleman yield?

Mr. BOUCHER. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Speaker, I would be pleased to work with the chairman. As currently written, the pole attachment language of H.R. 3636 could triple or quintuple the pole attachment fees paid by cable operators when they begin to offer telecommunications services. Such a result is not only inequitable, it will discourage operators from constructing and operating telecommunications facilities. I am confident we can devise a means of preventing this outcome while ensuring that the owners of poles and conduits are adequately compensated for use of their facilities.

Mr. BOUCHER. Mr. Speaker, I would say to the gentleman from Massachusetts and the gentleman from Texas that I am pleased to join with them in revisiting the pole attachment provisions. While I am reserving judgment as to the substance of the matter, I will be pleased to work with them in crafting some modification of the current provisions.

Mr. FIELDS of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. OXLEY], a Member who has worked very hard on this particular piece of legislation.

Mr. OXLEY. Mr. Speaker, I rise today in strong support of the National Communications Competition and Infrastructure Act of 1994. As Members know, this legislation will accelerate the construction of the information superhighway. It will promote competition in local telephone by allowing cable companies to provide telephone service, and will promote competition in the cable industry by enabling telephone companies to offer video services. I want to praise Chairman MARKEY, Congressman FIELDS, and every member of our Energy and Commerce Subcommittee on Telecommunications and Finance for the long hours of work they put into crafting this legislation.

What makes this significant legislation possible is the clear consensus which has emerged in favor of competition, deregulation, and entrepreneurialism. The approach that this measure takes toward the development of the telecommunications supersystem is one that I have endorsed for years. By lifting market-entry prohibitions and reducing government regulation we will ensure that American consumers are served with the most advanced telecommunications system in the world. Equally important, I am confident that by providing competition in the video service industry, this measure will give consumers the cable rate relief that the 1992 cable act did not.

I would like to add that while advancing private competition and deregulation are traditionally Republican themes, I was joined in my early efforts to promote this approach by a clear-thinking Democrat, the gentleman from Virginia, [Mr. BOUCHER].

Mr. Speaker, what this measure seeks to do is end the virtual monopolies that exist in the video programming and the local telephone markets. It is revolutionary legislation, and I urge all my colleagues to support it.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma [Mr. SYNAR].

Mr. SYNAR. Mr. Speaker, I rise today in support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994.

This bill, and its companion, H.R. 3626, represents the critical push we need to bring jobs, innovative technology, and services to Oklahoma and the Nation well into the next century. The growth and implementation of the national superhighway bodes well for the citizens of my State, where we expect to gain a healthy share of the 3.6 million newly created high-skill, high-wage jobs, a broad selection of consumer, telemedicine, and educational services for rural areas, and the ability to export Oklahoma-made goods to world markets in the future.

The National Communications Competition and Information Infrastructure Act builds upon principles that I have promoted since we began hearings on the bill. These essential elements include a commitment to universal service for all Americans, whether rural or urban, development of networks that are open and reliable, proper cost allocation between consumers and competitors, and effective FCC enforcement.

The importance of giving all Americans access to the information highway, and the host of educational, health, economic, and quality of life benefits it will provide, cannot be understated. As a nation, and a government, we must not bestow the benefits of the information highways on some, and deny others, just because they live in out of the way places or in poor urban neighborhoods. Our work on this issue must be done with great care and compassion, for real social disruption could result if we do our job poorly.

In listening to the debate over how to provide and upgrade universal service in a rapidly changing telecommunications environment, I developed three core principles for evaluating the proposals before us. First, to echo title I of the 1934 communications act, all the people of the United States must get service at a reasonable charge. Second, the quality of the service must be available to all on equal basis, regardless of geographic location or economic station. And third, the service must be provided in a prompt fashion to all citizens—no area of the country should be left off the information highway for any length of time.

The bill before us today is a good starting point for addressing the principles I have raised. On several key issues, however, such as the definition and the funding of universal service, the bill gives basic authority for these decisions to a Federal-State Joint Board. I have some concerns about delegating such broad authority for such essential issues to this Board, and I will be looking forward to overseeing the progress in these areas.

Along these lines, I am pleased to note that the bill contains specific provisions to ensure rural areas are not left behind as the private sector moves forward to deploy new technology to consumers. As drafted, the exemptions allow the Commission to apply initially equal access and interconnection requirements specifically to rural providers only when they would not be unduly burdensome and economically unfeasible. We recognize in this legislation something that rural telephone and cable consumers in Oklahoma have known for a long time: that new entrants to a market often face tremendous obstacles if they must compete against an entrenched service provider. The goal of this rural package is to encourage competition in these markets so that residents get new services quickly and at lower prices.

It is important to remember that the future cost of our national infrastructure should not be borne by rate payers who remain captive to regulated industries. People who want only a Chevy should not have to pay the cost of a Cadillac. Certainly, consumers with new demands for upscale, integrated services expect to bear the proper and equitable cost of such services if they select them. Moreover, providers that use the telecommunications network to reach their consumers should pay for all the direct costs such services incur, as well as a reasonable share of the joint and common costs of the network. The bottom line is this: as technology advances, we are clearly going to encounter a declining cost industry, and the appropriate savings from these efficiencies should be reflected in a consumer's phone bill.

We ensure this goal by providing specific language in the legislation prohibiting cross subsidization between a common carrier's telephone exchange service and a common carrier's other nonregulated activities and investments. Cross subsidization occurs when a telephone company uses revenues derived from captive ratepayers to subsidize the company's nonregulated

business ventures. The effect of this practice is twofold: the cost of service to ratepayers increases and the telephone company's nonregulated business ventures receive a comparative competitive advantage over their rivals in those businesses.

However, it is difficult for regulators to properly enforce these cross-subsidy prohibitions without making sure a rigorous cost allocation scheme is in place. Unless, and until, the costs incurred by the telephone company are properly allocated between the regulated entity and the nonregulated entity any cross subsidization regulation cannot be effectively enforced. My amendment, offered and adopted in full committee, puts real teeth into the original cross-subsidy prohibition by including cost allocation language that empowers the FCC to audit telephone exchange providers to make sure that consumers are fairly charged for the services they receive.

Enforcement of any regulatory structure rests on the ability of the agency in charge to get the job done. That is why I also offered, and the full committee adopted, an amendment to ensure that the FCC can use its authority given under the 1993 budget act to collect fees from the industry it regulates and target them to augment the FCC's sorely understaffed auditing, rulemaking, and legislative review functions. The estimated cost for the FCC's implementation of H.R. 3636 is $44 million in 1995, and up to $30 million each year thereafter. This amendment will enable the Commission to get a head start on defraying its administrative costs upon enactment, so that taxpayers aren't solely responsible for bearing these expenses.

Finally, Mr. Speaker, we must remember that a locked door without a key cannot be opened and the opportunities inside cannot be enjoyed. Universal service, proper cost allocation, and effective enforcement are the keys to the information highway for all Americans. I look forward to reaching these goals as we move forward on final passage of the legislation in this Congress.

Mr. FIELDS of Texas. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Speaker, I rise in support of the bill and especially want to thank the committee for their protections for the deaf and the hard of hearing section that is included in the bill.

Mr. Speaker, I rise in support of H.R. 3636 and H.R. 3626, legislation which will establish new telecommunications policy for our Nation and help move our Nation forward into the 21st century. Congressmen DINGELL, BROOKS, FISH, MOORHEAD, and FIELDS are to be commended for their efforts to forge compromise legislation which will increase competition within the telecommunications industry and which will bring new goods and services to consumers across our country.

These bills contain necessary policy reforms that are required to bring our Nation's telecommunications policy up to date with both the changing technologies and the changing marketplace. Both the technologies and the marketplace have completely bypassed existing telecommunications policy to the detriment of our Nation's economy and to our constituents.

In addition, I note with particular interest the support of the disabled community for these measures. I commend the authors of this legislation for requiring that Bell Company manufactured equipment and advances in network services be accessible to people with disabilities as outlined in section 229 of H.R. 3626. Title IV of the Americans with Disabilities Act has made the voice telephone accessible to people who are deaf or hard of hearing through the establishment of telephone relay services. And H.R. 3636 assures that individuals who are deaf will enjoy more complete access to cable programming, as much more of it would be captioned. Gallaudet University's Mark Goldfarb and Dr. Margaret Pfanstiehl of Metropolitan Washington Bar testified that these access provisions are long overdue.

I agree and urge my colleague to support provisions that, like those in H.R. 3626 and H.R. 3636, provide deaf and blind Americans the equal access they deserve.

Mr. FIELDS of Texas. Mr. Speaker, I yield 1 minute to the gentleman from Illinois [Mr. HASTERT].

Mr. HASTERT. Mr. Speaker, as an original cosponsor of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994, I rise in support of this legislation. In a nutshell, this legislation has two major objectives: First, to open up the local telephone loop within 1 year to enable new entrants to compete for local exchange service with the incumbent telephone companies and, second, to permit cable and telephone companies to compete in each other's business.

This bill reflects not only good public policy, but also the commendable efforts of our colleagues Chairman MARKEY and ranking Republican member, Mr. FIELDS, to achieve what has been appropriately described by some as the "impossible dream."

As the legislative process proceeds, we need to remain vigilant to ensure that all industries will be able to fully compete with each other as quickly as possible and with the fewest regulatory constraints. Where regulation occurs, it should be equivalent regulation so that every player is required to be regulated in a similar manner as they strive to gain market share from the other. We should guarantee that asymmetrical treatment of new entrants in the marketplace is eliminated.

Finally, Mr. Speaker, I believe that America is standing on the brink of a new information age. At stake today is whether our constituents—individual consumers—are allowed to enjoy the fundamental benefits of enhanced choice and access. Accordingly, I urge my colleagues to vote "yes" on H.R. 3636.

□ 1400

Mr. MARKEY. Mr. Speaker, I yield 1½ minutes to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, today I rise in support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994. This comprehensive piece of legislation has been a long time in the making and it is rewarding to see it come to floor with such bipartisan support. I congratulate our colleagues on both sides of the isle for keeping their focus on the merits of this legislation. We are on the verge of entirely new industries and ways of communicating. H.R. 3636 points us in the right direction.

I am proud to have played a part in the evolution on this monumental legislation. The process that has brought this bill to the floor has been receptive to many important concerns. From universal service to public access, H.R. 3636 addresses the abundance of concerns relative to delivering telecommunications services. I am particularly pleased that H.R. 3636 addresses specific concerns with regard to rural areas, minorities, information redlining, programming access, and public, educational, and governmental access.

Rural issues are of great concern to me and I was pleased to support provisions to ensure universal service and infrastructure sharing for rural telephone companies. A progressive universal service plan is necessary to ensure that all Americans have access to the information superhighway and I am hopeful that all New Mexicans and Americans will soon be the beneficiaries of competition in the local telephone market. The costs associated with upgrading telecommunications systems to offer enhanced services is prohibitive for many smaller telephone companies and cooperatives. I am pleased to have supported an infrastructure sharing provision which will allow smaller entities to access the services of larger telephone exchanges.

I was pleased to include provisions regarding equal employment opportunities and information redlining. Minorities are seriously lacking as participants in the telecommunications industry. Today H.R. 3636 has language that would hold telephone companies that provide cable services to the same EEO standard as cable operators must now abide by. I think this is a small but important step toward equalizing the telecommunications playing field. As new telecommunications systems are built, an issue which will of continuing concern will be access, for all Americans, to new services. H.R. 3636 addresses my concerns regarding information redlining. The ability of providers of new services to discriminate

against specific geographic areas on the basis of race or economic status is too great. I am pleased that the committee took a progressive step and made explicit that the FCC must take into account the demographic makeup of the proposed area to receive new services.

Cable television plays an important and growing part of the information superhighway. It is imperative that the legislation provide for a competitive marketplace for small cable operators. Small cable operators provide services to small populations in remote areas which larger operators have no commercial interest in serving. I am pleased that this legislation contains several, important provisions to provide for a competitive marketplace for small cable operators. For example, the legislation would preempt State and local barriers for new telecommunications services, prohibiting local government entities from overregulating cable's provision of telecommunications services. H.R. 3636 also allows for joint ventures, mergers, and acquisitions to occur in areas with populations of less than 10,000, or when a cable system serves less than 10 percent of the households in a telephone company's service area. While such provisions are a step in the right direction, I hope that additional issues will be addressed in the legislative process. For instance, franchise requirements for providers of cable services must be balanced so that everyone plays by the same rules. Additionally, interconnection and access requirements must be ensured so that small cable operators have fair and equal access to the information highway.

Lastly, I am pleased that H.R. 3636 addresses public, educational, and governmental concerns. If the information superhighway is going to serve our democracy then it is critical that these institutions have access to reach all Americans.

Again, I support this legislation and I urge my colleagues to do likewise.

Mr. FIELDS of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Mr. Speaker, I rise today in support of H.R. 3636, the National Communications Competition and Information Infrastructure Act.

When my constituents in Colorado need a telephone line, there is only one company they can call to provide that service. When my constituents want cable service, again, there is only one company to provide it.

The consumer choice of all Americans is limited in the telecommunications market today. But that choice is not limited by technology. It is limited by outdated laws and regulations that were designed over the last 60 years.

For instance, in most States, it is illegal for anyone to provide an alternative to the phone company.

H.R. 3636 clears the way for competition—and thus more choice, lower prices, and better service—in all segments of the telecommunications marketplace.

By sweeping away the laws that prevent competition in both the local telephone and cable market, H.R. 3636 paves the way for the next generation of advanced telecommunications networks. This is truly a revolutionary bill and I urge all my colleagues to support it.

Before I finish, Mr. Speaker, let me also briefly address one aspect of H.R. 3636, the Dingell-Brooks legislation to lift the MFJ restrictions, which was just debated.

While I supported this legislation in committee and here on the floor, I strongly believe that the so-called domestic content provision of this legislation needs to be stricken from the bill at some point in the legislative process. I know keeping jobs in America is an emotional issue, but violating our free-trade agreements is not only bad policy and bad economics, it is also bad for American workers in the long run.

These bills show the great work that we on the Energy and Commerce Committee can and will do.

Again, please support H.R. 3636, the Markey-Fields bill.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, I would first like to commend, as other speakers have here today, the tremendous work that the chairman, the gentleman from Massachusetts [Mr. MARKEY], has done on this legislation, and the chairman, the gentleman from Michigan [Mr. DINGELL], and the ranking minority member, the gentleman from Texas [Mr. FIELDS]; all of you have done tremendous work on this, and you deserve all the kudos you are receiving here today.

Mr. Speaker, I rise in strong support of both of the bills that we are debating here today. These bills are truly essential to the construction of the Nation's information superhighway, this is landmark legislation.

Mr. Speaker, I am particularly pleased that H.R. 3626 would allow the regional Bell operating companies to get involved in manufacturing telephone equipment in this country. I introduced legislation 4 years ago, and it has taken us a long time to get to this day. I am pleased we are here. I think this legislation will create good paying jobs in this country.

I am also pleased that H.R. 3626 includes an amendment I offered to help thousands of community newspapers across the country have a better chance to get on board the information superhighway. The National Newspaper Association believes this legislation is critically important to the future of many small-town community newspapers. It is important because it guarantees them fair access and fair rates when accessing the information highway.

This legislation gives them nothing less than a license to their future. Without it, they could be ignored or actually driven off the information superhighway. These newspapers often provide the social, political, and economic ties that bind communities together. Many are going through tough times. They face competition and disappearing ad revenue. Now, at least, they can face the electronic future with confidence that if this bill becomes law they can compete for their fair share.

Mr. Speaker, in addition, in keeping with the spirit of the Americans with Disabilities Act mandate to bring about the complete integration of individuals with disabilities into the mainstream of our society, H.R. 3636 and H.R. 3626 would ensure that advances in network services deployed by local exchange carriers are available to all our citizens.

Mr. FIELDS of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina [Mr. MCMILLAN].

Mr. MCMILLAN. Mr. Speaker, I rise in support of H.R. 3636. Along with H.R. 3626. This legislation lifts the restrictions that have long blocked a diverse competitive telecommunications industry. Not only will the competition reduce prices, enhance quality, and offer broader choices for the American consumer, it will create the incentives for industry to finance and build the information highway of the future.

That is the purpose of H.R. 3636: "to make available a switched, broadband communications network." And I commend Chairman MARKEY for including an amendment that directs the FCC to collect information on the rate at which this network is deployed. This will allow policymakers to make sure that the intent of Congress is being achieved.

Toward this goal, I do have a concern with the antibuyout provision in H.R. 3636 which will slow down the creation or a competitive marketplace and the construction of broadband network. By prohibiting telephone company acquisitions of cable companies in their respective territories, this bill will deter the natural convergence of voice and video technology and thereby slow the creation of a multimedia, interactive system that could potentially bring a host of combined services to the public. If H.R. 3636 adequately ensures that all program providers will have access to a telephone company's video platform, do we really need an antibuyout provision to guaranty competition—a provision that may, in fact, impede progress. I hope this can be worked out in conference.

Overall, however, I strongly support H.R. 3636 as a full step toward the completion of the information superhighway and the creation of its competive marketplace.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from Washington [Mr. SWIFT].

□ 1410

Mr. SWIFT. Mr. Speaker, I am proud today to say that ED MARKEY and JACK FIELDS are my friends, because today anyone who is a friend of these two gentleman is going to bask in the reflected glory of this magnificent accomplishment, bringing this very progressive piece of legislation to the floor.

The time has come to update the 1934 Communications Act to recognize new realities and technology and competition, and this bill does that.

I am pleased that the bill has incorporated an amendment to the public access provision that tightens the definition of eligible nonprofit institutions.

I want to thank the gentleman from Louisiana [Mr. TAUZIN] and his staff for their help in crafting this amendment.

As author of this provision, I did not intend to place unreasonable economic or technical burdens on carriers providing advanced telecommunications services, but I do expect that such carriers will make all necessary good-faith efforts needed to implement the goals of this provision.

Again, I commend this legislation to all of my colleagues. It is an outstanding piece of work.

Mr. FIELDS of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from New York [Mr. PAXON].

Mr. PAXON. Mr. Speaker, I rise in support of H.R. 3636. Two years ago Congress took what I consider a step backwards by enacting the Cable Act, which through overregulation led to consumer confusion, increased paperwork burdens, and higher rates in some instances.

Fortunately, Congress has learned from its mistake and is now pursuing a policy of competition rather than regulation. Only by increasing competition in the local telephone lop and the cable industry will Americans see the private creation of an information superhighway. Competition will also provide consumers and business with new and innovative services and technology at a reasonable cost.

In conclusion, Mr. Speaker, I am pleased to support H.R. 3636, which will move the telecommunications industry from its regulated past into the competitive 21st century.

Mr. FIELDS of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from California [Mr. HORN].

Mr. HORN. Mr. Speaker, I commend the chair and ranking Republican on both the full committee and the subcommittee for this outstanding legislation, H.R. 3636, and urge its strong support. I think it is a splendid accomplishment. It is seldom we have that much bipartisanship, and this committee has set a good example.

A number of us sent a letter to the chairman of the full committee expressing the concerns of local government. Mr. MARKEY's very fine reply where he reaffirmed the "local governments' rights to impose fees identical to the cable operator's fees on a telephone company's provision of video programming," was reassuring, my views on this legislation reflect a number of local governments such as the city of Los Angeles, Downey, Long Beach, and Signal Hill which are part of my congressional district.

Mr. Speaker, H.R. 3626, the Antitrust Reform Act, and H.R. 3636, the National Communications Competition and Information Infrastructure Act, represent the most sweeping telecommunications reform since the breakup of AT&T. What the House does today is to construct the structural framework for the revolutionary changes which have already begun changing the telecommunications field. The framework we erect today will provide for a level playing field so that competition can occur in a manner that benefits the everyday consumer while bringing new technologies into that same person's home. But passage of these bills does not mean that all pertinent issues have been resolved. Today's votes represent a means to move the process forward, so that we may send these bills to the President before the legislative session comes to a conclusion.

The issue in question, which is contained in H.R. 3636, primarily revolves around the treatment of municipal franchising authority and the new, possibly restrictive definition of cable services in the bill. In particular, I am concerned that the language of the amendments of Messrs. FIELDS and SCHAEFER that were accepted by the committee may have the unintended, and unfortunate, result of depriving our Nation's municipalities of badly needed revenue that they need to carry out the vital governmental duties they perform.

For instance, section 102(b)(2) of H.R. 3636 amends the franchise fee provision of the Cable Act to limit the revenue base on which franchise fees may be based to only those revenues an operator derives from providing cable services. According to current law, a franchising authority is entitled to 5 percent of all revenues derived from operations of a cable system. Because the term "cable service" is already defined in the Cable Act for purposes completely unrelated to its use in H.R. 3636, my concern is that section 102(b)(2) could be construed as restricting cable franchise fees only to the revenues a cable operator receives from subscribers. That is a far narrower revenue base than the Cable Act currently allows, and would deprive municipalities of the many nonsubscriber revenues a cable operator earns, such as advertising and home shopping revenues. Many municipalities across the Nation are currently receiving, and relying on, franchise fees paid by operators that include such nonsubscriber revenues. I certainly hope that it is not the intent of this legislation to deprive our municipalities of funds they are currently receiving. This issue is particularly important, since nonsubscriber revenues are the fastest growing form of cable operator revenues.

I am also concerned that the language in section 102(b)(1) may be construed as preventing municipalities from securing the full benefits for the public of any new services that cable operators may provide. Many communities have negotiated franchises with cable operators under which the cable operator furnishes institutional networks for use by schools and local governments. These are valuable resources for our schools, our children, and our local governments. I certainly hope that it is not the intent of this legislation to forbid or preempt these arrangements.

The parity of franchise and other changes provision in section 102(a) also raises similar concerns. The drafters of this provision seem not to be aware that pursuant to applicable State law, many municipalities have issued franchises to telecommunications providers to use their local rights-of-way, and municipalities rely on revenue from those providers in their budgets. Once again, I hope it is not the purpose of this provision to deprive our already financially strapped municipalities of further revenues. There is an important question as to whether or not it is proper for the Federal Government to require local municipalities to allow private companies to use their valuable public rights-of-way for free.

In conclusion, these issues need adequate debate and consideration. I look to the product of the House-Senate conference for improvements and clarity on these issues. Finally, I am providing for the RECORD two documents. The first is a letter to Chairman DINGELL signed by myself and a number of my California colleagues. It raises a number of these issues. The second is the response to that letter by Chairman MARKEY.

HOUSE OF REPRESENTATIVES,
Washington, DC, June 23, 1994.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, 2125 Rayburn House Office Building.

DEAR MR. CHAIRMAN: City and county governments in California have successfully franchised cable television according to the provisions of the Cable Act for many years. We are concerned that H.R. 3636 does not

contain a similar franchise requirement for telephone companies wishing to offer cable services and urge that you include such a provision as an amendment to H.R. 3636 when it comes before the full House for consideration.

The public rights-of-way, owned by local governments on behalf of local taxpayers, are worth billions of dollars and should be controlled by the city and county governments which build, own and maintain them. As the Cable Act requires, the best way to do this is to subject a provider of cable service to the franchise requirement. The telephone companies (telcos) which want to offer cable need to be covered by a franchising process at the local government level. Local governments want nothing more and nothing less than what they currently have in their relationship with the cable companies.

We also urge that H.R. 3636 be amended to remove provisions that restrict the right of local government to control local rights-of-ways and to collect appropriate compensation for the use of such rights-of-way. In particular, we are concerned with the provisions that: (a) strip local governments of the right to ensure telecommunication providers use public rights-of-way in a safe and reasonable manner and pay appropriate compensation for that use; and (b) limit the right of local governments to impose cable franchise fees on the provision of telecommunication services over a cable system, and to ensure that provision of such services are consistent with the public interest.

Local governments in California are eager for competition to traditional cable operators and the development of new telecommunication services, but want to be able to control the rights-of-way and ensure that competition is done on a level playing field. City and county officials and the members of the California delegation want to see the information superhighway built. Local governments should receive reasonable compensation for the use of public assets, should be able to ensure that transportation is not disrupted, and guarantee that the needs of the entire community are served by the new information superhighway. It is important that the new information superhighway fits the needs of the local community which it serves rather than simply the desires of the telephone, cable and telecommunications industries.

Thank you for your consideration in this matter.

Sincerely,

Pete Stark, M.G. Martinez, Ronald V. Dellums, Stephen Horn, Lynn Woolsey, Nancy Pelosi, Don Edwards, George Miller, Tom Lantos, Dan Hamburg, Julian C. Dixon.

COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE,
Washington, DC, June 27, 1994.

Hon. STEPHEN HORN,
1023 Longworth House Office Building,
Washington, DC.

DEAR STEVE: As sponsor of H.R. 3636, and as Chairman of the Telecommunications and Finance Subcommittee, I would like to take this opportunity to address the concerns you and several colleagues raised in a letter to Chairman John Dingell dated June 23, 1994. The letter addressed the role H.R. 3636 accords the cities in regulating telecommunications services.

The letter raised three major concerns with the provisions of H.R. 3636 that affect local governments' jurisdiction. The first was a concern that H.R. 3636 would "strip local governments of the right to ensure telecommunication providers use public rights-of-way in a safe and reasonable manner * * *." While this may well have been a concern with earlier drafts of H.R. 3636, the version of H.R. 3636 that will be voted on by the full House this week includes express language that reaffirms cities' jurisdiction over all activity that affects their rights-of-way. Authority over public rights-of-way is crucial to local governments and is effectively preserved in the bill.

The second concern raised in your letter was with the bill's "limit[ation of] the right of local governments to impose cable franchise fees on the provision of telecommunication services over a cable system * * *." This is a question that has caused some confusion in recent months. First, H.R. 3636 actually affirms local governments' rights to impose fees identical to the cable operator's fees on a telephone company's provision of video programming. Local governments do not currently have this authority and some have complained that telephone companies have refused to pay such a fee. Requiring that telephone companies pay equivalent fees puts them on precisely the same footing as cable companies in their future competition for cable subscribers.

H.R. 3636 does not, however, require cable companies to pay franchise fees on telephone services. Cities have never had the power to impose such fees on telephone companies. For the past 60 years, states and the federal government have traditionally been the primary regulators of telephone service. H.R. 3636 ensures this will continue to be the case, both for telephone companies and cable companies. If this were not so, as you seem to recommend, telephone companies would have an inherent, governmentally-mandated advantage over cable companies that wish to compete for their telephone customers.

Finally, you state your concern that H.R. 3636 does not give local governments a franchise over telephone companies' provision of cable service. The reason H.R. 3636 does not do this is because of the fundamental difference between the architecture of telephone networks and cable networks. Cable systems grew up as a local service within discreet communities. They typically do not extend beyond municipal boundaries nor do they typically interconnect with other systems within a state or region. In contrast, telephone systems have developed into statewide or regional networks. To require telephone companies to restructure their networks in order to respond to each community's requirements would effectively Balkanize today's regional networks, raising costs to consumers and delaying the arrival of new, advanced services.

Instead of imposing a franchise, H.R. 3636 imposes a wide range of requirements on telephone companies that closely track requirements that are currently imposed on cable companies. For example, H.R. 3636 assures local governments of: (1) the functional equivalent of a franchise fee (up to 5% of video revenues); (2) public, educational and governmental access channels similar to those available on cable systems; (3) authority to enact consumer protection and customer service requirements; (4) oversight authority over the ownership of local video programming networks in certain situations; and, (5) authority to enact local privacy laws consistent with federal law. In this way, local governments will continue to have significant influence over telephone companies, provision of video without forcing them to restructure their networks.

It is important to point out that H.R. 3636 contains important safeguards and authorities for local governments that they do not currently enjoy. The Subcommittee office has been contacted by cities who have requested exactly these kinds of powers to help them in their dealings with powerful telephone and cable companies. If H.R. 3636 is not passed this year, cities will have little protection for the foreseeable future from telecommunications providers who have no statutory obligations vis-à-vis local governments.

Even though the provisions of the legislation do not coincide perfectly with some of the recommendations of local governments, H.R. 3636 represents a balanced, comprehensive telecommunications policy framework that should meet local governments' needs for the foreseeable future. As the 44–0 vote in the Energy and Commerce Committee indicates, there is a broad consensus in the approach this legislation takes. Passage of H.R. 3636 will be a vital and important step toward accelerating the development of the national information infrastructure and considerably increasing franchise fees available to local governments, while ensuring a competitive telecommunications marketplace that will benefit all Americans. Please feel free to contact me with any further concerns or questions about this important legislation.

Sincerely

EDWARD J. MARKEY,
Chairman.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from South Carolina [Mr. DERRICK].

Mr. DERRICK. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of H.R. 3626. One thing which directly affects new investment and jobs creation is the perception of fairness. Companies don't invest, they don't create new jobs with a future when they are not sure the Government will treat them fairly. So, one thing we in Congress always need to do is stress the fact that we are all committed to fairness, and we also expect regulatory agencies such as the Federal Communications Commission to be fair, too.

That is important because there are some unanswered questions presented by this bill. For instance, it is not clear that telephone companies competing with cable TV will have the same flexibility the cable companies now enjoy. It is also not clear that if the cable companies chose to go into the telephone business, they will bear the same universal service obligations which we have placed on the phone companies.

Key provisions of H.R. 3636 could be construed as justification for tilting the playing field. And, the problem with that isn't just fairness—rather, it is also the potential negative effect that could have on future jobs creation and investment.

I want to review each and every such provision of H.R. 3636, but, I do think it is important for Congress to make clear to the regulators as well as the investment community that it wants regulation to be fair and evenhanded here.

We do not want to have the sort of situation develop where cable companies have a great deal of pricing flexibility, but phone companies trying to compete with them do not. We want both to face basically the same regulatory options.

In short, we want both the perception and the reality of fairness, because that's key to new investment and jobs creation, and delivering the competition American consumers want and expect.

Mr. FIELDS of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from Tennessee [Mr. QUILLEN].

Mr. QUILLEN. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of H.R. 3636, and I encourage my colleagues to vote for it. The bill that was just discussed prior to H.R. 3636, that is, H.R. 3626, I support that and urge my colleagues to vote for it. I congratulate the chairmen and the ranking members of both committees for bringing this much-needed legislation to the floor of the House. Our information highway system will be greatly improved as a result of the passage of these measures.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Speaker, I thank the gentleman for yielding this time to me.

Chairman MARKEY, I first would like to commend you, along with the distinguished gentleman from Texas, [Mr. FIELDS] and the Telecommunications and Finance staff for the hard work and long hours you have all spent crafting this legislation and moving it expeditiously to the floor today. Your earnest efforts have resulted in a bill that, while not flawless, certainly will help pave the roads of the information superhighway with increased competition and assist in promoting greater economic opportunities for more Americans as we head into the 21st century.

I am particularly pleased that the bill before us contains interoperability language that I supported and Mr. MARKEY agreed to include in his en bloc at the full committee markup of this legislation. This language will provide many new manufacturers, who do not provide subscription services, with the ability to offer telecommunications equipment or hardware to consumers, expanding consumer choice, and enhancing competition.

In reflecting on the momentous changes occurring virtually every day in the telecommunications arena, I find it absolutely astounding that a little over 100 years ago, in my city of Chicago, the first multiple telephone switchboard in the Nation was being installed. Just as we in Congress look forward to the day in the near future when all homes, businesses, schools, and hospitals are linked by networks that will provide groundbreaking services such as telemedicine as a matter of course, so too were the community leaders of Chicago in 1879 anticipating the tremendous benefits that eventually came from the expanded deployment of telephone service throughout their region of the country.

Yet in looking forward to the opportunities presented by emerging technologies, we cannot disregard the lessons of the past and the hurdles we still face in ensuring that everyone in America plays a part in the communications revolution now underway. I refer to the well-documented fact that minority and women-owned small businesses continue to be extremely underrepresented in the telecommunications industry.

The statistics speak for themselves. The cellular telephone industry, which generates in excess of $10 billion a year, has a mere 11 minority firms offering services in its market. Overall, barely 1 percent of all telecommunications companies are minority-owned. Of women-owned firms in the United States, only 1.9 percent are involved in the communications field.

The two amendments which I offered and were adopted by the full committee will go a long way toward leading to the diversity of ownership in the telecommunications marketplace. The first amendment will require a rulemaking on the part of the Federal Communications Commission, after consultation with the National Telecommunications and Information Administration, on ways to surmount barriers to market access, such as undercapitalization, that continue to constrain small businesses, minority, women-owned, and nonprofit organizations in their attempts to take part in all telecommunications industries. Again, underlying this amendment is the obvious fact that diversity of ownership remains a key to the competitiveness of the U.S. telecommunications marketplace.

My second adopted amendment which is intended to increase the availability of venture capital and research and development funding for both new and existing small, women, and minority-owned companies will require all telecommunications providers to annually submit to the FCC their clear and detailed company policies for increasing procurement from business enterprises that are owned by minorities and women in all categories of procurement in which these entities are underrepresented. The FCC would then report to the Congress on the progress of these activities and recommend legislative solutions as needed.

As an aside, I am hopeful that when the FCC adopts its final licensing rules tomorrow for small business, minority, and women-owned firms to participate in auctions of broadband radio spectrum for a new generation of wireless technologies, known as personal communications services or PCS, it understands that this Member of Congress is watching closely to see that the goal of diversity of ownership in PCS is sufficiently advanced.

Hopefully, however, with several of the targeted provisions included in this bill, we can begin to eradicate the inequities present in the telecommunications arena and ensure that minorities and women are drivers, not simply passengers, in the superhighway fast lane. Too often in the past, these groups have been left standing on the shoulder, only to watch the big guys and gals motor down the road past them.

While my measures do not completely solve the long-standing problems that confront so many forgotten entities and enterprises in our communities, their inclusion in H.R. 3636 ensures that minorities and women will have a strong role in the fantastic industries of the future as both users and providers of services. Because of this, we all stand to benefit.

I strongly urge my colleagues to support H.R. 3636.

Mr. FIELDS of Texas. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. SHAW].

Mr. SHAW. I thank the gentleman for yielding this time to me.

Mr. Speaker, as mayors across this country have indicated, the U.S. Conference of Mayors, the National League of Cities, they are concerned about this legislation and what it is going to open up, whether the local cable franchises can survive. They also have a stream of income from franchise fees and they have certain controls over programming that is required of the cable franchises.

My concern is that the newcomer, the telephone companies, would have those same controls. I would like to ask the gentleman from Texas these statements and inquire how he would address the concerns of the mayors across this country.

Mr. FIELDS of Texas. Mr. Speaker, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I thank the gentleman for yielding to me.

Mr. Speaker, I would agree this legislation does not prejudice the cities to assess franchise-like fees on telephone companies when they offer cable service. Additionally, cities clearly retain control over the streets, should they adequately let cable, telephone and other providers lay their networks in the ground. Further, telephone companies would, under this bill, comply with the peg requirements, broadcast of public education and local Government programming.

Mr. SHAW. In other words, there is clearly a level playing field and that there is no undue advantage given to telephone companies under this legislation.

Mr. FIELDS of Texas. Yes.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentlewoman from Arkansas [Ms. LAMBERT].

Ms. LAMBERT. I thank the gentleman for yielding to me. I rise today in strong support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994.

As a freshman and recognizing the many years of work that have gone into a piece of legislation like this on an issue like this, I am certainly pleased and I appreciate the willingness of the chairman to allow me to take a role and to play a small part on behalf of rural communities and rural America.

I join my colleagues in thanking the gentleman from Massachusetts, Chairman MARKEY, of the subcommittee as well as Chairman DINGELL of the full committee, for all of their efforts on behalf of everyone in this Nation, making sure that rural communities are recognized in equal opportunity, as well as in fairness. A special thanks for their support in adding amendments to keep telephone rates in rural areas low and protect small and medium-size phone companies from unfair competition.

It was important to note, especially from the chairman of the subcommittee, that it was equally as important to him that service in Turkey Scratch, AR, was just as important as in Boston, MA.

So, my thanks to the chairman for his willingness to allow us to help in forming this bill and for rural America and a special thanks from those in Arkansas and all of rural America. This bill represents an amazing opportunity for advancements in education and in telemedicine, among other things.

The SPEAKER pro tempore (Mr. MONTGOMERY). The gentleman from Massachusetts [Mr. MARKEY] has the right to close the debate.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. NEAL].

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Mr. NEAL of Massachusetts. Mr. Speaker, I take this opportunity to express my support for H.R. 3636, the National Communications Competition and Infrastructure Act of 1994 and for H.R. 3626, the Antitrust and Communications Reform Act of 1994. I have been closely involved with cable television issues for almost 20 years as a city council or, mayor, and now Congressman. It is clear at this point that major decisions need to be made to ensure that America continues to be the world leader in communications technology and service. These two bills will move Federal policy forward as we seek to create the best possible climate for our emerging communications future. I have long felt that we must always consider the consumer as we set cable television policy. H.R. 3636 is a solid consumer bills. If signed into law as currently written, this bill would: create positive competition for each cable household. While many cable subscribers are satisfied with their service, there are a great many areas, including my home city of Springfield, MA, where consumers have been greatly upset and confused by high rates and ever-shifting channels. The Cable Act of 1984 was designed to allow the cable television industry to grow and establish itself across the country. That has happened, but at a cost. The cable market monopolies have, unfortunately, led to high prices and poor service in some areas. The Markey-Fields bill encourages true competition by allowing telephone companies and others into the market. I believe the end result will be greater service selection and lower prices for the consumer, and hasten the arrival of the much-heralded "information superhighway." The information technology sector of the economy is posed to take off. H.R. 3636 will put into effect policies that will encourage the logical development of these new technologies and systems, and protect the role of local authorities as they seek to provide their citizens with the best possible cable television and telephone service.

Clearly these provisions are designed to foster the kind of competition that will benefit the consumer and America's position in the worldwide communications market. We have been a leader in this market; H.R. 3636 will help us remain a leader.

As for H.R. 3626, I believe this bill will also be a boost for the American consumer. The 1982 court case that created our current telephone system is out of date. This bill eases restrictions on true competition in the long-distance service sector. This bill is strongly supported by many disabled activists, educators, rural Americans, small business leaders and minority groups because of the opportunities that will open up if this measure is approved. It also will promote the development of new equipment and technologies as we build the information superhighway.

Both of these bills are the result of long and careful consideration. It is important that these steps be taken now, before we have a crisis in this flagship industry. I salute Chairmen MARKEY, BROOKS, and DINGELL, as well as Congressman FIELDS on crafting language that is logical, fair, and realistic. They are seeking to craft the future of communications as we head into a new century. I urge my colleagues to support both of these important measures.

Mr. FIELDS of Texas. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I just want to say to my colleagues that this is the most sweeping change since 1934, and I do not want my colleagues to lose sight of that because we are coming up on suspension today. There will be more telecommunication development and deployment in the next 5 years than there has been this century, and I would like to think much of that is enhanced and speeded because of this legislation.

Again, Mr. Speaker, I want to compliment our chairman. I do not believe we would be here today in this fashion without the leadership of the gentleman from Massachusetts [Mr. MARKEY]. I also want to compliment the staff on both sides of the aisle who labored diligently to bring us to this point today.

Mr. Speaker, I yield the balance of my time to the gentleman from Georgia [Mr. GINGRICH], our future leader and our current minority whip.

The SPEAKER pro tempore (Mr. MONTGOMERY). The Chair recognizes the gentleman from Georgia for 2½ minutes.

Mr. GINGRICH. Mr. Speaker, I thank the gentleman from Texas [Mr. FIELDS] for yielding this time to me.

Let me say first of all that I think in this Congress this is one of the best days for the legislative process, and I think that people should realize that the gentleman from Michigan [Mr. DINGELL] and his colleague, the gentleman from California [Mr. MOORHEAD], the gentleman from Texas [Mr. BROOKS] and his ranking member, the gentleman from New York [Mr. FISH], and the gentleman from Massachusetts [Mr. MARKEY] and his ranking member, the gentleman from Texas [Mr. FIELDS], as a team developed two bills which are right here, H.R. 3626 and H.R. 3636, which are both landmarks in terms of the future of American jobs and the future of American technology, and they are also, I think, a tremendous case study in a good legislative process that is genuinely bipartisan. Here are very sophisticated, very complex and very technical issues in which Members of both parties subordinated their partisanship to the effort to understand what the marketplace and the technology made possible and to try to truly craft historic legislation. I think it is fair to say that this is, in the case of H.R. 3636, a dramatic break from 60 years. This is the new benchmark, and it was done the right way. It was done by constant consultation, by staffs working together and by dealing with some very difficult issues by very persistent negotiations.

Mr. Speaker, I think the result of these two bills taken together, and they will be joined together and go to, hopefully, the other body, and we will produce by the end of this session, I hope, a landmark legislation that will truly create an opportunity for more jobs in America. The result is going to open up the marketplace so that more entrepreneurs can try out more new

ideas to create more products, to build more jobs in America by delivering better services at lower costs to more people.

Now that is a remarkable accomplishment, and in the time that I have been in this Congress I do not know of many occasions where we have had as much bipartisanship, as much sophistication and as serious an effort to deal with very complex issues, and I simply want to commend both committees and the Members who worked on them, and I ask all of my colleagues to join in voting "yes" this afternoon on this historic opportunity.

Mr. MARKEY. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Massachusetts for 1½ minutes.

Mr. MARKEY. Mr. Speaker, a year and a half ago I sat up in the second last row, May 1993, and began a conversation with the gentleman from Texas about how we could fashion a piece of legislation that would be good telecommunications policy, good social policy, and good economic policy, and, beginning with that first conversation up in that back row of the Chamber, we proceeded not only speaking to ourselves, Mr. Speaker, but to other Members here in the Chamber and to hundreds of other interested parties across this country.

The legislation which we bring out here today is one which is going to open up enormous economic and technological opportunity for our country, not only to the well-known giants, the telephone companies and the cable companies, but in many ways, more importantly, to the software industry and computer industry of this country using the open architecture, set top box protections, which we build into this legislation so the fiberoptic networks which are going to be designed to the interactivity which is going to be constructed, to all of these technologies across this country, from the innermost neighborhoods of our country to the most distant, rural parts of this country, each and every American will be given access to these exciting technologies. It will be the most important part of the economy of this country in the world over the next generation.

With this legislation accompanying the Brooks-Dingell legislation, Mr. Speaker, we are going to lead this world and have an opportunity to capture a disproportionate share of the economic benefits. But at the same time we ensure that all Americans, poor, rich, rural and urban, all benefit from it, and we do it ensuring that the economic and social policies of our country continue to capture these technological advances.

I want to congratulate again my good friend, the gentleman from Texas [Mr. FIELDS]. I want to congratulate my counsel, Gerard Waldron, with Colin Crowell, with David Moulton, Mark Horan who worked with Winnie Loeffler, with Kristan Van Hook, with Steve Popeo, with all the rest of our staff, Mike Balmoris, with David Zesiger, with Mike Regan and with Cathy Reid on the minority side, and I want to, as well, thank Sara Morris who is back and watching this right now. It would not have been possible without her. David Leach and Johnnie Roski did the same work on the other piece of legislation. They are to be congratulated.

Mr. CRAPO. Mr. Speaker, I rise today to speak about the many tough and complex issues being addressed in the area of telecommunications policy through H.R. 3636, the National Communications Competition and Information Infrastructure Act. There are several competing interests at play in this formula for emerging telecommunications policy. And I admire the efforts of Telecommunications Subcommittee Chairman ED MARKEY and Congressman JACK FIELDS for their work in weaving together a consensus that serves the public interest.

Six years ago in Idaho the legislature, of which I was Senator pro tem at the time, took a bold approach communications laws. There were doomsday predictions about how rates would skyrocket and competition would be choked off. But by adopting a more relaxed regulatory framework, Idaho created an environment conducive to the Information Age. And consumers have reaped benefits from it.

Basic telephone remain unchanged. Long-distance prices have been reduced several times. Numerous new products and services have been introduced. Competition is flourishing. And the State's communications infrastructure is leading edge. That was not accomplished by increased regulation but by relaxed regulation. In Idaho, we opened markets, provided pricing flexibility for competitive and optional services, and rate stability for essential services where competition has yet to take hold. Again, the results have exceeded expectations.

Today, I rise in support of H.R. 3636. We have taken a different path in this bill, however. With this legislation we have directed the Federal Communications Commission to make decisions on telecommunications competition issues. And what standard have we directed the Commission to use in making those competitive decisions? Not the public interest standard embodied in the 1934 Communications Act. Not a market standard—which would seem to properly focus on consumers.

Rather, at least in the area of interconnection, we stand ready to direct the FCC to abandon the public interest standard they have used for 60 years and replace it with a standard of technical feasibility. H.R. 3636 requires local telephone companies to connect competitors to their networks at any point technically feasible and economically reasonable. If our objective is competition, interconnection ought to be restricted to essential facilities. We should not legislate a standard that allows new communications entrants to piecepart the public network at their whim.

This legislation requires a telephone company to interconnect and unbundle its facilities and prices virtually anytime and anywhere another company requests it. There is no mechanism in the legislation to insure the telephone company is kept whole, nothing that requires the company requesting the unbundling to withstand the economically reasonable cost. In fact, there's a strong likelihood that local telephone companies will attempt to recover some of their costs by raising local telephone rates. That is not in the consumers' interest.

Mr. Speaker, by abandoning the public interest standard, we are likely inviting protracted litigation and sharp price increases. I supported H.R. 3636 in committee and do so on the floor. But I hope that if the legislation goes to conference, we take another look at these overly regulatory issues, refocus on the public interest, and show faith in the marketplace.

Mr. STUDDS. Mr. Speaker, hardly a day passes that we are not exposed to a multitude of new reports about the information superhighway. While we are all aware of the critical necessity of ensuring the development of an advanced communications infrastructure in the United States, it is not always clear how we will achieve that goal.

Our colleagues, Mr. MARKEY and Mr. FIELDS, have provided us a blueprint for advancing the Nation's communications highway. Their bill, the National Communications Competition and Infrastructure Act of 1993, will spur the development of the information infrastructure by letting cable companies provide basic telephone service, and by permitting local telephone companies to offer video programming within their service regions—both of which are prohibited under current law. This competition will be essential to the widespread deployment of advanced communications services throughout the Nation.

What will that mean to our citizens? Nothing short of a dramatic improvement in the quality of their lives. Full cooperation in the communications industry will mean that a wider variety of services will be available in the marketplace. Senior citizens will be able to take advantage of a broad array of shopping services from their own homes. Students throughout the country will have access to educational resources from libraries and schools throughout the world. Health care providers will be able to examine patients at remote locations. And that's just the start.

Furthermore, intense competition within the communications industry will drive down the cost of new services, ensuring their affordability to all citizens. As we have witnessed, limited competition has resulted in sustained high costs for all but the very basic telecommunications services. U.S. consumers deserve better than that.

Mr. Chairman, I strongly support the goals of H.R. 3636 and applaud Mr. MARKEY, Mr. FIELDS and others who have worked so hard to develop this well-balanced legislation. I urge my colleagues to vote for H.R. 3636.

Mr. TAYLOR of North Carolina. Mr. Speaker, I want to commend Congressman MARKEY, chairman of the Telecommunications Subcommittee, and the ranking member, Mr. FIELDS.

This is a good bill. It is not perfect, but if it were perfect, it would not pass.

Mr. MARKEY, Mr. FIELDS, and their staffs are to be praised for their efforts.

They worked diligently with all interested parties to craft a bill that attempts to promote competition in the marketplace.

They know that competition will lead to establishment of an information infrastructure much more quickly than the Federal Government throwing dollars towards this effort.

The information highway will be a great accomplishment, allowing constituents in rural areas like mine to electronically communicate with libraries, hospitals, and museums—and even Members of Congress.

It will allow for video competition, where we get movies over the phone line. One day, we may be dialing up for all services we generally go out for—groceries, clothes, and more.

I don't know anybody who is against the basic objective of this bill—more competition, more choices, and more new services.

But I am concerned that some of the provisions in this bill could be construed to frustrate that goal.

Take all the new regulatory safeguards the bill contemplates.

Everyone agrees we need safeguards. We want to make sure there's fair competition.

But what if the Federal Communications Commission decides that all these safeguards have to be firmly in place before we can have any competition?

This could literally take years. And, all that time, the American public would be sitting there—waiting for the competition that Congress has promised.

I intend to vote for H.R. 3636 because it looks like the best package we can pass at the present time.

However, I also want to emphasize that I am doing so only because I have been assured that the FCC won't regulate to stymie competition.

The new chairman of the FCC, Reed Hundt, says that he's firmly committed to full competition.

Two years ago, we all voted to re-regulate cable TV.

We were told that re-regulation would result in lower cable TV rates and more choices.

Two years after the event, we are still waiting.

I don't want to be waiting for another 2 or so years before we get video competition.

We need that now.

Mr. MACHTLEY. Mr. Speaker, I rise in support of H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1993. Today, it is time that competition in the cable industry is opened so that private as well as public industries can take part in the technological revolution that is changing the way the world does business. Passage of H.R. 3636 will trigger growth in the economy, which will allow the United States to remain in the forefront of technology and economic development.

H.R. 3636 will bring about a quicker and more efficient means of implementing universal service, which will provide resources and information to all Americans. By eliminating the restrictions in cable and local telephone industries, both private and public businesses will have the opportunity to provide services, resulting in more jobs for Americans and better quality of phone and video services, all at lower prices.

79-059 O—97 Vol. 140 (Pt. 10) 42

In addition, this legislation can provide unsurpassed benefits to the elderly and disabled by giving them easy access to resources and information. H.R. 3636 is good for the economy, good for society, and good for America's future. I urge all of my colleagues to vote for this important legislation.

Mr. KLUG. Mr. Speaker, as we are all aware, America faces new challenges in education. Growth in technology, competing world markets, and the changing perspective of the youth have created a need for an innovative way to thinking and acting in the educational arena.

This is why I give my support for H.R. 3626 and H.R. 3636. By eliminating the restrictions in the local telephone market, we can increase competition, increase technology, and provide students with the educational edge needed for success.

Inner-city, as well as rural students, increasingly find themselves isolated from a wide range of educational opportunities. H.R. 3626 and H.R. 3636 will change outdated policies to allow expanded access to global information, allowing everyone from the elementary student who lives in a disadvantaged neighborhood, to the university professor working on a cure for cancer, to have access to learning tools such as expanded databases, and electronic distance learning. This will in turn improve the quality of life, not only for them, but for all Americans. Yes, I support improving education in America. I support H.R. 3626 and H.R. 3636.

Mr. McCOLLUM. Mr. Speaker, I rise today to express my support for H.R. 3636, but do so with a caveat that I hope that we in this Chamber will keep in mind for the future. Much of what we do in this bill is done in uncharted waters. The information age is new, and we in the Congress are just beginning to legislate in this area, so I offer a basic point.

H.R. 3636 is, to say no more about it, a complicated piece of legislation. To some degree, this is to be expected, but I must say that much in H.R. 3636 concerns me. The bill, in essence, allows the phone companies into the cable television business provided they build a super cable system and then throws in an array of regulations for good measure.

For my part, I would have favored a far less regulatory approach, but this bill is a first step—a fair compromise—and for that reason I will support it.

That said, I hope that we in this body, in the future, are careful not to overburden the phone companies with restrictions. The cable industry is an extremely tough business, and we must see to it that all who wish to participate in it do so on an even playing field.

Fortunately, H.R. 3636 does give the Federal Communications Commission some flexibility in this regard. It is my hope that it will be this discretion with an understanding of the peculiarities of the cable industry, and that they, and all those involved in the regulation of cable, will see to it that competition and choice are emphasized.

H.R. 3636 is a first step and on the whole a reasonable one. Now, Mr. Speaker, let us be certain that what issues forth from this step is not heavy handed regulation, but the beginnings of a new and dynamic marketplace.

Mr. BLUTE. Mr. Speaker, I rise to commend Mr. MARKEY and Mr. FIELDS for sponsoring H.R. 3636, one of the most proconsumer and proeconomy bills to come before the 103d Congress.

The Markey-Fields bill, which provides for full competition among telecommunications and cable service providers, would serve as a catalyst in the development of the U.S. communications industry, a cornerstone to long-term economic growth and development. Although competition has become a reality in many areas of the communications industry, the time has come to lift restrictions that prevent local telephone companies and cable companies from contributing fully to the advancement of the Nation's information infrastructure.

But, more importantly, we have the responsibility of adopting laws that will enable all consumers to obtain a full range of communications services from the providers of their choice, at competitive prices. We in Congress have learned hard lessons that strict industry regulation has not brought about the deployment of new communications services, nor driven down the costs of those services. Clearly, the most viable means of achieving those goals is to adopt policies that will enable competition to flourish within the communications industry. H.R. 3636 strikes the right balance in achieving competition and in preserving the major tenet of U.S. communications policy—universal service.

Mr. MARKEY and Mr. FIELDS have crafted a bill that will serve our Nation well. I applaud their efforts and urge my colleagues to adopt H.R. 3636.

Mr. LAZIO. Mr. Speaker, today the House is taking a positive step toward opening the information superhighway by passing H.R. 3626 and H.R. 3636. These bills will increase competition in the U.S. telecommunications industry, making us more competitive in the world market, and will stimulate economic growth, creating new jobs for Americans.

The WEFA Group, a respected econometric forecasting agency, and the Economic Policy Institute, a well-known think tank, examined the impact of increased competition on the U.S. telecommunications industry. Both concluded such a change in policy would result in millions of new jobs.

WEFA found that a fully competitive telecommunications environment will create 3.6 million new jobs by the year 2003. These jobs will be spread throughout the U.S. economy and in every State in the Union. EPI found these jobs will be filled by blue-collar, noncollege-educated workers, a segment of our economy that has been particularly hard hit by layoffs and the loss of more traditional employment.

A number of Members on both sides of the aisle have worked hard to make this legislation a reality, and I commend them for their efforts. After lagging behind our international competitors, H.R. 3626 and H.R. 3636 will help the United States recapture and maintain its lead in high technology development and marketing.

Mr. Speaker, I urge my colleagues to join me in supporting this legislation.

Ms. SNOWE. Mr. Speaker, I rise in strong support of H.R. 3636 and H.R. 3626, telecommunications legislation which will dramatically improve our Nation's telecommunications

policy, setting the stage for our Nation's entry into the information age.

These measures are a compromise, and I congratulate the members of the Energy and Commerce and Judiciary Committees for their excellent work. They have ended years of deadlock between industries seeking to protect their own interests. These bills represent an opportunity to unleash the creative, competitive spirits of telecommunications industries, while providing important protections for consumers and rural areas such as universal access and rural exemptions for rural companies.

Most importantly, these bills will serve as a catalyst in the development of the U.S. communications industry, a cornerstone to long-term economic growth and development. I share the view of many in Maine, including the Maine Chamber of Commerce and Industry, that Maine's quality of life when combined with a state-of-the-art telecommunications infrastructure will be an excellent job-creating, job-attracting tool. A study by the independent econometric forecasting firm, the WEFA Group, indicated that full competition in the telecommunications industry would create 3.6 million new jobs in the United States over the next 10 years in a variety of industries in every State in the Union. In my home State of Maine, the WEFA study estimates that over 16,000 new jobs would be created in the next 10 years.

Congress has the responsibility of adopting laws that will enable all consumers to obtain a full range of communications services from the providers of their choice, at competitive prices. The most viable means of achieving these goals is to adopt policies, such as those embodied by these two bills, that will enable competition to flourish within the communications industry, while preserving universal service.

I urge my colleagues to join me in supporting H.R. 3636 and H.R. 3626.

Mr. GEPHARDT. Mr. Speaker, I rise in support of H.R. 3636 and H.R. 3626, and I commend particularly Mr. DINGELL, Mr. BROOKS, and Mr. MARKEY for their leadership in fashioning a new vision for America's vital telecommunications industry.

These bills—the most significant communications legislation in 60 years—will inject new competition into the Nation's long-distance and local telephone industries. As such, they promise to unleash new technologies that will revolutionize the American lifestyle.

For the past decade, the Nation's telecommunications policies have been determined largely in Federal courts. The 1982 Consent Decree, known as the modified final judgment [MFJ], divested AT&T of its local Bell operating companies and allowed some competition in long-distance telephone service. The resulting competition lowered prices and accelerated private investment in new long-distance technology

Under the MFJ, however, significant impediments to competition remain. The MFJ bars the Bell operating companies from providing long-distance service. Local telephone service remains heavily regulated. And the MFJ has prevented Bells from manufacturing equipment, forfeiting jobs to foreign manufacturers.

While some of these restrictions made sense in the early 1980's, subsequent developments have brought massive change to the telecommunications industry, creating new possibilities for healthy and beneficial competition. Companies that barely existed in early 1980's are now billion-dollar enterprises. Local Bell companies face focused—albeit not widespread—competition in many services.

The House legislation is intended to invigorate competition, fostering private investment in the development of a new telecommunications infrastructure.

H.R. 3636 allows the Bell operating companies to provide interstate long-distance service immediately and to begin the manufacture of equipment within 1 year, provided that their entry poses no significant possibility of lessened competition in the markets they seek to enter. Bell entry into intrastate long-distance markets remains subject to State public service commission approval, with the Justice Department given 90 days to review State decisions.

H.R. 3626 likewise opens up the market for local telephone services. It requires the Bell companies to offer use of their local networks to any competitors—such as cable companies. It also allows the Bells to offer cable services. Both bills contain mechanisms to assure continuation of universal service and retain sensible regulation where competition is unlikely to develop.

These changes portend the creation of new American jobs, perhaps more than 40,000 in Missouri alone. Moreover, the exploitation of digital technology and the creation of the information superhighway is expected to revolutionize opportunities for learning, delivering health care, conducting business, and providing government service. Under this legislation, consumers should expect to see a multitude of changes within several years: a choice of cable TV services from multiple operators, with more programming and improved prices; new choices in both local and long-distance telephone service; the ability to monitor the sick at home so they do not have to spend so much time in hospitals; expanded research and educational opportunities at schools and colleges across the State; greater opportunities for people to work at home, thereby reducing traffic congestion and increasing leisure time; expanded access to shopping and entertainment.

We know from experience that new technologies promise profound and positive change to those who embrace them. While preserving safeguards needed to maintain universal coverage and fair pricing, this legislation makes tremendous strides to realize the possibilities inherent in new technologies. We are on the verge of another technological revolution.

Mr. SERRANO. Mr. Speaker, as we are all aware, America faces new challenges in education. Growth in technology, competing world markets, and the changing perspective of the youth have created a need for an innovative way of thinking and acting in the educational arena.

This is why I give my support for H.R. 3626 and H.R. 3636. By eliminating the restrictions in the local telephone market, we can increase competition, increase technology, and provide students with the educational edge needed for success.

Inner-city, as well as rural students, increasingly find themselves isolated from a wide range of educational opportunities. H.R. 3626 and H.R. 3636 will change outdated policies to allow expanded access to global information, allowing everyone from the elementary student who lives in a disadvantaged neighborhood, to the university professor working on a cure for cancer, to all have access to learning tools such as expanded databases, and electronic distance learning. This will in turn improve the quality of life, not only for them, but for all Americans. Yes, I support improving education in America. I support H.R. 3626 and H.R. 3636.

Mr. COOPER. Mr. Speaker, I think we all owe a great deal of thanks to Chairman DINGELL, Chairman BROOKS, and Chairman MARKEY for their tireless efforts to bring telecommunications reform legislation to fruition this year. Many thought that this day would never come, and it is a tribute to your skill and dedication that it has.

Both of the bills that we will vote on today represent a step forward toward achieving what we all want—an information superhighway that benefits both consumer and business alike. I support H.R. 3636, and commend the changes made at the subcommittee and committee level. I have some reservations about H.R. 3626. As I said during the hearing process, forging this deal was a herculean achievement. That achievement should not, however, overshadow the real and important concerns of those who were not even invited to the negotiating table.

The Regional Bell Operating Companies [RBOC's] were restricted from entering long-distance, manufacturing, and information services because they had the local monopoly strength to squelch competition from smaller businesses. The decision to keep the RBOC's out of long distance, as long as they are monopolies, has been a success to this point. Little more than a decade ago, only the smallest handful of long-distance callers had a choice of carriers. Today, virtually every consumer in the Nation has a choice of at least three full-service long-distance companies. Since the breakup of the Bell system monopoly, average long-distance rates have dropped dramatically.

Prices have dropped, both residential and business users can take advantage of significant discounts offered by long-distance companies. The competitive marketplace has spurred an increase in the value of service, and technological improvements worth billions.

Competition is the force that drives our economy, and I could not be a stronger supporter of that concept across the board. In order for true, healthy, constructive competition to operate, however, we must assure the so-called level playing field. I am all for allowing the RBOC's and cable companies to compete in a fair arena. If what we do here today is to the detriment of consumers, then we have defeated the ultimate purpose.

With regard to H.R. 3626, I support the general thrust of this bill. Assertion of congressional authority in this area is long overdue. I had hoped, however, that we could have agreed on an amendment that would have applied the same entry test to the RBOC's in intrastate long distance that we apply to the interstate market.

Again, let me commend Chairmen DINGELL, BROOKS, and MARKEY for their tremendous hard work to get this legislation to the floor. There is wide support for telecommunications reform this year, both in Government and the private sector. I hope that these bills will receive the support of the full House.

Mr. OLVER. Mr. Speaker, I support H.R. 3636 for the economic advantages it will bring to the new information age and the competition it will help to usher in in telecommunications. I also support this legislation for the social advantages the bill will provide by ensuring that people with disabilities have access to new technologies.

By allowing telephone companies to provide video programming, services such as narrator-spoken descriptions of on-screen action can assist the blind, while complete captioned programming can serve the deaf. For bedridden and elderly individuals the development of new services and the opening of the telecommunications network has the potential of greatly enhancing their lives, by both removing isolation and maintaining their independence.

H.R. 3636 will also expand the quality and lower the cost of education. An open telecommunications market will result in the development of new services, better products, and greater efficiency by connecting students to teachers and both to worldwide information.

The creation of new jobs in these services and industries is another advantage of H.R. 3636. Not only will these benefits be seen here at home, but they should enable us to increase our competitiveness in international markets as well. For these reasons I support and will cast my vote for H.R. 3636.

Ms. SCHENK. Mr. Speaker, I rise in strong support of both H.R. 3626 and H.R. 3636. Chairman DINGELL, Chairman MARKEY, and Chairman BROOKS deserve our thanks and praise for their hard work, their vision, and their leadership in this debate.

Mr. Speaker, others will describe the many benefits of this legislative package. I'd like to focus on just one—its potential to stimulate economic growth and job creation.

Mr. Speaker, the telecommunications and information industries will be the engines of economic growth into the next century. In San Diego County, for example, telecommunications employment grew by 22 percent last year.

This growth has occurred despite a patchwork system of inflexible regulations that reflect the realities of yesterday, not the vibrant industries of today.

These bills break down the artifical barriers that stifle competition between phone companies and cable operators. They will stimulate private investment by enacting a uniform system of federal regulation. And, according to a recently released report by the President's Council of Economic Advisers, these bipartisan bills will help the private sector create more than 500,000 new jobs over the next 2½ years.

Mr. Speaker, I urge my colleagues to pass these bills and help create the next generation of high-wage jobs.

Mr. TOWNS. Mr. Speaker, I rise in support of H.R. 3636, a forward-looking bill that will advance the development of the information highway. I wish to congratulate Chairman MARKEY and the ranking member. Mr. FIELDS and their staffs for their patience in developing a bill that has bipartisan and inter-industry support on a most difficult and complicated issue.

H.R. 3636 will open the telephone network at the local level to full competition, and will permit the local exchange companies to provide video services. In this environment, competition will flourish for both telephone and cable services, where we have seen only limited competition in the past. As more people are connected to the information highway, more entrepreneurial endeavors will develop steadily increasing service options.

These entrepreneurial companies will create jobs in a robust new industry fueled by the passage of H.R. 3636. I urge all my colleagues to support this bill.

Mr. PASTOR. Mr. Speaker, a little discussed or debated and not well-understood provision in H.R. 3636, the National Communications Competition and Infrastructure Investment Act, could have a mega-billion-dollar impact on the price of telephone service. Language in the bill states that the resale of local telephone service shall "not be prohibited or subject to unreasonable conditions."

Although it sounds rather innocent, that provision is a direct broadside at the affordability of telephone service. By conservative estimates, the historic system of telephone pricing has resulted in a $20 billion subsidy of carrier services. Permitting unlimited resale could virtually wipe out that subsidy. I am concerned that the $20 billion could not be recovered without a hefty increase in residential rates.

Resale is a practice whereby a third-party buys bulk services from the local telephone company and resells them to customers. By buying in bulk, the third-party achieves certain savings, enabling that company to undercut the local telephone company in selling primarily to business customers.

Within limits, some States permit the practice today. Third-parties can resell within the same class of service, but can't buy residence lines and sell them to business customers, or purchase business lines and sell them to interexchange carriers. The FCC permits resale in the interstate jurisdiction, but bars long distance carriers from using business service to connect the local and long distance network. Instead, the FCC requires the carriers to buy access service.

Depending on how unreasonable conditions is defined, H.R. 3636 could remove those limits and place billions of dollars of subsidies at risk. I can think of no reason why a business customer would pay $35 per month for a telephone line if a third-party will sell that customer a line for $30. Without limits on resale, that is not only possible, but likely.

Because of this concern, I urge conferees to clarify this matter to help ensure that subsidies are protected and the price of telephone service remains affordable.

Mr. QUINN. Mr. Speaker, I rise in support today of H.R. 3636—the National Communications Competition and Information Infrastructure Act. This is a procompetitive bill which will help advance the development of telecommunications technology and the information superhighway.

I wish to congratulate Chairman MARKEY and ranking member JACK FIELDS and their staffs for their work in developing a bill on this difficult and complicated issue that has bipartisan support.

I am a cosponsor of H.R. 3636 and strongly believe that we should permit the local exchange telephone companies to provide video services. Competition will bring new services to consumers and will serve to hold down prices.

This legislation will also give telecommunications companies the financial incentives necessary to install fiber optic lines, high-capacity switches and other broadband technology throughout the local networks. This last mile of the information superhighway will be put in place much more quickly with the passage of H.R. 3636.

Competition clearly works. And I want my constituents to have choices—both in cable television services and in telephone services. H.R. 3636 will ensure fair and open competition for both services. I urge my colleagues to support this bill.

Mr. HUGHES. Mr. Speaker, I rise in support of H.R. 3636, the Telephone/Cable Communications Competition and Infrastructure Act of 1994. I would like to commend my colleagues, Chairman DINGELL, Chairman MARKEY, and Chairman BROOKS for the excellent work they have done with respect to facilitating this measure being brought to the floor for a vote. As a result of their diligence, we have the opportunity—by passing H.R. 3636—to ensure that America remains on the path toward excellence in the international telecommunications marketplace.

Undoubtedly, the technology that American telecommunications companies have developed to date—and have the potential to develop in the future—is tremendous. At this juncture our challenge is to create an environment in which these companies may flourish and achieve even more sophisticated technological advances leading to the establishment of the national information superhighway.

H.R. 3636 will assist us in facing this challenge by promoting the creation of a national communications and information infrastructure. This measure will enable the American telecommunications industry to remain on the cutting edge of the technological advancements fueling this communications revolution by encouraging the development of state-of-the-art communication services and technologies through competition. Of equal importance, this bill establishes provisions to safeguard ratepayers and competitors from potential anticompetitive abuses and preserves as well as enhances universal service.

Essentially, H.R. 3636 will eliminate the line of business prohibitions that currently ban or limit the ability of telephone companies, cable companies as well as other telecommunication service providers from competing in each other's business.

That is, H.R. 3636 will promote competition in the local telephone market by requiring that local telephone companies allow competitors equal access to their networks. Local telephone companies generally could be required to provide space at their facilities for competitors to place equipment with which to connect the telephone companies' networks.

Moreover, the local telephone companies must ensure that such connections provide full

interoperability between their phone system and their competitors' systems. The bill also requires long-distance networks and cellular companies to allow other parties to use their switches and transmission equipment for their competing businesses.

It is important to note that this bill preserves State and local governments' rights to regulate telephone companies to the extent necessary for public safety, consumer protection and to ensure that intrastate rates are reasonable. However, these governing bodies would be prevented from imposing any franchise, license or other fee that discriminates against potential competitors.

One of the most significant aspects of H.R. 3636 is the Federal-State Joint Review Board it establishes to recommend to the Federal Communications Commission [FCC] and the State utility commissions specific action necessary to preserve and enhance universal access for consumers. This joint-board will define the nature and extent of services encompassed within a telephone company's universal service obligation. Moreover, the board's review will ensure that as technological innovation and competition are introduced into the local telephone market, the policy of universal access to basic telephone service at affordable rates is preserved.

As in the local telephone industry, H.R. 3636 will promote and accelerate competition to the cable television industry by permitting telephone companies to compete in the offering of video programming. Essentially, the bill eliminates the cross-ownership restrictions established in the 1984 Cable Act. Therefore, pursuant to H.R. 3636, local telephone companies—through separate affiliates—will be permitted to provide cable services in their own service areas. This increase in competition will, in turn, provide a strong incentive for the local telephone companies to invest in and upgrade their information networks.

Another safeguard against the potential for anticompetitive behavior is the establishment of the video-platform. Pursuant to H.R. 3636, those telephone companies that offer cable services in their own service areas would be required to establish a video platform upon which to offer their video programming. Telephone companies, on a nondiscriminatory basis, must allow other providers to offer video programming to subscribers utilizing the same video platform.

I urge my colleagues to support H.R. 3636. This measure is a procompetitive, proconsumer bill which will enable America to remain at the forefront of the rapidly developing information superhighway while ensuring quality and affordable services for American consumers.

Mr. PAXON. Mr. Speaker, I am in support of H.R. 3636 because I believe it establishes good public policy for the United States. However, I would like to take this opportunity to raise a concern about one of the bill's provisions that would require local phone companies to further unbundle their various services.

I understand some of the reasoning behind this provision, but I think we also need to be fully aware of the potential risk here. Many people in this country do not want Congress to force them to buy their telecommunications services a la carte. They would prefer to purchase a package of services tailored to fit their needs.

Selling everything individually does not mean that they will be cheaper. In fact, the more things sold or bought, the larger the transaction costs. That is why more and more businesses are offering packages of goods or services. This is not an attempt to be anticompetitive, rather businesses are trying to offer consumers greater convenience at a better price.

H.R. 3636 might be read as prohibiting this. I hope H.R. 3636 does not because I think customers should have the option of purchasing telecommunications services individually or as part of a package.

Mr. MARKEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and pass the bill, H.R. 3636, as amended.

The question was taken.

Mr. FIELDS of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Debate has concluded on all motions to suspend the rules.

Pursuant to clause 5, rule I, the Chair will now put the question on each motion to suspend the rules on which further proceedings were postponed earlier today in the order in which those motions were entertained. Votes will be taken in the following order:

H.R. 3626, by the yeas and nays; and H.R. 3636, by the yeas and nays.

The Chair will reduce to 5 minutes the time for the second electronic vote after the first vote in this series.

ANTITRUST AND COMMUNICATIONS REFORM ACT OF 1994

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 3626, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill H.R. 3626, as amended, on which the yeas and nays are ordered.

The Chair reminds Members that the next vote will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 423, nays 5, not voting 6, as follows:

[Roll No. 292]

YEAS—423

Abercrombie
Ackerman
Allard
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Archer
Armey
Bacchus (FL)
Bachus (AL)
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barca
Barcia
Barlow
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bateman
Becerra
Beilenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Blackwell
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burton
Buyer
Byrne
Callahan
Calvert
Camp
Canady
Cantwell
Cardin
Carr
Castle
Chapman
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooper
Coppersmith
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cunningham
Danner
Darden
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Derrick
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Dooley
Doolittle
Dreier
Duncan
Dunn
Durbin
Edwards (CA)
Edwards (TX)
Ehlers
Emerson
Engel
English
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Fingerhut
Fish
Foglietta
Ford (MI)
Ford (TN)
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frost
Furse
Gallegly
Gallo
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Goodlatte
Goodling
Gordon
Goss
Grams
Grandy
Green
Greenwood
Gunderson
Gutierrez
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings
Hayes
Hefley
Hefner
Herger
Hinchey
Hoagland
Hobson
Hochbrueckner
Hoekstra
Horn
Houghton
Hoyer
Huffington
Hughes
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Inslee
Istook
Jacobs
Jefferson
Johnson (CT)
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klein
Klink
Klug
Knollenberg
Kolbe
Kopetski
Kreidler
Kyl
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Laughlin
Lazio
Leach
Lehman
Levin
Levy
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
Lloyd
Long
Lowey
Lucas
Machtley
Maloney
Mann
Manton
Manzullo
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McHale
McHugh
McInnis
McKeon
McKinney
McMillan
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murphy
Murtha

Myers
Nadler
Neal (MA)
Neal (NC)
Nussle
Oberstar
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quillen
Quinn
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Reynolds
Richardson
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sangmeister
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schenk
Schiff
Schroeder
Schumer
Scott
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shepherd
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter
Smith (IA)
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stark
Stearns
Stenholm
Stokes
Strickland
Studds
Stump
Stupak
Sundquist
Swett
Swift
Synar
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Unsoeld
Upton
Valentine
Velázquez
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Washington
Waters
Watt
Waxman
Weldon
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—5

Gonzalez
Holden
Obey
Petri
Yates

NOT VOTING—6

Dornan
Flake
Hilliard
Hoke
Pombo
Ridge

□ 1449

Mr. YATES changed his vote from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NATIONAL COMMUNICATIONS COMPETITION AND INFORMATION INFRASTRUCTURE ACT OF 1994

The SPEAKER pro tempore (Mr. MONTGOMERY). The pending business is the question of suspending the rules and passing the bill, H.R. 3636, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and pass the bill, H.R. 3636, as amended, on which the yeas and nays are ordered.

The Chair will tell the Members that this is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 423, nays 4, not voting 7, as follows:

[Roll No. 293]

YEAS—423

Abercrombie
Ackerman
Allard
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Archer
Armey
Bacchus (FL)
Bachus (AL)
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barca
Barcia
Barlow
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bateman
Becerra
Beilenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Blackwell
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burton
Buyer
Byrne
Callahan
Calvert
Camp
Canady
Cantwell
Cardin
Castle
Chapman
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooper
Coppersmith
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cunningham
Danner
Darden
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Derrick
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Dooley
Doolittle
Dreier
Duncan
Dunn
Durbin
Edwards (CA)
Edwards (TX)
Ehlers
Emerson
Engel
English
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Fingerhut
Fish
Foglietta
Ford (MI)
Ford (TN)
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frost
Furse
Gallegly
Gallo
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Goodlatte
Goodling
Gordon
Goss
Grams
Grandy
Green
Greenwood
Gunderson
Gutierrez
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings
Hayes
Hefley
Hefner
Herger
Hinchey
Hoagland
Hobson
Hochbrueckner
Hoekstra
Hoke
Holden
Horn
Houghton
Hoyer
Huffington
Hughes
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Inslee
Istook
Jacobs
Jefferson
Johnson (CT)
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klein
Klink
Klug
Knollenberg
Kolbe
Kopetski
Kreidler
Kyl
LaFalce
Lancaster
Lantos
LaRocco
Laughlin
Lazio
Leach
Lehman
Levin
Levy
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
Lloyd
Long
Lowey
Lucas
Machtley
Maloney
Mann
Manton
Manzullo
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McHale
McHugh
McInnis
McKeon
McKinney
McMillan
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murphy
Murtha
Myers
Nadler
Neal (MA)
Neal (NC)
Nussle
Oberstar
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quillen
Quinn
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Reynolds
Richardson
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sangmeister
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schenk
Schiff
Schroeder
Schumer
Scott
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shepherd
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter
Smith (IA)
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stark
Stearns
Stenholm
Stokes
Strickland
Studds
Stump
Stupak
Sundquist
Swett
Swift
Synar
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Unsoeld
Upton
Valentine
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Washington
Waters
Watt
Waxman
Weldon
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—4

Gonzalez
Obey
Petri
Yates

NOT VOTING—7

Carr
Dornan
Flake
Hilliard
Lambert
Pombo
Ridge

□ 1501

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. LAMBERT. Mr. Speaker, on rollcall vote No. 293 H.R. 3636 providing for the consideration of the National Communications Competition and Information Infrastructure Act of 1994, my vote was not recorded. My intent was to vote "yea" on this bill as I am in favor of it.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to

include extraneous material, on H.R. 3636, the bill just passed.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 3626, ANTITRUST AND COMMUNICATIONS REFORM ACT OF 1994

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that the Clerk of the House, in the engrossment of the bill, H.R. 3626, be authorized to delete title III of H.R. 3626, to add at the end of title II of H.R. 3626 the text of titles I through IV of H.R. 3636, to redesignate titles I through IV of H.R. 3636 as titles III through VI of H.R. 3626, to redesignate section numbers and references thereto accordingly, and to conform the table of contents and to make such other technical and conforming changes as may be necessary.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. FISH. Mr. Speaker, reserving the right to object, I, of course, will not object. I simply want the views of the gentleman from Texas, chairman of the Committee on the Judiciary. The purpose of this unanimous consent request is simply to marry up the two bills just passed by the House this afternoon?

Mr. BROOKS. Mr. Speaker, if the gentleman will yield, the gentleman is absolutely correct. We can send them to the Senate and have a joint conference. The bill that is now being considered in the other body includes both components.

Mr. FISH. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Without objection, H.R. 3636 is laid on the table.

There was no objection.

ANNOUNCEMENT REGARDING PREPRINTING OF AMENDMENTS ON H.R. 4299, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1995

(Mr. MOAKLEY asked and was given permission to address the House for 1 minute.)

Mr. MOAKLEY. Mr. Speaker, the Rules Committee has granted a rule for H.R. 4299, the Intelligence Authorization Act for fiscal year 1995, that would require any amendments to H.R. 4299 be printed in the CONGRESSIONAL RECORD prior to the consideration of the bill. It is anticipated that H.R. 4299 will be considered in the House upon our return from the July 4 district work period.

Members should be aware, that the rule the Committee reported, provides for consideration of only those amendments that have been filed in the CONGRESSIONAL RECORD prior to consideration of H.R. 4299.

Again, H.R. 4299 is not expected to be considered by the House until the week of July 11, however, it is important that Members who desire to amend this bill, file their amendments in the CONGRESSIONAL RECORD as soon as possible.

I thank the Members of the House for their consideration in this matter.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST H.R. 4649, DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1995

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 103–564) on the resolution (H. Res. 466) waiving certain points of order against the bill (H.R. 4649) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4600, EXPEDITED RESCISSIONS ACT OF 1994

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 103–565) on the resolution (H. Res. 467) providing for consideration of the bill (H.R. 4600) to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed rescissions of budget authority, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4299, INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1995

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 103–566) on the resolution (H. Res. 468) providing for consideration of the bill (H.R. 4299) to authorize appropriations for fiscal year 1995 for intelligence, and intelligence-related activities of the U.S. Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, which was referred to the House Calendar and ordered to be printed.

GENERAL LEAVE

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill (H.R. 4606) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1995, and for other purposes, and that I may be permitted to include tables, charts, and other extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1995

Mr. SMITH of Iowa. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4606) making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1995, and for other purposes; and pending that motion, Mr. Speaker, I ask unanimous consent that general debate be limited to not to exceed 1 hour, the time to be equally divided and controlled by the gentleman from Illinois [Mr. PORTER] and myself.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

Mr. PORTER. Mr. Speaker, reserving the right to object, I do so simply to say that at this point in time, we have requests for general debate speakers that exceed our 30 minutes. I would simply ask the gentleman, when we reach the end of our 1 hour, if we still have speakers left, whether he might accede to a few other speakers.

Mr. SMITH of Iowa. Mr. Speaker, if the gentleman will yield, we might go under the 5-minute rule.

Mr. PORTER. We can do that, yes.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa [Mr. SMITH].

The motion was agreed to.

□ 1509

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4606, with Mr. SHARP in the chair.

The Clerk read the title of the bill.

By unanimous consent, the bill was considered as having been read the first time.

The CHAIRMAN. Under the unanimous consent agreement, the gentleman from Iowa [Mr. SMITH] will be recognized for 30 minutes, and the gentleman from Illinois [Mr. PORTER] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Iowa [Mr. SMITH].

□ 1510

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first, I want to thank the members of the subcommittee and the full committee, the Members of the House, the members of the authorizing committees, and all the others who helped on this bill. It takes everybody to put together this bill, because it is a big bill. It involves over 500 programs.

The programs in this bill total $258 billion in budget authority for 1995. Of that $258 billion in budget authority, $252 billion it is estimated will be obligated within the fiscal year 1995. That happens to be $7.2 billion less than was obligated in the prior fiscal year, that is, this fiscal year. However, that is, mostly accounted for by a reduction in unemployment compensation and Medicare subsidies over which, of course, we have little control.

Now, the President's request included a good many increases for programs, all of them good increases, good things that people would like to vote for. But to pay for those, he also provided recommendations for a lot of reductions that were far in excess of what this House would stand for.

And so we had to take a look overall at those reductions. At the same time we looked at the administration's request for increases. Among the reductions that they requested were $745 million in the energy assistance program for low-income people; $745 million is over 50 percent of the amount they got this year. Of course, that would not be sustained in the House. We restored $495 million of that amount.

They also requested a reduction of $140 million in impact aid. We restored $70 million of that. On the other hand, there is going to be a revision in the formula, and H.R. 6 is in the Senate. It has already passed the House, and we provided for the distribution of that amount of money under the House-passed bill.

In addition to that, the administration recommended the elimination of 33 programs. Actually the subcommittee went along, and the committee went along, with eliminating 21 of those programs. All of them had some importance. All of them were good in some ways. But in setting the priorities, we went along with the eliminations.

After we had done all of this, we found out that the amount of money allocated was actually only about 96½ percent of what current services were in this fiscal year that we are in right now. So we had to go with a sort of a temporary formula, because I do not like across-the-board, and I do not think many people do. We did not want to cut everything 3½ percent. So what we did, anyplace we increased something, including the requests of the administration, we found an offset for it. When you increase something, you find an offset for it in the reductions.

By the time we had done that, we were down in some accounts to where we were into RIF's. A RIF in the first year does not save money. There are payouts of various kinds and transfers, and so we tried to avoid RIF's.

I do not believe at this point, although we are right on the edge, I do not believe at this point that we will require RIF's within this year. That does not mean that they will not have another reduction next year in some of these programs.

I consulted the members of the subcommittee of the House, of the authorizing committees, and I got plenty of advice from Members of the House, a whole stack of advice in the way of letters, people wanting everything increased. I do not remember anything that they wanted to reduce.

The bill, as it comes out here, does not include any provision, I do not believe, that is objected to by an authorizing committee.

It does include some limitations that were either requested or agreed to by authorizing committees, and virtually all of the general provisions were carried before. There were a couple of exceptions to that which I think will come up during the process of the amendments. But virtually all of the general provisions are provisions that have been carried, many, for many years, and apparently desired and wanted. The authorizing committee did not object, and so they were carried again.

The bill does not make anyone completely happy. I would be the first to agree to that. But I really believe that this is the best that we could do under the circumstances today, and I heartily recommend the passage of the bill as it is today.

Mr. Chairman, I reserve the balance of my time.

Mr. PORTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to begin by paying tribute to our long-time colleague Bill Natcher who passed away earlier this year. He was truly one of the legends of the House, and it was one of the great privileges of my career to have served with him on this subcommittee. I have served on this subcommittee over 12 years and until this year, he was the only chairman I had served under. I think we have all greatly missed Bill's warmth and dignity, and his passing has been a great loss to me personally, to the Congress, and to the country.

Mr. SMITH is our new chairman, and he has done a tremendous job of leading this subcommittee under extremely difficult circumstances in which he was required to assume command of the bill midway through our annual hearings. I have very much appreciated his consensus building, cooperative spirit, and fairness in bringing this bill out of the committee.

Mr. Chairman, as Bill Natcher would always say, "This is a good bill."

We have put it together with an allocation that was well below what the President requested in programs under our jurisdiction.

I will have two amendments later that reflect perhaps some differences in our priorities.

As it stands, this bill very heavily reflects the President's investment initiatives. Funding is reduced across the bill to 96.5 percent of current services to accommodate increases in each of the President's investment priorities including: Chapter 1, Head Start, Goals 2000, NIH, Worker Retraining, and School-to-Work, among others.

Many of the cuts and program terminations requested by the President have been adopted. Most, however, have not. This is to me the greatest concern with the bill.

As we look at the next 5 years, this subcommittee's budget will be extremely constrained. We will not have the resources to meet all the needs in the programs we oversee. We will therefore necessarily be forced to make difficult choices and we will have to choose among competing priorities. This is as it should be and what I have been urging since I came to Congress.

I reject the idea that these cuts should be distributed equally. So does the chairman. We must choose our highest priorities, fund them at the level they should be funded at, and then make the difficult offsetting cuts to pay for them.

The President began the process by proposing—courageously and responsibly in my judgment—to reduce the Low Income Home Energy Assistance Program [LIHEAP] and to eliminate 33 low priority programs in the Department of Education.

While I congratulate Chairman SMITH for including about one-third of the proposed reductions in his mark, I believe we should have approved the entire proposal to free up more funding for priority programs.

Mr. Chairman, I want to discuss some of the provisions in the bill.

First, I am greatly concerned about the impact aid funding included in the bill. It represents a $70 million reduction from the 1994 level and will impose a further hardship on many schools

which must subsidize federally connected students.

I want to thank the chairman for his willingness to include $40 million in the newly authorized section of which serves the most heavily impacted districts. This funding will help provide much needed funding for schools like the North Chicago School District in Illinois which nearly closed its doors last year due in part to the lag in impact aid appropriations.

Mr. Chairman, I am also very concerned about the level of funding for the National Institutes of Health which I believe are a national treasure.

Again, I want to thank the chairman for working together to provide a $384 million increase for the NIH in this bill. But, I want to raise a real warning about the future of biomedical research in this country. The increase we are providing in this bill is less than inflation so we are actually going backward in research funding—the area that holds the greatest promise for controlling health care costs.

Many in Congress still believes that research is driving up the cost of health care. In reality, research is saving us billions of dollars through vaccines, prevention, and early treatment and diagnosis of disease. Just one medical advance, the development of the polio vaccine, has saved Americans more money in prevented health care costs than Congress has invested in NIH in its entire history. NIH has a booklet detailing 26 discoveries—a tiny fraction of the thousands made—that have saved hundreds of billions of dollars in health care costs.

Mr. Chairman, if we are not willing to make the long term sacrifices to maintain this vital enterprise, we will lose our world leadership in health care, our economic vigor in this large sector of the economy, and a generation of scientific minds. Later, I will offer an amendment for discussion on this matter to highlight what I consider an impending crisis for our country.

The bill includes important increases for education programs which help disadvantaged children.

In particular, the bill funds the Even Start program which Mr. GOODLING has championed and early transitional learning programs that may continue programs currently funded under the follow through program.

On the medical research side, the bill provides modest increases for breast and prostate cancer research, AIDS, diabetes, rehabilitation research, chronic fatigue syndrome, and dystonia among others.

The report which accompanies the bill contains some language I authored regarding the establishment of a Federal warehouse to distribute vaccines to children under the new vaccine entitlement. Throughout this appropriations cycle, I have expressed my concern about the wisdom of creating a Federal distribution system as opposed to contracting out the service. My report language directs the CDC and GSA to comply with all applicable FDA safety guidelines and reserves a final judgment on whether to establish the Federal warehouse pending the outcome of a GAO study on the matter due in July.

Finally, Mr. Chairman, we have a chance today to begin the process of enacting meaningful health care reform.

I intend to offer an amendment at the appropriate time to increase funding for the community health centers to expand access to health care for nearly 1 million Americans. The amendment will offset funding in other accounts so that neither the outlay or authority caps will be breached.

Mr. Chairman, I want to thank Chairman SMITH's very fine staff: Mike Stephens, Bob Knisely, Sue Quantius, Mark Miodusky, Joanne Orndorff, Meg Holland, and my excellent and able staffer, Mike Myers. Also Mr. MCDADE'S staff, John Blazey.

Mr. Chairman, I commend this bill to the House and reserve the balance of my time.

□ 1520

Mr. SMITH of Iowa. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. STOKES], chairman of the Subcommittee on VA, HUD and Independent Agencies.

Mr. STOKES. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in support of H.R. 4606, the bill establishing fiscal year 1995 appropriations for the Departments of Labor, Health and Human Services, and Education. Mr. Speaker, for many years I have been one of the members of this subcommittee who have put this particular bill together. This is the bill that our beloved but now deceased former chairman, Bill Natcher or Kentucky used to call the "People's Bill."

This is the first time that we have come to the floor with this bill under the leadership of the gentleman from Iowa, Mr. NEAL SMITH. I want to congratulate him for bringing out a bill which I think would have pleased Bill Natcher. I also commend the gentleman from Illinois, Mr. JOHN PORTER, for his work in producing this bill.

Although we faced tight budget constraints, H.R. 4606 will greatly benefit American families. The bill provides the resources necessary for an improved quality of life in areas ranging from employment, to health, to education.

For the Department of Labor, the bill includes a total appropriation of $13.3 billion. This amount includes $1.3 billion for dislocated workers assistance. These resources will enable the program to respond not only more quickly to the need for assistance, but to also provide more effective early intervention activities. For summer youth employment, the bill includes $1.1 billion. This program will provide work experience and support services to an estimated 623,000 participants.

For Job Corps, the bill includes $1.1 billion. These resources will support 42,220 slots at 111 existing centers, and initial funding for an additional 6 new Job Corps Centers. To help ensure a more successful and effective transition from school to work, the bill includes $140 million for the school-to-work initiative.

The Department of Health and Human Services is provided an appropriation totalling $216.4 billion. Mr. Speaker, I am especially proud of the quality of life investments we also achieved in this portion of the bill. To provide comprehensive primary health care services to the medically underserved and indigent population the bill includes a $616.6 million appropriation for the Nation's community health centers. As a strong supporter of providing quality health care services to all Americans, I am pleased that we were able to provide $9.7 million to enhance primary care services, health screening, and health counseling services to residents of public housing.

To help ensure a continuous pipeline of minority health care providers, the bill includes $27.2 million for the Health Careers Opportunity Program, $11.3 million for the Exceptional Financial Need Scholarships Program, $8.7 million for the health professions student loans, and $18.6 million in funding for the Scholarships for Disadvantaged Students Program.

To enable the NIH to continue to exploit opportunities in biomedical research that will continue to improve the quality of life, the committee provided an appropriation of $11.3 billion. This amount includes the resources needed to strengthen research efforts in cancer, heart disease, stroke, AIDS, diabetes, and sickle cell disease. These resources will allow NIH to expand research in many areas including vaccine development, gene therapy, immunology, molecular biology, biotechnology, and high performance computing.

To strengthen the participation of minorities in biomedical research, the funding for the NIH includes $17 million for the Minority Access to Research Careers Program, $26.2 million for the Research Centers in Minority Institutions Program, and $5 million for biomedical facilities construction at emerging institutions. In addition, the Minority Biomedical Research Support Program is provided $37.3 million. Combined, these investments will help to improve and enhance minority institutions' participation in biomedical research, as well as to increase opportunities for minority students to pursue research careers.

Mr. Chairman, we were also very supportive of the need to fund important initiatives undertaken by the Centers for Disease Control. The Center is in the forefront in addressing the health crisis gripping the Nation. In fiscal year 1995, the Centers for Disease Control will benefit from an appropriation totaling $2.1 billion. These funds will allow the Center to continue its important research in areas including AIDS, diabetes, breast and cervical cancer screening, tuberculosis, lead poisoning prevention, and violence prevention.

To help prevent the crisis that recipients needing energy assistance would have been forced to endure, we provided $1.2 billion for the Low Income Home Energy Assistance Program [LIHEAP]. President Clinton's budget request had slated the program for a 50 percent funding cut. This important program provides assistance to low income households in meeting the high costs associated with home energy, heating, and cooling.

To strengthen and expand the Head Start Program, a $3.5 billion appropriation is provided.

Mr. Chairman, in response to the need to strengthen our Nation's education system. The committee provided investments at all levels of the education continuum. To begin to improve the Nation's education system, the bill includes $388.4 million for Education Goals: 2000, and $140 million for the Education Department's the school-to-work initiative. To expand the benefits of magnet schools, the fiscal year 1995 appropriation for the program is slated at $113 million.

For the TRIO Program which serves disadvantaged students, the committee provided an appropriation totaling $463 million for fiscal year 1995. The additional funds provided will allow an increased number of needy students to reap the benefits of this successful program.

Historically black colleges and universities will also benefit from investments. A combined appropriation of $131.5 million is provided for these institutions to strengthen academic and physical infrastructure. Funds provided include enhancements for academic instruction, libraries, scientific instrumentation, and student support services.

Mr. Chairman, as you and my colleagues can see, H.R. 4606 is truly a human investment bill. This is reflected by investments in programs that meet the needs of our Nation's youth and families through greater investments in the Head Start, childhood immunization, Job Corps, school-to-work, summer youth employment and training, student aid, and dislocated workers programs. As the allocations reflect, the committee took a firm stance in providing for the health, education, and human resource needs of American families.

Mr. Chairman, I urge my colleagues to support passage of H.R. 4606 which will improve the quality of life for all Americans.

Mr. PORTER. Mr. Chairman, I am very pleased to yield 6 minutes to the gentleman from Texas [Mr. BONILLA], a member of the subcommittee.

Mr. BONILLA. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise to join the distinguished gentleman from Iowa to, as Chairman Natcher used to say, walk down the center of the aisle today in support of the people's bill.

This bill helps Americans become more educated, develop the training tools to advance in the job sector, and prevent illness or treat an illness if you become sick.

This bill affects and protects almost every American in a fiscally responsible manner. I want to commend my chairman, Mr. SMITH, and my ranking member, Mr. PORTER, and their hard-working staffers for their dedication in crafting this bill.

Mr. SMITH had to lead the subcommittee after the death of our beloved chairman, Mr. Natcher.

Mr. SMITH assumed the reins and has worked in a fair, equitable, and bipartisan manner to produce a good bill.

I want to highlight a few very important programs to my rural colleagues, who often share my view that Congress turns its back on the heartland.

This is the second year that I have had the opportunity to advocate and secure funding to improve access to rural Americans.

This bill takes another step to provide equity and quality of health care in our rural communities.

Funding for community and migrant health care centers reflects the increased need to provide comprehensive primary health care in our rural communities. Last year, these clinics served over 6.5 million people.

The area health education centers and border health centers funding has been given increases.

The AHEC Program links university health service centers with community health service delivery systems to provide training sites for students, faculty, and practitioners.

The border health education centers help schools support education and training centers to improve the supply, distribution, and quality of health personnel along the border between the United States and Mexico.

Other rural programs include transition grants, the allied health grants that address the growing shortage of allied health personnel in both rural and urban areas, the Physicians Assistants Program which delivers health care and emergency services in rural areas.

This program is especially important to the health of rural Americans.

The Family Medicine Residencies Program has been funded to provide grants to medical schools to teach family medicine programs which are greatly needed to fill the demand for doctors in rural America.

The rural health research and rural outreach grants are funded to coordinate public and private sector efforts nationwide to strengthen and improve the delivery of health services to populations in rural areas.

They provide health services to rural populations not currently receiving them and enhance access to and utilization of existing services.

Finally, we have tried to fund the nursing programs at last year's levels. In my rural district of Texas, 23 of my 29 counties are classified as professional health care shortage areas. All of these programs collectively try to improve access to health care. These are all very small programs compared to other line items in this bill but they help a large portion of population living in our rural communities.

I am pleased that the committee included funding to initiate the Hispanic serving institutions. This is the first year that HSI's have been given their own line in the budget and also received an increase of $2.6 million for a total of $12 million for HSI's.

I am extremely pleased that we have funded this program to help either low-income or first generation college students.

Growing up on the southside of San Antonio I saw many of my friends unable to afford to go to school.

Funding for the HSI's program will be a small step to help Hispanics increase their numbers in our Nation's higher education systems. I look forward to hearing of the successes by Hispanic students who will be able to take advantage of this program.

Finally, this bill also recognizes the need to prevent, treat, and educate Americans about diabetes. Persons with diabetes face not only a shortened life span, but also the strong likelihood of severe disabilities.

Diabetes is particularly prevalent among Hispanics. The committee has wisely provided additional funding to continue a national diabetes program.

Regarding diabetes research, the bill recognizes the need to continue research efforts to combat diabetes. Diabetes is the leading cause of new adult blindness, kidney failure, and nontraumatic amputation, and it is a major risk factor for stroke, heart attack, and premature death to the estimated 13 to 14 million people who currently have diabetes. Further research will be carried out to isolate the diabetes gene and will increase efforts to educate the public about preventing blindness.

I wish we could have done more for some worthy programs but unfortunately the President sent us a request for 14 new Presidential initiatives. The chairman was generous enough to fund those requests at 46 cents on the dollar.

The President should have made the tough decisions, but I will tell you that in conference I will support the lower figure for each of his initiatives.

Again, Mr. Chairman this appropriations bill is a good one. There are no easy choices in this subcommittee yet we must step up to the plate and do the best we can.

For every dollar shift from one program, another program that serves an equally important constituency must be cut. I believe this bill can be improved and Mr. PORTER will be offering two amendments to do that.

Overall, this bill is fiscally responsible and provides for this country's needs.

□ 1530

Mr. SMITH of Iowa. Mr. Chairman, I yield 4 minutes to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Chairman, I rise in strong support of the legislation before us today, the fiscal year 1995 labor, health and human services, and education appropriations bill.

As a member of the subcommittee, I know how difficult it was to put this bill together. As we all know, the budget pressure was immense. We were able to give important programs like Ryan White, title I, Goals 2000 and Head Start only a fraction of the increases the President requested—and that they should have received.

But this was also a difficult year for other reasons: the loss of Chairman Natcher this spring was a great loss to this institution. Programs that Mr. Natcher funded, based on his steadfast belief in investing in human capital, will serve this country for decades to come.

So with this bill, our subcommittee enters a new era: I want to salute our new chairman, my colleague and friend, Mr. SMITH of Iowa, for an excellent job done under far less than optimal circumstances.

I would particularly like to thank Chairman SMITH for his invaluable help with one of the most important issues addressed in this bill: The coordination and integration of services for children and families.

Mr. Chairman, back in February, Secretary Riley gave an inspired speech at Georgetown University in which he discussed service integration, one of the most urgent needs faced by young children and their families today.

In the complicated world we live in today, families and children need easy access to centralized services: education, social service, and health care programs should be brought together in one easily accessible location.

In his speech, Secretary Riley referred to just such a model, which he called "early childhood family centers." I believe we should be encouraging every community in this country to work toward this goal. And, thanks to Chairman SMITH, this bill sets up a working group at the Department of Education, along with HHS and Labor, to make this vision a reality. I am very excited about this effort, and am hopeful that its work will enable us to better Marshall our precious Federal resources for children and their families.

I would also like to point out a provision in the committee report that should help us accomplish that end. The committee report encourages the Secretary of HHS to promote colocation of Head Start programs with public schools, health care and social services in approving facilities construction permitted by the reauthorization.

Mr. Chairman, I would prefer that our language here be even stronger than it is. When we are giving Head Start a mere 30 percent of the increase the President requested, I think it is entirely appropriate to urge that construction funds be used only to promote service integration through colocation. It gets our children and families the most for our money, recognizing that the money is far less than it should be given the need.

It is going to be a long process to weave service integration into the fabric of our Federal programs. Efforts like Congresswoman NITA LOWEY's link up for learning have already begun the process, as has Congresswoman LYNN WOOLSEY's coordinated services section of H.R. 6. The new title I program and the Head Start reauthorization also move in this direction, and so does the bill before you today.

I am looking forward to working with Chairman SMITH and my subcommittee colleagues on this important undertaking, as well as with the authorizing committees on both sides of the Capitol and on both sides of the aisle.

In closing, I would like to thank the subcommittee staff for their fine work in putting this bill together. Mike Stephens, Bob Knisely, Sue Quanius, Mark Mioduski, Joanne Orndorff, and Meg Holland have all been a pleasure to work with. As Mr. Natcher always said, this is the people's bill, and I commend it to my colleagues.

Mr. PORTER. Mr. Chairman, I yield 4½ minutes to the gentleman from Pennsylvania [Mr. GOODLING], the very distinguished ranking member of the Committee on Education and Labor.

Mr. GOODLING. Mr. Chairman, I rise in support of H.R. 4606, the fiscal year 1995 appropriations bill for the Departments of Labor, HHS, Education and Related Agencies. I note with sadness that this is the first Labor, HHS appropriations bill in many years to come to the floor that is not being managed by our late colleague, Mr. Natcher. I do want to commend chairmen OBEY and SMITH, and ranking Republicans MCDADE and PORTER for carrying on and keeping the process moving. However, Mr. Natcher will never truly be replaced.

While I do plan on voting for this bill, it does not mean that I am completely satisfied with everything in this massive appropriations bill. For example, I would have preferred that the Appropriations Committee eliminate the funding for more of the programs that the administration had recommended cutting. Nevertheless, I think the Appropriations Committee deserves credit for bringing this bill before us under the tight constraints of the budget caps. In addition, I would like to comment on some specific areas of this bill that touch upon programs authorized by the Education and Labor Committee, of which I am the Ranking Republican.

EDUCATION

Mr. Chairman, I am extremely pleased by the generous increase provided to the Even Start family literacy program. Illiteracy is one of the biggest problems facing our country, and these programs will play a key role in welfare reform and crime reduction efforts. Even Start addresses these concerns from a family perspective, providing for the literacy and education needs of parents as well as their children. It provides parents with education and parent training. In addition, it provides their children with an early childhood education program. The family literacy approach embodied in Even Start will help us ensure participating children never experience the problems faced by their parents—it helps break the cycle of poverty. Through this investment in Even Start, we are helping to insure a literate, well-trained work force as well as preventing welfare dependency and involvement in criminal activities. I thank my colleagues on the Appropriations Committee for their support for this important, effective program.

I was also pleased to note that the Appropriations Committee has not agreed with the administration's proposal to eliminate the chapter 2 program. Chapter 2 provides local school districts with the only flexible Federal dollars they can use for innovative, locally developed programs to improve the educational achievement of their students. Both the House and Senate authorizing committees have continued this important program in the elementary, secondary education reauthorization bills, and I am hopeful that the final Labor, HHS appropriations bill will include a similar amount or more for the chapter 2 program.

I want to commend the Appropriations Committee, particularly my colleague Mr. BONILLA, for addressing what has become known as the "85/15 rule." This rule states that Institutions of Higher Education must have at least 15 percent of their revenues generated from sources that are not derived from funds provided under title

IV of the Higher Education Act. Many Members on both sides of the aisle have expressed serious reservations about the Department of Education's intent to apply the regulation implementing this section of the 1992 amendments to a period of time prior to the effective date of the regulation. The Appropriations Committee's delay in the effective date of this regulation will allow institutions sufficient time to comply with its intent. As a result, quality training institutions will not be forced out of the program for failing to comply with confusing and unforeseen accounting rules. I will oppose any efforts to strike this provision from the appropriations bill and hope that my colleagues do likewise.

I am pleased to see that the committee has included in its report, language regarding the Department of Education's plans to expand current regulations to provide supplementary services to special populations under the Carl D. Perkins Vocational and Applied Technology Education Act. The report states the committee's concerns about the policy implications of any expansion of current regulations and encourages the Department to consider submitting any new regulatory changes to the negotiated rulemaking process. While I have hoped the committee would prohibit the Department from issuing any new regulations on this issue, I support the committee's approach. I strongly believe that the Department's proposed regulations will impose an unfunded mandate on States and local school districts and cause confusion and disruption in the States and local school districts. This issue should be addressed during the reauthorization of the Carl Perkins Vocational Education Act next year and I urge the Department to reconsider their position.

There are several funding recommendations in this bill for Education programs that cause me concern, but there is one in particular that I have complained about for years; and that is the funding for children with disabilities. Under the Individual With Disabilities Education Act, schools are legally obligated to provide all the special education services children need, regardless of the Federal appropriation. Congress currently provides only 7 percent of the costs of special education required by the law. This is a distant cry from the 40 percent funding level Congress said it would provide by 1983. In today's dollars, $315 million additional funding would be needed to increase the Federal commitment to special education costs by just 1 percent.

In my testimony before the Labor, HHS Appropriations Subcommittee, I recommended an increase in funding for the part B State grant program, and I am disappointed that the committee only maintained level funding between fiscal year 1994 and fiscal year 1995. It is unfair to the States and school districts and families of children with disabilities for Congress to continue ignoring the commitment it made to this program. This is a classic example of an unfunded mandate.

HUMAN RESOURCES

Everyone will deny it, but it is hard to avoid the "coincidence" that has linked the budgets for Head Start and the Low-Income Home Energy Assistance Program [LIHEAP] during this appropriations cycle. It began when the administration requested a $700 million increase for Head Start, and at the same time requested a $700 million decrease for LIHEAP. I have previously stated my opinion that Congress should resist the temptation to continually throw more money at a politically popular Head Start Program that is suffering from severe growing pains. Instead, I think we should wait until the new quality assurance mechanisms included in the recently enacted reauthorization are implemented before providing increased funding for Head Start. On the other hand, LIHEAP is a program that consistently achieves its purpose, and this past unusually harsh winter proved the importance of a program that helps low-income households heat their homes.

While I would have done it differently, I do respect the Appropriations Committee's more reasonable trade-off between Head Start and LIHEAP. Head Start received, in this bill, an increase of $210 million, one of its smallest increases in several years. On the other hand, LIHEAP funding was decreased by $250 million, which is much more rational than the administration's recommended 50 percent slashing of the program.

JOB TRAINING

In the area of job training, I commend the Appropriations Committee for recognizing programs for dislocated workers, school-to-work transition, and funding for the one-stop delivery of job training services as priorities in the Labor, HHS, education appropriations bill. In saying this however, I do want to express my growing concern over the vast number of Federal programs we have developed over the years that provide education, training, and employment assistance to adults and out-of-school youth. I urge members of the Appropriations Committee, as well as all Members of the House to join with us in making sense out of this fragmented system prior to consideration of the next funding cycle.

To address this concern, I recently introduced the Consolidated and Reformed Education, Employment, and Retraining Systems Act—the CAREERS Act—that would consolidate over 80 separate programs—as identified by the GAO—into seven block grant systems. Under this legislation, States and localities would be provided with streamlined and more flexible funding for further reform of work force preparation systems. Such consolidation is expected to result in administrative savings over time, and in much more efficient and high quality systems. Again, I encourage the Appropriations Committee to work with those of us on the authorizing committee in the coming year to develop a true system of work force preparation in this Nation that is both efficient and effective, similar to that envisioned in the CAREERS Act.

LABOR

On the Labor front, I am opposed to a provision in the bill which prohibits the Department of Labor from implementing or administering the Davis-Bacon Act "helper" regulations. The helper regulations authorize the use of semiskilled workers, working under the direct supervision of higher-skilled journey-level workers, to be employed on Federal construction projects. After nearly a decade of court challenges, the helper regulations have been found to be fully consistent with the language and purpose of the Davis-Bacon Act. I would like to point out that identical language was contained in the fiscal year 1994 Labor-HHS-Education appropriations bill. This was accompanied by committee report language which stated that the conferees were taking the action on a one-time basis and that further action should be taken by the authorizing committee of jurisdiction. As this provision constitutes a significant, questionable change under the Davis-Bacon Act, this issue should be considered in the Committee on Education and Labor, and not addressed through a rider attached to an appropriations bill.

Regarding another Labor issue, the Appropriations Committee has recommended a total appropriation of $312.5 million for the Occupational Safety and Health Administration, an increase of $16 million over 1994. While I will not argue with the total amount of the appropriation, I note that OSHA's budget for enforcement activities would be increased by about $10 million, or more than 5 percent, while "compliance" activities are increased only by about 2 percent. Unfortunately, that seems to reflect that prevailing priorities over at the Department of Labor these days as well—although they talk about wanting to promote "cooperation" with employers, all we see coming out of the agency these days is a heavy emphasis on enforcement. You can fool people only so long before they see that what you are really doing is discouraging business with heavy fines, and then business will understandably go elsewhere.

In addition, the Appropriations Committee would begin to fund, at about $3 million in the first year, an expensive new data collection program by OSHA. The problem is that we do not yet know what that data program is going

to look like—OSHA has not proposed regulations and the report that they were supposed to issue in March, to answer questions about their intentions, is still not here. From what has been released, I would say that there are going to be some very controversial parts to what is proposed, and so it may never get off the ground. So I would hope that this $3 million in new money that is allocated for data collection by OSHA would not be spent until we have a much better idea of what kind of data collection program OSHA is proposing.

CLOSING

In closing, Mr. Chairman, I want to once again commend the Appropriations Committee for their hard work in bringing this bill to the floor today. As I said, I do not agree with everything in it, but taken as a whole it is definitely a bill I can support.

□ 1540

Mr. SMITH of Iowa. Mr. Chairman, I yield 2½ minutes to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of the Labor, Health and Human Services, and Education appropriations bill for fiscal year 1995. This legislation includes funding for the highest priority domestic programs. It deserves your support.

As our colleagues know, this has been a difficult year for our subcommittee, the Appropriations Committee, and the Congress. We were all saddened by the illness and eventual passing of our distinguished chairman, Mr. Natcher of Kentucky. It is difficult to express how much we miss him. He was one of a kind and a joy to his colleagues. If he were here, Chairman Natcher would surely tell you that "this is a good bill." And it is.

Let me begin by expressing my thanks and my admiration for our acting chairman, Mr. SMITH of Iowa. He has taken up where Mr. Natcher left off and has worked with the members of the subcommittee to shape a bill that responds to the many challenges that face our country.

I believe that the strength of our country is defined by the health, education, and well-being of our people. President Clinton honored his commitment of putting people first by his investments funded in this subcommittee—for jobs, health and human services, and education.

Mr. Chairman, this bill has been developed within the budget discipline required by the Revised Budget Enforcement Act. Discretionary spending for fiscal year 1995 will actually be less than spending for this year—the first reduction in discretionary spending since 1969.

While budget discipline is necessary, it is particularly painful when it comes to this bill. Virtually every program in this subcommittee's jurisdiction is deserving of higher levels of funding. As I frequently tell our chairman, there are no bad programs in our bill. That makes deliberations over relative priorities very difficult work.

I particularly commend Chairman SMITH for his leadership in shaping the public health prevention initiative in this legislation. Through our extensive hearings, it became clear that before doing anything else, the committee had to rebuild basic public health prevention programs. Thus, the bill contains $160 million in new funding for a package of 14 programs at the Centers for Disease Control and Prevention [CDC] and the Health Resources and Services Administration [HRSA].

The bill contains increased funding for the CDC to fund unmet needs identified by the nearly 300 community-level planning groups across the country implementing HIV prevention reform. These HIV prevention reforms, along with the new strategic planning authority and other reforms at the Office of AIDS Research at the National Institutes of Health, bring new hope to our Federal AIDS response.

This bill also contains funding which responds to many challenges regarding women's health. Funding for breast cancer research is increased by 17 percent at the National Cancer Institute. Funding for breast and cervical cancer screening at the CDC is increased by 22 percent triggering important provisions in the authorizing legislation allowing more comprehensive preventive health evaluations for low-income women. Funding for the Office on Women's Health at the Public Health Service is tripled to $3 million. Funding for control of sexually transmitted diseases is increased to allow for chlamydia and other diseases of concern to women.

The bill also provides for significant increases for the investments outlined in the President's budget request—including the National Institutes of Health, Head Start, drug treatment, and an initiative to respond to the backlog in disability claims at the Social Security Administration.

The Department of Labor has received well-deserved new resources to respond to the needs of dislocated workers and disadvantaged youth. The bill contains funds to continue our commitment to expand on Jobs Corps programs and funding to maintain the Summer Youth Employment and Training Program. Both the Department of Labor and the Department of Education have received significant new funding to implement the School-to-Work Program for individuals not intending to seek higher education.

The bill also provides significantly increased funding for implementing Goals 2000 and compensatory education as authorized in the Elementary and Secondary Education Act. The bill continues a major commitment to higher education.

Mr. Chairman, this bill is an investment in the health and well-being of the American people. Again, I commend our chairman and I thank the subcommittee staff for their hard work and skill in assisting the subcommittee in developing this important legislation. I urge my colleagues to support this bill.

Mr. PORTER. Mr. Chairman, I am pleased to yield 3 minutes to the distinguished gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Chairman, I thank my good friend, the gentleman from Illinois, for yielding time to me.

Mr. Chairman, the White House's fiscal year 1995 budget would have abolished all funding for the Adolescent Family Life Program, the sole program in the entire Federal Government with the responsibility of promoting abstinence among teenagers. While the AFL only costs about $7 million a year, it was still deemed too much.

The advantages of teenage abstinence are obvious. It is the only guarantee against unwanted pregnancy. It is the only guarantee against sexually transmitted diseases. And while it is not a guarantee against social problems, like welfare dependency, it is the best first step we have.

Fortunately, the AFL's pluses were apparent to my friends Chairman NEAL SMITH and ranking Republican JOHN PORTER of the Subcommittee on Labor-HHS-Education. With their help, the AFL's funding has been restored in this bill.

Abstinence as a Federal program should not disappear. Among the $700 billion the Department of Health and Human Services will spend and the $50 million the Federal Government will spend to provide contraceptive services to America's young people, there is still room for the ray of hope that the AFL offers.

It is a message of hope and values that young people are seeking.

When Emory University asked 2,000 young, sexually active girls what they would like most to be taught in a pregnancy-prevention class, more than four out of five answered: "How to say no without hurting the other person's feelings."

Students of both sexes in Emory's Postponing Sexual Involvement program were five times less likely to become sexually active than students on average.

In a recent story on Norplant, the long-term contraceptive provided in Baltimore public schools, ABC News reported that of the students they talked to, every single one of these sexually active girls confided to us they wish they'd said no (to sex)."

Asked how long they wish they had waited, all the girls responded: until marriage.

Patricia Funderburk-Ware, former head of the AFL program, has written:

The sad part is that abstinence until marriage probably was not seriously presented as a viable option for these girls. Someone made a judgment that it was unrealistic—an unacceptable concept for them—perhaps because most were black, poor and in the inner city.

I would say to my colleagues, if we're not going to spend as much on abstinence as we spend on contraceptives, at least we should be spending something. Teenagers may not read the Federal budget, but they're smart enough to figure out what message Uncle Sam is sending. The AFL program makes that a message of hope.

The Adolescent Family Life Program tells our children that we have enough faith in them to offer more than just contraception. Promoting abstinence tells our young people that we care about them enough to do more than just abandon them to the pressures of adolescence and then try to minimize the physiological damage.

My colleagues, I ask for your support to continue Federal funding of teen abstinence programs. Respect for the dignity of our children demands no less.

Mr. SMITH of Iowa. I yield 4 minutes to the gentlewoman from New York [Mrs. LOWEY].

Mrs. LOWEY. Mr. Chairman, I rise in strong support of H.R. 4606, a bill to make appropriations for the Departments of Labor, Health, and Human Services and Education, and related agencies for fiscal year 1995.

I want to begin by joining my colleagues in commemorating the service of the late subcommittee chairman, Bill Natcher, who led this panel so capably and with such devotion for 14 years. It is impossible to replace a legendary figure like Chairman Natcher. But I am pleased to say that this most vital bill now rests in the very dedicated and sure hands of Congressman NEIL SMITH, the new subcommittee chairman.

I congratulate Chairman SMITH and his outstanding staff headed by Mike Stephens for meeting, head-on, the difficult challenges we faced in developing the fiscal year 1995 bill. As much as any other subcommittee, the Labor-HHS panel is the testing ground for how Congress will respond to the fiscal and social realities facing our Nation.

Stated simply, we must cut and invest. We must continue the difficult job we started in 1993 by steadily reducing the Federal deficit. At the same time, we must seize this opportunity to reorient our budget priorities toward investments in the building blocks of our economy and society: our people. The bill Chairman SMITH and the subcommittee members bring to the floor today meets that test.

The $252.3 billion provided by this bill represents a cut of $7.1 billion below the fiscal year 1994 bill. In addition, H.R. 4606 provides nearly $2 billion less than the amount requested by the President and eliminates 21 Federal programs. This is a tough bill, containing cuts which many will find difficult to accept. But the fiscal and social problems confronting this country demand tough choices, so we can focus our limited resources where they are needed most—in programs that address crime, economic competitiveness, public health, and the breakdown of our families and communities.

The investments contained in H.R. 4606 will expand economic opportunities for dislocated workers, jump-start nationwide school reform, provide increased support for preventive health and biomedical research, respond to pressing public health threats, such as AIDS and TB, and continue the expansion of successful programs, including Head Start and Job Corps.

DEPARTMENT OF LABOR

I want to take this opportunity to focus on a number of investments which address some of our Nation's most pressing needs. In the Department of Labor, the subcommittee included significant investments in worker retraining, the implementation of the new School-to-Work Opportunities Act, the development of a nationwide system of one-stop career centers, and a special initiative designed to improve compliance with Federal requirements related to worker safety and fair labor practices.

These are investments in our Nation's most valuable resource: the potential of our people. These are investments which will pay back dividends many times over in enhanced economic opportunity and competitiveness. If we are to rebuild our communities, fight crime, and promote families, we must offer our people the chance to obtain marketable skills. The investments in this bill will bring us significantly closer to those goals.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

In the Department of Health and Human Services, the bill provides an additional investment of $384 million in the National Institutes of Health [NIH], raising total expenditures for NIH to $11.3 billion. Included in that increase is a $50 million expansion for breast cancer research, which is critical to maintaining our commitment to finding a cure for this devastating illness which kills 46,000 American women each year. Under the bill, total NIH expenditures for breast cancer research will exceed $350 million in fiscal year 1995. This represents a 58-percent increase during the past 2 years.

Like many of my colleagues, I would have preferred to allocate even more to the NIH. Few, if any, Federal expenditures support such high quality of work and return so much in terms of improving our Nation's quality of life. It should be noted, however, that with the exception of one program, NIH received the highest percentage of any of the administration's investment requests.

I also want to mention the preventive health initiative, which my colleagues, Representative PELOSI and Representative DELAURO, and I crafted in close cooperation with the chairman and other members of the panel. The initiative consists of increases totaling $146 million for a number of important programs, including the Breast and Cervical Cancer Screening program, Community Health Centers, AIDS prevention and education, sexually transmitted disease prevention, infectious diseases, and family planning. These investments are both a response to pressing public health concerns and an important downpayment on health care reform.

The prevention initiative will provide critical new resources to help New York address ongoing public health crisis, including AIDS and TB as well as growing problems that demand greater attention, including sexually transmitted diseases, Lyme disease, foodborne diseases, hantavirus, hepatitis, and infectious diseases in child care settings. Expanded funding for family planning services will be critical to any strategy to address the teen pregnancy crisis in this country.

With regard to the Low-Income Home Energy Assistance Program [LIHEAP], the subcommittee restored $495 million to the program out of a total cut of $745 million requested by the administration. Despite claims that relatively stable oil prices have eliminated the need for this program, the simple truth is that millions of Americans continue to struggle to meet their heating expenses. For over 1 million New Yorkers, LIHEAP is a lifeline that protects them from freezing temperatures and, in some cases, homelessness. The drastic cut proposed by the administration would have had devastating consequences for New York and the Nation.

While there are a number of accounts in the bill that—resources permitting—would have merited higher levels of funding, I want to express strong support for providing additional funds for the Child Care and Development Block Grant. H.R. 4606 provides an increase of $42 million over fiscal year 1994. This amounts to only 21 percent of the administration's requested increase for the program.

Child care is essential to any strategy for improving the life chances of low-income working families. Child care is a prerequisite for ending welfare dependency and enabling parents to obtain marketable skills. I will continue to work to see that we enhance the funding level for the child care and development block grant before this measure reaches the President's desk.

DEPARTMENT OF EDUCATION

In the Department of Education, in addition to investments in education

reform and school-to-work transition, the bill increases funding for the reauthorized title I program by $334 million. The bill also includes $30 million for the State Postsecondary Review Program [SPRE] which is establishing a crucial Federal-State partnership for improving the integrity and effectiveness of Federal student aid programs. Student aid programs are estimated to lose approximately $4 billion per year to waste and fraud. It is essential that the Education Department give the highest priority to implementing the SPRE program as soon as possible.

I am also pleased that the subcommittee included $3.1 million for the newly established Early Intervention Scholarship and Partnership Program. This is approximately $1 million over last year's funding level. I want to reiterate the subcommittee's recommendation that the Department include the Early Intervention Program as a central component of a comprehensive strategy aimed at helping at-risk teens prepare for higher education.

THE HYDE AMENDMENT

I am clearly disappointed that we are unable to lift the Hyde amendment from this appropriations bill. The Hyde amendment is a punitive policy that discriminates against poor women by denying them access to basic health care, which includes the full range of reproductive health care services, including abortion. We must continue working to erase the two-tiered system of health care which jeopardizes poor women's health, and renders the right to choose meaningless for far too many women.

Health care reform, however, presents us with a historic opportunity to address inequities in women's health care, and I am hopeful now that we can focus our attention on winning the battle to ensure that all women, regardless of income, have comprehensive reproductive health care, including abortion.

Mr. Chairman, this is a challenging time to be a member of the Labor-HHS Subcommittee, because so much is at stake and our resources are so scarce. The American people are demanding performance and accountability from Government. The only way that Congress can fulfill that mandate is to embrace the tough choices and invest aggressively in what works. H.R. 4606 does that. I urge my colleagues to give this bill strong support.

□ 1550

Mr. Chairman, I would like to engage the gentleman from Iowa in a colloquy concerning the Higher Education Act, title IX-E, Minority Faculty Development Fellowship Program. I wish to clarify the committee's intent regarding the eligibility of institutions which participate in the program.

Mr. SMITH of Iowa. Mr. Chairman, will the gentlewoman yield?

Mrs. LOWEY. I yield to the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Chairman, I would be delighted to have a colloquy with the Congresswoman on this important program.

Mrs. LOWEY. The committee report language which accompanies H.R. 4606 indicates that fellowships are to be made available through institutions of higher education. I would appreciate it if the chairman would help me to clarify that the authorization legislation for title IX-E also sought to ensure that programmatic and fellowship support could be made available through consortia and other interinstitutional collaborations. It is my understanding, Mr. Chairman, that the committee intends that individual institutions, as well as consortia and other interinstitutional collaborations, be eligible to participate in the Minority Faculty Development Fellowship program.

Mr. SMITH of Iowa. Mr. Chairman, the gentlewoman from New York has correctly stated the committee's intent with regard to the institutions that are eligible to participate in the Title IX-E Program.

Mrs. LOWEY. Mr. Chairman, I thank the subcommittee chairman.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. SERRANO], a very valuable member of the committee.

Mr. SERRANO. Mr. Chairman, I rise in strong support of H.R. 4606, the Labor-HHS-Education appropriations bill for fiscal year 1995.

I must first pay tribute to Chairman Bill Natcher, whose illness and death this year marked the loss of a legendary Member and the end of an era for this House.

The torch has passed to new leaders, particularly to our subcommittee chairman, NEAL SMITH. Chairman SMITH has done an extraordinary job on this bill, the largest and most complicated appropriations bill, and in many ways the most important to every person and family in the Nation.

Chairman SMITH worked closely with subcommittee members and consulted widely with full committee members and other Members of the House, the administration, and the public. He made the hard choices required to set priorities among the many vital programs in the bill, and, despite very difficult circumstances, crafted a very fair bill.

I don't imagine anyone, including Chairman SMITH, thinks this bill is perfect; it isn't. But with the resources the subcommittee was given to work with, it is as fair an allocation as could be hoped for.

One problem took some extra effort. The budget request actually cut funding for most disease prevention activities of the Center for Disease Control, but the subcommittee, working together, was able to identify savings that made it possible to provide some increases for these vital public health functions.

I would certainly like to see more spending than the bill contains for Ryan White, for biomedical research and public health generally, for jobs and job training, for Head Start and programs for our children and families, for Goals 2000, but we simply weren't allocated enough money to do more.

My colleagues must recognize that H.R. 4606 is a very good bill and I urge all Members to support its passage.

Mr. PORTER. Mr. Chairman, I yield 2 minutes to my friend, the distinguished gentlewoman from Maryland [Mrs. MORELLA].

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute and 30 seconds to the gentlewoman from Maryland [Mrs. MORELLA].

The CHAIRMAN. The gentlewoman from Maryland [Mrs. MORELLA] is recognized for 3 minutes and 30 seconds.

Mrs. MORELLA. Mr. Chairman, I rise in support of H.R. 4606, the Labor-Health and Human Services-Education Appropriations bill for fiscal year 1995. I commend Chairman SMITH, the ranking minority member, Mr. PORTER, and the members of the subcommittee and committee for their efforts on this very difficult bill. With limited funding, the committee has managed to continue to fund critical health and human services, education, and labor programs. While I will be working to increase funding for several programs in the bill during conference, I respect and commend the members for their efforts.

Despite the extreme restrictions in funding, the committee provided $384 million in increased funding for the National Institutes of Health. Even in this time of budgetary restrictions, we must continue to provide strong support for biomedical research.

I commend the committee for the increased funding provided for AIDS research, prevention, and services, substance abuse treatment, breast and cervical cancer screening, the Office of Research on Women's Health, and the injury control program, which helps fund domestic violence prevention efforts. I concur with the committee's report language urging that the highest priority be given to research on breast, cervical, ovarian, and prostate cancer within the increased appropriation for the National Cancer Institute.

I am also pleased that the committee included report language that I submitted urging the National Institutes of Health to give high priority to the Women's Interagency HIV Study, and to the development of a microbicide to prevent the spread of sexually transmitted diseases, including HIV infection, in both women and men. It is critical that women have a method of protection that they can use, with or without their partner's cooperation or knowledge.

I also commend the committee for increasing funding for the Women's Education Equity Act [WEEA]. This act promotes gender equity through the funding of educational programs, such as the Eisenhower Math and Science Educational Program, which was created to improve the skills of teachers and the quality of math and science instruction. Legislation which I introduced and which is included in WEEA will improve the effectiveness of the Eisenhower Programs by allowing training in gender-fair teaching practices in math and science, and by clarifying that informal educational opportunities will be eligible for funding.

The bill also includes increased funding for a number of other critical investments in education, job training, health, and human service programs. The committee has done the best possible job given the limited amount of funding, and I urge my colleagues to support the bill.

I wish to clarify the Appropriations Committee's intentions regarding funding for displaced homemakers. The committee urged the Department of Labor to improve access to longer-term intensive services. I want to clarify with the gentleman from Iowa that the committee's recommendation means that the Department should allocate funding for appropriate long-term services for displaced homemakers based on successful models currently being provided by displaced homemaker programs throughout the country.

Mr. SMITH of Iowa. Mr. Chairman, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Chairman, the gentlewoman is correct.

Mrs. MORELLA. Mr. Chairman, displaced homemaker programs in my district and throughout the country need the resources to help women become economically self-sufficient.

I also wish to clarify the Appropriation Committee's intentions regarding funding for technical assistance and training for local displaced homemaker programs. There is a long history of committee support for Women Work!—formerly the National Displaced Homemakers Network—for the technical assistance and training services it provides to the more than 1,300 programs across the country. These services have a proven track record resulting in improved programs for displaced homemakers at the local level. The committee favors funding levels to maintain Women's Bureau support for customized technical assistance and training services for displaced homemaker programs at the same level as provided in fiscal year 1994.

Mr. SMITH of Iowa. Mr. Chairman, the gentlewoman is correct. The committee intends that the Women's Bureau maintain support for technical assistance and training for displaced homemaker programs at the fiscal year 1994 level if possible. Women Work! has a long track record of being an effective provider of technical assistance and training to local programs. I have heard from many of my colleagues and from service providers around the country about the high quality and importance of the services that the network provides. We intend for the Women's Bureau to continue to provide technical assistance and training for displaced homemaker programs through effective programs such as Women Work!

□ 1600

Mr. SMITH of Iowa. Mr. Chairman, I yield 2½ minutes to the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Chairman, today, I strongly urge my colleagues to support the 1995 Labor-HHS-Education appropriations bill we have before us. By passing this legislation, we will help Americans and their families to address some of the toughest problems they face. If we adopt this bill, we can provide real help to: those who have lost their job or are looking for their first job; children who need special assistance so they can learn; people who are suffering from devastating diseases, such as cancer and AIDS; and students who need assistance in order to go to college.

As a member of the subcommittee that drafted this legislation, I cannot fully express to the House how difficult the choices were that had to be made in order to live within our discretionary budget allocation. It is fair to say, I believe, that none of us are 100 percent happy with the funding levels provided for every program in the bill—there is no doubt that several programs could use significantly greater resources.

So I commend our chairman, Mr. SMITH, for his leadership under these extremely difficult circumstances and for the wonderful job he did in assuming the chairmanship he inherited from Mr. Natcher. Chairman SMITH has brought to the House a finely crafted bill which brings much needed help to our working families and which responds to Americans' health and education needs. This is a good bill that reflects to the greatest extent possible the administration's priorities within very tight fiscal constraints.

I also want to commend our ranking member, Mr. PORTER, and all of my subcommittee colleagues for their consideration throughout our deliberations on the bill. Every member of the subcommittee worked very hard and made the difficult choices that had to be made in completing our work on the bill. I would also like to thank the subcommittee staff and other Members' staff for all of their hard work, as well.

Mr. Chairman, one of the subcommittee's most pressing priorities was to do as much as possible to assure that all working people benefit from the economic recovery underway in some regions of our country. And there is good news about jobs. New jobs are being created, many of them good jobs.

At the same time, these continue to be the most difficult of times for many working men and women. The pace of mass layoffs is, if anything, increasing. Throughout our country, hard working people are loosing their jobs, or living in fear of seeing their name show up on the next list of terminated employees.

Right now, as some in our economy prosper, working people are experiencing one of the highest rates of permanent job loss in history. Over 2 million of the 8 million currently unemployed have permanently lost their jobs, and often their careers. These workers are living through the highest rate of long-term unemployment ever recorded.

The administration made clear to the subcommittee that one of its highest priorities was to target additional assistance to help our Nation's unemployed workers find new, and hopefully better jobs. This bill does that. It includes a significant increase in funding for job retraining, and for the one-Stop-Shop initiative. These programs—guided by an administration committed to improving the services provided to unemployed workers—are bringing a new level of assistance to workers struggling to find new jobs, struggling to once again be able to contribute to a prosperous future for themselves, their families, and their communities.

The administration also made clear to the subcommittee that another key priority was to assure that all young people are given the opportunity to get the education and training they need to compete for good first jobs. Two key components of this effort are the School to Work Program and the summer jobs program. I'm pleased to say that the bill before you today includes significant increases for these two programs, and it also includes vital funding for college aid programs that make all the difference in allowing so many young people to reach their goal of earning a college degree.

And in order to make sure our children have the proper foundation to enable them to do well in school, we increased the Head Start Program by $210 million. I was also pleased that, with our chairman's leadership, the subcommittee turned back efforts to cut impact aid targeted to the neediest of our students and school districts.

As a very strong supporter of biomedical research, I am not totally satisfied with what the committee was able to include for the National Institutes of Health. I believe it is critical that we maintain our commitment to biomedical research so we can continue to make advances in the prevention and treatment of disease.

However, even in the face of our tough budget constraints, we were able

to provide more than 70 percent of the administration's requested increase for the NIH—a total of $11.32 billion—which is the largest percentage increase in the bill for any of the President's health investment initiatives. Within the NIH total provided, I am pleased that funding for breast cancer research will be increased by approximately 17 percent, and that the budget for AIDS research is also increased and consolidated in the Office of AIDS Research. I am also pleased to report that the committee rejected the administration's proposal for a pause in indirect research costs.

The committee was also able to provide increases above fiscal year 1994 levels for several important disease prevention and care programs including: $22 million for the breast and cervical cancer screening program; $63 million for AIDS prevention; $13 million for community health centers; $47 million for the Ryan White AIDS Care Programs; $6 million for family planning; $2 million of lead poisoning prevention; $60 million for substance abuse treatment, and $10 million to fight the spread of tuberculosis and sexually transmitted diseases. I want to again especially thank our chairman for his leadership in advancing the critical public health initiatives included in this bill.

Finally, I want to make sure the House knows that the subcommittee was able to restore almost all of the cuts the administration had proposed for the Low Income Home Energy Assistance Program. Thousands of senior citizens and low-income families depend on this program to help them keep their homes warm in the cold months. This past winter demonstrated how important LIHEAP is, and while we couldn't bring the program fully back to the fiscal year 1994 level, I want to thank my colleagues for their support in providing the highest level of funding possible given all the competing priorities in this bill.

Mr. Chairman, again, I urge my colleagues to support this important legislation. While I believe we could wisely spend additional resources on several programs funded in this bill, the committee has done the best job it could possibly do given the tough limit on discretionary spending we faced.

Mr. PORTER. Mr. Chairman, I am pleased to yield 2 minutes to the gentlewoman from Maryland [Mrs. BENTLEY], a very hard-working and able member of our subcommittee.

Mrs. BENTLEY. Mr. Chairman, as we begin consideration of the fiscal year 1995 Labor-HHS-Education appropriations bill, I want to take a brief moment to thank Chairman SMITH and his very capable staff for assembling a bill that I think is good for the country. I also want to thank my ranking member, Mr. PORTER, and his staff for their fine work during the course of a very lengthy hearing schedule.

Despite the fact that we all would have liked to have seen higher levels for the National Institutes of Health, headquartered in Bethesda, MD, this is a bill with which we can all live. I am pleased that the committee sought to increase programs such as Healthy Start which has done so much to help bring down the appallingly high levels of infant mortality which continue to plague many regions of the country. And I am pleased that the committee rose to meet the challenge of providing comprehensive, community-based services that will help alleviate this problem.

Community-based services are vital to accomplish what we are endeavoring to accomplish in improving the health of American citizens. We also need to set up community-based programs with our police departments to help the community in every way.

I am particularly pleased that the bill adequately addresses the issue of prevention of offering much needed assistance to many of our struggling young families through innovative programs such as Family Support Centers. In addition, this bill provides a much needed funding increase for in-home services for the frail elderly in order to provide seniors with the opportunity to live at home. There also are generous increases for programs that provide key services to the severely disabled, thus giving them the opportunity to remain independent. In remembering Chairman Bill Natcher for his years of diligent service at the helm of the Committee, I want to salute Chairman SMITH and the entire committee staff for moving diligently forward during the difficult transition following the death of Mr. Natcher.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Chairman, I very much appreciate the gentleman from Iowa [Mr. SMITH] yielding time to me.

Mr. Chairman, I rise to enter into a colloquy with the chairman, the gentleman from Iowa [Mr. SMITH] and my colleague, the gentleman from California [Mr. BROWN].

Mr. Chairman, the gentleman from California [Mr. BROWN] and I share districts in southern California, in San Bernardino County. We essentially cut up most of the territory of the county and the population as well.

Mr. Chairman, I would say to the gentleman from Iowa [Mr. SMITH] that I would like to enter into a colloquy with him and the gentleman from California [Mr. BROWN], who has also received a series of complaints, a growing volume of complaints, as I have, from constituents regarding the extended length of time it takes to have their cases resolved by our Social Security office in San Bernardino, which we both share in our districts.

I have received a letter from the chief administrative law judge that begins to outline the problem. There are over 6,000 cases pending in the one county office. That is about four times the number of cases pending just last year. This is not a reflection of the fine work of the Social Security staff, but outlines the enormous challenge that our staff and constituents are facing.

I appreciate your subcommittee recognizing this ongoing problem and appreciate your willingness to add $194 million to this bill in order to address the situation. However, I am sure these problems are developing all around the Nation, not just in California. I hope there is more we can do.

Mr. Chairman, I am very interested in any comments the gentleman might have. These problems, while they do not just affect our districts, are very important to the gentleman from California [Mr. BROWN] and myself.

Mr. BROWN of California. Mr. Chairman, will the gentleman yield?

Mr. LEWIS of California. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Chairman, the gentleman from California [Mr. LEWIS] has correctly stated our joint situation involving our county, the largest county, I might say, in the United States. Our office has received the same type of complaints as the gentleman's have. We think this is an extremely serious problem. We do appreciate the fact that this bill addresses it.

I want to thank the chairman of the subcommittee for the additional resources through the Social Security Administration, and of course, we hope that the subcommittee will be able to do even more in the future.

Mr. PORTER. Mr. Chairman, I would ask how much time remains on each side.

The CHAIRMAN. The gentleman from Illinois [Mr. PORTER] has 5½ minutes remaining, and the gentleman from Iowa [Mr. SMITH] has 4 minutes remaining.

Mr. PORTER. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Illinois [Mr. EWING], my colleague both in Congress and in the general assembly.

Mr. EWING. Mr. Chairman, I have addressed an issue on this floor on several occasions before dealing with the counterproductive Labor Department regulations which discourage supermarkets from hiring young people.

Mr. Chairman, report language included in this legislation directs the Department of Labor to review the regulation which have been causing the problem, H.O. 12. On two separate occasions I have risen on this floor and talked about H.O. 12, and how its enforcement by the Department is having a detrimental effect on job opportunities for teenagers.

H.O. 12 prohibits teenagers from using paper baler machines. When the

regulation was written in 1954, it made good sense. However, modern paper baler machines are very different, and they are much safer. I know, because I recently inspected one in my own district.

It has been the policy, however, of the Department of Labor to levy large fines against grocery stores under this regulation, even though there was no clear evidence of safety risks to teenagers. This policy has discouraged grocery stores from hiring young people.

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After I contacted the Department of Labor, their response to me seemed to show they had little recognition or information about this regulation or the current standards they were enforcing. I have asked them to look into this and the response has been very marginal. We know today that modern baler machines must meet the standards of the American National Standards Institute, which are very rigorous.

I want to thank the gentleman from Iowa [Mr. SMITH] for raising this issue in the report language. He has included language which directs the agency to take a hard look at their enforcement of this outdated regulation. This language can do a lot to put our young people back to work.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from Guam [Mr. UNDERWOOD].

Mr. UNDERWOOD. Mr. Chairman, I rise today in strong support of H.R. 4606. On behalf of the people of Guam, I certainly appreciate some of the items in there that are unique to the territories. I stand in support of this legislation. It not only meets the educational needs of our youth but speaks to the inclusion of all U.S. citizens no matter where they live and recognizes some very unique historical circumstances.

If I could just be allowed to mention a couple of items. One is the attention given to the preservation of indigenous languages and cultures. One which is also near to us is the native Hawaiians which we will be discussing a little bit later.

Mr. Chairman, I rise today in support of H.R. 4606. On behalf of my district, I see this appropriations bill as a positive step in addressing Guam's needs. And from a national perspective, I think this bill strikes an appropriate balance between innovative public spending and sound frugal budget practices.

H.R. 4606 includes a provision to help U.S. territories improve their education systems. The bill includes $2,937,000 for territorial education improvement, a modest program but one that strikes at an inherent inequality among our Nation's schoolchildren. Test scores show that children in the territories do not have the same opportunities as their stateside counterparts. By efficiently directing these funds to those who need it most, the authorizing and appropriating committees succeeded in putting Federal dollars to work in a productive way.

This bill recognizes the importance of assisting in the preservation of the culture and history of indigenous peoples. This is evident in the inclusion of the Native Hawaiian Education Program which we will be debating later today.

Other national efforts are also acknowledged in H.R. 4606 such as school-to-work and Goals 2000. The bill directs substantial funds to this initiative which assists those students who might otherwise fall between the cracks in our educational system after high school and before employment or further education. This legislation's support for bilingual education programs authorized in the Elementary and Secondary Education Act is also a powerful investment in our youth, both in my district and the nation at large. We must equip our youth with the tools to surpass our expectations. Language skills are an essential tool in that effort.

H.R. 4606 recognizes the educational needs of our youth and attempts to meet these needs with prudence in a time of fiscal restraint and it speaks to the inclusion of all U.S. citizens no matter where they live, while it recognizes some very unique historical circumstances. I urge my colleagues to support this bill and address the needs of America's students.

Mr. Chairman, I would like to engage in a brief colloquy with the gentleman from Iowa regarding some provisions under the Higher Education Special Grants section of the Labor-HHS-Education appropriations, $397,000 in funding for assistance to Guam institutions of higher education has not been included as it was in last year's appropriation. These funds compensate Guam for the tremendous impact Micronesians place on our higher institutions of education.

Would the gentleman consider supporting the funding for this assistance if it is included in the Senate appropriations?

Mr. SMITH of Iowa. Mr. Chairman, if the gentleman will yield, I would assure the gentleman that if this matter is included, I would definitely consider it. However, we have been told that it is not authorized at this time and we have to work with the committee on that.

Mr. PORTER. Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. PENNY].

Mr. PENNY. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise to congratulate the gentleman from Iowa [Mr. SMITH] and the gentleman from Illinois [Mr. PORTER] the ranking Republican, for their work in developing the legislation. Theirs has not been an easy job, with many tough choices forced by the existing budget caps. For example, they made reductions in impact aid, they accepted a third of the President's proposed reduction for LIHEAP, they canceled programs such as substance abuse grants, dropout demonstration grants, follow through, foreign language assistance, bilingual training, and some construction programs. They did that in order to make room for many of the President's priorities. These cuts helped to accommodate modest increases in chapter I, Head Start, health research, and training for the unemployed.

Mr. Chairman, we call this pay as you go budgeting around here. The Clinton administration has come up with a new term. They like to refer to it as cut and invest. Any way we describe it, the committee is to be complimented for setting important priorities within a very tight budget.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. WOOLSEY].

Ms. WOOLSEY. Mr. Chairman, I rise in support of H.R. 4606, because this bill recognizes that investing in education is critical to solving many of the urgent problems facing our Nation.

I know how difficult it was to produce this bill. Chairman SMITH, and the members of the subcommittee, are to be complimented on the openness of their process, and for giving many Members, including me, the opportunity to testify.

In the end, however, there simply is not enough money to meet all of our Nation's needs—particularly for education, which is our most important investment for tomorrow.

In coming years, we must be able to maintain important programs, such as chapter I, and we must get new initiatives, such as coordinated services, off the ground.

As a member of the House Budget Committee, I will be fighting to make sure that sufficient funds are available for education in future years.

Mr. Chairman, Congress can do this by sticking to its resolution to increase Federal spending on education by 1 percent every year until it accounts for 10 percent of the Federal budget.

If we make good on that resolution, future education spending bills will be true investments in our children—an investment that will reap long-term results for our Nation.

Mr. Chairman, let us pass this important bill and get on with the urgent task of providing more where more is urgently needed.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, I alluded to this, but I want to say it more specifically because with all of the accolades, I feel very humble, I could not have been here as chairman with a bill that seems to meet with such approval had it not been for the very conscientious and hard work of the gentleman from Illinois [Mr. PORTER] and of each of the members of the subcommittee. This is not any one Member's bill, this is everyone's bill.

Mr. Chairman, reference was made to our late chairman who, of course, cannot be replaced completely. We just do the best that we can. The gentleman has set a model.

At this point in time, we hope that this bill is a bill that would have met with his approval. I think that we have done the best that we can, but we did have a great advantage in that we had the same staff available to us that we had for the last several years and that the former chairman had. That helped us a great deal, even though we started more or less in the middle of the year putting this bill together.

Mr. Chairman, I heartily recommend this bill to the House.

Mr. PORTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just like to say that it is a great and distinct pleasure to work with the gentleman from Iowa, the chairman of the committee. I thank him for his very kind words. I look forward to working closely with him for a long time to come. I echo that this is a bill I think Bill Natcher would say was a good one.

Mr. SKELTON. Mr. Chairman, recently, I joined 100 of my colleagues in a letter to Chairman SMITH, urging the Appropriations Subcommittee on Labor, Health and Human Services, and Education to support the Impact Aid Program in the fiscal year 1995 appropriations bill, by accepting the authorizing committee's numbers.

Beyond question the Impact Aid Program is vital to school districts serving military children and students who live in communities impacted by Federal property. Impact aid provides basic resources for essential school services. It is already critically underfunded.

Moreover, under this bill, impact aid will be one of the hardest hit of the Federal education programs. These disproportionate cuts will deny federally impacted schools funds which may be necessary for their survival.

We continue to ask our educators and our school districts to produce the finest students in the world. It is time we gave them the resources to do so.

Mr. OWENS. Mr. Chairman, I rise in reluctant support of H.R. 4606, the Labor-HHS-Education appropriations bill for fiscal year 1995. This bill fails to put money where Congress' mouth is. Members of the House continually espouse their support for education reform, but when put to the test, would rather spend their dollars on wasteful defense projects than educating the Nation's children. That is proven by the fact that while the Labor-HHS-Education appropriations bill's total is $7.1 billion less than the current level, the Defense appropriations bill's total is $3.5 billion more than the current amount.

H.R. 4606 shortchanges students at an early age. The bill clearly demonstrates Congress' lack of commitment to investing in our children's education. Chapter I of the Elementary and Secondary Education Act, which provides assistance to the poorest school districts, is given $302 million less than the administration's request and only $302 million more than the current year's allocation. With such meager funding, students residing in poor districts will never be able to receive an education which is on par with that of their counterparts living in wealthier districts.

H.R. 4606 also allocates a paltry amount for the Safe and Drug-Free Schools Programs at a time when our schools have become a more hospitable environment for crime and substance abuse than reading and writing. These national programs have been cut by more than one-half of the current year's funding level.

Additionally, this bill makes it more difficult for disadvantaged students to receive a high-quality college education. By imposing a cap on the number of students eligible to receive Pell grants, the bill makes it no longer possible to boast that in this country, no one who is qualified for admission to college will be turned away because of inadequate resources. If that is not slamming the door on the American dream, then I am not sure what is.

Moreover, the cap represents a misguided attempt to cut education costs. For example, while the overall number of students eligible for the maximum Pell grant award is declining, the number of these students who enroll at United Negro College Fund institutions and historically black colleges and universities is increasing. The cap therefore ignores the educational needs of poor African-Americans and other people of color as well.

Not only is education given short shrift in the bill, but libraries also are underfunded. Federal support for libraries is cut by $30 million, and zero funding is recommended for public library construction.

Finally, H.R. 4606 is a raw deal for individuals with disabilities. The National Institute on Disability and Rehabilitation Research [NIDRR] within the Department of Education is being funded at a level slightly below last year but $1.5 million higher than the administration's request. The low request and funding level run counter to the administration's policy to "end welfare as we know it," since NIDRR primarily supports research and training activities designed to maximize the employment of individuals with disabilities. The National Council on Disability [NCD] also is recommended for a cut in funding. This cut is a tremendous blow to the civil rights of individuals with disabilities, as NCD takes an active part in monitoring compliance with the Americans with Disabilities Act.

Overall, the bill is an embarrassment to the administration and the Congress. If we cannot commit ourselves to fully fund education, libraries, and programs for individuals with disabilities, then to what can we commit ourselves? The democratic ideal of self-empowerment is meaningless to underprivileged Americans unless they have access to world-class education and training.

The strategy of no cuts for defense is a blunder immense. Education is the innocent victim of this misguided policy. With great reluctance I vote "yes" for this bill. We must all pray that the administration will find its way in the next session. In 1995 education must become the No. 1 priority.

Ms. SCHENK. Mr. Chairman, recently the House passed H.R. 6, which reauthorizes many elementary and secondary education programs, including the Impact Aid Program. This program provides funds to school districts which, because of the presence of Federal land or a Federal activity, have a reduced tax base.

Early last month, I joined 101 of my colleagues in sending a letter to NEAL SMITH, the distinguished chairman of the Appropriations Subcommittee on Labor, Health and Human Services and Education, seeking full funding of the Impact Aid Program, in the amount of $889 million for fiscal year 1995. Current funding is $798 million. Unfortunately, the subcommittee's bill allows for only $728 million, a cut of $70 million, approximately 10 percent from the current level of funding.

Each year, federally impacted school districts receive less and less of the impact aid funds which the Congress has promised. And yet each year they are supposed to take on more and more initiatives, update their facilities so that their students can compete in the global economy, and protect themselves against increasing school violence. Their budgets are squeezed so tightly that many schools are hard pressed to maintain existing programs.

There are approximately 2,500 federally impacted school districts and over 2 million federally connected children. These children must remain our priority.

While I intend to support the fiscal year 1995 Labor-HHS-Education appropriations bill, I urge the House and Senate conferees to restore the funding for this important program.

Ms. SNOWE. Mr. Chairman, I rise today to express my serious concerns about the language in H.R. 4606 concerning the Low-Income Home Energy Assistance Program [LIHEAP]. The bill cuts $250 million from the $1.475 billion in fiscal year 1995 funding that we appropriated last year in accordance with LIHEAP's forward funding schedule. It also provides a reduced funding level of $1.225 billion for the program in fiscal year 1996.

In its report, the committee states that the rescission in LIHEAP funding was prompted by overall funding constraints and by the need to shift funding to the President's investment priorities of education, job training, health care, and biomedical research.

Reading the report the question immediately entered my mind: what could be a higher priority than heat during the bitter cold winters that many northern States experience? Food, clothing, and shelter are the immediate responses. But heat in the winter actually ranks equally with them as a fundamental human necessity. People do not survive without any of these things, including heat in the winter. Having them all is a matter of subsistence not comfort.

I support education, job training, and biomedical research. These programs give our less fortunate citizens the tools they need to achieve their goals, advance themselves economically, and improve the quality of their lives. But it is hard to understand how effective a job training or education program will be when the participant in that program must return after class to a freezing home, or when the participant is afflicted with anxiety because he knows that he cannot pay the heating bills piling up on the table at home.

LIHEAP is a survival program, not a self-improvement program. It is directly linked to the

health of our citizens. A 1992 study by Boston City Hospital found that the number of clinically underweight children visiting the emergency room increased dramatically in the period immediately following the coldest month of winter. After considering and ruling out chronic illness as a primary cause of this phenomenon, researchers estimated that the children's low weights resulted from increased caloric demand due to cold stress, and from a lack of food due to the economic stress caused by high heating costs. Mr. Speaker, these findings are a disgrace. None of our citizens should ever have to choose between food and heat.

The $1.5 billion originally appropriated for fiscal year 1995 is far from excessive. In fiscal year 1985, the program received $2.1 billion, but funding steadily declined to $1.35 billion in fiscal year 1993 in unadjusted dollars. If LIHEAP funding had remained constant since fiscal year 1985 in dollars adjusted for inflation, today's appropriation would have to be about $2.7 billion—much higher than the $1.5 billion that we appropriated last year, and higher still than the reduced level of $1.225 billion contained in H.R. 4606. And even at recent funding levels, LIHEAP covered less than 25 percent of the average recipient's energy bill, and literally millions of people got no assistance despite meeting the eligibility requirements for the program. We should be increasing LIHEAP funding, not cutting it.

Mr. Chairman, I understand as well as anyone in this body that we need to cut spending to reduce the deficit and begin to pay down our enormous debt. But before we begin the process of cutting, we need to set priorities, and LIHEAP ranks at the top of the priority list. I hope that, should the Senate provide more funds for LIHEAP in its bill, the members of the committee will reconsider their current position and accept a higher Senate funding level in conference.

Mr. HYDE. Mr. Chairman, as the chief sponsor of the Hyde amendment, I want to address a serious problem faced by the States in implementing this funding limitation which was first passed by Congress last year.

Mr. Chairman, there is nothing in the language of the modified abortion funding limitation amendment which required the Medicaid Bureau to take upon itself the functions that it did when, on December 28, 1993, an official issued the misguided and burdensome directive to the States on abortion funding. The language on its face merely recites a passive situation as a condition precedent for receipt of funds. It does not preclude, however, the investigation and proper disposition of suspected cases of fraud on the part of hospitals, physicians, Medicaid recipients, etc.

Mr. Chairman, it was never our intention to require States to pay for abortions in cases of rape and incest. The thrust of the Hyde amendment, as our colleagues well know, was to place restrictions on Federal abortion funding, with certain exceptions. We did not intend to override State laws and policies to require States to pay for abortions; but we recognized that if States so chose to pay for abortions in cases of rape, incest, or life endangerment, Federal reimbursement would now be available.

In fact, Mr. Chairman, this was the administration's own interpretation of the impact on States of repeal of the Hyde amendment. Prior to enactment of the modified Hyde language in 1994, the administration stressed in several statements the rights of States to determine whether or not to pay for abortions—even those abortions for which Federal reimbursement was available.

On March 30, 1993, senior Presidential adviser George Stephanopoulos participated in a White House briefing that dealt fairly extensively with the administration's budget proposal to repeal the Hyde amendment and open the door to full Federal funding of abortion. "As you know," Mr. Stephanopoulos stated, "there are several states now which do have some restrictions on abortion funding, several others that don't. They will continue to maintain that flexibility."

On the same day, White House Press Secretary Dee Dee Myers said this about the President's decision to seek repeal of the Hyde amendment: "No, this would not mandate that States spend their money that way. * * * If the Hyde amendment is repealed, States will then have the flexibility to determine how that money is spent. Some States would then choose to spend it on abortions. Other States will still have restrictions against it."

Two days later, Dee Dee Myers reiterated the President's support for State flexibility. "What the President has done in terms of overturning the Hyde amendment or moving to make that change is that the Federal Government ought not to dictate policies to the States," Ms. Myers said. "Medicaid, for example, is funded by a combination of State and Federal funds," Ms. Myers continued. "The President believes that the States ought to have more discretion over how that money is spent and that the Federal Government ought not to dictate it," she added.

Lorraine Voles, deputy press secretary at the White House, had this to say: "The States will have flexibility about their funding for abortions. Some states will and some States won't."

Finally, respect for State flexibility upon repeal of the Hyde amendment was strongly implied in a letter which Secretary Shalala wrote to the late chairman of the Appropriations Committee, Mr. Natcher, on June 8, 1993. "As indicated in the President's budget, the administration prefers to work out an approach on this sensitive issue [i.e., abortion funding] which is consistent with both State and Federal law."

Thus, several administration officials made similar statements on the implications of repealing the Hyde amendment, a policy change which had been discussed for weeks—if not months—before it was formally announced. All statements affirmed the right of States to determine whether or not to fund abortions when partial Federal reimbursement is available. No statements made during this time indicated that the availability of Federal funds for abortions would require States to pay for these same abortions.

The fiscal year 1994 Hyde amendment was enacted with the knowledge that 37 States had laws or policies restricting abortion funding, and that at least two of these States restricted funding under their State constitution. Based on our own understanding that the Medicaid Program is essentially a State-run program which receives Federal assistance, and taking into account the administration's prior and repeated statements that States would maintain the flexibility of deciding whether or not to fund abortions, we did not believe that the Department of Health and Human Services would proceed to order the States to pay for abortions whenever Federal funding is available.

Nevertheless, after the Hyde amendment was signed into law, without any notice or opportunity for comment, the Medicaid Bureau issued a directive which completely belied the administration's previous statements. Moreover, it went even further afield by reading into the modified Hyde amendment a mandate on the States to allow abortionists to waive reporting requirements in cases of rape or incest. This requirement—manufactured out of thin air—would effectively gut all State anti-fraud provisions. The administration's hostility to reporting requirements is clearly demonstrated by its attack on the Pennsylvania law which pays for abortions in cases of rape and incest but which has reporting requirements.

Since this administration announced in March 1993 that the President wanted to repeal the Hyde amendment in its entirety, a policy statement that was repeated in 1994 in the fiscal year 1995 budget request and which showed its preference for no restrictions on Federal funding of abortion, it is arguable that this position has strongly influenced its interpretation and use of the modified Hyde amendment.

Mr. Chairman, I do not believe that the law requires the States to pay for abortions when Federal reimbursement is available. Therefore, it should not be necessary, when the law is sufficient, for Congress to enact new legislation to correct every faulty administration decision. Moreover, the Rules of the House of Representatives preclude this Member, or any other Member, from offering an amendment to the Labor/Health and Human Services Appropriations bill to make this clarification. Such an amendment would be subject to a point of order under clause 2 of rule XXI, which prohibits legislating on an appropriations bill.

Therefore, Mr. Chairman, as much as I would like this issue to be resolved quickly and definitely, the House is not able to clarify its intent at this time.

Miss COLLINS of Michigan. Mr. Chairman, as we consider H.R. 4606 today, the bill appropriating funds for fiscal 1995, I am pleased that the House Appropriations Committee restored most of the proposed cuts in the low-income energy program known as LIHEAP. I commend the committee for recognizing the needs of millions of our citizens whose homes have been warmed and weatherized with LIHEAP's help.

Earlier this year, I presented to the committee a letter signed by all members of the Congressional Black Caucus in support of restoring funds for the Low-Income Energy Assistance Program. Since many of us in the caucus have a disproportionate number of low-income people in our districts, this program is particularly important to minority Members of Congress.

As you know, for fiscal year 1995, the President proposed only $750 million, compared to

the $1.4 billion we appropriate for fiscal year 1994. Coming after a particularly harsh winter in many parts of the country and several scorching summers, these cuts are difficult to understand. Commendably, the bill before us today restores most of those cuts and provides $1.2 billion.

Most studies show that the programs is a great help to poor households, many of which contain elderly and handicapped persons. Recipients receive help with their heating and cooling costs, with weatherization and in some cases, as crisis intervention.

In Michigan last winter, more than 372,000 households received some heating help under LIHEAP. Approximately two-thirds of these households were headed by single parents and senior citizens, living on incomes of less than $8,000. For these families, an annual heating bill in Michigan can be as high as $1,000. One study shows that 20 percent of families who experience unmet heating assistance needs will become homeless.

Having a warm house is not just a luxury. It is a necessity. Not only does it help us adults function better, it provides a good home environment for our children to study and to learn.

I hope some day we can eradicate poverty and eliminate the need for this program, but until then, I will continue to work so that a warm home is a reality for every American.

Mr. WILLIAMS. Mr. Chairman, as our late colleague Bill Natcher used to remind us, this bill is really the heart and soul of what we do as a Congress. It supports the health and education of our people, and as such it contributes mightily to the strength of our Nation. It's a bill that always deserves our support.

However, I would not be totally forthcoming if I did not share with my colleagues some reservations I have with the way this bill treats student aid funding. No matter how one looks at it, this is not a good student aid budget. The bill before us today cuts student aid funding by $75 million below last year's funding level. State student incentive grant funding is the lowest it has been since 1976. Work study and supplemental grants are frozen for the second year at their 1993 levels. In nominal dollars the Pell grant maximum is equivalent to its 1990 level. No, this is not a good student aid budget.

I understand and appreciate the dilemma the Appropriations Committee has been faced with in dealing with the impact of last year's budget resolution and very tight 602(b) allocations. Yet in my opinion student aid has been asked to disproportionately share the burden of those decisions. And I think this will have long-term damaging consequences. Because when we short-shrift our future leaders, we're short-shrifting the future of our Nation. I'm afraid we may be doing that with this student aid budget.

This bill includes, for the first time in its history, a cap on the number of students who can receive Pell grants. I know this is being proposed as a one-time-only cap, hopefully a cap that will never go into effect. But we've had experiences with past one-time-only solutions to budget problems. An example of that is the origination fee charged on student loans. That was supposed to be, if not a one-time-only proposition, at least a short-term charge to students. It was implemented in 1981. It's still with us today. So, I'm suspicious of one-time-only propositions.

But even if I did not have this suspicion, the Pell cap is a bad idea, for it fundamentally alters the Pell Grant Program. Under a cap, Pell becomes a race to the application gate. What was once the foundation of our student aid system—a grant that would be available to every eligible student no matter at what point in time they apply to college or for assistance—becomes a rationing system that rewards the best advised and those who can fill out and have processed their student aid forms fastest. Those who can master the mysteries of the student aid application process and who, with good guidance, apply to college early, will survive a cap. However, those students who decide late to apply to college and those who aren't always encouraged that post-secondary education is a viable option for them—in many cases the poor, the working class, single parents, women with dependent children, minority students—these students will be left at the gate. If the word spreads that the guarantee of a Pell grant is no longer there, these students may decide not to pursue college or advanced training. Or conversely, we may have a stampede to get in first in the Pell grant lottery, which could frustrate the hopes of the committee that the cap will never be implemented. Whatever the outcome, capping the number of students who can receive a Pell award is a terrible idea.

Mr. Chairman, in the last Congress we enacted the Higher Education Amendments of 1992. One of the highlights of that legislation was the fact that it brought some certainty, reliability, and stability to our system of Federal student aid. Those 1992 amendments gave students and parents some confidence that they could plan early for college. Today we're taking that ability to plan away from the most disadvantaged of those students and their parents. It's a big mistake. I hope it is not a harbinger of things to come. I urge the committee and the House to correct these policy directions in the next appropriation bill.

Mr. GENE GREEN of Texas. Mr. Chairman, I rise today to express my concern that the funds designated under H.R. 4606 fall far short of the funds needed to achieve our national education strategy. Over the past 18 months, we have undergone the process of reauthorizing the Elementary and Secondary Education Act. During this debate, we have discovered that the Federal Government plays an inadequate role in our Nation's education system, and accordingly, this administration had pledged a substantial increase in funding for education programs.

Sadly, the appropriations process has not yielded the results we had been promised. Our current budget constraints could not allow the full increase of $700 million in the Chapter 1 Program which will mean that hundreds of thousands of children will continue to be unserved or underserved through this program. Comparing the administration's request for funding in fiscal year 1995 to what was actually appropriated, one will notice a net decrease in funding of 0.6 percent compared to 1994. And, compared with the other agencies in this appropriations bill, education only received 32 percent of the recommended increase requested by the administration while Health and Human Services received 85 percent and Labor received 49 percent of their recommended increases.

On the positive side however, there are increases in a number of important programs. Bilingual education received an additional $23 million and Goals 2000, our Nation's new education reform plan, received an additional $283 million.

These numbers represent our Nation's commitment to the education and training of our future work force. Unless we reevaluate our efforts in this area, we will not be able to produce the kind of workers that are able to compete in an increasingly competitive global market. I urge my colleagues to place more emphasis on these vital programs in the future and to consider the Federal Government's role in education as the ultimate investment we can make for the future of our children.

Mr. YOUNG of Florida. Mr. Chairman, I rise in support of H.R. 4606, the 1995 appropriations bill for the Departments of Health and Human Services and Education. At the outset, I want to compliment our chairman, Mr. SMITH, and our ranking Republican member, Mr. PORTER, for the outstanding work they have done under very difficult circumstances.

This legislation, which in one way or another affects the lives of virtually every American family, provides funding for quality program after quality program. Unfortunately, our allocation this year did not allow us to provide the level of support we would have liked for each and every program. We have had to make some very difficult choices in a year in which the President's budget request for the programs within our jurisdiction was $3.1 billion greater than our allocation.

One area which I am most concerned about is funding for biomedical research. In the National Institutes of Health, our Nation has one of the world's richest resources of medical and scientific talent. The investment our committee and Congress has made in NIH has been repaid many times over in important medical breakthroughs that have saved lives, eased pain and suffering, and offered people throughout the world renewed hope.

Many mysteries remain, however, and we must continue the search for the clues that will one day lead to a cure for cancer, diabetes, AIDS, and so many other diseases. This bill provides a 3-percent increase in NIH funding for 1995. This, unfortunately, fails to keep pace with the inflation index for biomedical research which is estimated to be 4.1 percent.

My colleague from Illinois, Mr. PORTER, has made efforts I supported at the subcommittee, full committee, and will again try today to increase funding for NIH. We believe that at a time when we are considering health care reform and the need to reduce the cost of health care, NIH should be one of our Nation's priorities for finding ways to treat some of the most debilitating and costly diseases.

Regardless of the final appropriation we agree on for NIH in conference, my experience is that the Director and his Directors of each of the Institutes will continue to provide quality research. It has been my pleasure to develop a special relationship over the years with Dr. Claude Lenfant, Director of the Heart, Lung, and Blood Institute, which has oversight responsibility for the National Marrow Donor Program.

This is a program that the committee continues to give high priority to and which continues to save lives every day throughout our Nation and the world. The chairman, Mr. SMITH, Mr. PORTER, and each of the members of the subcommittee are heroes of the program for their continuing support and interest.

Every time I report to the House on our ongoing work with the National Marrow Donor Program, the news gets better and better. Under the direction of the program's chairman of the board, Admiral Elmo Zumwalt, Jr., one of the program's greatest heroes, the national registry had grown to 1,256,692. During the past year, an average of 21,000 potential donors joined the national registry each month.

An area of particular concern to our committee, and especially to my colleague from Ohio, Mr. STOKES, who has also been one of the program's heroes, is the need for greater growth in the number of minority donors. It is a pleasure to report that principally through the allocation of specially designated funding the past three by this committee and the Appropriations Subcommittee on National Defense, on which I also serve, more than one-third of all the new donors recruited in the past year were from minority groups. Each month, 200 minority focused drives are held throughout our Nation.

The key to the success of the National Marrow Donor Program continues to be people. It is so heartening to see the miraculous growth of the program continue as more and more people learn of the possibility that they could save the life of a person somewhere in the world suffering from leukemia and any 1 of 60 other blood disorders.

The odds of finding a matched bone marrow donor in the general population is 1 in 20,000. With the tremendous growth in the national registry, the growing racial diversity of the donors, and the number of fully typed donors, supported in large part with funding provided by our two subcommittees, more than 56 percent of all new patients searching the registry find at least one completely matched donor. A significant number of other patients find one or more near perfect matches, which with the experience our transplant centers have acquired through the large number of transplant procedures, leads to almost the same rate of success for patients.

In the 6½ years since the national registry became operational, more than 2,500 patients have been given a second chance at life. Every month, 62 transplants are facilitated through the national registry, and not a month goes by where bone marrow doesn't cross international boundaries to save a life here or abroad.

The success of the National Marrow Donor Program is something every Member of Congress can be proud of and I appreciate the continuing support of each of my colleagues for my efforts to see that we pursue our goal to one day find a matched donor for every patient in need of a bone marrow transplant.

The National Marrow Donor Program is one of the many valuable programs funded in this bill. Time does not allow me or any member of our subcommittee to list every single program. There are two others, however, that I want to highlight and thank my colleagues for their continuing support.

The first is the National Youth Sports Program, for which the committee has included $14 million in fiscal year 1995. This program provides an opportunity for more than 60,000 low-income children, primarily from minority communities, to spend 6 weeks during the summer on a college campus. For most participants, this is the first time they have ever been on a college campus let alone have the opportunity to use the facilities and tap into the talent of their faculty and staffs. We have found that over the past 26 years of the program, this experience has encouraged many, many students to pursue a new found dream of a college education.

The name does not fully tell the story of all the benefits participants derive from the program. In addition to sports skills and training, students also receive physical examinations, hot lunches, math and science instruction, and tough antidrug and antigang messages.

These programs are underway as we speak today on 170 college campuses throughout our Nation and I would encourage my colleagues who are fortunate enough to have programs in their district to take some time during the Fourth of July district work period to go out and visit with the students and faculty and staff to see firsthand how excited they are about this tremendous way they spend their summer.

Finally, Mr. Chairman, I want to call attention to a small but very important program our subcommittee continues to support at my request. This is the Emergency Medical Services Program for Children which provides instruction and training for emergency room personnel into the special needs of children who require treatment in emergency rooms.

The Institute of Medicine reported last year on the unmet need for pediatric emergency medical services throughout our Nation and indicated strong support for the roll this program has played in developing these services and training programs.

Accidents and injuries continue to be the leading cause of death and disability for America's children. They result not only from unsafe environments in which accidents occur, but also from the lack of access in many communities to emergency medical services capable of meeting the unique needs of children. Since 1985, the Emergency Medical Services Program for Children has recognized this great unmet national need and has taken some very important steps to reach out on a State-by-State basis to make the public, hospital administrators, and emergency response personnel more aware of the special needs of children and to provide training and equipment to better treat them and save lives.

In closing, Mr. Chairman, I have only had time to talk about several of the many programs included in this legislation. It is a good bill, although there are areas which demand greater support. However, given our tight fiscal constraints, the Committee has made the difficult choices that are necessary to ensure that our limited resources are allocated to provide the greatest return to the American people.

Mr. COMBEST. Mr. Chairman, I would like to congratulate Chairman SMITH on adding report language to this appropriations bill, regarding Hazardous Occupation Order Number 12, as it relates to cardboard balers.

I have been interested in making commonsense reforms to this 40-year-old regulation to reflect the numerous technological advances that have occurred in the manufacturing of cardboard balers. My suggested changes would not affect safety in any way. It simply would allow workers under the age of 18 to deposit cardboard into a dormant baler, not to operate the machine.

I was first alerted to this situation earlier this year when I was contacted by grocery store owners from my district who told me that they had been cited and fined by the Labor Department for violations involving the placement of cardboard materials into a nonoperating baler by employees under 18 years of age.

My grocers told me that because of these fines, which can be as much as $10,000 for each violation, they are no longer hiring young people, or they have decided to cut back considerably on the number of teenagers that they employ in their stores.

With 1.3 million teenagers unemployed, it seems counterproductive to have a regulatory policy that discourages certain businesses—such as supermarkets—from hiring young people. Unbelievably, the Department of Labor has no data that shows young people are at risk or have been injured when tossing cardboard into a dormant baler. Just the other week, the administration urged the business community to hire some 300,000 teenagers for the summer, but here is an example of regulations that prompt businesses not to hire young people.

Mr. Chairman many of my colleagues share these same concerns and frustrations with this issue of Hazardous Occupation Order Number 12, and how it is being enforced by the Department of Labor. As a matter of fact, 71 Members of the House joined with me in sending a letter to Secretary of Labor Robert Reich, requesting information in this area. I am inserting our letter to the Labor Department to be made a part of the RECORD.

To conclude, I should mention that it has been 10 weeks since we sent this letter, and that we have not received a response yet.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 25, 1994.

Hon. ROBERT REICH,
Secretary of Labor, Washington, DC.

DEAR MR. SECRETARY: We are writing to you in an effort to seek common sense improvements in the Hazardous Occupation Order Number 12 (HO 12) as it relates to scrap paper balers.

As you know, HO 12 was adopted in 1954 under authority of the Fair Labor Standards Act. It prohibits 16 and 17 year olds from operating or assisting to operate balers, wire stitchers, guillotine paper cutters or staplers, as well as other pieces of equipment used in the paper industry. Major advances in baler safety technology have taken place in the last 40 years since HO 12 was adopted, and we are perplexed as to why the regulatory framework does not reflect these changes. We believe HO 12, as it applies to balers, is very outdated.

Specifically, we strongly oppose the current enforcement of HO 12 that prohibits a 16 and 17 year old from even placing materials into a baler. It seems unbelievable to fine small businesses thousands of dollars for this simple act, when modern balers cannot be operated during the loading process. At a

time when the nation has more than 1.3 million unemployed teenagers, it seems counterproductive to have regulatory policies that discourage their hiring or significantly hamper usage of their skills.

We request answers and supporting information to the following questions within 14 days.

How many minors have been injured or killed by throwing cardboard boxes into a baler, not operating it?

Where there have been injuries, how old was the baler, did it meet current safety standards? Exactly what injuries were sustained and how did they occur—that is what part of the baling process was the individual doing?

In what industries did these injuries occur?

What is the total assessed fines for the last three years for placing material in a baler? Information provided previously was for the entire standard not singly for balers.

We believe that improving this standard would be a positive step towards relieving the cumbersome maze of regulations that currently stifle the nation's small businesses.

Sincerely,

Larry Combest, John Boehner, Ron Klink, Joe Knollenberg, Peter DeFazio, Thomas Ewing, Henry Bonilla, Bill Baker, Robert Michel, James Talent, Sam Johnson, Bill Barrett, Peter Hoekstra, John Doolittle, Mike Kreidler, James Walsh.

Mac Collins, Michael Huffington, Harry Johnston, Dick Armey, Ron Machtley, Richard Baker, Tom DeLay, Donald Manzullo, Dan Miller, Jay Dickey, Ron Wyden, Glenn Poshard, Peter Torkildsen, Spencer Bachus, Don Sundquist, Jim Ramstad, Jim Kolbe, Tillie Fowler, David Mann, Craig Thomas, John Linder, G.V. (Sonny) Montgomery.

William Goodling, Ike Skelton, Ralph Hall, Thomas Bliley, Marge Roukema, Joe Skeen, Harris Fawell, W.J. (Billy) Tauzin, Earl Hutto, Bill Emerson, Lamar Smith, Tom Petri, Steve Gunderson, Cass Ballenger, Alan Mollohan, Norman Sisisky, Joseph McDade, Jan Meyers, James Bilbray, Jon Kyl, Joel Hefley, James Hansen.

Charles Stenholm, James Moran, Bill Zeliff, Jimmy Hayes, Hamilton Fish, Jr., Mike Parker, Charles Canady, Bob Stump, Rob Portman, Bill Brewster, Ed Pastor.

Mr. PORTER. Mr. Chairman, I yield back the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1995, and for other purposes, namely:

TITLE I—DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

Mr. HUGHES. Mr. Chairman, I move to strike the last word.

Mr. Chairman, first of all, let me congratulate the distinguished gentleman from Iowa, the chairman of the subcommittee, for doing an excellent job in his maiden voyage with this particular subcommittee. He and the ranking minority member, the gentleman from Illinois, I think under very difficult circumstances have done an excellent job. It just does not seem right not to have Bill Natcher, our late beloved chairman of this subcommittee, on the floor. Mr. Chairman, I speak for a lot of the Members in this body when I say that Bill Natcher could not have a more worthy successor than the gentleman from Iowa who has done such great work over the years in the Subcommittee on Commerce, Justice, State, and Judiciary, and who I know will labor hard in probably one of the most important subcommittees, the most difficult of the subcommittees, I would say, all the subcommittees are important, but this one spends by far the largest amount of money and has great responsibility.

My colleague, the gentleman from Iowa, is fortunate to have the continuity of the staff, the professional staff, of this subcommittee to work with him. I know that it was difficult for him to stay within the 602(b) allocation and he has brought this particular bill in $7.1 billion less than last year's fiscal appropriations bill and some $1.9 billion under the administration request. I congratulate the gentleman on his work.

□ 1620

I would like to engage the chairman of the subcommittee in a colloquy in a matter that does give me some concern, however. It seems to me that in the bill there is an $8 million cut in the Supportive Services and Centers Program and the Congregate Nutrition Program within the Older Americans Act, and I am also informed that because of this cut, over 1.5 million meals will not be served next year to the older Americans of this country and around 80,000 fewer seniors will receive less services than they presently receive in their homes and in the community.

I think you will agree that if such cuts were to take place that would be unfortunate, because it would hurt thousands and thousands of needy Americans around the country.

I hope that the gentleman from Iowa will take another look at that in conference and attempt to support the Supportive Services and Centers Program, but particularly the Congregate Meals Program closer to the 1994 level. Now, I know we could probably debate whether the cuts will translate into that many fewer meals being served to seniors around the country. That is something that is, I think, somewhat conjectural.

But the Office on the Aging suggests that we are talking about 1.6 million less meals being served to seniors, many of them who do not receive any other nutritious meal during the day than that particular meal.

I wonder if the gentleman will respond?

Mr. SMITH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I am happy to yield to the gentleman from Iowa.

Mr. SMITH of Iowa. I would hope they are not cut. I would point out that at these meal sites they do get voluntary contributions; that means that where they have been getting a dollar they will have to try to get a dollar and one cent in voluntary contributions. I think they can. I do not think the meals will be cut.

They may have to get a little higher contributions from some of the people who attend.

However, I do want to say that I like working with the gentleman and his committee. There are 14 of these senior citizens aging programs. We tried to allocate that money within that as best we could. There was only a two-thirds of 1 percent cut rather than the 3½ percent from current services that the whole bill had to take. So we did favor these programs, undoubtedly.

We also, within the 14 programs, tried to favor those that helped those people who were shut in, who cannot even go to a meals site. We tried to favor those kinds of programs, too.

On the other hand, within that, even though they are only cut two-thirds of 1 percent rather than 3½ percent from current services, if we can find more money in conference, we would be glad to increase it. Or if there is some shifting within the 14 programs that could be done and the gentleman's committee would recommend that, we would certainly very seriously consider that.

Mr. HUGHES. I thank the gentleman.

You know, one of the things that I am very interested in is older American issues. The Older Americans Act has been probably one of the greatest blessings, something we can be very proud of, and while the gentleman is correct, we can expect more voluntary contributions, the gentleman knows that that is somewhat problematic. Those voluntary contributions do not always take place.

As a result, we could end up with the kind of numbers that the Office on Aging suggests, a million and a half less nutritious meals for senior citizens.

Mr. SMITH of Iowa. To put it in perspective though, that is out of 245 million meals. They do serve a lot of meals. They serve a great purpose all over this country.

Mr. HUGHES. But, you know, to a hungry senior citizen who does not get a nutritious meal, that statistic does not mean anything. And, frankly, I would like to work with the gentleman before he goes to conference and hopefully during conference and try to look at areas even within the Older Americans Act, if we could find some funding to shift to make sure that nutrition

programs, that Congregate Meals Program, is protected.

And I thank the gentleman.

Mr. SMITH of Iowa. I will be glad to do so.

The CHAIRMAN. The clerk will read.

The Clerk read as follows:

PROGRAM ADMINISTRATION

For expenses of administering employment and training programs and for carrying out section 908 of the Social Security Act, $90,276,000, together with not to exceed $45,073,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund.

Mr. SMITH of Iowa. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mrs. MINK of Hawaii) having assumed the chair, Mr. SHARP, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4606) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1995, and for other purposes, had come to no resolution thereon.

APPOINTMENT OF CONFEREES ON H.R. 4454, LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1995

Mr. FAZIO. Madam Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4454) making appropriations for the legislative branch for the fiscal year ending September 30, 1995, and for other purposes with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

MOTION TO INSTRUCT CONFEREES OFFERED BY MR. YOUNG OF FLORIDA

Mr. YOUNG of Florida. Madam Speaker, I offer a motion.

The Clerk read as follows:

Mr. YOUNG of Florida moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 4454 be instructed to insist on the House position on the amendment of the Senate numbered 24.

The SPEAKER pro tempore. The gentleman from Florida [Mr. YOUNG] is recognized for 30 minutes.

Mr. YOUNG of Florida. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this is a bipartisan motion I offer today agreed to by the chairman of the subcommittee.

Last year, the House approved the GPO Electronic Information Access Enhancement Act, which creates a system to increase computer access to public information of the Federal Government.

The House report on this bill stated that the legislation did not authorize any increase in appropriations for these activities, and that the program was to be implemented within the current GPO budget.

During consideration of this appropriations bill in May, the House approved bill language requiring the GPO to implement the Access Act with savings from other GPO programs.

The amendment approved by the House stated, the Access Act "shall be carried out through cost savings."

This motion instructs the House conferees to support the House language thereby ensuring that the GPO comply with the intent of Congress to implement this new program with cost savings, and not more American tax dollars.

Mr. FAZIO. Madam Speaker, will the gentleman yield?

Mr. YOUNG of Florida. I am happy to yield to the gentleman from California.

Mr. FAZIO. Madam Speaker, I thank the gentleman for yielding.

Madam Speaker, we support the motion and urge its adoption.

Mr. YOUNG of Florida. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Florida [Mr. YOUNG].

The motion to instruct was agreed to.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: Messrs. FAZIO, MORAN, OBEY, MURTHA, CARR of Michigan, CHAPMAN, SABO, YOUNG of Florida, PACKARD, TAYLOR of North Carolina, and MCDADE.

There was no objection.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1995

Mr. SMITH of Iowa. Madam Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4606) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1995, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa [Mr. SMITH].

The motion was agreed to.

□ 1628

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4606, with Mr. SHARP in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose earlier today, the bill had been read through page 2, line 11.

The Clerk will read.

The Clerk read as follows:

TRAINING AND EMPLOYMENT SERVICES

For expenses necessary to carry into effect the Job Training Partnership Act, as amended, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by the Job Training Partnership Act; title II of the Civil Rights Act of 1991; title XV, part A of Public Law 102–325; title VII, subtitle C of the Stewart B. McKinney Homeless Assistance Act; the Women in Apprenticeship and Nontraditional Occupations Act; Goals 2000: Educate America Act; and the School-to-Work Opportunities Act; $5,524,991,000 plus reimbursements, of which $5,035,179,000 is available for obligation for the period July 1, 1995 through June 30, 1996; of which $150,000,000 is available for the period July 1, 1995 through June 30, 1998 for necessary expenses of construction, rehabilitation, and acquisition of Job Corps centers, including $51,254,000 for new centers; of which $184,788,000 shall be available for the period October 1, 1994 through June 30, 1995; and of which $140,000,000 shall be available for obligation from July 1, 1995 through September 30, 1996, for carrying out activities of the School-to-Work Opportunities Act: *Provided*, That $63,666,000 shall be for carrying out section 401 of the Job Training Partnership Act, $84,841,000 shall be for carrying out section 402 of such Act, $8,880,000 shall be for carrying out section 441 of such Act, $1,500,000 shall be for the National Commission for Employment Policy, $5,579,000 shall be for all activities conducted by and through the National Occupational Information Coordinating Committee under such Act, $3,861,000 shall be for service delivery areas under section 101(a)(4)(A)(iii) of such Act in addition to amounts otherwise provided under sections 202, 252 and 262 of the Act, $1,044,813,000 shall be for carrying out title II, part A of such Act, and $598,682,000 shall be for carrying out title II, part C of such Act: *Provided further*, That no funds from any other appropriation shall be used to provide meal services at or for Job Corps centers.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

To carry out the activities for national grants or contracts with public agencies and public or private nonprofit organizations under paragraph (1)(A) of section 506(a) of title V of the Older Americans Act of 1965, as amended, $320,190,000.

To carry out the activities for grants to States under paragraph (3) of section 506(a) of title V of the Older Americans Act of 1965, as amended, $90,310,000.

FEDERAL UNEMPLOYMENT BENEFITS AND ALLOWANCES

For payments during the current fiscal year of benefits and payments as authorized by title II of Public Law 95–250, as amended,

and of trade adjustment benefit payments and allowances under part I, and for training, for allowances for job search and relocation, and for related State administrative expenses under part II, subchapters B and D, chapter 2, title II of the Trade Act of 1974, as amended, $274,400,000 together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15 of the current year.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

For activities authorized by the Act of June 6, 1933, as amended (29 U.S.C. 49–49l–1; 39 U.S.C. 3202(a)(1)(E)); title III of the Social Security Act, as amended (42 U.S.C. 502–504); necessary administrative expenses for carrying out 5 U.S.C. 8501–8523, and sections 225, 231–235, 243–244, and 250(d)(1), 250(d)(3), title II of the Trade Act of 1974, as amended; as authorized by section 7c of the Act of June 6, 1933, as amended, necessary administrative expenses under sections 101(a)(15)(H), 212(a)(5)(A), (m) (2) and (3), (n)(1), and 218(g) (1), (2), and (3), and 258(c) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.); necessary administrative expenses to carry out the Targeted Jobs Tax Credit Program under section 51 of the Internal Revenue Code of 1986, and section 221(a) of the Immigration Act of 1990, $146,697,000, together with not to exceed $3,269,013,000 (including not to exceed $1,653,000 which may be used for amortization payments to States which had independent retirement plans in their State employment service agencies prior to 1980, and including not to exceed $1,000,000 which may be obligated in contracts with non-State entities for activities such as occupational and test research activities which benefit the Federal-State Employment Service System), which may be expended from the Employment Security Administration account in the Unemployment Trust Fund, and of which the sums available in the allocation for activities authorized by title III of the Social Security Act, as amended (42 U.S.C. 502–504), and the sums available in the allocation for necessary administrative expenses for carrying out 5 U.S.C. 8501–8523, shall be available for obligation by the States through December 31, 1995, except that funds used for automation acquisitions shall be available for obligation by States through September 30, 1997; and of which $144,763,000 together with not to exceed $817,224,000 of the amount which may be expended from said trust fund shall be available for obligation for the period July 1, 1995, through June 30, 1996, to fund activities under the Act of June 6, 1933, as amended, including the cost of penalty mail made available to States in lieu of allotments for such purpose, and of which $232,437,000 shall be available only to the extent necessary for additional State allocations to administer unemployment compensation laws to finance increases in the number of unemployment insurance claims filed and claims paid or changes in a State law: *Provided*, That to the extent that the Average Weekly Insured Unemployment (AWIU) for fiscal year 1995 is projected by the Department of Labor to exceed 2.772 million, an additional $27,800,000 shall be available for obligation for every 100,000 increase in the AWIU level (including a pro rata amount for any increment less than 100,000) from the Employment Security Administration Account of the Unemployment Trust Fund: *Provided further*, That funds appropriated in this Act and in Public Law 103–112 which are used to establish a national one-stop career center network may be obligated in contracts, grants or agreements with non-State entities.

ADVANCES TO THE UNEMPLOYMENT TRUST FUND AND OTHER FUNDS

For repayable advances to the Unemployment Trust Fund as authorized by sections 905(d) and 1203 of the Social Security Act, as amended, and to the Black Lung Disability Trust Fund as authorized by section 9501(c)(1) of the Internal Revenue Code of 1954, as amended; and for nonrepayable advances to the Unemployment Trust Fund as authorized by section 8509 of title 5, United States Code, and section 104(d) of Public Law 102–164, and section 5 of Public Law 103–6, and to the "Federal unemployment benefits and allowances" account, to remain available until September 30, 1996, $686,000,000.

In addition, for making repayable advances to the Black Lung Disability Trust Fund in the current fiscal year after September 15, 1995, for costs incurred by the Black Lung Disability Trust Fund in the current fiscal year, such sums as may be necessary.

OFFICE OF THE AMERICAN WORKPLACE

SALARIES AND EXPENSES

For necessary expenses for the Office of the American Workplace, $30,411,000.

PENSION AND WELFARE BENEFITS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for Pension and Welfare Benefits Administration, $66,388,000.

PENSION BENEFIT GUARANTY CORPORATION

PENSION BENEFIT GUARANTY CORPORATION FUND

The Pension Benefit Guaranty Corporation is authorized to make such expenditures, including financial assistance authorized by section 104 of Public Law 96–364, within limits of funds and borrowing authority available to such Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended (31 U.S.C. 9104), as may be necessary in carrying out the program through September 30, 1995, for such Corporation: *Provided*, That not to exceed $11,493,000 shall be available for administrative expenses of the Corporation: *Provided further*, That expenses of such Corporation in connection with the termination of pension plans, for the acquisition, protection or management, and investment of trust assets, and for benefits administration services shall be considered as nonadministrative expenses for the purposes hereof, and excluded from the above limitation.

EMPLOYMENT STANDARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Employment Standards Administration, including reimbursement to State, Federal, and local agencies and their employees for inspection services rendered, $242,860,000, together with $1,059,000 which may be expended from the Special Fund in accordance with sections 39(c) and 44(j) of the Longshore and Harbor Workers' Compensation Act: *Provided*, That the Secretary of Labor is authorized to accept, retain, and spend, until expended, in the name of the Department of Labor, all sums of money ordered to be paid to the Secretary of Labor, in accordance with the terms of the Consent Judgment in Civil Action No. 91–0027 of the United States District Court for the District of the Northern Mariana Islands (May 21, 1992): *Provided further*, That the Secretary of Labor is authorized to establish and, in accordance with 31 U.S.C. 3302, collect and deposit in the Treasury fees for processing applications and issuing certificates under sections 11(d) and 14 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 211(d) and 214) and for processing applications and issuing registrations under Title I of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 et seq.

SPECIAL BENEFITS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation, benefits, and expenses (except administrative expenses) accruing during the current or any prior fiscal year authorized by title 5, chapter 81 of the United States Code; continuation of benefits as provided for under the head "Civilian War Benefits" in the Federal Security Agency Appropriation Act, 1947; the Employees' Compensation Commission Appropriation Act, 1944; and sections 4(c) and 5(f) of the War Claims Act of 1948 (50 U.S.C. App. 2012); and 50 per centum of the additional compensation and benefits required by section 10(h) of the Longshore and Harbor Workers' Compensation Act, as amended, $258,000,000 together with such amounts as may be necessary to be charged to the subsequent year appropriation for the payment of compensation and other benefits for any period subsequent to August 15 of the current year: *Provided*, That such sums as are necessary may be used for a demonstration project under section 8104 of title 5, United States Code, in which the Secretary may reimburse an employer, who is not the employer at the time of injury, for portions of the salary of a reemployed, disabled beneficiary: *Provided further*, That balances of reimbursements unobligated on September 30, 1994, shall remain available until expended for the payment of compensation, benefits, and expenses: *Provided further*, That in addition there shall be transferred to this appropriation from the Postal Service and from any other corporation or instrumentality required under section 8147(c) of title 5, United States Code, to pay an amount for its fair share of the cost of administration, such sums as the Secretary of Labor determines to be the cost of administration for employees of such fair share entities through September 30, 1995: *Provided further*, That of those funds transferred to this account from the fair share entities to pay the cost of administration, $5,299,000 shall be made available to the Secretary of Labor for expenditures relating to capital improvements in support of Federal Employees' Compensation Act administration, and the balance of such funds shall be paid into the Treasury as miscellaneous receipts: *Provided further*, That the Secretary may require that any person filing a notice of injury or a claim for benefits under Subchapter 5, U.S.C., Chapter 81, or under Subchapter 33, U.S.C. 901, et seq. (the Longshore and Harbor Workers' Compensation Act, as amended), provide as part of such notice and claim, such identifying information (including Social Security account number) as such regulations may prescribe.

BLACK LUNG DISABILITY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

For payments from the Black Lung Disability Trust Fund, $994,864,000, of which $943,005,000 shall be available until September 30, 1996, for payment of all benefits as authorized by section 9501(d) (1), (2), (4), and (7), of the Internal Revenue Code of 1954, as amended, and interest on advances as authorized by section 9501(c)(2) of that Act, and

of which $28,216,000 shall be available for transfer to Employment Standards Administration, Salaries and Expenses, and $23,333,000 for transfer to Departmental Management, Salaries and Expenses, and $310,000 for transfer to Departmental Management, Office of Inspector General, for expenses of operation and administration of the Black Lung Benefits program as authorized by section 9501(d)(5)(A) of that Act: *Provided*, That in addition, such amounts as may be necessary may be charged to the subsequent year appropriation for the payment of compensation, interest, or other benefits for any period subsequent to June 15 of the current year: *Provided further*, That in addition such amounts shall be paid from this fund into miscellaneous receipts as the Secretary of the Treasury determines to be the administrative expenses of the Department of the Treasury for administering the fund during the current fiscal year, as authorized by section 9501(d)(5)(B) of that Act.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Occupational Safety and Health Administration, $312,500,000, including not to exceed $70,615,000 which shall be the maximum amount available for grants to States under section 23(g) of the Occupational Safety and Health Act, which grants shall be no less than fifty percent of the costs of State occupational safety and health programs required to be incurred under plans approved by the Secretary under section 18 of the Occupational Safety and Health Act of 1970; and, in addition, notwithstanding 31 U.S.C. 3302, the Occupational Safety and Health Administration may retain up to $500,000 per fiscal year of training institute course tuition fees, otherwise authorized by law to be collected, and may utilize such sums for occupational safety and health training and education grants: *Provided*, That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs ten or fewer employees: *Provided further*, That no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 with respect to any employer of ten or fewer employees who is included within a category having an occupational injury lost workday case rate, at the most precise Standard Industrial Classification Code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of that Act (29 U.S.C. 673), except—

(1) to provide, as authorized by such Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies;

(2) to conduct an inspection or investigation in response to an employee complaint, to issue a citation for violations found during such inspection, and to assess a penalty for violations which are not corrected within a reasonable abatement period and for any willful violations found;

(3) to take any action authorized by such Act with respect to imminent dangers;

(4) to take any action authorized by such Act with respect to health hazards;

(5) to take any action authorized by such Act with respect to a report of an employment accident which is fatal to one or more employees or which results in hospitalization of two or more employees, and to take any action pursuant to such investigation authorized by such Act; and

(6) to take any action authorized by such Act with respect to complaints of discrimination against employees for exercising rights under such Act:

Provided further, That the foregoing proviso shall not apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs ten or fewer employees.

MINE SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Mine Safety and Health Administration, $197,519,000, of which $5,851,000 shall be for the State Grants Program, including purchase and bestowal of certificates and trophies in connection with mine rescue and first-aid work, and the hire of passenger motor vehicles; the Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private; the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations; and any funds available to the Department may be used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of a major disaster: *Provided*, That none of the funds appropriated under this paragraph shall be obligated or expended to carry out section 115 of the Federal Mine Safety and Health Act of 1977 or to carry out that portion of section 104(g)(1) of such Act relating to the enforcement of any training requirements, with respect to shell dredging, or with respect to any sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mine.

BUREAU OF LABOR STATISTICS

SALARIES AND EXPENSES

For necessary expenses for the Bureau of Labor Statistics, including advances or reimbursements to State, Federal, and local agencies and their employees for services rendered, $296,761,000, of which $5,134,000 shall be for expenses of revising the Consumer Price Index and shall remain available until September 30, 1996, together with not to exceed $54,102,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For necessary expenses for Departmental Management, including the hire of five sedans, and including up to $4,392,000 for the President's Committee on Employment of People With Disabilities, $156,002,000, which includes $6,500,000 which shall remain available until expended for use by appropriate Departmental agencies for ADP equipment acquisition, systems development and associated support related to Departmental enforcement programs; together with not to exceed $328,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund.

ASSISTANT SECRETARY FOR VETERANS EMPLOYMENT AND TRAINING

Not to exceed $185,281,000 may be derived from the Employment Security Administration account in the Unemployment Trust Fund to carry out the provisions of 38 U.S.C. 2001–10 and 2021–26.

OFFICE OF INSPECTOR GENERAL

For salaries and expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $47,676,000, together with not to exceed $3,860,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund.

GENERAL PROVISIONS

SEC. 101. None of the funds in the Employees' Compensation Fund under 5 U.S.C. 8147 shall hereafter be expended for payment of compensation, benefits, and expenses to any individual convicted of a violation of 18 U.S.C. 1920, or of any felony fraud related to the application for or receipt of benefits under subchapters I or III of chapter 81 of title 5, United States Code.

SEC. 102. None of the funds appropriated under this Act shall be expended by the Secretary of Labor to implement or administer either the final or proposed regulations referred to in section 303 of Public Law 102–27.

(TRANSFER OF FUNDS)

SEC. 103. Not to exceed 1 percent of any appropriation made available for the current fiscal year for the Department of Labor in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 104 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 104. (a) None of the funds provided under this Act to the Department of Labor shall be available for obligation or expenditure through a reprogramming of funds which: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes offices, programs, or activities; or (6) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Appropriations Committees of both Houses of Congress are notified fifteen days in advance of such reprogramming of funds.

(b) None of the funds provided under this Act to the Department of Labor shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of $500,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress, unless the Appropriations Committees of both Houses of Congress are notified fifteen days in advance of such reprogramming of funds.

This title may be cited as the "Department of Labor Appropriations Act, 1995".

□ 1630

Mr. SMITH of Iowa (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of title I of the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The CHAIRMAN. Are there points of order on title I?

If not, are there amendments to title I?

AMENDMENTS OFFERED BY MR. PORTER

Mr. PORTER. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. PORTER: On page 17, line 9, strike "$156,002,000" and insert in lieu thereof "$145,422,000";

On page 29, line 20, strike "$2,166,148,000" and insert in lieu thereof "$2,106,148,000";

On page 40, line 3, strike "$4,408,775,000" and insert in lieu thereof "$4,402,690,000";

On page 52, line 26, strike "$359,358,000" and insert in lieu thereof "$348,134,000";

On page 24, line 15, strike "$1,919,419,000" and insert in lieu thereof "$1,938,159,000";

On page 24, line 20, strike "$1,259,590,000" and insert in lieu thereof "$1,271,922,000";

On page 24, line 24, strike "$162,832,000" and insert in lieu thereof "$164,513,000";

On page 25, line 5, strike "$726,784,000" and insert in lieu thereof "$733,942,000";

On page 25, line 10, strike "$626,801,000" and insert in lieu thereof "$632,988,000";

On page 25, line 15, strike "$536,416,000" and insert in lieu thereof "$541,725,000";

On page 25, line 19, strike "$877,113,000" and insert in lieu thereof "$885,731,000";

On page 25, line 24, strike "$513,409,000" and insert in lieu thereof "$518,495,000";

On page 26, line 4, strike "$290,335,000" and insert in lieu thereof "$293,255,000";

On page 26, line 9, strike "$266,400,000" and insert in lieu thereof "$269,087,000";

On page 26, line 13, strike "$431,198,000" and insert in lieu thereof "$435,486,000";

On page 26, line 18, strike "$227,021,000" and insert in lieu thereof "$229,326,000";

On page 26, line 23, strike "$166,155,000" and insert in lieu thereof "$167,867,000";

On page 27, line 4, strike "$47,971,000" and insert in lieu thereof "$48,540,000";

On page 27, line 9, strike "$181,445,000" and insert in lieu thereof "$183,307,000";

On page 27, line 13, strike "$290,280,000" and insert in lieu thereof "$293,200,000";

On page 27, line 17, strike "$542,050,000" and insert in lieu thereof "$547,414,000";

On page 29, line 4, strike "$1,337,606,000" and insert in lieu thereof "$1,350,696,000";

On page 29, line 12, strike "$114,370,000" and insert in lieu thereof "$115,581,000";

And amend the report accordingly.

Mr. PORTER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. PORTER. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc and that the debate be limited to 30 minutes, to be divided equally between the gentleman from Iowa [Mr. SMITH] and myself.

The CHAIRMAN. Does the request relate to this amendment and all amendments thereto?

Mr. PORTER. Yes, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. The gentleman from Illinois [Mr. PORTER] will be recognized for 15 minutes and the gentleman from Iowa [Mr. SMITH] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Chairman, at the beginning I would like to commend a young lady who is a Presidential Management Intern from NIH working on my staff, Susan Hill, who has been with us for 5 months now and has been doing a tremendous job in my office helping with this bill and other legislation.

Mr. Chairman, she reflects the caliber of the people at NIH, and we very much appreciate having her as a member of our staff during this time.

Mr. Chairman, this amendment would add $105 million to the National Institutes of Health and offset funding in administrative and unauthorized accounts.

Mr. Chairman, I said in my opening remarks on this bill that NIH is a treasure, and it is.

It represents half of all biomedical research conducted in our country, the so-called basic research that undergirds every medical improvement.

This is not research that would otherwise be done by industry. It is a service that can only be supported at the Federal level.

While companies are engaged in applied research and development to bring new drugs and devices into the health care system, NIH provides the basic research that makes these advances possible.

Mr. Chairman, the United States is the world leader in biomedical research and development in large measure due to the foresight of Congress in showing support for a strong NIH.

Let me reiterate that the United States is the world leader in biomedical research and development.

We not only have the most advanced diagnostic devices and procedures, we have the best prevention, early diagnosis and treatment of diseases.

The NIH is vital to all of this. Its contributions have helped extend life expectancy dramatically over the last 40 years.

Beside the obvious health benefits, the NIH supports high-quality, high-skilled jobs. Virtually every researcher in this country, public or private, has been trained or supported in part by NIH.

The NIH supports a positive balance of trade in medical research and advances.

It spawned the biotechnology industry, one of the fastest growing industries in the country and one that also produces a positive balance of trade.

The FDA is poised to approve a new biotech product that can detect cervical cancer through blood tests. Until today there has been no good diagnostic test for this cancer, causing thousands of deaths every year.

With a new, cheap diagnostic test, thousands of lives will be saved as the disease is diagnosed early in its treatable stage.

It is inconceivable that this test could have been developed without the basic research on structural biology that came out of NIH.

Mr. Chairman, I want to list just a few examples of how NIH saves lives and money.

In 1970 lithium treatment for manic depression was developed by NIH and approved for widespread use. In the 24 years since then the use of this drug has saved over $145 billion in prevented hospitalizations that were previously required for manic depression.

The NIH supported the development of many vaccines including the polio vaccine, which has saved more in prevention than Congress has invested in NIH in its entire history. One discovery has saved the entire cost of NIH throughout its history.

Finally, the economic costs of hypertension are estimated at $18.2 billion per year. The Heart, Lung and Blood Institute helped develop blood pressure drugs and public education campaigns which ensure that over 70 percent of Americans with high blood pressure are controlling it today through the use of regular medication.

As these examples demonstrate, Mr. Chairman, biomedical research is key to health care reform and saving money in the long term.

Research ought to be at the top of the health care agenda.

Recent advances in genetic science have created greater opportunity to prevent, cure, and treat disease than ever before.

Yet, despite the past commitment of this subcommittee to NIH, we are not taking advantage of these opportunities.

Less than one in four meritorious NIH grants is funded, and it has become very difficult to recruit and train new researchers.

We are in real danger of losing an entire generation of biomedical researchers.

At a time when we lead the world and opportunities are manifest, we should redouble our commitment to this enterprise.

Unfortunately, the subcommittee mark provides only a 3-percent increase for the Institutes, less than biomedical inflation.

My amendment, while it would still fall short of the President's requested increase, would get each Institute nearly to the inflation level.

While this is far less than we need to do to maintain our leadership position in the world, it would at least ensure that NIH is not losing ground to inflation.

The NIH is an area in which we should be going forward, not backward.

Mr. Chairman, my amendment offsets the funding in four places.

First, it would offset $60 million dollars in the Substance Abuse Block Grant.

This increase resulted from the President's request for over $300 million for a Hard Core Drug Treatment initiative.

Neither the hard core initiative nor the underlying block grant are authorized for 1995.

The amendment offsets program administration in the Departments of Labor and Education and the Administration on Children and Families.

The offsets for Labor and Education do not include any built-in increases such as rent or pay increases identified in the budget.

In addition the offsets exclude certain program increases such as employee training and printing for the Student Guide.

The offset for Administration on Children and Families would level fund program direction at the 1994 amount.

Mr. Chairman, these are difficult choices. I understand that the Departments are trying to do more with less, and I understand the need for additional drug treatment funding.

But as I said in my opening remarks, I believe our job on the Committee on Appropriations is to provide funding for our highest priorities, and that means offsetting funding in areas of relatively lower priority.

Nor should the proposal to offset administrative funding in any way reflect on the quality of employees at the Departments, who I feel are very high-caliber people.

Mr. Chairman, I understand that many Members will rise to oppose this amendment on the grounds that it is insensitive to the needs of the programs which would be offset.

I want everyone to understand that I am bringing this amendment to the floor because I believe we are facing a true crisis at NIH.

If we do not act over the next 5 years to create real and stable growth in our biomedical research enterprise, we will: Lose world leadership in this critical industry; lose high paying, high skill jobs; compromise our balance of trade; lose a generation of scientific talent that will take 10 or 20 or 30 years to rebuild, and lose the greatest opportunities in medical science ever available to mankind: opportunities to improve our health and the quality of life, and the opportunities to control health care costs.

Mr. Chairman, I offer this amendment to raise alarms for everyone in this House and to ask for the support of all Members in the years ahead and beyond to ensure that NIH continues to grow and continues to provide the kinds of opportunities for all Americans.

Mr. Chairman, I yield 5 minutes to the fighter for NIH, the gentleman from Michigan [Mr. UPTON].

□ 1640

Mr. UPTON. Mr. Chairman, I thank the gentleman from Illinois [Mr. PORTER], my dear colleague, for yielding this time to me.

Mr. Chairman, I would be very remiss today if I did not join in this debate providing for more research for the National Institutes of Health, the NIH. One of the very highest priorities that I have in the Congress, in fact, is health research, and this appropriation bill provides for health research, and this amendment is a very important step in the right direction.

Why?

Well, Mr. Chairman, unfortunately money for the NIH does not really keep up with inflation, particularly medical inflation, and I think that that is a shame.

This amendment is, in fact, budget neutral. It does not impact the deficit, and yet it will add $100 million for NIH.

Now why is this important?

Well, a couple of weeks ago I had the opportunity to visit the University of Michigan cancer center in Ann Arbor, and I visited with a physician there by the name of Dr. Michael Clark, and I had the chance to again talk to Mike this afternoon on the phone, and I can tell my colleagues that they are on the brink of some very exciting, very exciting, changes in the way that our life may be led with regard to cancer research in the future.

The day that I was there, Mr. Chairman, they had a marvelous night where, in fact, a virus that they had developed was identified as killing cancer cells. causing cell death in breast cancer cells. This week, probably, they will be in trials with mice, and within a year the virus that they developed, which I saw on the slides killing breast cancer cells, will be in humans before the year is out.

They are looking at the most common childhood cancers, Mr. Chairman. They know that it will likely be very effective in controlling and eliminating colon cancer, as well as gastric cancers. The ultimate goal, of course, will be to cause the cells to kill themselves, not even requiring surgery in the future.

Now why is this amendment important?

Well, as the gentleman from Illinois [Mr. PORTER], my friend, indicated, one out of four research applicants to the NIH are not funded because of lack of money, and, as I sat with Dr. Clark, and looked through his slides and saw those cells that had virtually exploded, he told me an alarming fact. Seventy-five percent of the time that he spends in the lab is for filling out forms seeking funds from the NIH. In other words, Mr. Chairman, only 25 percent of the time that he is able to spend is doing the actual research, and I think that is a shame. His research, which could prove to be the promise and the hope for all Americans, has so far only cost less than a million dollars, and yet all of his time, almost, is composed of filling out those forms.

Mr. Chairman, this research is very important, and this amendment is very important, because it will bring the NIH to the level of funding that it ought to be to look for real good medical research.

There is another thing that we can do, too. Because of the cuts in the NIH not keeping up with inflation, the number of us in both the House and the Senate, Republicans and Democrats alike, have introduced a bill that will improve and protect the health of all Americans through an increase in the funding available for health research that holds the promise for the prevention, cure and treatment of disease and disability. This bill, H.R. 4260, introduced by the gentleman from Pennsylvania [Mr. COYNE], my good friend, myself, and the gentleman from New Mexico [Mr. RICHARDSON], has a parallel bill in the Senate. It is called Harkin-Hatfield. Already here in the House we have 54 cosponsors of this bill, and it is important because it provides a private means of supporting the NIH in addition to the amounts that are funded through this appropriation bill. Virtually every medical group, whether it be cancer, or diabetes, leukemia, Parkinson's AIDS, Lou Gehrig's ALS, heart association, virtually every disease group in this country supports our bill to provide more money for NIH.

The NIH provides for the hope and promise of all Americans, and I would urge the adoption of this amendment and further work on H.R. 4260.

I do appreciate the work of the chairman of this committee for giving the increase that we did have. I wish that it could be more. I know the gentleman wishes that it really could be more, too. And I think the thoughtful way this amendment was structured, so that it is budget neutral, certainly helps us fiscal conservatives in a priority we all want.

Mr. SMITH of Iowa. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Illinois [Mr. PORTER], but very reluctantly. This bill is put together very delicately that I do not think we should add other money to the NIH accounts at this time.

I would like to point out that on an average in this bill programs are held to 96.5 percent of current services, but in the National Institutes of Health we did allocate a minimum of 3 percent increase to each one over the dollars that they got last time. The average is $384 million.

Now in addition to that, Mr. Chairman, some of the institutes were increased more. For example, the Genome Center got a 20-percent increase, and I think everybody agrees it is one of the very important programs right now. There are great opportunities that probably cut clear across the line in helping in all these diseases.

I also want to point out, as my colleagues know, drug abuse is very important, too, and this would cut drug abuse funding by $60 million. It would cut some other things, and we are reluctant. We just did not have enough money to do all the things we wanted to do.

In addition to that, Mr. Chairman, for the first time, I think the head of the National Institutes of Health was requested to do a little study on how many of the upper half of the applicants were not funded and to try to find out what happened to them. Well, this study showed that of the upper half, only 10 percent were not funded within a couple of years. That is much lower than it has been. We do not know yet how many of those actually continued in research under some other team or went into research under a private company, a pharmaceutical company maybe, or some foundation. There is a high suspicion that the upper half were being funded, if not through NIH, then through some other funding mechanisms, and we need to know that. They have not been asked to research that before, and we are going to find that out, and I think the new head of the institute, Dr. Varmas, wants to find that out.

In addition to that, Mr. Chairman, the reimbursements to university has been from 40 to 83 percent, an enormous reimbursement to university that does not go to the researchers. I know they furnish the facilities, but the difference between 40 percent and 83 percent means that in some universities a much larger share of Federal funding is going to researchers than at other universities. NIH and the administration are working to renegotiate those reimbursement rates. If they can get that down within the year to a range of 37 to 70 percent, that will also free up more money for more of these grants, and that is something that we expect them to work on. I personally think anybody that is over the median ought to be looked at very carefully—see for sure whether or not they are justified because any additional money that is not justified comes out of research. We need to be putting all we can into research.

So all I have to say to the gentlemen who support this amendment, is that I do not disagree with the need. We all support NIH. But we do have a very delicate balance in this bill, and I would hope at this time that in view of that and in view of all of us as wanting to do all that we can, and we will, and if we can find more money, we would like to put more money into NIH, and I would hope that perhaps at this point we could withdraw the amendment.

□ 1650

Mr. PORTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is obviously not a Republican or Democratic matter. The NIH is supported broadly and in a bipartisan way by, I think, every single Member of this Congress. NIH was one of the President's initiatives this year. I commend the President for that.

Unfortunately, in last year's budget, the President had originally suggested only a 1 percent increase for NIH. We ended up with a 6 percent increase overall. This year the President suggested 4.7 percent, but, unfortunately, we were forced to work with far lower 602(b) allocations, and, believe me, on a bipartisan basis, within those allocations we did the best we can to fund NIH.

Obviously there is no program, no institution, no agency, no department, that can escape the fact that we have a very tightly constrained budget. NIH is not escaping it either, with an increase that is below inflation.

I know the chairman's commitment to NIH. It is a very, very strong commitment. He feels he has done the very best he can by it. I respect that. I raise the issue to point the way to the future. I believe that unless we can get a larger allocation or raise NIH to a higher priority, we are going to develop very severe problems in keeping the lead in biomedical research through NIH.

I hope, Mr. Chairman, that the Senate can bring in a higher number for NIH and that in conference we can recede to that higher number and do a bit better.

I very much appreciate my colleague from Michigan [Mr. UPTON], coming to the floor and expressing his strong feelings about this subject in support of this amendment.

Mr. Chairman, in light of the fact that the chairman and I both are strong supporters of NIH, feel we are doing the best we can, and are concerned about the future of funding for biomedical research, I would ask unanimous consent that I be allowed to withdraw the amendments, at this time.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. Are there other amendments to title I?

AMENDMENTS EN BLOC OFFERED BY MR. PORTER

Mr. PORTER. Mr. Chairman, I offer amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. PORTER:

On page 8, line 4, strike "$30,411,000" and insert in lieu thereof "$29,784,000";

On page 8, line 8, strike "$66,388,000" and insert in lieu thereof "$63,959,000";

On page 9, line 9, strike "$242,860,000" and insert in lieu thereof "$237,791,00";

On page 13, line 6, strike "$312,500,000" and insert in lieu thereof "$296,428,000";

On page 15, line 19, strike "$197,519,000" and insert in lieu thereof "$194,607,000";

On page 16, line 23, strike "$296,761,000" and insert in lieu thereof "$291,101,000";

On page 17, line 1, strike "$54,102,000" and insert in lieu thereof "$51,927,000";

On page 17, line 9, strike "$156,002,000" and insert in lieu thereof "$143,459,000";

On page 20, line 17, strike "$3,008,225,000" and insert in lieu thereof "$3,121,225,000";

On page 40, line 3, strike "$4,408,775,000" and insert in lieu thereof "$4,402,690,000";

On page 52, line 26, strike "$359,358,000" and insert in lieu thereof "$346,008,000"; and

On page 53, line 4, strike "$58,325,000" and insert in lieu thereof "$56,570,000".

Mr. PORTER (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. PORTER. Mr. Chairman, I ask unanimous consent that time for debate on these amendments and all amendments thereto be limited to 60 minutes, to be divided equally between the gentleman from Iowa [Mr. SMITH] and myself.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. The gentleman from Illinois [Mr. PORTER] will be recognized for 30 minutes, and the gentleman from Iowa [Mr. SMITH] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Chairman, this amendment would provide a total increase of $100 million for community health centers, and it would be offset by reductions in administrative and enforcement accounts.

Mr. Chairman, the amendment is my attempt to begin to enact real health care reform right now. We have waited 2 years for action on this national imperative. Still, congressional committees are struggling with reform strategies. Only two of five congressional committees have cleared health reform bills as of today.

But, Mr. Chairman, through my amendment, we can make progress on this issue now. All of the major health care reform bills seek to broaden access to health care for the uninsured. The minority leader's bill contains a substantial expansion of community health centers as one mechanism to increase access to care. These centers

provide health care in underserved areas for those people unable to afford it. These are people primarily in heavily urban or rural areas that traditionally lack a strong health care infrastructure or sometimes any health care infrastructure at all.

Mr. Chairman, the funding provided by my amendment would support an additional 125 community health centers and serve an additional 848,000 Americans. In other words, it would provide access to health care for the first time to nearly 1 million additional people.

This amendment will not solve the health care problem by itself, but it will make a significant contribution to the solution.

Mr. Chairman, the amendment offsets funding only in administrative accounts and enforcement accounts. It includes reductions in program administration at the Departments of Education, Health and Human Services, and Labor, and it includes a freeze at the 1994 level for enforcement programs at OSHA, the Mine Safety and Health Administration, and the Pension and Welfare Benefits Administration.

In short, the amendment would provide access to health care for almost 1 million Americans by reducing Federal bureaucracy and enforcement.

When I offered this amendment in the committee, some Members complained that it was designed to block real health care reform. Rather, Mr. Chairman, this is one component of real health care reform. Nevertheless, we will clearly need to do more. We need to have insurance reforms to prohibit exclusions based on preexisting conditions. We need to improve portability and guarantee renewability. We need antitrust reforms. We need medical liability reform. We need to abolish Medicaid and empower the poor with real purchasing power in the health care marketplace.

But, Mr. Chairman, this is a good first step. We do not have to wait for the Committees on Ways and Means, Energy and Commerce, and Education and Labor. We can act today to grant access to health care for nearly 1 million more Americans.

I commend this amendment to the House and ask for its support.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just briefly say at this point I do not have another speaker and will reserve most of my remarks for later. At this moment I want to say I am opposed to this amendment, very strongly opposed to the amendment. At a later time, I will conclude the debate.

Mr. PORTER. Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Chairman, I would hope this does not become a Democrat-Republican amendment. It is not an urban-rural amendment, and it is not a reform-antihealth care reform amendment. There are some things we can do for this calendar year 1995 to reform health care, and this is one of those important changes in dealing with the whole issue of access to health care, in particular in those underserved areas, the inner cities and in the rural areas.

This amendment does two things: It expands the community health centers, which are traditional areas in the urban areas in the East and West Coasts of this country, and it recognizes, unfortunately, the community health centers are not that common a facilitator for health care access in the Midwest, and so it doubles the rural outreach grants which has become our particular vehicle.

This is important because 25 percent of our population lives in rural America, and yet a 1991 study by the Center for Budget and Policy Priorities found that there are 97 physicians for every 100,000 people in a rural area, compared to 225 physicians for every 100,000 people who live in the cities.

Recognizing throughout the health care reform debate that the integration and cooperation and coordination of health care delivery is the key, we have recognized that these two vehicles, within budget allocation, can become a major tool to increase access to health care in 1995.

Let me tell you what the rural outreach grant program is. It was created in 1990. It is funded at $26 million at the present time. These are grants awarded by Health and Human Services. They require that there be a consortium arrangement of three or more health care providers to bring access to health care to people that otherwise would not have it.

Let me give you a couple of examples in my own congressional district. One of those programs, frankly, the first outreach grant that we had in western Wisconsin, was known as Kids Care. It was through a grant to the Wisconsin Center for Public Representation. What they did in working with a county health agency is they set up a whole service of preventive health care to children not on medical assistance, but from low income families who were uninsured, exactly the targeted population which is the whole basis for health care reform.

□ 1700

Likewise, St. Mary's Hospital in Sparta has a mobile office van, medical office van that travels throughout the rural service delivery area bringing the same kind of preventive health care and diagnostic health care aimed primarily at young children, young mothers in pregnancies to bring access to these people in these very small, unincorporated rural areas who have neither the money, the transportation, nor the access to health care in their particular communities.

This is not new spending, my colleagues. This is not health care reform beginning in 1998. This is health care reform now. This is access to people regardless of condition and regardless of income, if they are uninsured. I would encourage and plead with my colleagues, rural, urban, conservative, liberal, Republican, Democrat, please vote for this amendment and send the signal that we can do health care reform at least a small step in 1995.

Mr. PORTER. Mr. Chairman, I yield 4 minutes to my distinguished colleague, the gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. Mr. Chairman, I rise in support of the Porter amendment, Community health centers are a crucial component of any health reform legislation; they provide valuable medical services to individuals across the country.

One of the biggest issues in the health reform debate is how to improve access. Individuals who do not have access to routine care many times use the local hospital emergency room for their medical services. While some may go to the emergency room for minor illnesses, the sad truth is that most wait until they are seriously ill.

In my Florida congressional district, this trend is beginning to change because community health centers in the Tampa Bay area are providing health access to all residents. And it is making a difference—more and more people are receiving routine preventive, primary, and acute care services on a regular basis.

In addition, valuable health care dollars are being saved because people are going to the community health centers instead of the hospital emergency rooms.

The Tampa Community Health Center has four locations serving Hillsborough County. These facilities provide comprehensive pediatric and adult health services to residents regardless of their ability to pay. The number of clinic users has steadily increased since 1990. As a result of the Tampa Community Health Center, more people are seeking care on a regular basis at these clinics, in many cases seeking preventive care and less people use the emergency rooms for these purposes.

Another success in our area is the Mothers' and Child Care Clinic of Clearwater. Since this clinic opened in 1991, the local hospital emergency room visits have steadily declined. In 1990, there were 71 emergency room births by mothers with no prenatal care; by 1993, these births were reduced to 24.

Pediatric emergency room visits have also drastically declined. In 1990,

there were 7,400 pediatric emergency room visits at Morton Plant Hospital; in 1993, there were only 6,400.

Community health centers give many a choice—if more community health centers are built, more people will be given access to routine health care. The Porter amendment would provide more individuals with this opportunity.

Passage of the Porter amendment would be a welcome response to our country's problems regarding health care access. Community health centers are successful because individual health care needs are taken into account. Quality care is available to all residents, regardless of whether or not they have health coverage.

I urge my colleagues to support the Porter amendment so more people will have access to valuable health care services.

Mr. Chairman, I include for the RECORD the following statistics:

MOTHERS' AND CHILDREN'S CARE OF CLEARWATER, CLEARWATER, FL

Mothers' and Children's Care of Clearwater (MCCC) began in January 1991 with only obstetric services. In October 1991, Johnny Ruth Clark Center joined with Morton Plant Hospital to include pediatric services.

More people in our area are becoming medicaid eligible. MCCC fills in these gaps.

Morton Plant emergency room births by mothers with no prenatal care has decreased dramatically.

1990.—71 births.

1991.—51 births (the year MCCC clinic opened).

1992.—35 births.

1993.—24 births.

Morton Plant Hospital pediatric emergency room visits:

1990—7,400 (MCCC was not open).

1991—7,400 (MCCC only provided OB services).

1992—6,500.

1993—6,400.

MCCC sees almost 13,000 pediatric cases annually.

At MCCC, 10,000 pediatric visits cost around $500,000. Therefore, even if money is not being saved, many more children are being provided with good health care in the clinic for approximately the same amount of money.

GOOD SAMARITAN CLINIC (DR. DORMOIS) HOLIDAY, FL

Clinic open 3 years—there has been over 11,000 patient visits. It is crisis oriented.—9,300 medical; 1,800 dental.

Number of medical providers participating (all volunteers): 60 doctors; 12 dentists; 70 nurses; 70 social workers, and 50 clerical volunteers.

Only accepts patients who do not qualify for Federal entitlement programs and do not have insurance. Clients are the working poor—people who fall through the cracks.

Approximately 100–130 patients are seen each week. Includes children and adults up to age 65.

Five to 10 patients with dental problems are seen each week.

Agreements exist with medical specialists to provide additional care.

Clinic is advertised by word of mouth, social agencies, etc.

Clinic relies on donations and medical provider volunteers.

TAMPA COMMUNITY HEALTH CENTER, INC.

Established January 22, 1987.

Funding provided under Section 330 and 340 of Public Service Act.

Currently operating 4 locations serving Tampa and Hillsborough County.

Provide comprehensive pediatric and adult ambulatory health care services to residents of the catchment area regardless of their ability to pay.

26,837 individuals served generating 93,608 patient visits.

Center specific inpatient referral reduction: below shows the number of users of patient visits by year by type (outpatient and inpatient), and the reduction in the ratio of outpatient to inpatient.

	Users	Encounters	Outpatient	Inpatient
1990	3,705	14,629	13,912	717
1991	4,393	16,957	16,382	575
1992	5,513	16,701	16,617	84
1993	5,669	18,435	18,425	10

This graphic shows that the Tampa Community Health Centers, Inc. has shown a steady increase in the number of users and patient visits, but the number of inpatient visits compared to the outpatient has steadily declined.

Mr. PORTER. Mr. Chairman, I yield 3 minutes to the distinguished gentlewoman from Connecticut [Mrs. JOHNSON], the chair of our Health Reform Task Force and ranking member on the Subcommittee on Health of the Committee on Ways and Means.

Mrs. JOHNSON of Connecticut. Mr. Chairman, I rise in strong support of this amendment. The community health centers have bipartisan support in this Congress and have enjoyed that broad support for many years. This funding to expand that system throughout America is not only directly related to the solution to our health care problems but is long overdue.

There are few things this Congress could do that would more affect people's lives. Of the 125 new clinics that this would provide, all have demonstrated need. All have met all of the funding criteria. All cannot operate for lack of funds.

In fact, there are 150 centers prepared to open that have demonstrated need and that have met all of our criteria. In addition, there are 75 additional applicants who have been able to demonstrate that they would exist in a medically underserved area.

It is high time we put our dollars on the line behind all those words that we have been saying for so many years about the 37 million uninsured. These clinics tend to be located in the very areas where the majority of Americans without health insurance live. They are in the areas where there is a shortage. They are in the areas where often the poorest live. They are in the city neighborhoods. They are in the most isolated rural areas. They are where the people who have the least access to health care live. And furthermore, even if we mandate that all employers provide health insurance, even if we mandate that everyone in America has health insurance, there will still be problems in accessing the system until we expand our community health center system.

There is a lack of transportation in cities and in rural areas. There is a lack of providers in many areas of the Nation. It is only by expanding this infrastructure of care that we can make access to community health care a reality for the majority of those 37 million who are uninsured.

In my State of Connecticut, these community health centers helped those that went through serious periods of unemployment, because it made access available and affordable, whether one was covered or not covered.

I hope that we will lay aside our differences today and vote for this amendment, because it is the heart and soul of one of the critical pieces of the solution to access for health care. It supports those kinds of institutions that provide holistic care, that create the relationships that mean that prenatal care is accomplished, that create the relationship that assures that well-child care is carried out in a timely fashion.

□ 1710

Community health centers create the relationships through which substance abuse, family abuse and violence can be addressed. They are comprehensive, they are holistic, they are family oriented, and they are located where the people who need them can reach the health services that are so critical to the lives of our children and the strength of our families.

Mr. Chairman, I urge support of this amendment.

Mr. PORTER. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. MICHEL], the Republican leader.

Mr. MICHEL. Mr. Chairman, I thank the gentleman from Illinois for yielding time to me.

The Porter amendment reflects our Republican view that the best health care reform is that which makes health care available to those who need it most at the earliest possible date.

There is sometimes a tendency to believe that those without insurance are not getting health care, but that is not accurate.

Most people receive health care when they really need it and one of the key programs that provides such care, regardless of insurance status, is the Community Health Center Program.

Such centers provide ready access to health care in one's own neighborhood or community.

So, regardless of what kind of insurance reforms we eventually undertake, there is a need for an expanded Community Health Center Program.

It will provide care through the transitional period of expanded insurance

coverage and provide access to care that is essential regardless of insurance status.

Our health care reform bill, the Affordable Health Care Now Act, provides for nearly doubling the Community Health Center Program over a 5-year period, at the rate of $100 million a year.

The $100-million increase over last year called for in the Porter amendment thus represents the initial down payment on this 5-year effort to extend health care to those in underserved areas.

Underserved areas, of course, exist in both urban and rural regions of our country. Since community health centers are primarily located in urban areas, the need for increased access to health care in rural areas is provided for by the doubling of funding in the Porter amendment for the Rural Outreach Grants Program.

I believe there is widespread support for the Community Health Center and Rural Outreach Grant Programs, but there seems to be a view on the part of some in this body that nothing should be done until the grandiose health reform plan is approved.

In fact, the President has even proposed reductions in these programs.

That is the wrong way to look at it.

The only effective way to achieve workable health care reform in all its aspects is through a step-by-step approach, doing as much as we can at each stage to bring improvements to the American people at the earliest possible time.

This is the time, and stage, to begin expanding the Community Health Center Program and the Rural Outreach Grant Program.

Expansion of these programs must be done through the appropriations process. So why not now? Let us adopt the Porter amendment.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we all support community health centers very, very strongly. If we did not support community health centers, we would not have put an additional $19 million into this bill, which is enough so they will open some more community health centers.

However, Mr. Chairman, this is a part of health reform, and when we have a health reform bill, it will find financing for this kind of an increase that is proposed here without taking it out of education and other programs.

When we have a health bill, for example, a lot of people will be insured who are not insured today, who can go to these health centers and pay for this kind of a service, so they will have a lot more revenue. These health centers do get more money than they do out of the Federal Government from insurance and from the contributions that they are able to get from the people that go there. What this amendment will do, it will take $15 million, a little over $15 million, from the Department of Education that they need to reduce fraud and abuse in student aid.

We are going to have amendments here later, Mr. Chairman, an amendment to strike that concentrates on some of the fraud and abuse that is in student aid. We hardly know how to get at it. They need this money. We do not want to take money they need.

We did not give extra money to any of these departments for salaries and expenses unless they had a good reason. In fact, the general trend was to cut them. We do not want to take money away from the money that the Department of Education needs for their effort to reduce fraud and abuse in student aid.

Also, Mr. Chairman, they need the money to implement Goals 2000. That is a new program. We have the school-to-work program, and we have the direct loans. Those need to be implemented. This would take money from that.

Mr. Chairman, in the Department of Health and Human Services they would lose over $6 million that they need for quality improvements and monitoring in Head Start. Virtually everybody is for Head Start now. I remember when it was not that way, but it is now.

They need the money for these improvements in Head Start. We are all talking about how we can improve Head Start, give deprived children 3 and 4 years old an equal opportunity to get started in the first grade.

Mr. Chairman, the Department of Labor programs would be cut by $47 million, and that includes money for improvements in the consumer price index in BLS. I point out that this is very important to industry. This is important to our economy. It is done every 10 years. They need this money. We are at that point in the cycle when they need to do it.

Mr. Chairman, the Porter amendment will increase the deficit by $44 million. That is the budget authority amount. It will not do that in outlays, but it does in budget authority. The bill already, as I said before, has $19 million over what it had before in community health centers.

What I am saying, Mr. Chairman, in summary, is that it is not the gentleman from Illinois, but there is, it seems to me here, whether we like to admit it or not, there is a tendency to want to say, "We do not need a health reform bill because we can take care of these community health centers without a health reform bill." However, to take care of the community health centers without a health reform bill, we would be taking money from programs that need it very badly.

What we need to do, I think, Mr. Chairman, is wait for the health reform bill. It will finance at least this number of health care centers.

Mrs. SCHROEDER. Will the gentleman yield?

Mr. SMITH of Iowa. I am happy to yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I am so pleased the gentleman is explaining this, because when I walked on the floor I was terribly confused. As the gentleman knows, I grew up in Iowa, and he was the first person I ever voted for for Congress. I know the gentleman has already been out there supporting this, so it sounded like a role reversal, with the compassion coming from the other side, and I could not quite figure it out.

What the gentleman is saying is, they are taking money out of education, Goals 2000, Head Start, all these other things that we have done, and some of it they were just adding to the deficit. Is that how we are getting there?

Mr. SMITH of Iowa. Not only that, Mr. Chairman, but getting at fraud and abuse in student aid, that is a big item. We do not want to take money out of that.

Mr. Chairman, the Members should just wait here a few weeks. We are going to have a health care bill, and in the health care bill we will take care of these community centers. It will certainly be a very high priority. Taking money out of other programs today in this bill is not an answer for having a health care bill.

Mr. Chairman, I urge Members to vote "no" on this amendment.

Mrs. SCHROEDER. I thank the gentleman for clearing that up.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I reluctantly rise in opposition to the Porter amendment, reluctant in that of course we all respect and regard the excellent work the community health centers do, and the rural health outreach. However, as with everything in our bill, we would like to increase all of them, all of the programs. They are all excellent.

□ 1720

As someone is the press described it in dealing with the competing demands in this legislation, it is lamb eat lamb, because everything in here is so good.

As I said, we would love to give more money to community health centers. It is not the price, it is the money. There just is not any more. Unfortunately in order to give more money to community health centers, we would have to make cuts as our chairman mentioned earlier in some very important initiatives that also help people. I believe that cutting the budget for administration for children and families, their program administration, would be a serious cut. The Education Department,

their administration, we should not cut it. The list goes on and on. I will not repeat it because our chairman has already laid out what the offsets would be.

Mr. Chairman, while the Porter amendment is very attractive and while the community health centers are excellent and do a very good job, I look forward to continuing work with the gentleman from Illinois, [Mr. PORTER] on health care reform where we can appropriately address the access and coverage of affordable health care to all Americans, community health centers being one way that we can do that.

As far as this legislation is concerned, we have had a very difficult time meeting the challenge that the initiatives propose, making the difficult choices, subjecting all of the proposals to very harsh scrutiny so that we know we are wringing it out and getting our money's worth for the American taxpayer.

Mr. Chairman, as I say, I reluctantly oppose the amendment of the gentleman from Illinois, not because the health centers are not worthy recipients of more funds, but because so many initiatives in this legislation deserve more funds.

As I said earlier to the gentleman from Illinois, it is not the price, it is money, and the offsets are too expensive for us to approve this. I urge my colleagues to vote no on the Porter amendment.

Mr. PORTER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Illinois [Mr. HASTERT].

Mr. HASTERT. Mr. Chairman, I thank the gentleman from Illinois for yielding me the time.

Mr. Chairman, it is amazing to see people talk against the development and increasing community health centers. I have been around this country, had the privilege of doing that for the last couple of years now, especially this last year, talking about problems in health care.

When we get into big urban areas and when we get out into the far rural reaches, the place that best serves underserved communities, underserved groups of people, are community health care centers. I visited a community health care center in southern California—I believe it was in the district of the gentleman from California [Mr. BEILENSON]—did a wonderful job of outreaching to people, taking care of people's needs. In that health care center, there were little old ladies and men that were getting eye care, eye glasses where they would not go before; expectant mothers were getting prenatal care, on and on, the whole realm of health care needs that people were getting at community health care centers.

I visited a rural health care center where nurse practitioners, because they could not afford doctors at that point, were taking medical histories from incoming patients, then directing them on to further health care where people did not have the opportunity to get health care before.

Mr. Chairman, we hear the argument that, oh, this is too expensive, we are going to take money out of some type of enforcement program for scholarships or we are going to take money out of here. We are talking about spending hundreds of billions of dollars in health care reform, and we need to do health care reform, but if we ignore, if we blind ourselves to simple solutions to big problems, then we are doing wrong.

I commend the gentleman from Illinois for bringing forth the idea that we ought to expand our community health care centers, our rural intake centers where people are getting real health care and a real solution to a very, very real problem.

We talk about lambs eating lambs. If we do not take care of America's health care, the poor's health care, underserved health care, rural health care—and that is what the gentleman from Illinois [Mr. PORTER], is trying to do in this amendment—we are blinding ourselves to a very, very real problem in this country. I do not understand the logic of people that are trying to do that.

Mr. Chairman, I commend the gentleman from Illinois in putting this program in. I ask this body to support it.

Mr. SMITH of Iowa. Mr. Chairman, I yield 4 minutes to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Chairman, how times have changed. I can remember when Republican members of our subcommittee used to oppose amendments that I offered trying to expand funding for community health centers. Now, however, the worm seems to have turned. I think we ought to be frank in admitting what this amendment is all about.

What we have here is a political figleaf. It is being offered by people who do not have any intention whatsoever of voting for comprehensive health care reform, and yet they want to be on record somewhere, somehow, on the cheap, supporting an initiative which appears to provide greater access for people to basic health care. Of course it is okay if the taxpayers pay for it, they just do not want employers to pay for it. That is, I think, an interesting aspect of the amendment before us today.

Mr. Chairman, I think it is a sop to the principle of health care access which will then be used to justify a vote against real health reform when it comes down the pike in a few weeks.

I would also point out that it is ironic to discover where the funding would supposedly come from to pay for this. It would come by taking $16 million out of the Occupational Safety and Health Administration. I used to work with asbestos before I came to Congress. I did not know as a worker that asbestos was a carcinogen, that 40 percent of British shipyard workers who had worked with it in World War II died from exposure to it. I think workers who are exposed to dangerous chemicals or dangerous health practices in the workplace have a right to know it and have a right to know that their Government will protect them.

The Mine Safety and Health Administration would be cut by $3 million. Would anybody in this room like to leave their job and go work in a mine? Do Members know any profession that is more dangerous?

I would suggest this amendment says that we ought to pull the plug on funding for some of the most vulnerable people in this country in order to support a political figleaf that is aimed at providing some help for other people in this country who are equally vulnerable. I do not think that is the way to do business. I think the way that we provide health care for people who desperately need services of these community health service organizations is to provide expanded health care for all, to provide guaranteed private health insurance coverage for all, and then add the support structure and support services to go with it.

Mr. Chairman, there is a very good reason why the association that normally lobbies for community health centers has not come out in support of this amendment. My office talked to them. They said they do not have any intention of supporting this amendment because they recognize what it is, a political figleaf, and they have no intention of being used as a pawn in the health care debate. That is what community health centers are being used as today through this amendment.

I urge Members to see through this sham. I urge Members to vote against it.

Mr. PORTER. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. WALKER], the chief deputy whip.

Mr. WALKER. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I am disappointed by the mean-spirited nature of the remarks that we just heard. It seems to me that the motivations of the gentleman from Illinois ought not be called into question on this, that he has indeed been an advocate for community health care centers as have many of the people that spoke on our side.

It seems to me that what we are hearing is a redefinition of the priorities by the Democrats at the moment. What they have told us in just the last few minutes is that community health care centers and health care in general

is not as high a priority as bureaucracy in a number of programs that are included in this program.

What the gentleman from Illinois is doing is cutting money out of bureaucracies, not out of programs, out of bureaucracies, out of administrative expenses in order to find some money to do community health care centers. Why is it important to do that? Because whether or not we get to a health care bill, and the Democrats have so screwed up the health care debate at this point that they are not even sure they can get to a bill, but here is something that we can do right now, and here is something where we can actually in a global sense save costs in the system, because it is hospital emergency rooms that are carrying far too much of the primary care coverage in this country at the present time and that is the single most expensive place to access health care. Yet with the expansion of community health care centers, we can in fact reduce some of those overall costs in health care and do it in a responsible way.

□ 1730

The Democrats today are coming to the floor and telling people they ought to reject that as an argument. Beyond that, there are a number of specialized people, specialized kinds of constituencies that community health care centers serve.

I happen to have a large migrant farm population in one part of my district. They are served by community health care centers. It provides access they would not otherwise have to health care and thereby lowers the overall cost to the system.

What the gentleman from Illinois is doing is extremely responsible. He is doing it not at the expense of other people. He is doing it at the expense of bureaucracy.

To suggest, for example, that somehow Goals 2000 has risen to a level that it is more important than the health care of this country, it seems to me, is a ludicrous argument. Here is a chance to decide what your real priorities are. If your real priorities are to do something significant about helping to access primary health for people in this country, you will vote for the Porter amendment. If what you are doing is just playing politics with the subject, suggesting the only way to deal with the health care issue is in the big global bill that is coming down the pike, maybe, I would suggest that that is exactly the wrong approach.

Mr. PORTER. Mr. Chairman, I yield 2 minutes to the gentleman from Delaware [Mr. CASTLE].

Mr. CASTLE. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I would just like to sort of step away from the politics of this for a minute that have been discussed here and discuss what I have seen on a firsthand basis with respect to the delivery of health care. That is what this is all about.

We can talk about all the health care plans we want across the United States of America, but the bottom line is we need to have medical personnel who will be able to deliver health care to the individuals who need it. It has shifted a tremendous amount in the United States of America even in the last 5 years, but particularly perhaps in the last 3 or 4 years. As HMO's have sprung up, as alternate forms of health care delivery other than going to a doctor's office have sprung up, we are seeing more and more people who are very comfortable with the concept of going to a community health clinic or to a rural health clinic or whatever it may be in order to receive their health care.

In my State of Delaware where I was Governor for a few years, I saw this opportunity grow, and I saw individuals who were not able to otherwise get health care be able to get it because of the expansion of these units and because the doctors and other individuals took a great deal of interest in these delivery systems. It took people out of the emergency rooms. It gave them health care they did not have before. It made a fundamental difference.

Today we are in a situation in which we are debating health care in the Congress of the United States of America. Hopefully it will come to this floor, and when it comes to this floor, I think you are going to find in practically any piece of legislation which we are going to have before us the concept of having community health clinics and rural health clinics for the delivery of the health care in addition to whatever else is in there.

It is for that reason I think we should be supportive today of this. I do not think it is a matter of politics. I think it is a matter of health care for the people of the United States of America.

I would encourage all of us to support this. I believe that the offsets that we have are basically increases in administration in very good programs, but the bottom line is health care is important.

We do not know if we are going to pass a health care bill or not. If there is one single thing we could do other than pass a universal health care program, whatever it would have in it, it would be to have the delivery system for those who do not have the opportunity to get health care expanded. I believe this would do it.

I support this amendment.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York [Mrs. LOWEY].

Mrs. LOWEY. Mr. Chairman, I would like to reluctantly speak against this amendment.

Mr. Chairman, it would be very nice if we could vote for additional money for community health centers, vote for additional money for child care, vote for additional money for DARE programs, all kinds of substance abuse programs. I would like to see a lot more money in prevention.

But as my colleague on our committee and the rest of my colleagues know too well that we had to make some really tough choices, and under the leadership of our distinguished Chair, the gentleman from Iowa [Mr. SMITH], we made those choices.

Now, no one has been a greater advocate of community health centers. They are working tremendously well in our communities. There are people who are reaching out, reaching out to those who really need those services, and in fact, in this bill we did increase the funds for community health centers, and in fact, we also put a down payment on health care reform by increasing the whole preventive package by $146 million. The community health center increase of $13 million was just part of it. So it is not as if we are waiting for health care reform. We have done some very important things in this bill with our prevention package, and an increased investment in community health centers was part of it.

So I am proud to have worked with my colleagues from Illinois on an increase for the community health centers. I wish we could work together and do more. Let us hope we can continue to do more next year.

But as we know too well, we had a tough job, and in order to invest, we had to cut, and we were still able to expand the vital services that we can be proud to take back to our individual districts.

So I urge my colleagues to vote against the amendment, not because it is not a good idea, but we have had to make some tough choices, and we have done very well under the leadership of our Chair.

Mr. PORTER. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Chairman, I just want to make sure everyone understands fully and clearly that this has been a carefully and correctly thought out amendment, and contrary to what was said earlier, we do not in any way cut those basic education funds. Head Start, which has doubled over 5 years, has a $210 million increase program, not touched by this amendment; Goals 200, a $283 million increase, not touched by this amendment; chapter I, $334 million increase, not touched by this amendment; apprenticeships, $179 million increase, not touched by this amendment; OSHA, the State grants, not cut at all; AMSHA, the State grants, not cut at all.

Give us credit when we put together a carefully crafted, well thought out amendment that establishes a better set of priorities.

This ought not be a partisan issue. Republicans and Democrats, urban and rural people alike, ought to have the courage to stand up and say there is a better idea on the floor, and I am going to have the courage to vote for it.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Chairman, I would simply repeat, for OSHA Safety and Health Administration, $16 million cut; for Pension and Welfare Benefit Administration, the organization that is supposed to protect the integrity of America's private pension systems, $2.4 million cut; Mine Safety and Health Administration, $2.9 million cut.

Now, those programs cannot be run without administrators. Those programs cannot be administered without administration. You cannot have people in the field unless there is somebody to direct them.

The fact is the amendment makes those cuts. It is very clear. The Education Department has already been cut in terms of personnel by 20 percent in terms of people since 1980. This will cut $13 million additional.

Mr. GUNDERSON. Mr. Chairman, will the gentleman yield?

Mr. OBEY. I am happy to yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Chairman, were not the administrative numbers you talked about in OSHA, Pension reform, AMSHA, et cetera, were not those increases over 1994?

Mr. OBEY. Reclaiming my time, whether they were or not, you are cutting the committee recommendations. As you well know, under previous administrations, those agencies have been squeezed for years.

Mr. PORTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would say to the chairman of my committee that I am, in fact, for health care reform, as I said in my opening remarks.

This is only one component of health care reform. I might not be for the same health care reform my chairman is, but I certainly am for it.

We consider community health centers to be a very important component of that, and we are not cutting, as the gentlewoman from Colorado seemed to suggest; we are not cutting Goals 2000 or Head Start or any other program.

This is a simple judgment that Members have to make, and the judgment is this: Do you want to spend $87 million more on creating 125 new community health centers that will serve 848,000 Americans who are not served today?

□ 1740

Or do you want to spend that money on increases—we are not cutting—on increases in administrative costs in the three departments and in the enforcement of OSHA, MSHA, and PWBA? I believe that people on our side of the aisle want to spend that money on community health centers and providing direct services to people who do not have them today. I think that is an honest choice. I think it is a real choice. It is not a fig leaf. The community health centers are very much a part of the plan that we have for health care reform. We consider it a higher priority. We would like to spend more money on that. We think the choice is a real and honest one and ought to be made in favor of doing so.

Mr. Chairman, I yield back the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself the balance of my time. I ask my colleagues, please vote against this amendment. We are all for community health centers. I think we will end up this year with about the same number that they are talking about without cutting these important programs that are being cut.

The way we are going to do it is, whenever we increase the number of people who have health insurance, the health insurance benefits will pay for health centers. When they go to the health center, they will pay under their health insurance. At this point we do not know for sure what is going to be in that health bill, but we have got to depend on it increasing the amount of benefits available to help pay for the health centers. We do not want at this point to cut the important things like reducing the fraud and abuse, student aid, improvements in Head Start program, improvements in the consumer price index, so very important to business in this country. We do not want to do that at this time.

We probably will not be out of conference until sometime in September on this bill, and by that time we should have the health care reform matter settled. At this point we have the bill balanced, we have increases only in those instances where they are needed, and I think they are needed. We should not take the money they are going to take out today in order to finance these community health centers.

Mr. Chairman, I urge, please vote "no" on this amendment.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Illinois [Mr. PORTER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. PORTER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 224, noes 205, not voting 10, as follows:

[Roll No. 294]

AYES—224

Allard
Andrews (ME)
Andrews (TX)
Archer
Armey
Bachus (AL)
Baker (CA)
Baker (LA)
Ballenger
Barrett (NE)
Bartlett
Barton
Bateman
Bentley
Bereuter
Billirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Brewster
Bunning
Burton
Buyer
Calvert
Camp
Canady
Castle
Chapman
Clinger
Coble
Collins (GA)
Combest
Condit
Cooper
Cox
Crane
Crapo
Cunningham
de la Garza
Deal
DeLay
Derrick
Dickey
Dicks
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards (TX)
Ehlers
Emerson
Everett
Ewing
Fawell
Fish
Fowler
Franks (CT)
Franks (NJ)
Gallegly
Gallo
Gekas
Geren
Gilchrest
Gillmor
Gingrich
Goodlatte
Goodling
Gordon
Goss
Grams
Grandy
Greenwood
Gunderson
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hayes
Hefley
Herger
Hoagland
Hobson
Hoekstra
Hoke
Horn
Houghton
Huffington
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Istook
Johnson (CT)
Johnson (GA)
Johnson, Sam
Kasich
Kim
King
Kingston
Klug
Knollenberg
Kolbe
Kreidler
Kyl
Lambert
Lancaster
Laughlin
Lazio
Leach
Levy
Lewis (CA)
Lewis (FL)
Lewis (KY)
Lightfoot
Linder
Livingston
Lloyd
Lucas
Machtley
Manzullo
McCandless
McCollum
McCrery
McCurdy
McDade
McHugh
McInnis
McKeon
McMillan
Meehan
Meyers
Mica
Michel
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Neal (NC)
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Penny
Peterson (MN)
Petri
Pickett
Pickle
Pomeroy
Porter
Portman
Quillen
Quinn
Ramstad
Ravenel
Regula
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Rowland
Royce
Santorum
Sarpalius
Saxton
Schaefer
Schiff
Sensenbrenner
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stearns
Stenholm
Stump
Stupak
Sundquist
Swett
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Torkildsen
Upton
Valentine
Volkmer
Vucanovich
Walker
Walsh
Weldon
Williams
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—205

Abercrombie
Ackerman
Andrews (NJ)
Applegate
Bacchus (FL)
Baesler
Barca
Barcia
Barlow
Barrett (WI)
Becerra
Beilenson
Berman
Bevill
Bilbray
Bishop
Blackwell
Bonior
Borski
Boucher
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Byrne
Cantwell
Cardin
Carr
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coppersmith
Costello
Coyne
Cramer
Danner
Darden
de Lugo (VI)
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dingell
Dixon
Durbin
Edwards (CA)
Engel
English
Eshoo
Evans
Farr
Fazio
Fields (LA)
Filner
Fingerhut

Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Green
Gutierrez
Hall (OH)
Hamburg
Harman
Hastings
Hefner
Hinchey
Hochbrueckner
Holden
Hoyer
Hughes
Inslee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Klein
Klink
Kopetski
LaFalce
Lantos
LaRocco
Lehman
Levin
Lewis (GA)
Lipinski
Long
Lowey
Maloney
Mann
Manton
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCloskey
McDermott
McHale
McKinney
McNulty
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Murphy
Murtha
Nadler
Neal (MA)
Norton (DC)
Oberstar
Obey
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Poshard
Price (NC)
Rahall
Rangel
Reed
Reynolds
Richardson
Roemer
Romero-Barcelo (PR)
Rose
Rostenkowski
Roybal-Allard
Rush
Sabo
Sanders
Sangmeister
Sawyer
Schenk
Schroeder
Schumer
Scott
Serrano
Sharp
Shepherd
Skaggs
Slattery
Slaughter
Smith (IA)
Stark
Stokes
Strickland
Studds
Swift
Synar
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Underwood (GU)
Unsoeld
Velazquez
Vento
Visclosky
Waters
Watt
Waxman
Wheat
Whitten
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOT VOTING—10

Callahan
Faleomavaega (AS)
Fields (TX)
Flake
Hilliard
Olver
Pombo
Pryce (OH)
Ridge
Washington

□ 1804

The Clerk announced the following pair:

On this vote:

Ms. Pryce of Ohio for, with Mr. Hilliard against.

Ms. WOOLSEY, and Messrs. GILMAN, PALLONE, and BROOKS changed their vote from "aye" to "no."

Messrs. DORNAN, GORDON, and PICKLE changed their vote from "no" to "aye."

So the amendments were agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to title I?

AMENDMENT OFFERED BY MR. DELAY

Mr. DELAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DELAY: Page 18, strike lines 13 through 16.

Mr. SMITH of Iowa. Mr. Chairman, I ask unanimous consent that debate on the current amendment and all amendments thereto be limited to 40 minutes, to be equally controlled by the gentleman from Texas [Mr. DELAY] and myself.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The CHAIRMAN. The time will be limited to 40 minutes, to be equally divided between the gentleman from Iowa [Mr. SMITH] and the gentleman from Texas [Mr. DELAY].

The Chair recognizes the gentleman from Texas [Mr. DELAY].

Mr. DELAY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in opposition to language contained in the Labor, HHS appropriations bill and offer an amendment to strike this onerous provision. The language in the bill would prohibit the Secretary of Labor from using any funds to implement or administer the final Davis-Bacon helper regulations. These regulations are court-tested, final regulations which the Department of Labor had already begun implementing before the current prohibition. The language contained in the bill arbitrarily prohibits these regulations without ever giving them the opportunity to work or realize any of their projected benefits.

Helpers are semiskilled workers who work under direct supervision of higher skilled journey-level workers. Helpers are widely used in the private sector, where approximately 75 percent of all construction work is performed by contractors who use semiskilled helpers. The helper regulations serve the original purpose of the Davis-Bacon Act—bringing practices on Federal construction projects in line with locally prevailing practices on private work. In fact, Vice President GORE's National Performance Review recently recommended changes to bring the antiquated Davis-Bacon Act into the realities of today's construction marketplace, which these regulations clearly do.

Under the regulations, helpers are paid the locally prevailing wage rate for the type of work they perform. Without the helper regulations, all workers on Federal projects, regardless of task, must be paid the high-wage rate paid to a skilled craftsman. In this way, the helper classification serves as an entrance into construction for groups not traditionally prevalent in the industry—for example, minorities and women. The helper classification serves as a strong first step up the job ladder for workers who are interested in furthering their education and pursuing a career in construction. Forcing contractors to pay all workers the high journey-level wage rate effectively precludes groups who have not previously trained in construction from having the opportunity to work on Federal construction projects.

I would also like to mention that one of the chief opponents to the helper regulations, organized labor, has seen fit to allow their own classification of helpers or subapprentices over the last decade in order to meet the private marketplace's changing needs. However, they are refusing to allow the taxpayer to enjoy the same advantage for fear of losing their crown jewel, their cash cow, and their control over young people's entrance into the construction industry together with their stronghold in the Federal construction market.

It has been estimated that when the helper classification becomes widely used on Davis-Bacon projects, an estimated 250,000 jobs will be created and $600 million a year will be saved. By prohibiting helpers on Davis-Bacon projects, we are further aggrevating the very problems which top the American agenda today—our Nation's huge Federal deficit, lack of job creation, and near-stagnant economy.

More than a decade of litigation and debate regarding the helpers issue has culminated in favorable rulings by both the U.S. District Court (1990) and the U.S. Court of Appeals (1992), affirming that helper regulations are fully inline with the purpose of the Davis-Bacon Act. The Supreme Court denied an appeal of those rulings.

With all the benefits associated with the helper regulation—benefits to contractors, disadvantaged workers, and the Federal Government—one may wonder why we are arbitrarily prohibiting their implementation. Supporters of this ban will tell you it is to protect against shoddy construction and unsafe working conditions for construction employees. Come on. This argument simply does not hold water. Let us face it, this arcane system only exists on Government construction projects. Nonunion and union shops both have helpers on private construction projects.

As I previously mentioned, in the private sector more than 75 percent of all construction is performed by contractors who use semiskilled helpers. There is simply no rationale for assuming that Federal construction is any different than private construction in this regard. A recent OSHA study found that open shop employers, the majority of whom employ semiskilled helpers on their jobsites, are safer than their union counterparts. The OSHA report, "Analysis of Construction Fatalities"—The OSHA database 1985–89 showed that over the 5-year period of the report, the unions experienced a fatality ratio of 20.9 per 100,000 workers—more than 25 percent higher than the open shop's 15.1 per 100,000 workers. While construction unions account for approximately one-fifth of the total work force, they also account for more than one-fourth of the fatalities in the industry. The safety of construction employees would not be affected by the use of helpers on Davis-Bacon construction projects.

Further, construction must be performed to specifications and contractors are not paid for faulty work. Plain and simple, if a contractor were to perform shoddy construction, he would jeopardize his payment and his reputation. Quality of Federal construction would not be jeopardized by employing helpers on those projects.

Although the committee has seen fit to continue to allow this 1 year ban of the Davis-Bacon helper regulations, I would like to reiterate my strong objection to this prohibition. The helper regulations have been one small positive step toward alleviating the burdens imposed by the outdated, unnecessary Davis-Bacon Act. They at least help bring the law back to its original intent, which it certainly does not meet in practice today. The Davis-Bacon Act and this prohibition discriminates against minorities and women and the very group it intended to help—small, local contractors. It continues business as usual by lining the pockets of the unions with taxpayer dollars.

I suggest that all Members take a close look at the prohibition provision contained in this legislation and consider it when voting on this appropriations bill.

□ 1810

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Chairman, I rise in opposition to the DeLay amendment to strike the "helpers" provision from the Labor-HHS-Education appropriations bill.

The provision at issue prohibits the Department of Labor from implementing revised "helpers" regulations which control the wages paid to certain workers on Federal construction projects subject to the Davis-Bacon Act.

The Davis-Bacon Act requires that contractors who undertake Federal construction projects pay the local prevailing wage to mechanics and laborers on those projects. The act protects workers employed building Federal projects. The fundamental policy of the act is that the existence of Federal construction should not undermine the prevailing wages and benefits in local communities.

A secondary benefit of the act is that it ensures quality construction of Federal buildings. Quality construction saves money in the long run; a valuable objective when public money is at stake. Payment of prevailing wages insures that firms that use highly skilled, highly paid workers are not underbid by unscrupulous contractors using unskillled low-wage labor.

In the early 1980's, the Reagan administration Department of Labor promulgated rules which would have allowed payment of lower wages to helpers who performed tasks in conjunction with journeymen and laborers. These regulations changed prior rules regarding the use of helpers in that they allowed creation of a separate classification and wage scale for helpers even when their duties overlapped with those of journeymen and laborers and even when the contractor had no formal certified training programs for the helpers.

These regulations, if implemented, would have harmful effects. First, they would allow contractors to shift work from highly productive journeymen to lower skilled and lower paid helpers. Second, they would undermine apprenticeship training programs because contractors would substitute helpers for apprentices. Both of these practices run contrary to the goal of creating high skilled, high paying jobs in the Nation instead of low skilled dead end work.

The implementation of these regulations was stalled for several years by litigation during the Reagan and Bush administrations. In the meantime, the House and the Senate have voted several times to bar the implementation of these regulations in the past 3 years. The moratorium in the current bill extends the one adopted last year in the House-Senate conference report for Labor-HHS-Education appropriations for the 1994 fiscal year.

The Department of Labor has informed us that it intends to issue revised helpers regulations within the upcoming fiscal year. These regulations should resolve this issue. The provision in the appropriations bill will allow the conclusion of the administrative process without decreasing the standard of living enjoyed by construction workers. Accordingly, we ask for your support in defeating the DeLay amendment.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from Michigan [Mr. STUPAK].

Mr. STUPAK. Mr. Chairman, I rise in opposition to the DeLay amendment. When we talk about helper, what are we talking about? We are talking about a new subclass of worker, a worker where we are not required to pay any benefits. We are not required to put in any training. All we have to do is give them the lowest possible rate, not the highest, but the lowest.

The gentleman from Texas says Davis-Bacon has the highest possible rate. That is not true. Davis-Bacon is the prevailing rate based upon the marketplace in that locality. It is not the highest possible rate.

The Associated Building and Contractors Organization, not known to be a union organization, claims that if this amendment goes through, 40 percent of the current work force under Davis-Bacon will be replaced by a lower class, lower-paid worker, low-paid workers, low-skilled workers, these so-called helpers.

Let us protect the working men and women of this country. Let us protect those who paid their dues, who worked through this system from apprenticeship.

Mr. Chairman, defeat the DeLay amendment.

□ 1820

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. FILNER].

Mr. FILNER. Mr. Chairman, I rise today in strong opposition to this amendment by the gentleman from Texas.

Skilled American workers are under attack—right here in the Halls of Congress—the very institution that should be protecting them.

What America needs and deserves today is a better trained, more highly skilled work force. If we were to pass this amendment we would be guaranteeing the exact opposite—a labor force that is dangerously undertrained and ill-informed. We cannot allow this.

Federal construction jobs today require the best workmanship available—work that is the product of intensive training and on-the-job experience. Funding these proposed changes to the Davis-Bacon Act would ultimately serve to deny our workers safe and thorough training. They deserve quality training—and nothing less.

The previous two administrations undermined the strength and quality of America's work force, and this amendment continues that misguided tradition. I believe this new administration and this new Congress are friends and supporters of American workers—let's not betray our country's most valuable resource.

Vote "no" on this amendment.

Mr. DELAY. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Chairman, we ought not be discussing Davis-Bacon on an appropriations bill today. Unfortunately, the Appropriations Committee has once again decided to include a legislative rider regarding the Davis-Bacon Act in an appropriations bill. I hope that we can end this annual process of debating the Davis-Bacon Act as part of the appropriations process by striking this legislative rider from the bill.

This rider would overturn regulations issued by the Department of Labor allowing the use of semi-skilled helpers on contracts subject to the Davis-Bacon Act. These regulations have been developed over the last 10 years through a painstaking and thorough process. They have passed every conceivable court test. The courts have repeatedly held that the regulations are consistent with the intent of the Davis-Bacon Act.

This amendment is an issue of fiscal responsibility, efficiency and increased

competition in Federal construction and creating jobs. According to CBO the helper regulations will reduce the cost of Federal construction by approximately $600 million a year once they are fully implemented. Over the next 5 years, they will result in savings of nearly $2.3 billion.

By allowing contractors on Federal construction projects to utilize the more flexible work rules that are used in the private sector, the regulations will open up Federal construction to many small and minority contractors who are unable to compete for Federal contracts. today. Without the regulations, contractors who want to compete for Federal contracts have outdated workrules imposed on them. For example, the same unskilled worker must be classified as a journeyman carpenter to carry lumber one day and reclassified—with all the attendant paperwork—as a journeyman plumber to carry or hold pipe the next day. Thus, labor is allocated inefficiently, costs rise, and semi-skilled workers are denied entry-level jobs. The regulations reflect changes in the construction industry since the passage of the act in 1931. The utilization of helpers was virtually non-existent in 1931, but has become a widespread practice in private construction. Today, about 75 percent of the construction industry uses helpers for semi-skilled and unskilled tasks to assist a variety of skilled craftsmen on private contracts. The regulations are consistent with the intent of the Davis-Bacon Act—that Federal contracts should reflect the local market and that the Federal Government should not use its power to impose a wage structure on local markets.

Mr. Chairman, we should not make a legislative change of this magnitude in a rider on an appropriations bill. The House should deal with the issue of Davis-Bacon in the proper way—in authorizing legislation. There are several proposals to make changes in the Davis-Bacon Act. HARRIS FAWELL and I have introduced comprehensive reform legislation. The National Performance Review proposed modest reforms of the Davis-Bacon Act. AUSTIN MURPHY has proposed Davis-Bacon legislation as well. If we are to consider changes in the Davis-Bacon Act, we should resolve all of the issues regarding the Davis-Bacon Act by debating all of these proposals and any other suggestions on how the Davis-Bacon Act can be improved, instead of going through the annual process of legislating on an appropriations bill.

When a similar rider was included in the Labor—HHS appropriations bill last year, the committee report stated that the Appropriations Committee would not continue the prohibition but would allow this issue to be resolved through the authorization process. It has been over a year since then, and we are still waiting for an authorization bill to come out of subcommittee. We should return this issue to the place it belongs—the authorizing committee. There are ongoing discussions to see if there is a resolution to the issue of Davis-Bacon that is acceptable to all sides of this body. These discussions may not succeed, but we should not undercut these good-faith discussions through legislative riders on an appropriations bill.

I urge my colleagues to strike this legislative rider from the bill.

Mr. SMITH of Iowa. Mr. Chairman, I yield such time as he may consume to the gentleman from Florida [Mr. HASTINGS].

Mr. HASTINGS. Mr. Chairman, I rise in vigorous opposition to the DeLay amendment.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Chairman, I rise in strong opposition to the DeLay amendment. I do so as someone who has supported the Davis-Bacon law through the years.

I believe very strongly that what we are talking about, Mr. Chairman, is reducing the cost of building government projects to the taxpayers. That has appeal to me as a fiscal conservative. However, the problem is this. What we are really talking about doing, Mr. Chairman, is reducing the cost of wages to workers in this country.

I happen to believe very strongly that when the government, whether it is the city, the county, the State or the Federal Government, builds a building, we as a matter of public policy should be prepared to pay the workers that are building that building a living wage. That is what we are talking about.

Mr. Chairman, that includes benefits, so that these workers do not show up in our emergency rooms without health care, or that they do not show up on welfare later on in life because they do not have some kind of a retirement program to take care of their family, or themselves.

Mr. Chairman, I think this is a penny-wise, dollar-foolish concept. I urge my colleagues to vote against this amendment.

Mr. Chairman, this is a fundamental question of whether we are going to pay working men and women who have hammers in their hand every day across this country a living wage, yes or no. I believe as a matter of public policy, when it comes to building government projects, we should be committed to paying our working men and women a living wage.

Mr. Chairman, I urge opposition to this amendment.

Mr. DELAY. Mr. Chairman, may I ask how much time I have remaining?

The CHAIRMAN. The gentleman from Texas [Mr. DELAY] has 9 minutes remaining, and the gentleman from Iowa [Mr. SMITH] has 14 minutes remaining.

Mr. DELAY. Mr. Chairman, I yield myself such time as I may consume. Before I yield to the gentleman from Hawaii, I would just respond to my good friend from Kansas.

As many as 75 percent of all construction jobs, Mr. Chairman, are not union wages or under the auspices of the Davis-Bacon Act, and they are making livable wages. Mr. Chairman, the whole point of this is letting people get into the construction industry that have been prohibited from doing so because of arbitrarily set wage rates.

Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. BOEHNER].

Mr. BOEHNER. Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from Texas.

It is now 10 years. That is how long this issue has been debated and litigated in the courts. In 1990, the U.S. district court held that the helper regulations were fully consistent with the Davis-Bacon Act. In 1992, the U.S. court of appeals followed suit in reaching the same decision. The U.S. Supreme Court denied an appeal of these rulings. Now, we are faced again with congressional action which would fly in the face of these judicial decision by prohibiting the implementation of the Department of Labor's helper regulations.

As Mr. DELAY explained earlier, helpers are semi-skilled workers working under the supervision of higher skilled workers on construction projects. The private sector uses these helpers in 75 percent of all construction work. Now, we simply want Federal contractors to have the same right to use them in projects falling under Davis-Bacon.

There are many benefits to the helper regulations—foremost of which is giving the semi-skilled a foot in the door. These workers want to start their way up the ladder of success, but the lack of these regulations hold them down and prevent them from getting ahead. Unfortunately, these actions tend to hurt the minorities and women most.

It has also been estimated that these regulations would help create 250,000 jobs and save the Federal Government $600 million a year. In a time of economic uncertainty and budgetary constraints, it is time we use some fiscal sanity. People need to work and the Federal Government needs to save money.

Mr. Chairman, I will be the first to admit that I do not much care for Davis-Bacon. In fact, I want to outright abolish it. I believe it is an anachronism of the New Deal and is costing the American taxpayer hundreds of millions of dollars a year. However, if we are not going to repeal it, we might as well lessen its impact. This amendment would do this by

opening the Federal construction market to those who are currently prevented from entering it. I urge its adoption.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Chairman, I rise in strong opposition to the amendment offered by Mr. DELAY. Mr. Chairman, there is a good reason these regulations have never been fully implemented. The regulations in question were crafted in 1982 to accomplish a simple goal—rob American construction workers of the opportunity to move into and to hold on to good, high-skill, high-wage jobs.

First, these regulations were designed to undermine our States' right to build strong apprenticeship programs—programs that give young working men and women entering the work force the training and skills vital to a future that holds more than just the promise of dead-end, low-wage jobs.

Second, these regulations were designed to encourage replacing skilled construction workers—many of whom are graduates of the very apprenticeship programs under attack from these same regulations—with the use of unskilled, low-wage workers.

So let us be clear what this debate is about:

It is about whether we allow implementation of a regulation that would cause massive job losses among good, skilled construction workers as some contractors move to substitute these workers with lower-paid helpers.

It is about whether we jeopardize construction quality and safety by enabling the employment of semi-skilled and unskilled helpers to perform work previously done by skilled workers.

It is about whether you support or oppose giving young people just entering the construction trades the right to receive good training that leads to good jobs.

Secretary Reich is now in the middle of working with all interested parties to find a solution to the helper issue. It is the administration that asked the committee to continue the prohibition for 1 additional year to have enough time to resolve the issue in a sensible and responsible manner. A solution that moves us further along the road to a skilled work force vital to our Nation's global competitiveness.

Mr. Chairman, I urge that the amendment be defeated. We must give the administration the time needed to resolve this issue in a way that protects the livelihoods and the lives of American construction workers.

□ 1830

Mr. DELAY. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina [Mr. VALENTINE], a gentleman who is retiring from this House and will duly be missed because he is a stalwart on this issue and we appreciate all the work that he has done on this issue.

Mr. VALENTINE. Mr. Chairman, I rise today in support of the DeLay amendment to the Labor, HHS, Education appropriations bill.

Mr. Chairman, this body, the other body, administrations, and the courts of this country have been dealing with the Davis-Bacon Act and its meanings since long before I came to Congress. It seems we have toiled with this issue every year. In an effort to put an end to this battle, the Clinton administration's Department of Labor issued regulations to govern the use of helpers on Federal construction contracts. Yet, still we continue to have our battles today.

The DeLay amendment would strike from this bill language that effectively prohibits the U.S. Department of Labor from implementing helper regulations and thereby allowing the Labor Department to implement their plan to bring Federal construction in line with private construction—allowing the use of helpers in many instances.

Allowing the use of helpers on Federal contracts means the Government can save money, while allowing untold numbers of young Americans to gain experience in the construction industry. CBO and GAO studies have shown that full implementation of helper regulations could save this country around $600 million in Federal construction labor costs and could create as many as 250,000 new jobs in the industry. Given the extremely high unemployment rate in the construction industry, these jobs are desperately needed.

The Labor Department regulations do not seek to eliminate the protections under Davis-Bacon, but simply to augment them by allowing the use of helpers where that is practical.

Mr. Chairman, it is time to eliminate the ban on construction helpers. I urge my colleagues to join me in support of the DeLay amendment.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I would urge my colleagues to oppose this amendment. Let me tell my colleagues why. I have a father who for 30 years was a laborer in construction and on many occasions he worked on Federal projects, mostly on freeway projects. Contrary to one of the earlier speakers, the gentleman from Ohio who said that Davis-Bacon hurts minority workers, let me tell my colleagues, Davis-Bacon helps minority workers. My father would not be able to say he is a pension member of the Laborers Union with benefits, with the opportunity to have some health care were it not for the fact that there are provisions in our laws like Davis-Bacon that made sure that my father, a minority worker, a laborer, was able to not only provide his skills in this construction project but at the same time understand that he would be protected as well because he has been providing some good work at a decent wage.

I would urge the Members to look at these helper provisions that were passed back in the 1980's and see that, in fact, we are not talking about helper provisions, we are talking about provisions that tell an employer that he can hire someone and call the individual a helper and never provide any further training to get that person to become a journeyman, someone who can become very skilled in that particular area and at the same time never provide the benefits or protections that most workers would want and deserve given the work that they do.

Let us provide the dignity to every worker, the dignity that we all deserve and would like to have not only for ourselves but for our children. Let us make sure that anyone who works on any project is able to say that they have provided us what we deserve as taxpayers and American people, and that means a good construction project that provides dignity to the workers that help build America.

I urge my colleagues to vote against this particular amendment.

Mr. DELAY. Mr. Chairman, I feel honored to yield 3½ minutes to the gentleman from Illinois [Mr. FAWELL], who serves on the Committee on Education and Labor and does tireless work on that committee.

Mr. FAWELL. Mr. Chairman, i rise in support of the amendment. Obviously, as has been indicated, an appropriations bill should not be loaded with important major labor legislation as this bill is. This bill will knowingly waste billions of dollars of taxpayer money on Federal construction and will deny thousands of semiskilled entry workers the opportunity to gain the experience they need to break into the construction field, including nontraditional workers such as minorities, women, and native Americans. How is this done? By simply refusing to let the Department of Labor, not contractors, by the way, but the Department of Labor, to implement new rules which would allow for a job classification which they would create, not contractors, for the use of journeymen helpers in Federal construction when it is the prevailing custom in the area of the construction project.

Mr. Chairman, we have already talked about what these journeymen helpers are. In the spring of 1993 after nearly a decade of litigation with consturction labor unions, the Department of Labor was finally authorized to begin implementation of a new helper regulation in regard to federally financed construction projects. But

shortly thereafter, the Department was forced to suspend the implementation because we had an appropriation bill like this which simply said:

We are going to pull out all funds and you will not be able to implement what the court has said you have every right to implement and what the Department of Labor wants to implement.

Both the district court and the court of appeals has found that the DOL helpers' regulations are totally consistent with the language of Davis-Bacon and as has been brought out, over 75 percent of all construction work in this Nation is done by private construction where journeymen helpers are used extensively.

Do Members think construction standards in the private sector somehow are inferior in quality when compared to Federal buildings? Of course not. Are they lower in cost? You bet they are.

Why? Because without helpers, there are more journeymen obviously being paid at journeyman wage rates of, say, $30 or $35 or $40 an hour as opposed to helper wage rates at $10 or $12 per hour. That does not mean we are taking away journeyman jobs, it simply means that journeymen have semi-skilled helpers and, yes, these helpers will also learn how to be journeymen and they can actually use a hammer on a job or a saw or something like that. Of course, construction unions don't like those kinds of prevailing job classifications.

Mr. Chairman, this can save taxpayers something like $600 million per year according to CBO and GAO. The whole concept of Davis-Bacon, after all, is that the prevailing wages and the prevailing job classifications defined and authorized by the Department of Labor, not by contractors, will be what controls in federally funded construction projects. But the construction trade unions will not allow it. They have fought the new job classifications in the courts since 1982. They lost, they always lost. So each year they come back to the court they control. What court do they control? They control Congress, and they come back to their friends to make sure that the taxpayers have to continue to pay unnecessary higher union rates for Federal construction projects. I say unnecessary higher rates.

Is there any Member who would insist that in building his or her home the contractor, for instance, must use plumbers, carpenters, and other journeymen at journeyman wage rates to do semiskilled work which is normally performed by journeymen helpers? We would never do something like that. Then why in the world do we insist that when we build Federal buildings that helpers for journeymen cannot be used? Do Members know why?

Because it is the people's money, it is not our money. We sill not do what is done in common sense, in construction in the private sector. We ought to do it in the public sector, too, and save $600 million per year to boot.

Mr. Chairman, it is a good amendment. We ought to pass it.

□ 1840

Mr. DELAY. Mr. Chairman, I yield myself 1 minute, the remainder of my time.

Let me just say that I greatly appreciate the gentleman from Illinois and his remarks.

The members of the Black Caucus and the members of the Hispanic Caucus ought to really take note, the chairman of Ed and Labor gave us a little history of Davis-Bacon, but he always leaves out the history. The reason Davis-Bacon was passed, and I will show you in the CONGRESSIONAL RECORD the speech that was made, was to keep blacks from competing for construction jobs in the Northeast.

And I use the term "blacks." They used another term in the CONGRESSIONAL RECORD. That is the reason for Davis-Bacon, is to keep competition out, particularly minorities and women.

If you do not believe me, what was all of that protest about in Chicago just a couple of weeks ago, because the blacks were complaining about the white-faced construction unions taking all the jobs and not allowing minorities to participate in these construction jobs? What we are saying is if you have helper provisions then that allows the semi-skilled worker an entry into the construction industry. That is what we are talking about. We are not keeping people out or lowering wages.

In fact, the prevailing wages are always the union wages.

I ask you to support the DeLay amendment and allow everyone to participate.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself the balance of my time.

I would point out to the gentleman from Texas another reason it passed is because President Hoover was for it.

Things have changed since those days, have they not?

These regulations have been around in one form or another since 1982. They were blocked by the Federal courts for many years, and then were given approval in 1990 finally, this regulation and rule, and Congress blocked them again in a supplemental bill in 1991. They were allowed to go into effect in 1992 and 1993, and in the fall of 1993, that is a year ago, again, there was this provision put into the bill, and there was a separate motion on it. It is the same Congress we have now, so I assume everybody knows how the majority would vote, and I assume they would vote the same way.

This provision was requested again this year, because the administration is negotiating, I hope, a final settlement to this. They are going to change the regulation.

The chairman of the Committee on Education and Labor spoke here today. He says, "Give them another year. Give them 1 more year with this limitation." The administration has sent a letter up here; the Secretary of Labor says, "Give us another year." This is the kind of thing that you cannot settle just by having the existing regulation or not having any regulation at all. He says they are trying their best through negotiation and rulemaking to settle this.

So I say just leave this in the bill this year. Give them 1 more year, and the gentleman from Texas will not have to do this every year after this.

Let us vote "no" on it today.

Mr. RAHALL. Mr. Chairman, there is a 1-year moratorium in the Labor-HHS-Education bill to prohibit the Department of Labor from implementing 13-year-old Reagan-era regulations designed to create a subclass work force called helpers under the Davis-Bacon Act. I rise in opposition to the amendment to strike the moratorium.

Supporters of these regulations say: But they will assure jobs for women and minorities in the construction field. They sure would.

As I just stated, to allow the hiring of helpers would deliberately create a subclass of workers, who would be given no skills training, no health and safety standard training, and who would be paid very low wages on a very permanent basis.

Creating this new subclass of workers will cause massive job losses, with current workers being replaced by the newly created helper who works cheap.

If you think contractors won't jump at the chance to fire skilled workers to hire cheap labor, think again.

This new subclass of helpers will have no training for their jobs, and absolutely no knowledge of life-and-death health and safety standards that must be met at dangerous worksites.

What loss of life and limb might result from a work force with no health and safety training? Are women and minorities expendable human beings? Is that any way to treat women and minorities?

The rising costs of workers' compensation from workplace accidents is already of grave concern to this body and to industry. Are we deliberately setting out to make it worse? Have we set a price on the value of life and limb?

I am deeply concerned over the growing trend of creating jobs in this country that are low-skilled and that provide wages so low as to sentence workers to a lifetime of poverty.

We started this trend by enacting NAFTA which has caused a mass exodus of jobs from the United States.

To date, 126 companies from 29 States, including West Virginia, have moved to Mexico. Those jobs are gone.

I am trying to create jobs in the construction industry that will rebuild the transportation infrastructure of America. I not only want those jobs to be well-paying jobs, I want the jobs performed by skilled laborers in a safe work environment.

Let us treat women and minorities as first-class citizens entitled to local prevailing wages, to skills training, to health insurance and to pension plans, as allowed under the Davis-Bacon Act.

Let us say no to making women and minorities into a permanent subclass or underclass of citizens in America's work force.

Defeat the amendment to strike the moratorium.

Mr. BALLENGER. Mr. Chairman, I rise in support of the DeLay amendment.

The Labor, Health and Human Services appropriation bill for fiscal year 1995 prohibits the Secretary of Labor from using any funds to implement or administer the final Davis-Bacon helper regulations. The DeLay amendment strikes this burdensome provision from the bill.

Under current policy, union workers on federally funded projects are divided into various classifications. Helpers are unskilled workers who work under the direct supervision of higher skilled journey-level workers. If a contractor wants to hire an unskilled worker then the contractor must pay the helper the same wages as the skilled worker. Approximately 75 percent of all construction work is performed by contractors who use seimskiled helpers.

Over a decade ago, the Department of Labor initiated regulations to allow the use of semiskilled helpers on Davis-Bacon projects. After years of administrative review and litigation the courts affirmed that the Department of Labor's helper regulations were fully consistent with the language and purpose of the Davis-Bacon Act—that Federal contracts should reflect the local market, and that the Federal Government should not use its power to impose a wage structure on the local markets. Unfortunately, congressional intervention prevented the regulations from taking effect.

Estimates show that if the helper classification were to become widely used on Davis-Bacon projects, 250,000 jobs would be created and the Federal Government would save $600 million a year. Furthermore, construction industry advocates indicate that the helper classification would open up the job market to many individuals who are not currently employed in this area including minorities, women, the disadvantaged, and many entry-level workers.

Vote for the DeLay amendment. Vote for the opportunity to benefit workers, contractors, and taxpayers by allowing the use of helpers on Davis-Bacon projects.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. DELAY].

The amendment was rejected.

The CHAIRMAN. Are there further amendments to title I?

If not, the Clerk will read.

The Clerk read as follows:

TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

For carrying out titles II, III, VII, VIII, X, XII, XVI, XIX, and XXVI of the Public Health Service Act, section 427(a) of the Federal Coal Mine Health and Safety Act, title V of the Social Security Act, the Health Care Quality Improvement Act of 1986, as amended, Public Law 101-527, and the Native Hawaiian Health Care Act of 1988, as amended, $3,008,225,000, of which $411,000 shall remain available until expended for interest subsidies on loan guarantees made prior to fiscal year 1981 under part B of title VII of the Public Health Service Act: *Provided*, That when the Department of Health and Human Services administers or operates an employee health program for any Federal department or agency, payment for the full estimated cost shall be made by way of reimbursement or in advance to this appropriation: *Provided further*, That of the funds made available under this heading, $933,000 shall be available until expended for facilities renovations at the Gillis W. Long Hansen's Disease Center: *Provided further*, That in addition to fees authorized by section 427(b) of the Health Care Quality Improvement Act of 1986, fees shall be collected for the full disclosure of information under the Act sufficient to recover the full costs of operating the National Practitioner Data Bank, and shall remain available until expended to carry out that Act.

MEDICAL FACILITIES GUARANTEE AND LOAN FUND

FEDERAL INTEREST SUBSIDIES FOR MEDICAL FACILITIES

For carrying out subsections (d) and (e) of section 1602 of the Public Health Service Act, $9,000,000, together with any amounts received by the Secretary in connection with loans and loan guarantees under title VI of the Public Health Service Act, to be available without fiscal year limitation for the payment of interest subsidies. During the fiscal year, no commitments for direct loans or loan guarantees shall be made.

HEALTH EDUCATION ASSISTANCE LOANS PROGRAM

For the cost of guaranteed loans, such sums as may be necessary to carry out the purpose of the program, as authorized by title VII of the Public Health Service Act, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize gross obligations for the total loan principal any part of which is to be guaranteed at not to exceed $375,000,000. In addition, for administrative expenses to carry out the guaranteed loan program, $2,946,000.

VACCINE INJURY COMPENSATION PROGRAM TRUST FUND

For payments from the Vaccine Injury Compensation Program Trust Fund, such sums as may be necessary for claims associated with vaccine-related injury or death with respect to vaccines administered after September 30, 1988, pursuant to subtitle 2 of title XXI of the Public Health Service Act, to remain available until expended: *Provided*, That for necessary administrative expenses, not to exceed $3,000,000 shall be available from the Trust Fund to the Secretary of Health and Human Services.

VACCINE INJURY COMPENSATION

For payment of claims resolved by the United States Court of Federal Claims related to the administration of vaccines before October 1, 1988, $110,000,000, to remain available until expended.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

To carry out titles II, III, VII, XI, XV, XVII, and XIX of the Public Health Service Act, sections 101, 102, 103, 201, 202, and 203 of the Federal Mine Safety and Health Act of 1977, and sections 20, 21, and 22 of the Occupational Safety and Health Act of 1970; including insurance of official motor vehicles in foreign countries; and hire, maintenance, and operation of aircraft, $2,086,850,000, of which $3,575,000 shall remain available until expended for equipment and construction and renovation of facilities, and in addition, such sums as may be derived from authorized user fees, which shall be credited to this account: *Provided*, That for fiscal year 1995 and subsequent fiscal years training of private persons shall be made subject to reimbursement or advances to this appropriation for not in excess of the full cost of such training: *Provided further*, That funds appropriated under this heading for fiscal year 1995 and subsequent fiscal years shall be available for payment of the costs of medical care, related expenses, and burial expenses hereafter incurred by or on behalf of any person who had participated in the study of untreated syphilis initiated in Tuskegee, Alabama, in 1932, in such amounts and subject to such terms and conditions as prescribed by the Secretary of Health and Human Services and for payment, in such amounts and subject to such terms and conditions, of such costs and expenses hereafter incurred by or on behalf of such person's wife or offspring determined by the Secretary to have suffered injury or disease from syphilis contracted from such person: *Provided further*, That for fiscal year 1995 and subsequent fiscal years amounts received by the National Center for Health Statistics from reimbursements and interagency agreements and the sale of data tapes may be credited to this appropriation and shall remain available until expended: *Provided further*, That in addition to amounts provided herein, up to $27,862,000 shall be available from amounts available under section 241 of the Public Health Service Act, to carry out the National Center for Health Statistics surveys.

AMENDMENT OFFERED BY MR. KLUG

Mr. KLUG. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. KLUG: Page 23, line 5, strike "$2,086,850,000" and insert "$2,073,600,000".

Mr. SMITH of Iowa. Mr. Chairman, I ask unanimous consent that debate on this amendment and all amendments thereto close in 30 minutes.

The CHAIRMAN. With the time to be equally divided between the gentleman from Wisconsin and the gentleman from Iowa? Is that correct?

Mr. SMITH of Iowa. Yes, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. KLUG. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would strike $13 million from the Centers for Disease Control funding, and this amount represents the cost of operating a new national vaccine warehouse in Burlington, NJ, run by the General Services Administration. This is an outgrowth of the administration's plan last year to set up a new national vaccination program.

Incredibly we now find ourselves in the situation where the Federal Government is going to run and operate a warehouse to handle nearly 30 percent of the vaccines to take care of this country's children. There was nothing whatsoever in extensive testimony last year in the Committee on Ways and Means and the Committee on Energy and Commerce, on which I serve, or here on the floor of the House to indicate there has ever been a problem anywhere with the distribution system in this country.

The General Services Administration quite frankly lacks the infrastructure and experience to move hundreds of millions of fragile and highly sensitive biological products safely under a tight schedule and under strict Food and Drug Administration requirements.

One-third of the Nation's vaccines will be stored in a room that previously stored paint thinners and solvents, and according to the General Services Administration's own diagram, right next to a room that is referred to on their drawing plans as "the flammable room." So we are now going to figure out and put into place a new Federal bureaucracy where a manufacturer in California will ship drugs to a GSA warehouse in New Jersey which, at this point, handles chairs, tables, paper clips, and paper. We are going to ship from a pharmaceutical company in California to a Government warehouse in New Jersey where a doctor now in California will have to call the State of California, who will then call the Centers for Disease Control, who will then call New Jersey so we can finally then ship the vaccination back to California. What kind of sense does this make at all, Mr. Chairman?

Now, incredibly the Centers for Disease Control says it cannot even verify the GSA distribution will be cheaper than private-sector distribution. In fact, we find ourselves in a situation where we have already bypassed and surpassed the 2000 goal of 90 percent immunization against diphtheria, tetanus, whooping cough, and polio, and my colleague, the gentleman from Pennsylvania [Mr. SANTORUM], will talk more about those goals in a minute.

The bottom line is we are going to spend $18 million to do what the private sector does and trust the General Services Administration doing it.

Incredibly we are about to do this when there are two General Accounting Office reports, one on the Department of Defense, one on the Department of Veterans Affairs, which urge both of these Government agencies to disband Government warehouses we already will run. So it does not work in the Department of Defense, and it does not work in the VA.

Why are we going to spend $19 million that could be spent on outreach programs and more nurses and more clinics to reach children, instead, so we can run a GSA warehouse full of vaccines and immunizations? I would make the point that I think that is absolutely nuts.

So this amendment simply strikes the funding for that part of the bill.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I will just say this: I understand the frustration the gentleman has. He has a hard time reaching the purpose of his amendment. He cannot really reach it, and so he strikes $13 million out of an account which has things in it that I do not think he really wants to reduce, such as breast and cervical cancer screening, tuberculosis control, AIDS prevention, diabetes control, and injury control among others.

By reducing the money in the account, I mean, you can say what you do not want to do is to have this warehouse storage, but that is not what the amendment actually does.

□ 1750

You are expressing your frustration, but I do not think that we should do that.

So I oppose the amendment.

Mr. KLUG. Mr. Chairman, I yield 3 minutes to my colleague on the Committee on Energy and Commerce, the gentleman from Pennsylvania [Mr. GREENWOOD], a cosponsor of this amendment.

Mr. GREENWOOD. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in support of the Klug-Greenwood-Hastert amendment which would strike the estimated $13.25 million that would be needed by the Centers for Disease Control [CDC] to pay the General Services Administration [GSA] to operate a national vaccine warehouse.

The GSA's warehouse plan is the inevitable bureaucratic outgrowth of a poorly conceived, big government approach to childhood immunization. We are all committed to ensuring that all children are vaccinated and that vaccinations are available to children whose parents cannot afford them. But this is not the way to do it.

The most effective way to insure that children receive the immunizations recommended by pediatricians is to require their parents to have their children immunized as a precondition to receive Government subsidized day care, Aid to Families with Dependent Children, WIC, food stamps, pre-school and school services. The record is clear on this. But the administration has insisted on pursuing its command and control, Big Brother approach to immunizing children and now finds itself in the warehouse business once again.

The CDC has stated that it will purchase 80 percent of the Nation's vaccine supplies for children. Furthermore, it intends to use the GSA to store and distribute at least one out of three doses of this vaccine from a warehouse in Burlington, N.J. that currently is used to store paint solvent and thinner.

GSA has no experience with storing, handling, or tracking vaccines nor the strict licensure and inspection requirements of the Food and Drug Administration. I believe it would be irresponsible for the Congress to condone such a program which could easily put our children's vaccine supply in jeopardy.

The Federal Government will have to repackage and deliver these vaccines to over 70,000 sites when the Vaccine for Children Program is implemented in October. In order to ensure that deliveries are made, the CDC and GSA will need to develop and operate, by October 21, a data delivery system that includes name, street address, days, and hours of operation, required doses and replacement schedules for all 70,000 health providers. I am greatly concerned that the proposed distribution system could both disrupt the country's supply of vaccines and put the integrity of the vaccine supply at risk.

Both the Department of Defense and the Veterans' Administration have learned the hard way that the Federal warehousing of medicine is a bad idea. They have turned to private, commercial wholesale distributors.

Mr. Chairman, the Vaccine for Children Program can best be operated by allowing the manufacturers of these vaccines to deliver them directly to the health care providers without a massive Federal warehousing operation.

Mr. KLUG. Mr. Chairman, I yield such time as he may consume to the other cosponsor of this amendment, another colleague of mine from the Committee on Energy and Commerce, the gentleman from Illinois [Mr. HASTERT].

Mr. HASTERT. I thank the gentleman for yielding this time to me.

Mr. Chairman, I hope everyone will listen carefully to what my distinguished colleague, Mr. KLUG, is trying to do. What we are talking about is striking less than 1 percent of funding for Centers for Disease Control so that we can avoid another costly, big-government blunder.

Mr. Chairman, like my colleagues, I want all American children to grow up healthy. They should be immunized against the horrible diseases which claimed so many lives before vaccines. But for some reason, the Department of Health and Human Services thinks that it can do a better job of distributing vaccines than private companies can. Despite studies to the contrary, HHS thinks that not enough children are being immunized. However, the most recent data show that we have

reached the goal of immunizing 90 percent of our children against some of the worst diseases.

So why should the Federal Government be involved in the distribution of vaccines? Earlier, HHS asked the Veterans Administration and the Defense Department to operate a depot for vaccine distribution. Those two agencies said no. Two government studies showed that health care products were distributed more cheaply and efficiently by private companies than by the government.

The simple fact of the matter is that this program is not needed, and this warehouse is simply another place to store government money.

Mr. Chairman, I urge my colleagues to support the Klug-Greenwood-Hastert amendment and strike the funding for this unnecessary warehouse.

Mr. KLUG. Mr. Chairman, I yield 1 minute to another one of my colleagues on the Committee on Energy and Commerce, the gentleman from North Carolina [Mr. MCMILLAN].

Mr. MCMILLAN. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in support of the amendment. I really do not understand why we need to debate this issue. Why is the Department of Health and Human Services refusing to follow the law as it was written by Congress? And why at a time of scarce financial resources is the Federal Government attempting to duplicate what the private sector and the States do very well?

The $3.25 million that the amendment would strike from the Labor-HHS appropriations bill is money that the Federal Government does not have to spend because the private sector and the States already do the job of supplying and distributing vaccines very well. And it is estimated at a cost that would be far lower than the proposed cost of this HHS project.

We appropriately hear the litany of Members who say they want to cut the deficit. If you want to do that, why spend money to fund a request that does nothing more than federalize existing programs that are already extremely efficient and are providing vaccine at a lower cost and with better availability than the proposed program?

The problem is not the availability of vaccines at an affordable cost, the problem is educating people to take advantage of a program that is already available.

If you want to spend more money, spend it on education, not on duplicating an efficient system.

So, I urge my colleagues to support this amendment and perhaps HHS will get the message and get the focus in the right place.

Mr. KLUG. Mr. Chairman, I yield 2 minutes to my classmate, the gentleman from Ohio [Mr. HOBSON].

Mr. HOBSON. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in support of the amendment offered by Representative KLUG to prohibit the operation of a Federal warehouse for the administration's Vaccines for Children Program.

I have been concerned for some time about this new vaccine program and the reduced funding requested for the traditional 317 allocation for vaccines. As a result, a number of children in 66 of 88 counties in Ohio—particularly rural Ohio—may not have access to vaccinations.

While the administration seeks to cut by half the section 317 money—which has successfully provided vaccine to local public health clinics, it also seeks to spend over $13 million to fund a monument to bureaucracy in a New Jersey warehouse.

I have a better idea for the $13 million in taxpayer funds: let us use it to restore funding to the existing vaccine program.

Nothing in the law establishing the new vaccine program says anything about creating a warehouse. The Government has turned down offers of private companies to distribute the vaccines as they currently do, and instead is intent on stockpiling them in a warehouse previously used for toxic substances, and distributing it without the private industry's state-of-the-art system.

A bureaucratic Government warehouse distribution is all wrong. Funding this program is throwing Federal dollars at a problem that doesn't exist. Altering the traditional vaccine program is fixing a program that isn't broken.

As you have heard today, the problems with this idea are numerous. But the biggest problem is that the Department of Health and Human Services fails to recognize the potential failures of a Federal vaccine warehouse. What will it take to make them understand?

Will it be the loss of millions of vaccines due to a faulty refrigeration system? Or will it be the contamination of serum resulting in illness or loss of a child's life?

I believe that the administration and HHS are doggedly pursuing their agenda in an effort to save face. In the meantime, who will save these children?

Why take the risk? Let us eliminate the funding for this ill-funded effort now. Restore the funds to 317, and support the Klug amendment.

Mr. KLUG. Mr. Chairman, I yield 3 minutes to another one of my classmates, the gentleman from Pennsylvania [Mr. SANTORUM] who helped lead the same fight in the Committee on Ways and Means.

Mr. SANTORUM. I thank the gentleman for yielding this time to me.

Mr. Chairman, this is an amazing story of how a good intention of the Congress has run amok. Just a year ago here on this floor we passed the vaccination for children program. The reason we did it was based on data that only 40 to 50 percent of the children by age 2 were receiving the necessary vaccination. The fact of the matter is the data we used then was 7 years old. We now have new data from July of 1993. The goal set out last year by the vaccine for kids program was to get 90 percent of 2-year-olds vaccinated by the year 2000.

□ 1900

I am here to announce that we have accomplished that as of last year. We have 90 percent, and this is the CDC's own numbers; 90 percent get their diphtheria, tetanus and pertussis as of last year. Ninety percent receive their polio, and 86 percent receive their measles, mumps and rubella. We have already accomplished with the existing system, the 317 money and the private sector, we have already accomplished what this vaccine for kids program was put into place to accomplish 6 years from now, and we are going to spend billions of dollars, billions of dollars, setting up warehouses in New Jersey, wasting vaccines all over the country. The State of Illinois ordered 120 percent of their required vaccines. Why? Because they recognized that because of the distribution system set up by the Federal Government under this plan it will be 25 percent will be wasted in delivery. This is a boondoggle.

Mr. Chairman, I commend the gentleman from Wisconsin [Mr. KLUG] for his $13 million, but he has not gone far enough. This program needs to be scrapped and started all over again, and what are we doing? Not only are we not scrapping this program; oh, no. The program that we are taking money from to help fund this program, 317 program, which actually works to get money out into the minority community, into the poorer communities to try to outreach, has new delivery money to try to get people who cannot get immunizations. It is not because they are too expensive. It is because we do not have the proper delivery methodology to reach into the poorer communities to get these children of poor moms, to get them vaccinated. No, we are cutting that fund $64 million. We are going to cut that fund, and we are going to fund vaccines for kids.

So, we set up warehouses in New Jersey where they store paint solvent. This is absurd. This is absurd. This Congress needs to act right now, right now to send a message to this administration to put the brakes on this train that is going down the track, ready to go over a cliff, cost billions of dollars and do more harm than good.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York [Ms. SLAUGHTER].

Ms. SLAUGHTER. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Wisconsin [Mr. KLUG].

Mr. Chairman, this amendment proposes to prohibit the Centers for Disease Control and the General Services Administration from developing a system for storing, handling and shipping federally purchased vaccines. The gentleman from Wisconsin has expressed concerns that GSA does not have the expertise to carry out this responsibility, and I wouldn't disagree. That is why the CDC and the Food and Drug Administration are also going to be a part of the development, implementation and oversight of the program.

In a further effort to allay concerns about the best permanent method of storing and distributing these vaccines, the GAO has been assigned to study and report on this question. If they report that a better way needs to be found, the Secretary will make the necessary changes at that time. In the meantime, however, only the GSA/CDC option gives us the ability to implement this badly needed program on time.

A number of allegations have been circulated recently, about the ability of the GSA and CDC to manage this program. Such allegations are simply not true. For example:

The CDC will only purchase the amount of vaccine necessary to implement the Vaccines for Children program. No additional vaccine, beyond existing needs, will be acquired;

The GSA/CDC vaccine purchase and delivery system will not supplant or disrupt existing State vaccine distribution systems. Fifty percent of all childhood vaccines will continue to be distributed by the States. Only those states that do not wish to be responsible for delivery will be a part of the federal system;

The CDC, contrary to some allegations, is perfectly capable of designing and implementing a safe, effective vaccine distribution system, executed by GSA. And the FDA will be called on to inspect the storage facility to ensure full compliance with all vaccine storage, handling, packaging and distribution requirements;

Nor will placing the vaccine supply in a central distribution facility put us at risk of losing our entire vaccine supply. If fact, less than 8 percent of the country's annual vaccine supply will be stored in the distribution facility at any one time. I urge my colleagues to leave off arguing about non-issues such as these, and refocus attention on the reason why we passed this legislation in the first place. Just 2 years ago, 45 percent of all American pre-schoolers had not been fully immunized. That is the real problem and that is why we must defeat this amendment, and get on with the task of implementing this vital program as quickly as possible.

Mr. KLUG. Mr. Chairman, I still have several requests for speakers on my side, and I would ask the distinguished gentleman from Iowa if he would yield us part of his time so we can end this within our time constraints.

Mr. SMITH of Iowa. Mr. Chairman, how much time does the gentleman need?

Mr. KLUG. We would like to have 4 minutes.

Mr. SMITH of Iowa. Mr. Chairman, I ask unanimous consent that 4 minutes be transferred to the other side.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The CHAIRMAN. The gentleman from Wisconsin [Mr. KLUG] now has 5½ minutes remaining.

Mr. KLUG. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. PORTER] who has raised this same issue within the Committee on Appropriations debate itself.

Mr. PORTER. Mr. Chairman, I want to concur with the gentleman's concern about the vaccine warehouse. He is very much on point. This is an issue that we discussed very extensively both at the subcommittee and the full committee, and the report that accompanies this bill now contains language which highlights the warehouse as a concern of the subcommittee. It requires the CDC and the GSA to comply with all applicable FDA guidelines and reserves judgment on the whole question of the warehouse pending the outcome of a GAO study that is due in July.

Mr. Chairman, this is a matter of great concern to me personally, as well as to other members of the subcommittee and, I understand, to Senator BUMPERS as well, over in the other body, and I very much thank the gentleman from Wisconsin for raising this issue.

For my part, Mr. Chairman, I will continue to watch the matter very closely in the conference.

Mr. KLUG. Mr. Chairman, I yield myself such time as I may consume to close debate on our side.

Let me emphasize this one more time:

The Federal Government has for several years already attempted to run health distribution centers in both the Department of Defense and the Veterans' Administration. In 1991 a General Accounting Office report entitled DOD Medical Inventory said reductions can be made through the use of commercial practice, and the GAO concluded that the private sector is more efficient at distributing health care products than the Government. In September of 1992, Mr. Chairman, a study by the Logistics Management Institute reached similar conclusions for the Department of Veterans' Affairs. It verified that the expense levels of government run depot systems were 12 times higher than subsequent commercial bids.

My colleagues, there is absolutely no reason in the world to have the Federal Government spend $13 million on a warehouse to store paint thinners and flammable products just a few steps down from fragile immunization programs. This is a Government that cannot run the Post Office and where mail gets lost in Chicago for weeks at a time, and now, if the vaccinations get lost, it is not simply a fact of a letter being a day late, or 3 days late, or a week late. It is a fact that American kids can die precisely as a result of Government mistakes and Government foul-ups.

I urge my colleagues to vote yes for this amendment so we can spend $13 million on immunizing kids and not spend another $13 million on a Government warehouse we do not need for a program that already has worked well in the private health sector.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, on the merits of whether or not there should be a warehouse I would point out that the States are going to be permitted to keep their own distribution system, if they want to, and a good many States will do that. They will not change things from the way they are now. As to those States that do not keep their own distribution system, the question is whether or not GSA will do the distributing or it will be done by a contract with the various pharmaceutical companies. The department says it will be a lot more efficient to do it through the GSA because then it will be delivered. No matter how many pharmaceutical companies it comes from, it will all be delivered together by Federal Express. Whether it is done by GSA through a warehouse or whether it is done by the pharmaceutical companies, Federal Express will deliver it anyway. But in the event the GSA does it, then they will package that from various pharmaceutical companies, send it to the same destination. They say it will cost a lot less money.

However, Mr. Chairman, we are not talking about the merits of that question here because the gentleman could not reach it without having language on the appropriations bill that would be against the rules. All he could do was to reduce the amount of money in a certain account, and that account happens to also include a lot of things bedsides this, including breast and cervical cancer screening, tuberculosis control, AIDS prevention, diabetes control, injury control, and a number of other things.

□ 1910

So actually, the amendment that the gentleman presents, through no fault of his own, does not really reach the question of whether or not there will be a warehouse anyway.

Mr. Chairman, I ask for a no vote on the amendment

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin [Mr. KLUG].

The amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

NATIONAL INSTITUTES OF HEALTH

NATIONAL CANCER INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to cancer, $1,919,419,000.

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

For carrying out sections 301 and 1105 and title IV of the Public Health Service Act with respect to cardiovascular, lung, and blood diseases, and blood and blood products, $1,259,590,000.

NATIONAL INSTITUTE OF DENTAL RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to dental disease, $162,832,000.

NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to diabetes and digestive and kidney diseases, $726,784,000.

NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

For carrying out section 301 and title IV of the Public Health Service Act with respect to neurological disorders and stroke, $626,801,000.

NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to allergy and infectious diseases, $536,416,000.

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to general medical sciences, $877,113,000.

NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

For carrying out section 301 and title IV of the Public Health Service Act with respect to child health and human development, $513,409,000.

NATIONAL EYE INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to eye diseases and visual disorders, $290,335,000.

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For carrying out sections 301 and 311 and title IV of the Public Health Service Act with respect to environmental health sciences, $266,400,000.

NATIONAL INSTITUTE ON AGING

For carrying out section 301 and title IV of the Public Health Service Act with respect to aging, $431,198,000.

NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to arthritis, and musculoskeletal and skin diseases, $227,021,000.

NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS

For carrying out section 301 and title IV of the Public Health Service Act with respect to deafness and other communication disorders, $166,155,000.

NATIONAL INSTITUTE OF NURSING RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to nursing research, $47,971,000.

NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM

For carrying out section 301 and title IV of the Public Health Service Act with respect to alcohol abuse and alcoholism, $181,445,000.

NATIONAL INSTITUTE ON DRUG ABUSE

For carrying out section 301 and title IV of the Public Health Service Act with respect to drug abuse, $290,280,000.

NATIONAL INSTITUTE OF MENTAL HEALTH

For carrying out section 301 and title IV of the Public Health Service Act with respect to mental health, $542,050,000.

NATIONAL CENTER FOR RESEARCH RESOURCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to research resources and general research support grants, $294,877,000: *Provided*, That none of these funds shall be used to pay recipients of the general research support grants program any amount for indirect expenses in connection with such grants: *Provided further*, That $20,000,000 shall be for extramural facilities construction grants.

NATIONAL CENTER FOR HUMAN GENOME RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to human genome research, $152,010,000.

JOHN E. FOGARTY INTERNATIONAL CENTER

For carrying out the activities at the John E. Fogarty International Center, $15,193,000.

NATIONAL LIBRARY OF MEDICINE

For carrying out section 301 and title IV of the Public Health Service Act with respect to health information communications, $123,274,000.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

For carrying out the responsibilities of the Office of the Director, National Institutes of Health, $219,474,000: *Provided*, That funding shall be available for the purchase of not to exceed five passenger motor vehicles for replacement only: *Provided further*, That the Director may direct up to 1 percent of the total amount made available in this Act to all National Institutes of Health appropriations to activities the Director may so designate: *Provided further*, That no such appropriation shall be increased or decreased by more than 1 percent by any such transfers and that the Congress is promptly notified of the transfer.

OFFICE OF AIDS RESEARCH

(INCLUDING TRANSFER OF FUNDS)

For carrying out part D of title XXIII of the Public Health Service Act, $1,337,606,000: *Provided*, That the Director of the Office of AIDS Research shall transfer from this appropriation the amounts necessary to carry out section 2353(d) of the Act.

BUILDINGS AND FACILITIES

For the study of, construction of, and acquisition of equipment for, facilities of or used by the National Institutes of Health, including the acquisition of real property, $114,370,000, to remain available until expended.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

For carrying out the Public Health Service Act with respect to substance abuse and mental health services, section 612 of Public Law 100–77, as amended, and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, $2,166,148,000: *Provided*, That no portion of amounts appropriated for the programs of the Department of Health and Human Services shall be available for obligation pursuant to section 571 of the Public Health Service Act, other than an amount of $3,750,000 from amounts appropriated to carry out section 510 of that Act.

ASSISTANT SECRETARY FOR HEALTH

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

(INCLUDING TRANSFER OF FUNDS)

For the expenses necessary for the Office of Assistant Secretary for Health and for carrying out titles III, XVII, XX and XXI of the Public Health Service Act, $70,261,000, and, in addition, amounts received from Freedom of Information Act fees and reimbursable and interagency agreements shall be credited to this appropriation and shall remain available until expended: *Provided*, That $2,000,000 of the amount appropriated in this paragraph shall be transferred to the Food and Drug Administration, Salaries and Expenses appropriation account.

RETIREMENT PAY AND MEDICAL BENEFITS FOR COMMISSIONED OFFICERS

For retirement pay and medical benefits of Public Health Service Commissioned Officers as authorized by law, and for payments under the Retired Serviceman's Family Protection Plan and Survivor Benefit Plan and for medical care of dependents and retired personnel under the Dependents' Medical Care Act (10 U.S.C. ch. 55), and for payments pursuant to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), such amounts as may be required during the current fiscal year.

AGENCY FOR HEALTH CARE POLICY AND RESEARCH

HEALTH CARE POLICY AND RESEARCH

For carrying out titles III and IX of the Public Health Service Act, and part A of title XI of the Social Security Act, $134,624,000, together with not to exceed $5,806,000 to be transferred from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as authorized by sections 1142 and 201(g) of the Social Security Act; in addition, amounts received from Freedom of Information Act fees, reimbursable and interagency agreements, and the sale of data tapes shall be credited to this appropriation and shall remain available until expended: *Provided*, That the amount made available pursuant to section 926(b) of the Public Health Service Act shall not exceed $13,202,000.

HEALTH CARE FINANCING ADMINISTRATION

GRANTS TO STATES FOR MEDICAID

For carrying out, except as otherwise provided, titles XI and XIX of the Social Security Act $62,637,775,000, to remain available until expended.

For making, after May 31, 1995, payments to States under title XIX of the Social Security Act for the last quarter of fiscal year 1995 for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

For making payments to States under title XIX of the Social Security Act for the first quarter of fiscal year 1996, $27,047,717,000, to remain available until expended.

Payment under title XIX may be made for any quarter with respect to a State plan or plan amendment in effect during such quarter, if submitted in or prior to such quarter and approved in that or any subsequent quarter.

PAYMENTS TO HEALTH CARE TRUST FUNDS

For payment to the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as provided under sections 217(g) and 1844 of the Social Security Act, sections 103(c) and 111(d) of the Social Security Amendments of 1965, section 278(d) of Public Law 97-248, and for administrative expenses incurred pursuant to section 201(g) of the Social Security Act, $37,546,758,000.

PROGRAM MANAGEMENT

For carrying out, except as otherwise provided, titles XI, XVIII, and XIX of the Social Security Act, and title XIII of the Public Health Service Act, the Clinical Laboratory Improvement Amendments of 1988, section 4360 of Public Law 101-508, and section 4005(e) of Public Law 100-203, not to exceed $2,183,985,000, together with all funds collected in accordance with section 353 of the Public Health Service Act, the latter funds to remain available until expended; the $2,183,985,000 to be transferred to this appropriation as authorized by section 201(g) of the Social Security Act, from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds: *Provided*, That all funds derived in accordance with 31 U.S.C. 9701 from organizations established under title XIII of the Public Health Service Act are to be credited to this appropriation.

HEALTH MAINTENANCE ORGANIZATION LOAN AND LOAN GUARANTEE FUND

For carrying out subsections (d) and (e) of section 1308 of the Public Health Service Act, $15,000,000 together with any amounts received by the Secretary in connection with loans and loan guarantees under title XIII of the Public Health Service Act, to be available without fiscal year limitation for the payment of outstanding obligations. During fiscal year 1995, no commitments for direct loans or loan guarantees shall be made.

SOCIAL SECURITY ADMINISTRATION

PAYMENTS TO SOCIAL SECURITY TRUST FUNDS

For payment to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds, as provided under sections 201(m), 228(g), and 1131(b)(2) of the Social Security Act, $25,094,000.

SPECIAL BENEFITS FOR DISABLED COAL MINERS

For carrying out title IV of the Federal Mine Safety and Health Act of 1977, $527,874,000, to remain available until expended.

For making, after July 31 of the current fiscal year, benefit payments to individuals under title IV of the Federal Mine Safety and Health Act of 1977, for costs incurred in the current fiscal year, such amounts as may be necessary.

For making benefit payments under title IV of the Federal Mine Safety and Health Act of 1977 for the first quarter of fiscal year 1996, $180,000,000, to remain available until expended.

SUPPLEMENTAL SECURITY INCOME PROGRAM

For carrying out titles XI and XVI of the Social Security Act, section 401 of Public Law 92-603, section 212 of Public Law 93-66, as amended, and section 405 of Public Law 95-216, including payment to the Social Security trust funds for administrative expenses incurred pursuant to section 201(g)(1) of the Social Security Act, $21,237,101,000, to remain available until expended: *Provided*, That any portion of the funds provided to a State in the current fiscal year and not obligated by the State during that year shall be returned to the Treasury.

For making, after June 15 of the current fiscal year, benefit payments to individuals under title XVI of the Social Security Act, for unanticipated costs incurred for the current fiscal year, such sums as may be necessary.

For carrying out title XVI of the Social Security Act for the first quarter of fiscal year 1996, $7,060,000,000, to remain available until expended.

Mr. PORTER (during the reading). Mr. Chairman, I do not believe there are any amendments prior to page 35 through line 5. If there are, I would like for Members to stand and tell me at this point.

Mr. Chairman, in view of the fact no Member has stood, I ask unanimous consent that the remainder of the bill through page 35, line 5, be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The CHAIRMAN. Are there any points of order in that portion of the bill?

The Chair hears none.

Are there any amendments to that portion of the bill?

The Clerk will read the next paragraph.

The Clerk read as follows:

LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, not more than $5,159,785,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act or as necessary to carry out sections 9704 and 9706 of the Internal Revenue Code of 1986 as such sections were in effect on January 1, 1993, from any one or all of the trust funds referred to therein: *Provided*, That reimbursement to the Trust Funds under this heading for administrative expenses to carry out sections 9704 and 9706 of the Internal Revenue Code of 1986 shall be made, with interest, not later than September 30, 1996.

AMENDMENTS OFFERED BY MR. SANTORUM

Mr. SANTORUM. Mr. Chairman, I offer amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. SANTORUM:

TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES

LIMITATION ON ADMINISTRATIVE EXPENSES

a. On page 35, Line 8: Strike "$5,159,785,000" and insert "5,127,785,000".

b. On page 35, Line 20: Strike "$320,000,000" and insert "$352,000,000".

Mr. SANTORUM. Mr. Chairman, I would like to thank the chairman of the subcommittee for agreeing to the unanimous consent request.

Mr. Chairman, last year this committee appropriated $200 million to the Social Security Administration to address one of the most pressing problems that I hear about from my constituents back in my district, and that is the backlog of Social Security disability cases. It is a very serious issue, where you have literally a backlog of a year or more to deal with a disability claim.

Unfortunately, as we found out at a hearing before the Committee on Ways and means when the secretary of the Social Security Administration was there, we found out that the Social Security Administration spent $32 million just this year on bonuses for Social Security Administration employees, when they were coming here asking for additional money to solve a backlog.

We thought, and I think the press and Members in the other body, found that to be an outrage, that they would be spending that amount of money on bonuses, when they were coming here, hat in hand, asking for more money to clear up backlogs in their own department.

The payment, these bonuses, were paid to a large number of Social Security employees, but the largest amount was paid to the new second-in-command at the Social Security Administration, some $10,000 bonus for an employee who worked there for 2½ months. The employee has subsequently, under the pressure created by that move, given back the bonus. The average bonus to high senior executives in the Social Security Administration was over $100,000.

What this amendment does is restore the $32 million to the account which this Congress appropriated the $200 million to, to clear up the disability backlog. So what this amendment simply does is take $32 million out of the administration account of Social Security and put it in the disability account, so we can dramatically address this tremendous problem of backlog of Social Security disability claims, and send a message to the Social Security Administration that that kind of excess in compensation is not what the Congress is here to tolerate, and we want to see action done on disability claims, and action done quickly.

Mr. SMITH of Iowa. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, the gentleman is taking $32 million out of a $5 billion account. Obviously that is not going to hurt a lot. But he is also transferring it to a very good purpose. I understand his reasoning and what he said.

All I want to say is that if there is an aye vote, I do not intend to ask for a rollcall. Hopefully we can have a vote right away.

Mr. CUNNINGHAM. Mr. Chairman, I move to strike the last word.

Mr. Chairman, back in the districts we had a lot of town hall meetings, and the No. 1 issue was this issue. I thank the chairman for his consideration. What I had to tell them was I did not have to worry about them telling me, because my mother, the second she

read it, got on the telephone and said what are you allowing them to do in Congress, son? And I think that this is a very good amendment, and I think it will be widely supported on both sides of the aisle.

I thank the gentleman for offering it.

Mr. MFUME. Mr. Chairman, I rise today in strong opposition to the amendment offered by the gentleman from Pennsylvania.

As a Member of Congress who represents both people who work in the Social Security Administration as well as many who rely on the agency for their income, I can personally attest to the damage a decrease in funding of this magnitude would inflict. Like many Members, I am aware of the frustration and at times the pain that many of our older or disabled citizens feel when they have a claim or a problem with the Social Security Administration.

Furthermore, like many of my colleagues, I have tried to work with the Social Security Administration at all levels to reform the Administration to make it more responsive to needs of its clients, our constituents.

I must say, however, it is my experience that the last thing this agency needs to improve its service is a reduction in its administrative funding.

I understand that the purpose of this amendment is to strike the money that the agency would spend on employee bonuses. I must question the wisdom of this amendment, however, in light of the fact that since 1983 the number of Social Security employees has dropped approximately 20 percent, while workloads in recent years have grown 70 percent. Furthermore, according to the Bureau of Labor Statistics overall productivity at the Social Security Agency has increased by 18 percent over the last 5 years.

There are also a number of pending legislative initiatives that will only increase the demand on the Social Security Administration if enacted. Rather than taking resources away from the Administration, and further frustrating the attempts of its employees to provide quality service to our constituents and to prevent, deter, and terminate fraudulent claims, we should be rewarding and encouraging exemplary service.

Like other Americans, most Social Security employees are dedicated workers who are striving to do a good job.

We should not take actions here to impeded or discourage the employees of the Social Security Agency in their quest to help implement the programs that we, the Congress, mandate. Furthermore, we should not take the concerns of some Members about employee bonuses out on the disabled children, widows, and the elderly who depend on Social Security to survive. We should do all we can to help and encourage the Social Security Administration employees be as responsive and as helpful to our constituents as possible.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Pennsylvania [Mr. SANTORUM].

The amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

In addition to funding already available under this heading, and subject to the same terms and conditions, $320,000,000, for disability caseload processing.

In addition to funding already available under this heading, and subject to the same terms and conditions, $130,000,000, which shall remain available until expended, to invest in a state-of-the-art computing network, including related equipment and administrative expenses associated solely with this network, for the Social Security Administration and the State Disability Determination Services, may be expended from any or all of the trust funds as authorized by section 201(g)(1) of the Social Security Act.

ADMINISTRATION FOR CHILDREN AND FAMILIES

FAMILY SUPPORT PAYMENTS TO STATES

For making payments to States or other non-Federal entities, except as otherwise provided, under titles I, IV–A (other than section 402(g)(6)) and D, X, XI, XIV, and XVI of the Social Security Act, and the Act of July 5, 1960 (24 U.S.C. ch. 9), $12,761,788,000, to remain available until expended.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under titles I, IV–A and D, X, XI, XIV, and XVI of the Social Security Act, for the last three months of the current year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

For making payments to States or other non-Federal entities under titles I, IV–A (other than section 402(g)(6)) and D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960 (24 U.S.C. ch. 9) for the first quarter of fiscal year 1996, $4,400,000,000, to remain available until expended.

JOB OPPORTUNITIES AND BASIC SKILLS

For carrying out aid to families with dependent children work programs, as authorized by part F of title IV of the Social Security Act, $1,300,000,000.

LOW INCOME HOME ENERGY ASSISTANCE

(INCLUDING RESCISSION)

Of the funds made available beginning on October 1, 1994 under this heading in Public Law 103–112, $250,000,000 are hereby rescinded.

The funds remaining after said rescission shall be available for obligation through September 30, 1995.

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, $1,225,000,000, to be available for obligation in the period October 1, 1995 through September 30, 1996.

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, an additional $600,000,000: *Provided*, That all of the funds available under this paragraph are hereby designated by Congress to be emergency requirements pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That these funds shall be made available only after submission to Congress of a formal budget request by the President that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985.

REFUGEE AND ENTRANT ASSISTANCE

For making payments for refugee and entrant assistance activities authorized by title IV of the Immigration and Nationality Act and section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–422), $399,779,000: *Provided*, That funds appropriated pursuant to section 414(a) of the Immigration and Nationality Act under Public Law 102–394 for fiscal year 1993 shall be available for the costs of assistance provided and other activities conducted in such year and in fiscal years 1994 and 1995.

COMMUNITY SERVICES BLOCK GRANT

For making payments under the Community Services Block Grant Act, section 408 of Public Law 99–425, and the Stewart B. McKinney Homeless Assistance Act, $465,714,000.

CHILD CARE AND DEVELOPMENT BLOCK GRANT

For carrying out sections 658A through 658R of the Omnibus Budget Reconciliation Act of 1981 (The Child Care and Development Block Grant Act of 1990), $934,656,000, which shall be available for obligation under the same statutory terms and conditions applicable in the prior fiscal year.

SOCIAL SERVICES BLOCK GRANT

For making grants to States pursuant to section 2002 of the Social Security Act, $2,800,000,000.

CHILDREN AND FAMILIES SERVICES PROGRAMS

For carrying out, except as otherwise provided, the Runaway and Homeless Youth Act, the Developmental Disabilities Assistance and Bill of Rights Act, the State Dependent Care Development Grants Act, the Head Start Act, the Child Development Associate Scholarship Assistance Act of 1985, the Child Abuse Prevention and Treatment Act, chapters 1 and 2 of subtitle B of title III of the Anti-Drug Abuse Act of 1988, the Family Violence Prevention and Services Act, the Native American Programs Act of 1974, title II of Public Law 95–266 (adoption opportunities), the Temporary Child Care for Children with Disabilities and Crisis Nurseries Act of 1986, the Abandoned Infants Assistance Act of 1988, subtitle F of title VII of the Stewart B. McKinney Homeless Assistance Act, and part B of title IV and section 1110 of the Social Security Act, and for necessary administrative expenses to carry out said Acts and titles I, IV, X, XI, XIV, XVI, and XX of the Social Security Act, the Act of July 5, 1960 (24 U.S.C. ch. 9), the Omnibus Budget Reconciliation Act of 1981, section 204 of the Immigration Reform and Control Act of 1986, title IV of the Immigration and Nationality Act, section 501 of the Refugee Education Assistance Act of 1980, Public Law 100–77, and section 126 and titles IV and V of Public Law 100–485, $4,408,775,000.

FAMILY PRESERVATION AND SUPPORT

For carrying out section 430 of the Social Security Act, $150,000,000.

PAYMENTS TO STATES FOR FOSTER CARE AND ADOPTION ASSISTANCE

For making payments to States or other non-Federal entities, under title IV–E of the Social Security Act, $3,440,871,000.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

For carrying out, to the extent not otherwise provided, the Older Americans Act of 1965, as amended, and section 10404 of Public Law 101–239 (volunteer senior aides demonstration), $869,823,000.

OFFICE OF THE SECRETARY

GENERAL DEPARTMENTAL MANAGEMENT

For necessary expenses, not otherwise provided, for general departmental management, including hire of six medium sedans, $89,500,000, together with $31,008,000, to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from any one or all of the trust funds referred to therein.

OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as

amended, $63,585,000, together with not to exceed $37,060,000, to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from any one or all of the trust funds referred to therein.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, $18,409,000 together with not to exceed $3,874,000, to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from any one or all of the trust funds referred to therein.

POLICY RESEARCH

For carrying out, to the extent not otherwise provided, research studies under section 1110 of the Social Security Act, $14,632,000.

GENERAL PROVISIONS

SEC. 201. Funds appropriated in this title shall be available for not to exceed $37,000 for official reception and representation expenses when specifically approved by the Secretary.

SEC. 202. The Secretary shall make available through assignment not more than 60 employees of the Public Health Service to assist in child survival activities and to work in AIDS programs through and with funds provided by the Agency for International Development, the United Nations International Children's Emergency Fund or the World Health Organization.

SEC. 203. None of the funds appropriated under this Act may be used to implement section 399L(b) of the Public Health Service Act or section 1911(d) and section 1503 of the National Institutes of Health Revitalization Act of 1993, Public Law 103–43.

SEC. 204. None of the funds made available by this Act may be used to require States as a condition of receiving funding under the Child Abuse Prevention and Treatment Act to restrict, condition, or otherwise qualify a State's authority to determine (i) whether and under what circumstances a parent's decision to provide non-medical health care for a child may constitute negligent treatment or maltreatment, and (ii) the circumstances under which it is appropriate to order medical treatment for a child who is receiving non-medical health care.

SEC. 205. (a) Of the budgetary resources available to the Department of Health and Human Services (excluding the Food and Drug Administration and the Indian Health Service) during fiscal year 1995, $37,125,000 are permanently canceled.

(b) The Secretary of Health and Human Services shall allocate the amount of budgetary resources canceled among the Department's accounts (excluding the Food and Drug Administration and the Indian Health Service) available for procurement and procurement-related expenses. Amounts available for procurement and procurement-related expenses in each such account shall be reduced by the amount allocated to such account.

(c) For the purposes of this section, the definition of "procurement" includes all stages of the process of acquiring property or services, beginning with the process of determining a need for a product or services and ending with contract completion and closeout, as specified in 41 U.S.C. 403(2).

This title may be cited as the "Department of Health and Human Services Appropriations Act, 1995".

TITLE III—DEPARTMENT OF EDUCATION

EDUCATION REFORM

For carrying out activities authorized by titles II and III of the Goals 2000: Educate America Act and titles II, III, and IV of the School-to-Work Opportunities Act, $528,400,000 of which $503,670,000 shall become available on July 1, 1995, and remain available through September 30, 1996.

EDUCATION FOR THE DISADVANTAGED

For carrying out the activities authorized by title I of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act as passed the House of Representatives on March 24, 1994, and by section 418A of the Higher Education Act, $7,245,655,000, of which $7,212,093,000 shall become available on July 1, 1995 and shall remain available through September 30, 1996: *Provided*, That $6,698,356,000 shall be available for grants to local education agencies, $41,434,000 shall be available for capital expenses, $102,024,000 shall be available for the Even Start program, $305,475,000 shall be available for title I migrant education activities, $37,244,000 shall be available for title I delinquent and high-risk youth education activities, $27,560,000 shall be for program improvement activities, $15,000,000 shall be for demonstration grants, and $8,270,000 shall be for evaluation.

IMPACT AID

For carrying out programs of financial assistance to federally affected schools authorized by the Improving America's Schools Act as passed the House of Representatives on March 24, 1994, $728,000,000 of which $40,000,000, to remain available until expended, shall be for payments for heavily impacted districts under section 8004(f).

Mr. SMITH of Iowa (during the reading). Mr. Chairman, I ask unanimous consent that the portion of the bill through page 44, line 26, be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the question of the gentleman from Iowa?

There was no objection.

The CHAIRMAN. The Clerk will continue to read.

The Clerk read as follows:

SCHOOL IMPROVEMENT PROGRAMS

For carrying out school improvement activities authorized by titles II, III, IV, and V of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act as passed the House of Representatives on March 24, 1994; the Stewart B. McKinney Homeless Assistance Act; the Civil Rights Act of 1964; and title V of the Higher Education Act; $1,424,513,000, of which $1,158,695,000 shall become available on July 1, 1995, and remain available through September 30, 1996: *Provided*, That $5,899,000 shall be for law related education under section 3702.

Mr. PORTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we are awaiting the arrival of the gentleman from Ohio [Mr. BOEHNER], who will be here momentarily. He has an amendment on native Hawaiians and the education program. The gentleman's amendment would terminate the program by cutting $8.15 million, and the funding would not be redistributed.

Mr. Chairman, I support this amendment, and I supported a similar amendment that the gentleman from Ohio [Mr. BOEHNER] offered on the reauthorization bill. The President requested termination of this program in his budget, Mr. Chairman, and it is a recommendation that we should listen to and we should adopt.

Mr. Chairman, the Department of Education is overburdened with small programs that require a great deal of administrative support. The President in his budget request strongly suggested that we eliminate 33 of those programs. If you sit down with the people at the Department of Education and talk with them, you know that they are very, very much overburdened with so many small programs that take a great deal of time and a large number of personnel to separately administer.

Mr. Chairman, that is why I believe the Boehner amendment should be adopted. We are asking all of the department's to do more with less, particularly FTE's. We ought to help them by consolidating or eliminating many of these small programs, and I think the Boehner amendment is one that deserves to be adopted.

Mr. Chairman, Hawaii already receives funding from other Federal education programs. For example, $70 million in formula grants alone, which go to all States, go in part to Hawaii, and Hawaii also gets other funding set-asides and discretionary grants.

Mr. ABERCROMBIE. Mr. Chairman, will the gentleman yield?

Mr. PORTER. I yield to the gentleman from Hawaii.

Mr. ABERCROMBIE. Mr. Chairman, will the gentleman cite specifically what he is objecting to?

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Mr. PORTER. Mr. Chairman, I am supporting the amendment that the gentleman from Ohio [Mr. BOEHNER] intends to offer.

Mr. ABERCROMBIE. Mr. Chairman, if the gentleman will continue to yield, would be cite specifically what the gentleman from Ohio [Mr. BOEHNER] is objecting to?

Mr. PORTER. Mr. Chairman, I will have to let the gentleman from Ohio do that. His amendment would terminate the Native Hawaiian Education Program by cutting $8.15 million from it.

AMENDMENT OFFERED BY MR. BOEHNER

Mr. BOEHNER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BOEHNER: Page 45, line 9, strike "$1,424,513,000" and insert "$1,416,363,000".

Mr. SMITH of Iowa. Mr. Chairman, I ask unanimous consent that debate on this amendment and all amendments thereto be limited to 40 minutes, 20 minutes on each side.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa:

There was no objection.

Mr. BOEHNER. Mr. Chairman, I yield myself such time as I may consume.

This amendment seeks to strike $8 million from this bill for the Native Hawaiian Education Program. This amount of money is in addition to what Hawaii gets under the bill.

Under the regular formula, they get $70 million in funds which, under that formula, is like any other State. In addition, they get $4.4 million in setasides from the Drug Free Schools Act, the Vocational Educational Act and Individuals With Disabilities Act. They are also eligible for discretionary and competitive grants and receive such sums as they may win in that process.

However, I guess my biggest concern about this is the fact that of the $8 million, $5 million goes to the Kamehameha school.

Now, this school was established through an estate left in the will of the Hawaiian Princess in the 19th century with a mandate to educate native Hawaiians. The estate owns property and investments all over Hawaii and, for that matter, in Las Vegas, Wisconsin and Michigan and elsewhere. It owns 8 percent of all Hawaiian real estate. We believe that the estate is worth some $8 billion, and the endowment for this school is an amount of $6 billion, more than the endowment for Yale University and Harvard University combined.

The endowment is run by five trustees. These five trustees, all former politicians, former speaker of the Hawaiian House, former president of the Hawaiian Senate, these trustees are paid $860,000 each.

Let me explain this again. Five trustees over this estate; six billion of which is left to fund native Hawaiian programs. These five trustees are paid $860,000 each.

The estate's income last year is estimated to be approximately $177 million. Half of the money goes directly to fund the school. The other half is used to fund activities that are sponsored by the school.

I say to my colleagues that with the amount of money available to the school, certainly the Federal Government does not need to be putting up $8 billion, more than half of which goes to fund this school.

It is kind of interesting that there is about $4 million salaries paid each and every year just to the five trustees. The money we are paying them basically goes to pay their board of trustees. At a time when we are having the fiscal problems that we have, we should not be spending money in this matter.

Second, I would point out that there is no need for the Federal Government to fund this native Hawaiian program out of this bill. There is no need for the other setasides that are in other bills. The fact that the gentlewoman from Hawaii, who sits on the Committee on Education and Labor, has $8 million in this bill should not come as any great surprise to Members. She does a very good job on the committee. She works hard. She has worked hard enough to get the chairman and others to have this setaside included.

I say to my colleagues, we should not be doing this.

The last point I would make is this. President Clinton, when he sent his budget up to Congress, asked that this not be funded. I would also suggest that when the President submitted the re-authorization of the Elementary, Secondary Vocational Act, the President asked that this program not be funded.

I say to my colleagues, to send $5 million to this school is a waste of our taxpayers' money. The $8 million in this bill should not be spent, and I urge my colleagues to support the adoption of the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield 5 minutes to the gentlewoman from Hawaii [Mrs. MINK].

Mrs. MINK of Hawaii. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Ohio. It saddens me that there is such a lack of understanding of the history and the reasons behind the efforts that have been made over the last 10 or 15 years to recognize the native Hawaiians in the State of Hawaii.

Congress has always been sympathetic to native Americans. Most of us have native Americans in our constituency. And over the years, the programs have been devised and developed and implemented to help Native Americans throughout this country.

Notwithstanding that the native Americans, perhaps some of them live on reservations and others live in the cities, over a billion dollars have been set aside to help educate and provide for the needs of native Americans throughout this country.

What has not been understood by Members on the other side in particular is that native Hawaiians are as much native Americans as any of the other individuals that have been heretofore included in the definition of a Native American.

The difficulty is that Members do not understand the history of my State and how it was overtaken 100 years ago by a group of 100 or so Marines, captured the Queen, imprisoned her in her own palace and took over the lands of the kingdom there and exploited it to the use and purposes of the American Government and of the American citizens who were there trying to build up their businesses.

After 100 years, we have come to the realization that the Federal Government has a basic responsibility to right this wrong that occurred 100 years ago. So the Congress has been drawn in to try to recognize this legal and moral obligation.

As a consequence, my predecessors have, bit by bit, tried to get special programs enacted to help these native Hawaiians who are those in our community who are at the lowest end of the economic scale, who have the most difficulty in obtaining jobs, who have the most difficulty in acquiring homes and having a sense of prosperity in this great State of ours.

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One of the basic reasons is that when our delegate came here in 1920 and got the Congress to enact the Hawaiian Homestead Act, the Congress agreed and set aside 200,000 acres in an effort to try to bring some sort of justice to this tragedy that occurred to these people.

What happened was that the 200,000 acres that had been set aside for the native Hawaiians were in the remotest areas: no streets, no kind of communication, no job opportunities, no link with the economy. As a consequence, the native Hawaiian population has had a very difficult time.

It seems to us in Hawaii, Mr. Chairman, that the least we can do is to pay special recognition to this need, just as we have done to the native Americans in a whole variety of different pieces of legislation. That is precisely all that this is about.

As far as the charges that this fund has been allocated to the Kamehameha Schools, the Kamehameha Schools is the expert in terms of education for the native Hawaiians. There is no reason to look for other grantors to administer this program.

The $5 million that have been set aside to Kamehameha Schools is split, $3 million to Kamehameha Schools, and what they do is they go out to the community, they do not use it within their institution, they go out to the remotest areas, Waianae, Nanakuli, and they establish parent centers and preschools, and they move about trying to get these families together, the very essence of the things we talk about on the Committee on Education and Labor of having the families become involved in their children's progress. This is the essence of what the Kamehameha Schools program, known as KEEP, is all about.

Mr. Chairman, I support it wholeheartedly. I hope this Congress will agree that this is the least that we can do. It is a very modest amount, but it will go a long way to answering the charges that are now being made in my State that the Federal Government has completely left its obligations behind and refused to provide the assistance that is required.

Mr. Chairman, I ask my colleagues to defeat this amendment and to support the efforts of the Committee on Education and Labor that has authorized this program. Mr. Chairman, I commend the Committee on Appropriations for allowing this to proceed, and I hope the amendment will be defeated.

Mr. BOEHNER. Mr. Chairman, I yield 3 minutes to the gentleman from Florida [Mr. MILLER], a member of the Committee on Education and Labor.

Mr. MILLER of Florida. Mr. Chairman, at the beginning of the reauthorization process last year for elementary and secondary education, there was a bipartisan effort to target scarce Federal dollars on broad national education concerns, rather than on specific constituencies. The committee's expressed purpose was to eliminate or consolidate numerous categorical programs and use the savings to create better education opportunities for all students. Unfortunately, we did not achieve that goal during reauthorization. This, sadly, is also the case with this spending bill. The appropriations committee has reinstated funding for most of the programs recommended for termination by President Clinton, including moneys for the native Hawaiian program.

The President called this and a number of other programs in this bill unneeded, and duplicative. The Gore Commission on Reinventing Government specifically addressed the native Hawaiian program, stating, "This program duplicates other programs. The State of Hawaii already receives formula grants under such programs as chapter I that may be used for the education of eligible Hawaiians."

I agree with the President, the Vice President, and my colleague, the gentleman from Ohio [Mr. BOEHNER]. The House should eliminate the $8.2 million in funding for the native Hawaiian program. The time has come to set priorities on Federal spending, and to eliminate special programs that benefit parochial interests at the expense of common educational goals. Native Hawaiians can receive money from the same pool of chapter I moneys that the rest of the States have access to.

My colleagues continue to make a lot of noise on the House floor about cutting spending, consolidating programs, and reducing the size of Government. But our actions run contrary to the tough rhetoric. We are passing legislation that is loaded with unnecessary, unauthorized and unwanted spending.

We've got to start eliminating and consolidating somewhere.

The President drew the line when he proposed zeroing out the Native Hawaiian Education Program. Support the President, and Vice President GORE, and vote in favor of the Boehner amendment.

Mr. ABERCROMBIE. Mr. Chairman, will the gentleman yield?

Mr. MILLER of Florida. I yield to the gentleman from Hawaii.

Mr. ABERCROMBIE. Mr. Chairman, would the gentleman cite specifically what he is opposed to?

Mr. MILLER of Florida. Mr. Chairman, I am opposed to the additional spending of a special categorical program just for Hawaii. It should be treated as general funding across all the States, all the country.

Mr. ABERCROMBIE. Mr. Chairman, does the gentleman recognize that a trust relationship exists between the United States and the native Hawaiians?

Mr. MILLER of Florida. Yes, Mr. Chairman, but we have a trust relationship to our senior citizens, in my opinion.

Mr. ABERCROMBIE. If the gentleman will continue to yield, so the gentleman from Florida [Mr. MILLER] would say that the trust relationship should be violated with the senior citizens as well as with the native Hawaiians?

Mr. MILLER of Florida. No, Mr. Chairman, it should not be.

Mr. ABERCROMBIE. Only with the native Hawaiians?

Mr. MILLER of Florida. Mr. Chairman, we all have senior citizens, in Hawaii and in Florida and in New York. Why should native Hawaiians get any more than native Floridians? In fact, Mr. Chairman, we probably have more native Floridians than there are native Hawaiians.

Mr. ABERCROMBIE. If the gentleman will yield further, is it the position of the gentleman from Florida [Mr. MILLER] that the trust relationship exists only for the convenience of the gentleman?

The CHAIRMAN. The time of the gentleman has expired.

Mr. SMITH of Iowa. Mr. Chairman, I yield 5 minutes to the gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. Mr. Chairman, on June 23, the gentleman from Ohio [Mr. BOEHNER] rose. He had a little bit different orientation. Then he also cited the President, except this time the President, when asked to have a cut of $27 million, the gentleman from Ohio [Mr. BOEHNER] was up here begging for $27 million.

The gentleman from Ohio comes here and asks us to cut out a program for little kids in Hawaii, but when it is for the coal companies in Ohio, he cannot wait to get down here and say, "Please give us the money. Do not listen to him."

Mr. BOEHNER. Mr. Chairman, will the gentleman yield?

Mr. ABERCROMBIE. When I get through making my point, Mr. Chairman, I will yield. The gentleman has had plenty of time to beat up on Hawaiians. I think the coal companies of Ohio can take their share. You can dish it out. Let's see how you can take it. I am just getting started.

Mr. BOEHNER. I am sure.

Mr. ABERCROMBIE. The Subcommittee on Interior of the Committee on Appropriations was asked to cut $27 million. It was stated by the gentleman offering the amendment that a wide array of potential markets, from coal, from electric power, industrial processes, has already been researched, some as early as the 1940's; an ongoing coal liquefaction research and development project. He asked that that money be stopped.

Another gentleman in support of that got up and said:

> Let me point out that the Executive Office of the President has sent down a letter telling us they support the cut and moving money out for other programs.

A second gentleman got up and stated, in support of the amendment, "Today we simply ask the House to cut this appropriation by $28 million and bring the appropriations in line with the President's request," but the gentleman from Ohio [Mr. BOEHNER] got up and said, "We are trying to cut funding in this Congress. We are trying to save money, but we also realize we have a responsibility in this Congress to make sure there is a proper investment in our country in areas where the private sector cannot do it alone."

Now all of a sudden, I discover that the gentleman has now taken up the Bishop Estate. The Bishop Estate manages to stay in existence because, while people from the mainland were robbing the Hawaiians of all their lands, some of it happened to be able to be saved by the Bishop Estate.

Now the Bishop Estate is not required to educate all of the children in Hawaii, but it does so. It does so.

Mr. BOEHNER. Mr. Chairman, will the gentleman yield?

Mr. ABERCROMBIE. Mr. Chairman, I will yield when I am finished. The gentleman has plenty of time. I will give him all the time he wants.

Then the gentleman says, "We are going to do this for our children, and their children, and the next generation." It is too bad the phrase "our children" does not include the children in Hawaii. It apparently includes the children of the gentleman in the area, in his jurisdiction.

The gentleman says, "In Ohio," and I am quoting, "we have a separate fund that has been developed that adds money" to the processes the gentleman is referring to. We have a separate fund, too, Mr. Chairman, at the Bishop Estate, and Kamehameha Schools, and the income from that estate is devoted to the education of Hawaiian children, and they have developed the expertise.

They have developed the programs that reach out into the rural and isolated areas of Hawaii so that these children can have the advantage of an education that can only be provided in a context that the Kamehameha Schools has developed and understood, and has offered to us.

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They merely administer these programs. The Bishop Estate does not get this money. Kamehameha Schools does not get this money. As the gentleman

well knows, in the legislation they are required to take no more than 7 percent total administrative expenses. I wonder how much administrative expenses is taken in the coal research that was in the amendment he asked us to pass?

Mr. Chairman, the fact is that I voted for that. The fact is that the gentlewoman from Hawaii [Mrs. MINK] voted for that, because we were convinced that this is a good thing to do, that while it is a specific industry, that people benefit in general throughout the Nation if the coal research is done. We agreed with the gentleman. But he comes back today and I ask him to accept the same logic that he presented to us, that it is to the benefit of all of the people of this country, that all of our children receive the best education that they can have in the context in which they find themselves.

Our problem today, Mr. Chairman, is there is the odor of mendacity in the room. The oder or mendacity is pervasive on this floor. It is characterized and given to deception and falsehood and that is what is taking place here today. If there was a consistency in this, I could see it, but there is not. Why should our children be picked on in Hawaii while the coal industry up in Ohio gets the benefit? How can the gentleman stand here today and try to take the money away from our kids when he was asking for an exception to be made for him last week on June 23?

Mr. BOEHNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Hawaii came to this floor accusing me of duplicity because of the fact that I came to this floor last week and argued the difference between investment and spending. The coal research was an investment in this country, not only for our generation but our kids and our grandkids. The fact is there is a big difference between that investment in coal research and the extra money that is being spent for native Hawaiian children, extra money.

Let us not forget we are already talking about $74 million that Hawaii gets in the regular formula program and the competitive grants that they get. We are talking about $8 million extra, $5 million of which is going to one school. We have already described the difference in how that school spends this money. The gentleman from Hawaii said that the Bishop Estate does not have to fund this program. I would remind the gentleman from Hawaii that the Bishop Estate is left clearly in the language of the estate to educate Native Hawaiian children. That is why $177 million dollars that was earned on that estate, that $6 billion endowment, went to fund this school last year.

The Federal Government should not be involved in this program anymore.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Chairman, let us bring a little bit of sanity to the debate. I heard that this amendment was going to affect little children. Even Robin Leach of the Rich and Famous would laugh. He would highlight this school that is going to receive $8 million. He would highlight it on the Rich and Famous. The richest school in America and we are going to give them an additional $8 million. What are we talking about? We are going to pay the board of trustees who they already receive, and these are all ex-politicians, we are going to pay them $860,000 a year.

I would love to retire as an ex-politician in Hawaii with $860,000 a year. The assets that they hold in Las Vegas or in Hawaii, over $9 billion, more than any school in the entire United States. As a matter of fact, probably combined.

Mr. Chairman, we have an endowment of $6 billion, more than Yale and Harvard or probably any 20 schools put together. Yet they want $8 million because it is tradition, because we have violated their rights? We are going to hurt little children?

We cannot afford to give $8 million. This is almost laughable.

Mrs. MINK of Hawaii. Mr. Chairman, will the gentleman yield?

Mr. CUNNINGHAM. I am happy to yield to the gentlewoman from Hawaii.

Mrs. MINK of Hawaii. Mr. Chairman, the gentleman is misstating the situation. The $8 million does not go to Kamehameha Schools. The gentleman is correct. They are operated under a Bishop Estate that funds a couple of thousand students on their campus. These funds that we are appropriating are going to other children in deprived neighborhoods.

Mr. CUNNINGHAM. Reclaiming my time, Mr. Chairman, it is. But it is $8 million going to special interests in Hawaii, $8 million when they are already the richest, probably more than 20 schools put together, of all the United States. And they want an additional $8 million. Plus they get money from the original formula.

This is ridiculous, Mr. Chairman. Let us support the gentleman's amendment.

Mr. BOEHNER. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. FAWELL], a member of the Committee on Education and Labor.

Mr. FAWELL. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I am flabbergasted. I cannot believe my ears, what I hear. There is an old saying in the law that if the facts are with you, you pound the facts, and if the law is with you, you pound the law, and if neither facts nor law are with you, you pound the table, or you just yell.

Mr. Chairman, this is absurd. The purpose for this special appropriation is to educate children, native Hawaiians. Lo and behold it goes to an entity that has five trustees, and they are paid $860,000 a year apiece? We multiply that by 5, that is $4.3 million, and $5 million of the $8.2 million is going to that entity. It is barely enough to pay for the annual compensation of the trustees.

What defense do I hear? America owes something to the children of the native Hawaiians. Of course we do, I gather. I do not know the full history.

Mr. ABERCROMBIE. Mr. Chairman, will the gentleman yield?

Mr. FAWELL. No; I will not. I do not want to be yelled at anymore. I just want to say my say and sit down.

Mr. ABERCROMBIE. Will the gentleman yield on a factual matter?

Mr. FAWELL. I would like to continue on. My ears are still ringing.

Mr. Chairman, this is an educational matter. I do not think that anywhere in this country of ours, if we were serving one of the most degrading areas where children need help and so forth, and they set up an entity that is going to handle these funds and the entity is as rich and as endowed as this entity is, $6 billion endowment, greater than Harvard University and Yale? I don't think they should be subsidized by the U.S. taxpayers.

I have in my notes here that these schools actually serve only 6.4 percent of the State's native Hawaiian population.

Mr. Chairman, the taxpayers are being asked to give $5 million to one of the richest entities on the face of this Earth. The members of the board of this entity, the grantee of this Federal largesse, receive $860,000 per person per year. Common Cause states that these trustee positions at the Kamehameha School are political plums for the State's Democrat Party. I've seen some awfully sick pork-spending passed by Congress. This has to be among the worst. It is absolutely absurd. We ought to just quietly say, "We, of course, cannot do this, it just is absurd."

Mr. SMITH of Iowa. Mr. Chairman, I yield 3 minutes to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Chairman, let us just get to the facts. The $8.1 million in this program goes to the following programs:

First, native Hawaiian language immersion project; second, native Hawaiian family-based education centers; third, native Hawaiian higher education demonstration programs; fourth, native Hawaiian gifted and talented programs; and fifth, native Hawaiian special education programs.

Mr. Chairman, my Subcommittee on Native American Affairs also has jurisdiction over native Hawaiian affairs and we have a trust responsibility toward Native American children and native Hawaiian children. What we need to do is look at facts.

In 1983, a Department of Education report documented that native Hawaiians scored below all other groups in education testing and that this low achievement was directly related to their cultural situation. Native Hawaiian children score much higher when they are placed in education programs which incorporate their native cultures in their studies.

Mr. Chairman, again, statistics, the per capita income of native Hawaiians, $5,341 a year, is 28 percent less than the State average in Hawaii. Another statistic, 15 percent of the native Hawaiian population in Hawaii is below the poverty level. We are not talking about elite children getting special privileges. We are talking about children in need, and we have a responsibility to fund these programs.

The rate of unemployment among native Hawaiians, 7 percent, exceeds unemployment rates of all other groups within the State except blacks which is 13 percent. The rate of unemployment among the 16- to 19-year-olds in the native Hawaiian population, 19 percent, is worse than any other age group, I repeat, worse than any other age group.

Native Hawaiians are overrepresented in the below-average range of test scores. This is a Department of Education study. The rate of college completion for native Hawaiians is 8 percent, significantly lower than the State average. Fifty-seven percent of all youth in correctional facilities in Hawaii are native Hawaiians.

There is no doubt these services, as well as others, are needed by the native Hawaiian community.

So I ask every Member that has native Americans in their congressional districts, in their States, to band together against this amendment and rise in strong support of these programs, of the gentlewoman from Hawaii [Mrs. MINK], the gentleman from Hawaii [Mr. ABERCROMBIE], of many native Hawaiians that are serving in the House of Representatives and the Senate.

This is not a good initiative. Let us look for cuts elsewhere, and I think the gentleman from Ohio [Mr. BOEHNER] has a good record of looking for cuts elsewhere, but not in this program.

We have a responsibility to fund these programs.

CHAPTER 6: SUMMARY

STATISTICAL COMPARISONS

In Chapter 2 of this report, comparisons were made between native Hawaiians and national averages, national averages for other minority groups and other groups within the state of Hawaii. It was noted in that chapter that:

Although Native Hawaiians compare favorably to other minority groups nationally with regard to income, their mean and median per capita incomes are still just over 75 percent of the national average. Furthermore, the cost of living for a family of four with a low budget in Honolulu, where many Native Hawaiians reside, is 32 percent more than it would be for the average urban area, nationally.

Native Hawaiians compare favorably to other minority groups nationally with regard to poverty level status. However, 15 percent of Native Hawaiians are below the poverty level, a statistic that is substantially higher than the national average of 9.6 percent.

Native Hawaiians compare favorably to other minority groups nationally with regard to employment status, and their unemployment rate of 6.9 percent is just slightly above the national average of 6.5 percent. However, within the 16 to 19-year-old age group, 19.3 percent of the Native Hawaiian population is unemployed, compared with 14.4 percent nationally. Although this percentage is much better than the 27.7 percent of blacks and 23.9 percent of the American Indians, Eskimos and Aleutians who are unemployed within this age group, it is worse than the 16.9 percent unemployment rate of Hispanics in this age group.

Academically, based oh the results of the Stanford Achievement Test scores of sixth-, eighth-, and tenth-grade Native Hawaiians students, the proportion of Native Hawaiians whose scores are above average (i.e. at Stanines 7, 8, and 9) is smaller than the national average, and in the higher grades, a greater proportion of Native Hawaiians score below average than the national average.

The proportion of Native Hawaiians who are 25 years or older who are high school graduates is much higher than the proportion of high school graduates within other minority groups, and in fact slightly exceeds the national average, while the other minority groups, except for Hispanics, do as well or better than Native Hawaiians with regard to college attendance/completion.

Although Native Hawaiians are not, in most respects, as disadvantaged nationally as are blacks, Hispanics, or American Indians, Eskimos, or Aleutians, national comparisons provide only part of the picture. Most Native Hawaiians never leave Hawaii, and in fact many never even leave the island where they were born within the state of Hawaii, because of the geographic nature of the state. Therefore their relative advantage or disadvantage must also be viewed within the state context. From a state perspective, Native Hawaiians are among the most disadvantaged groups on the island:

The mean per capita income of the Japanese ($9,410), Chinese ($9,123) and whites ($8,109) exceeds the state average of $7,417 by 27 percent, 23 percent, and 9 percent respectively, while the per capita income of the Native Hawaiian ($5,341) is 28 percent less than the state average. Furthermore, the per capita incomes of the Japanese, Chinese, and whites are 76 percent, 71 percent, and 39 percent more, respectively, than that of the Native Hawaiians. With respect to income, the Native Hawaiians per capita income is 5 percent higher than the mean per capita income for Filipinos ($5,094) and 11 percent higher than the per capita income for blacks ($4,805), who constitute a very small portion of the state population.

Fifteen percent of the Native Hawaiian population in Hawaii is below the poverty level. This compares with a 12 percent rate for blacks, a 9 percent rate for Filipinos, a 7 percent rate for whites, a 5 percent rate of Chinese, and a 3 percent rate for Japanese.

The rate of unemployment among Native Hawaiians (7 percent) exceeds unemployment rates of all other groups within the state except blacks (13 percent). The state average for unemployment is 5 percent. Unemployment rates for other groups include 6 percent for whites, 5 percent for Filipinos, and 3 percent each for Japanese and Chinese.

The rate of unemployment among the 16 to 19-year-olds in the Native Hawaiian population (19 percent) is worse than for any other age group within the Native Hawaiian population except for blacks, who have a 30 percent unemployment rate for this age group within Hawaii. For Native Hawaiians this is particularly significant because over 10 percent of the Native Hawaiian population is in this age group. The state average for unemployment for 16 to 19-year-olds is 12 percent. Unemployment rates for other groups include 14 percent for whites, 11 percent for Filipinos, and 7 percent for Chinese, and 6 percent for Japanese.

The enrollment rate of 3 to 4-year-old Native Hawaiians (37 percent) is near the enrollment rates for whites (42 percent), blacks (35 percent), and the state average (39 percent), but they are greatly surpassed by the enrollment rates for the Japanese (56 percent) and the Chinese (47 percent). In this regard the Filipinos have the lowest rate of enrollment for this age group (23 percent).

Native Hawaiians, Filipinos, and blacks are disproportionately overrepresented in the below-average range of test scores and underrepresented in the above-average range of test scores on the Stanford Achievement Test in sixth, eighth, and tenth grade compared to whites, Japanese, and Chinese within the state of Hawaii. After sixth grade, the proportion of blacks and Filipinos in both the below- and above-average ranges improves somewhat, compared to the proportion of Native Hawaiians.

The enrollment rates for 16- and 17-year-old Native Hawaiians (93 percent) is at the state average and is exceeded only by the Chinese (98 percent) and the Japanese (97 percent). White enrollment for this age group is 90 percent and black enrollment is 84 percent. However, all groups except Filipinos have a higher percent of high school graduates than the Native Hawaiians have. (It must be remembered, however, that even the Native Hawaiians have a graduation rate [68 percent] that exceeds the national average of 66 percent).

Despite the high enrollment rates of 16- and 17-year-old Native Hawaiians, enrollment rates among older Native Hawaiian age groups decline dramatically, compared to the Chinese and Japanese enrollments. Further, the median years of completion for native Hawaiians, which is 12.4 years, is lower than for any group except Filipinos, who have completed a median of 12.1 years of school. These facts may be indicative of difficulties in making the transition from the secondary to the postsecondary arena. This in turn has implications regarding the extent to which Native Hawaiians have received vocational education, which, in Hawaii, is given greater focus at the postsecondary level.

The rate of college completion for Native Hawaiians (8 percent) is significantly lower than the state average of 21 percent and of all other groups, including whites (28 percent), Chinese (28 percent), Japanese (20 percent), blacks (14 percent), and Filipinos (11 percent).

Fifty-seven percent of all youth in correctional facilities in Hawaii are Native Hawaiians.

Other indicators of need

During the site visits to the Vocational Education and Library set-aside programs, various people, including those who were part of state agencies, were asked whether

the services that were being provided by these set-aside programs had ever been provided elsewhere to Native Hawaiians. The answers were unanimous. All people who were interviewed indicated that the state had never earmarked any funds especially to meet the needs of Native Hawaiians for several reasons. First, little information had been available in the past and was only now being examined in any depth regarding the specific needs of Native Hawaiians as they pertained to library programs and vocational education. Second, because Hawaii consists of many minorities, it was considered inappropriate to focus on the needs of one group, to the exclusion of the rest. Third, the state had insufficient funds to address the needs of each group separately.

These people were also asked whether these services were actually needed. There was some difference of opinion as to the approach taken for providing services and as to the priority given to various needed services. Furthermore, there was some concern voiced about whether the state's secondary and postsecondary organizations would actually meet the commitments necessary to make the new vocational education program for Native Hawaiians successful. Nevertheless, there seemed to be no doubt that these services, as well as some others, were sorely needed by the Native Hawaiian community.

Alu Like and its programs

All groups, including those who could be competitors against Alu Like, indicated that Alu Like was the only organization that was ready to receive the governor's designation as the grantee for the library and vocational education set-aside programs. Alu Like had the confidence of the Native Hawaiian community and the experience in running large Federal grants. Some people did feel that other organizations could now compete for grants in certain areas, but that there still is no other organization capable of handling large grants.

The vocational education program has had substantial redirection. Nonetheless, many of the projects initiated under the first grant have been continued by other organizations or have been subsumed in modified form as part of the postsecondary initiative of the second grant. A few projects have been continued unmodified under the second grant.

Both set-aside programs have had some difficulties in starting up projects quickly, after the grant award, particularly with subcontractors. This problem, however, is an understandable and not uncommon problem in situations where the exact grant amount is unknown prior to the award. It is very difficult and in many instances unsound or unworkable practice to make commitments for staff, equipment, and space when the exact size of the grant is unknown. This is particularly true when the size of the grant could vary sufficiently to increase or decrease the number of projects that could be conducted or have a significant impact on the scope of work that could be done.

It should be recognized that meeting the needs of Native Hawaiians in the very rural areas, where needs may be greatest, may be more difficult and more costly to achieve. Furthermore, as several people pointed out, until the entire economic situation in some of these areas changes, no amount of vocational education will provide the needed jobs. Furthermore, everyone concurred that the first problem to be addressed in these rural areas is the provision of basic skills. Several people pointed out that although many jobs are becoming available on Kauai, a very rural island in the state which is undergoing economic development, employees are being sought from outside the island and may even be imported from foreign sources, because the people on Kauai lack the basic skills needed for employment. Currently, the Native Hawaiian Vocational Education Program at Alu Like believes that providing only basic skills in such situations is beyond the permissible bounds of the program, although the Federal Program Officer indicated, in a telephone interview for this study, that such activities would be acceptable. This would seem to be an important point of clarification for future activities.

Mr. BOEHNER. Mr. Chairman, I yield myself such time as I may consume.

Let me say there is a great big difference here between native Americans and native Hawaiians with respect to the amount of money that is available.

Native Americans do not have an $8 billion trust that is dedicated to preserve their culture, dedicated to the education of their young, as do the native Hawaiians with regard to the program that we are talking about.

I should also point out that the school that gets this $5 million of the $8 million only enrolls 6.4 percent of the eligible population in their schools; only one out of seven applicants who are eligible to attend the schools actually get in, where the school pays 90 percent of the tuition for the room and board and fees, the student only pays 10.

So let us make sure that we are comparing apples and apples here and not something different.

Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota [Mr. GRAMS].

Mr. GRAMS. Mr. Chairman, I rise in support of the Boehner amendment.

I am continually shocked and amazed by the pork barrelling that goes on in this body during appropriations season—but perhaps I should not be. Congress has always abused the appropriations process to get a million here and a million there for local parochial projects.

And it is no different this year. It may be June in the rest of America, but it is Christmas time in Washington.

A perfect example of this practice is the $8 million being allocated by this bill to the Native Hawaiian Education Program. Before we use taxpayers' dollars for this program, we should carefully examine who benefits from these funds.

Of the $8 million appropriated for this program, $5 million goes to the Kamehameha School, which has an endowment larger than Harvard or Yale, yet serves only 6 percent of the native Hawaiian student population.

The five members who serve on the board of trustees enjoy salaries in excess of $800,000 each year—a substantially higher salary than any other educator in the United States. That includes the president of Columbia University, the highest paid university president, who makes in comparison only $363,000 a year.

Perhaps these were some of the criteria used by President Clinton when he recommended eliminating this program in his budget proposal. It is certainly something that this body should consider in making its decision today.

For these reasons, I urge my colleagues to join me in supporting the Boehner amendment. This year, let us put Christmas off until after election day for a change.

Mr. SMITH of Iowa. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Chairman, I rise today in strong opposition to the amendment offered by my colleague, the gentleman from Ohio [Mr. BOEHNER].

Several weeks ago, I joined with my colleagues to form an Asian Pacific American Caucus.

That decision was driven, in no small part, by the increasing level of attacks being directed at legal immigrants in our community.

Although they have immigrated to this country lawfully, pay their taxes, and have played by the rules, some people are questioning whether or not they are really deserving of things like childhood vaccinations or education assistance.

So I find it somewhat ironic that, the first time we take to the floor as a caucus, it is to try to defeat an amendment aimed at cutting education services for the native Americans in our community.

I have to wonder just how long an American family must have lived in this country in order to be considered worthy of Federal benefits these days.

From other measures introduced in this House, it appears that 20 years is too little. From this amendment, one might conclude that anything over 300 years is too much.

Ultimately, Mr. Chairman, this is an issue of basic fairness. This Nation has long recognized that we have an obligation to native Americans, whose lands we have taken and whose societies we have undermined.

That commitment is no less important for the native peoples of the Pacific Islands than it is for native American communities on the mainland.

The gentleman's amendment would undermine a key component of our efforts to live up to a solemn commitment this Nation has made to the native Hawaiian people.

Over 100 years ago, the U.S. Government, in violation of the precepts of our Constitution, overthrew the established monarchy of the Hawaiian people.

The damage that was done to native Hawaiian society as a result of those events continues to this day.

The Native Hawaiian Education Act is a small attempt to help undo that

damage, and the appropriation would continue the commitment to the native Hawaiian people that we first made in 1921, with the passage of the Hawaiian Homes Commission Act.

The Nation has a duty, and an obligation, to provide some level of social and economic assistance to the native Hawaiian people.

We recognized that commitment long ago. We must not abandon it today. I urge my colleagues to join me in voting to defeat the Boehner amendment.

Mr. BOEHNER. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. GOODLING], the ranking member of the Committee on Education and Labor.

Mr. GOODLING. Mr. Chairman, certainly I would not rise to cross the gentlewoman from Hawaii, so I will merely read or merely play the role of the administration this evening; I am speaking for the administration.

The administration zero-funded the program for 1995, citing the fact the five programs authorized under this program are provided exclusively to Hawaiian natives despite the availability of similar assistance for eligible Hawaiian natives under such formula grant programs as Title I, Even Start, and Special Education.

Second, the administration cited the fact these programs are funded largely through noncompetitive awards to organizations and agencies named in the authorizing statute. The same organizations can apply for competitive grants.

The 1990 Census said there were 37,134 native Hawaiian children ages 5 to 17; of the $8 million that are sent out, $5 million go to the Kamehameha Schools who also receive the big money from the trust fund, and you have heard all about that.

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But of the $8 million appropriated for the program for the current fiscal year, $5 million goes to Kamehameha Schools. Let me then give some statistics about the rest of the people.

There are a total of 540,000 other native American students. They are served through the BIA schools and public schools. Approximately 85 to 90 percent are educated in public schools and another 50,000 attend BIA schools.

Approximately 65 percent of native American students complete high school. Of native Hawaiians, 79.5 percent are high school graduates, which is higher than the national average of 75.2 percent. Twelve percent of native Hawaiians have incomes below the poverty line, while 27 percent of Indians, Eskimos, and Aleutians have incomes below the poverty level. Nationally, 10 percent of the population have incomes below the poverty level.

The median family income of native Hawaiians is $37,269, and for native Americans it is $21,750. The national average is $35,335. These are the statistics provided by the administration.

Mr. SMITH of Iowa. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. PAYNE].

Mr. PAYNE of New Jersey. Mr. Chairman, I rise in strong opposition to the Boehner amendment. It seems to me that we can spend a tremendous amount of time on an issue that really should not even be discussed here. We have an obligation: In 1921 the Hawaiian Home Commission Act created a land trust, and we started at that time to try to right some of the wrongs that we have seen in this country. The native Hawaiians are in fact native Americans, and the U.S. Government has a trust responsibility for native Hawaiians similar to that held for native American tribes and Alaskan Natives.

The elimination of the Native Hawaiian Act would be an egregious violation of historic, traditional legislative precedent in the manner in which this trust relationship began between the United States Government and the native Hawaiian people.

When we sit here and discuss $8 million, we can sit around and talk about a B–2 bomber sometimes, and we do not really spend so much time. As a matter of fact, during this entire debate I have not heard a B–2 bomber discussed for the past 2 or 3 months; the B–2 bomber currently runs about $850 million, $900 million. If we cut the number, it will be about a billion dollars apiece. Here we are talking about an $8 million program where people are going out into the rural parts of Hawaii, where people are going out and starting preschool programs, where people are going out and dealing with family values and getting people to be motivated. We have not heard one word about the Sea Wolf submarine, $2.8 billion, in order to go under the polar cap to surprise the Soviet Union, who are broke. But we are still building the Sea Wolf, $2.8 billion. What about our antiaircraft carriers? They are $5 billion each. You know what? It costs a billion dollars to operate it during the year.

So, even if we decide we do not need it anymore, we have got a billion dollars, not a million dollars, a billion dollars that it costs to run it. But here we are discussing an $8 million project. You know, some of the people on the other side make midgets into giants and make giants into midgets. They are really magicians.

I think that we need to stop beating, for political purposes, an item that makes sense, but never talk out about the waste and the fraud that we see in other programs.

So, I urge my colleagues to put aside this business of beating up on people and let us defeat this amendment.

Mr. BOEHNER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman and my colleagues, this is not being mean-spirited, it is not about picking on native Hawaiians. It is about what is right. It is about spending $8 million of taxpayer money, giving it to a program where $5 million goes to a school for those programs which has a $6 billion endowment, that has a board of trustees consisting of 5 former politicians who get paid $860,000 a year. That is an embarrassment.

If the estate used the money that was left to fund native Hawaiian programs the way it was intended, certainly this money would not be needed. But I would argue that $8 million of our money going into this program is not a necessary expense for the Federal taxpayers today.

So, I say to my colleagues, as the gentleman from Pennsylvania [Mr. GOODLING] pointed out, the averages, these native Hawaiians have above-average scores, above-average dropout rates.

Mr. Chairman, this is a good amendment, and I urge adoption.

Mr. SMITH of Iowa. I yield myself the balance of the time.

Mr. Chairman, this program has been carried in this bill for at least a dozen years. It is very strongly supported on the Senate side. I think it would be optimistic to think we could take this money out here, use it somewhere else, and not have to put it back in by the time we get back from the Senate. That is just too optimistic. It will not work.

Mr. ABERCROMBIE. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Hawaii.

Mr. ABERCROMBIE. I thank the gentleman for yielding to me.

Very quickly, Mr. Chairman, and briefly for my colleagues so we get it straight before we go to a vote: This money is not going to the Bishop estate, it is going to learning-disabled kids, it is going to gifted and talented children, this is going to specific programs that are not otherwise funded. The reason we have to come back here year after year is because we have not been recognized in great measure because of actions taken in the previous administrations and on the other side in the native American legislation.

We would not have to do it and have to defend our people if we received the basic justice that all of you expect for your constituents. I ask for justice for us, justice for every American, and justice for native Hawaiians, and I ask for a "no" vote.

Mr. ENGEL. Mr. Chairman, I rise in strong opposition to Representative BOEHNER's amendment to strike fiscal year 1995 funding for the Native Hawaiian Education Act.

As a member of the House Education and Labor Subcommittee on Elementary, Secondary, and Vocational Education, I can attest to the importance of continuing the educational projects which are supported through this Federal program. The U.S. Government has a historical and legal obligation to the native Hawaiian people since its participation in the

overthrow of the Hawaiian monarchy over 100 years ago. Cutting this program now would be both unprincipled and short sighted.

In addition, as a Representative from the New York metropolitan area, I understand that the great diversity of our Nation's people requires special consideration when formulating Federal policy. Regional concerns and differences including geography, cultural and economic factors, as well as other special considerations deserve the Federal Government acknowledgment and support.

The Native Hawaiian Education Act, established in 1988, attempts to achieve just that. The act contains a variety of programs, specifically designed to meet the unique needs of native Hawaiian students that other Federal programs fail to address. Family-based education programs, higher education provisions, programs for gifted and talented students, special education programs, and native language programs contained in the act are highly successful and deserve our support.

I urge my colleagues to support the continued funding of the Native Hawaiian Education Act and oppose the Boehner amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. BOEHNER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BOEHNER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 188, noes 233, not voting 18, as follows:

[Roll No. 295]

AYES—188

Allard
Andrews (NJ)
Archer
Armey
Bachus (AL)
Baker (CA)
Baker (LA)
Ballenger
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bentley
Bereuter
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bunning
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Clinger
Coble
Collins (GA)
Combest
Cooper
Coppersmith
Costello
Cox
Crane
Crapo
Cunningham
Deal
DeLay
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Emerson
Everett
Ewing
Fawell
Fingerhut
Fowler
Franks (CT)
Franks (NJ)
Gallegly
Gallo
Gekas
Gilchrest
Gillmor
Gingrich
Goodlatte
Goodling
Goss
Grams
Gunderson
Hancock
Hansen
Hastert
Hayes
Hefley
Herger
Hoagland
Hobson
Hoekstra
Hoke
Holden
Houghton
Huffington
Hunter
Hutchinson
Hyde
Inglis
Inhofe
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Kasich
Kim
Kingston
Klug
Knollenberg
Kolbe
Kyl
LaFalce
Lambert
Lazio
Leach
Levy
Lewis (CA)
Lewis (FL)
Lewis (KY)
Lightfoot
Linder
Livingston
Lucas
Machtley
Mann
Manzullo
Margolies-Mezvinsky
McCandless
McCollum
McCrery
McCurdy
McDade
McHugh
McInnis
McKeon
McMillan
Meyers
Mica
Miller (FL)
Minge
Molinari
Moorhead
Morella
Myers
Nussle
Orton
Oxley
Packard
Paxon
Penny
Petri
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quillen
Quinn
Ramstad
Ravenel
Regula
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Santorum
Saxton
Schaefer
Schiff
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Strickland
Stump
Sundquist
Swett
Talent
Tauzin
Taylor (NC)
Thomas (CA)
Thomas (WY)
Thurman
Torkildsen
Torricelli
Upton
Vucanovich
Walker
Walsh
Wolf
Zeliff
Zimmer

NOES—233

Abercrombie
Ackerman
Andrews (ME)
Andrews (TX)
Applegate
Bacchus (FL)
Baesler
Barca
Barcia
Barlow
Becerra
Beilenson
Berman
Bevill
Bilbray
Bishop
Blackwell
Boehlert
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Byrne
Cantwell
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Coyne
Cramer
Danner
Darden
de la Garza
de Lugo (VI)
DeLauro
Dellums
Derrick
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Dooley
Durbin
Edwards (CA)
Edwards (TX)
Engel
English
Eshoo
Evans
Farr
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Geren
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Grandy
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Hastings
Hefner
Hinchey
Hochbrueckner
Horn
Hughes
Hutto
Inslee
Jacobs
Jefferson
Johnson (GA)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
King
Kleczka
Klein
Klink
Kopetski
Kreidler
Lancaster
Lantos
LaRocco
Laughlin
Lehman
Levin
Lewis (GA)
Lipinski
Lloyd
Long
Lowey
Maloney
Manton
Markey
Martinez
Matsui
Mazzoli
McCloskey
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Montgomery
Moran
Murphy
Murtha
Nadler
Neal (MA)
Neal (NC)
Norton (DC)
Oberstar
Obey
Olver
Ortiz
Pallone
Parker
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Pomeroy
Rahall
Rangel
Reed
Reynolds
Richardson
Roemer
Romero-Barcelo (PR)
Rose
Rostenkowski
Rowland
Roybal-Allard
Rush
Sabo
Sanders
Sangmeister
Sarpalius
Sawyer
Schenk
Schroeder
Schumer
Scott
Serrano
Sharp
Shepherd
Sisisky
Skaggs
Skelton
Slattery
Slaughter
Smith (IA)
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Swift
Synar
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Torres
Towns
Traficant
Tucker
Underwood (GU)
Unsoeld
Valentine
Velazquez
Vento
Visclosky
Volkmer
Waters
Watt
Waxman
Wheat
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)

NOT VOTING—18

Bateman
Carr
Chapman
DeFazio
Faleomavaega (AS)
Fields (TX)
Fish
Greenwood
Harman
Hilliard
Hoyer
Michel
Owens
Pombo
Ridge
Washington
Weldon
Whitten

□ 2026

Mr. HALL of Texas changed his vote from "aye" to "no."

Mr. ALLARD changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. SMITH of Iowa. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having assumed the chair, Mr. SHARP, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4606), making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1995, and for other purposes, had come to no resolution thereon.

PERSONAL EXPLANATION

Mr. FLAKE. Mr. Speaker, due to personal business I was unavoidably detained in returning to the Capitol today. As a result, Mr. Speaker, I missed two votes for consideration under suspension of the rules on H.R. 3626 and H.R. 3636 to provide full competition in the telecommunications industry. Had I been present, I would have voted "yes" for both bills respectively. I believe that these measures provide opportunities for all Americans to benefit from a level playing field in the telecommunications industry. New communications and information technologies have brought America to a crossroads. Hence, as legislators, we must seize this enormous potential to bring the benefits of the "Information Age" to all Americans by enlarging the telecommunications markets.

Mr. Speaker, had I been present, I would have voted against the Porter amendment to H.R. 4606.

DETERMINATION OF PROCEDURE FOR FURTHER CONSIDERATION OF H.R. 4606, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1995

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent that when the

Committee of the Whole resumes consideration of the bill, H.R. 4606, it may proceed according to the following order:

First, the bill shall be considered as read through page 56, line 11, and open for amendment from page 45, line 13, through page 56, line 11.

Second, after disposition of any points of order against the pending portion of the bill, and before the consideration of any other amendment, the following amendments to that portion of the bill that shall be in order only in the following sequence: by Mr. MICA of Florida; by Mr. BAKER of California; by Mr. CRANE of Illinois; and by Mr. GRAMS of Minnesota.

Third, debate on each of the foregoing amendments (and any amendments thereto) shall be limited to 20 minutes equally divided and controlled by the proponent and an opponent.

Fourth, the Chairman of the Committee of the Whole may postpone until after disposition of the Grams amendment a request for a recorded vote on any of the foregoing amendments.

Fifth, the Chairman of the Committee of the Whole may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in any series of questions shall be not less than 15 minutes.

The SPEAKER. Is there objection to the request of the gentleman from Iowa?

Mr. PORTER. Mr. Speaker, reserving the right to object, I do not intend to do so. I just want to ask the gentleman one question, if I may.

Is the gentleman aware of any amendments to any of these four amendments?

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. PORTER. I yield to the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Speaker, I am not aware of any amendments to any of the four amendments.

Mr. PORTER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Iowa?

There was no objection.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1995

Mr. SMITH of Iowa. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4606) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1995, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Iowa [Mr. SMITH].

The motion was agreed to.

□ 2031

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4606, with Mr. SHARP in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose earlier today, the amendment offered by the gentleman from Ohio [Mr. BOEHNER] had been disposed of.

Pursuant to the order of the House of today, the bill is considered read through page 56, line 11 and open for amendment from page 45, line 13, through page 56, line 11.

The text of the bill, through page 56, line 11, is as follows:

BILINGUAL AND IMMIGRANT EDUCATION

For carrying out, to the extent not otherwise provided, bilingual and immigrant education activities authorized by title VII of the Elementary and Secondary Education Act as amended by the Improving America's Schools Act, as passed the House of Representatives on March 24, 1994 and by title IV of the Carl D. Perkins Vocational and Applied Technology Education Act, $247,572,000, of which $25,180,000 shall be for training activities under part C, and $50,000,000 shall be for the immigrant education program.

SPECIAL EDUCATION

For carrying out the Individuals with Disabilities Education Act, $3,106,634,000, of which $2,858,973,000 shall become available for obligation on July 1, 1995, and shall remain available through September 30, 1996.

REHABILITATION SERVICES AND DISABILITY RESEARCH

For carrying out, to the extent not otherwise provided, the Rehabilitation Act of 1973, the Technology-Related Assistance for Individuals with Disabilities Act, and the Helen Keller National Center Act, as amended, $2,355,600,000.

SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES

AMERICAN PRINTING HOUSE FOR THE BLIND

For carrying out the Act of March 3, 1879, as amended (20 U.S.C. 101 et seq.), $6,406,000.

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

For the National Technical Institute for the Deaf under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), $41,462,000, of which $333,000 for the endowment program as authorized under section 207 and not to exceed $192,000 for construction shall remain available until expended.

GALLAUDET UNIVERSITY

For the Kendall Demonstration Elementary School, the Model Secondary School for the Deaf, and the partial support of Gallaudet University under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), $76,742,000, of which $991,000 shall be for the endowment program as authorized under section 207 and shall be available until expended.

VOCATIONAL AND ADULT EDUCATION

For carrying out, to the extent not otherwise provided, the Carl D. Perkins Vocational and Applied Technology Education Act, the Adult Education Act, and the Stewart B. McKinney Homeless Assistance Act, $1,456,383,000, of which $1,453,464,000 shall become available on July 1, 1995 and shall remain available through September 30, 1996: *Provided*, That of the amounts made available under the Carl D. Perkins Vocational and Applied Technology Education Act, $400,000 of the amount available for Tech-Prep shall be for evaluation of the program and $25,767,000 shall be for national programs under title IV, including $7,851,000 for research, of which $6,000,000 shall be for the National Center for Research on Vocational Education; $13,000,000 for demonstrations, notwithstanding section 411(b); and $4,916,000 for data systems: *Provided further*, That of the amounts made available under the Adult Education Act, $5,400,000 shall be for national programs under sections 382 and 383, and $4,869,000 shall be for the National Institute for Literacy under section 384.

STUDENT FINANCIAL ASSISTANCE

For carrying out subparts 1, 3, and 4 of part A, and parts C, E, and H of title IV of the Higher Education Act of 1965, as amended, including, notwithstanding section 401(a)(1), not to exceed 3,930,000 Pell Grant recipients in award year 1994–1995, $7,825,417,000, which shall remain available through September 30, 1996, and of which $54,322,000 shall be for State Student Incentive Grants under subpart 4 of part A.

The maximum Pell Grant for which a student shall be eligible during award year 1995–1996 shall be $2,340: *Provided*, That notwithstanding section 401(g) of the Act, as amended, if the Secretary determines, prior to publication of the payment schedule for award year 1995–1996, that the $6,247,180,000 included within this appropriation for Pell Grant awards for award year 1995–1996, and any funds available from the FY 1994 appropriation for Pell Grant awards, are insufficient to satisfy fully all such awards for which students are eligible, as calculated under section 401(b) of the Act, the amount paid for each such award shall be reduced by either a fixed or variable percentage, or by a fixed dollar amount, as determined in accordance with a schedule of reductions established by the Secretary for this purpose.

FEDERAL FAMILY EDUCATION LOAN PROGRAM ACCOUNT

For Federal administrative expenses to carry out guaranteed student loans authorized by title IV, part B, of the Higher Education Act, as amended, $62,191,000.

HIGHER EDUCATION

For carrying out, to the extent not otherwise provided, titles I, II, without regard to section 241(d), III, IV, including chapter 2 of subpart 2 of part A, V, VI, VII, IX, part A, and subpart 1 of part B of title X, XI, without regard to section 1151, and XV of the Higher Education Act of 1965, as amended; the Mutual Educational and Cultural Exchange Act of 1961; title VI of the Excellence in Mathematics, Science and Engineering Education Act of 1990; and Public Law 102–423; $954,686,000, of which $8,248,000 for endowment activities under section 331 of part C of title III and $17,512,000 for interest subsidies under title VII of the Higher Education Act,

as amended, and $4,000,000 for Public Law 102–423 shall remain available until expended, and $1,500,000 of the amount provided herein for title III shall be available for an evaluation of the title III programs.

HOWARD UNIVERSITY

For partial support of Howard University (20 U.S.C. 121 et seq.), $206,463,000, of which $7,910,000, to remain available until expended, shall be for a matching endowment grant to be administered in accordance with the Howard University Endowment Act (Public Law 98–480) and $6,000,000, to remain available until expended, shall be for construction.

HIGHER EDUCATION FACILITIES LOANS

The Secretary is hereby authorized to make such expenditures, within the limits of funds available under this heading and in accord with law, and to make such contracts and commitments without regard to fiscal year limitation, as provided by section 104 of the Government Corporation Control Act (31 U.S.C. 9104), as may be necessary in carrying out the program for the current fiscal year.

COLLEGE HOUSING AND ACADEMIC FACILITIES LOANS PROGRAM

For the costs of direct loans, as authorized by title VII, part C, of the Higher Education Act, as amended, $134,000: *Provided*, That such costs, including costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974 and that these funds are available to subsidize gross obligations for the principal amount of direct loans of not to exceed $8,000,000: *Provided further*, That obligated balances of these appropriations will remain available until expended, notwithstanding the provisions of 31 U.S.C. 1552(a), as amended by Public Law 101–510. In addition, for administrative expenses to carry out the existing direct loan program of college housing and academic facilities loans entered into pursuant to title VII, part C, of the Higher Education Act, as amended, $1,022,000.

COLLEGE HOUSING LOANS

Pursuant to title VII, part C of the Higher Education Act, as amended, for necessary expenses of the college housing loans program, previously carried out under title IV of the Housing Act of 1950, the Secretary shall make expenditures and enter into contracts without regard to fiscal year limitation using loan repayments and other resources available to this account. Any unobligated balances becoming available from fixed fees paid into this account pursuant to 12 U.S.C. 1749d, relating to payment of costs for inspections and site visits, shall be available for the operating expenses of this account.

HISTORICALLY BLACK COLLEGE AND UNIVERSITY CAPITAL FINANCING, PROGRAM ACCOUNT

The total amount of bonds insured pursuant to section 724 of title VII, part B of the Higher Education Act shall not exceed $357,000,000, and the cost, as defined in section 502 of the Congressional Budget Act of 1974, of such bonds shall not exceed zero.

For administrative expenses to carry out the Historically Black College and University Capital Financing Program entered into pursuant to title VII, part B of the Higher Education Act, as amended, $347,000.

EDUCATION RESEARCH, STATISTICS, AND IMPROVEMENT

For carrying out activities authorized by the Educational Research, Development, Dissemination, and Improvement Act; the Elementary and Secondary Education Act of 1965 and the Education Council Act, as amended by the Improving America's Schools Act as passed the House of Representatives on March 24, 1994; the National Education Statistics Act of 1994 as passed the House of Representatives on March 24, 1994; and the General Education Provisions Act, $318,775,000: *Provided*, That $39,320,000 shall be for regional laboratories, including rural initiatives; $4,463,000 shall be for civics education activities; $14,480,000 shall be for the National Diffusion Network; $34,424,000 shall be for Eisenhower professional development Federal activities; and $20,000,000 shall be for Federal leadership activities in education technology.

LIBRARIES

For carrying out, to the extent not otherwise provided, titles I, III, IV, and VI of the Library Services and Construction Act (20 U.S.C. ch. 16), and section 222 of the Higher Education Act, $114,996,000.

DEPARTMENTAL MANAGEMENT

PROGRAM ADMINISTRATION

For carrying out, to the extent not otherwise provided, the Department of Education Organization Act, including rental of conference rooms in the District of Columbia and hire of two passenger motor vehicles, $359,358,000.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, as authorized by section 203 of the Department of Education Organization Act, $58,325,000.

OFFICE OF THE INSPECTOR GENERAL

For expenses necessary for the Office of the Inspector General, as authorized by section 212 of the Department of Education Organization Act, $29,199,000.

GENERAL PROVISIONS

SEC. 301. No part of the funds contained in this title may be used to force any school or school district which is desegregated as that term is defined in title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to force on account of race, creed or color the abolishment of any school so desegregated; or to force the transfer or assignment of any student attending any elementary or secondary school so desegregated to or from a particular school over the protest of his or her parents or parent.

SEC. 302. (a) No part of the funds contained in this title shall be used to force any school or school district which is desegregated as that term is defined in title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to require the abolishment of any school so desegregated; or to force on account of race, creed or color the transfer of students to or from a particular school so desegregated as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

(b) No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.

SEC. 303. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing or clustering. The prohibition described in this section does not include the establishment of magnet schools.

SEC. 304. No funds appropriated under this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

This title may be cited as the "Department of Education Appropriations Act, 1995".

TITLE IV—RELATED AGENCIES

ARMED FORCES RETIREMENT HOME

For expenses necessary for the Armed Forces Retirement Home to operate and maintain the United States Soldiers' and Airmen's Home and the United States Naval Home, to be paid from funds available in the Armed Forces Retirement Home Trust Fund, $59,816,000, of which $2,906,000 shall remain available until expended for construction and renovation of the physical plants at the United States Soldiers' and Airmen's Home and the United States Naval Home: *Provided*, That this appropriation shall not be available for the payment of hospitalization of members of the Soldiers' and Airmen's Home in United States Army hospitals at rates in excess of those prescribed by the Secretary of the Army upon recommendation of the Board of Commissioners and the Surgeon General of the Army.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

DOMESTIC VOLUNTEER SERVICE PROGRAMS, OPERATING EXPENSES

For expenses necessary for the Corporation for National and Community Service to carry out the provisions of the Domestic Volunteer Service Act of 1973, as amended, $205,771,000.

CORPORATION FOR PUBLIC BROADCASTING

(RESCISSION)

Of the funds made available under this heading in Public Law 102–394, $20,100,000 are hereby rescinded.

The CHAIRMAN. Are there any points of order to this section of the bill?

Pursuant to the order of the House of today, the following amendments shall be considered to that portion of the bill in the following order: by Mr. MICA of Florida; by Mr. BAKER of California; by Mr. CRANE of Illinois; and by Mr. GRAMS of Minnesota.

Debate on each of the amendments and any amendments thereto shall be 20 minutes, equally divided and controlled by the proponent and an opponent of the amendment.

The Chairman of the Committee of the Whole may postpone until after disposition of the Grams amendment a request for a recorded vote on any of the foregoing amendments.

The Chairman of the Committee of the Whole may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows another

vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in any series of question shall be not less than 15 minutes.

AMENDMENT OFFERED BY MR. MICA

Mr. MICA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MICA:

BILINGUAL AND IMMIGRANT EDUCATION

Page 45, line 21, strike "$247,572,000" and insert "$272,572,000" and line 22, strike "$50,000,000" and insert "$75,000,000".

The CHAIRMAN. The gentleman from Florida [Mr. MICA] will be recognized for 10 minutes in support of his amendment, and a Member opposed will be recognized for 10 minutes in opposition.

The Chair recognizes the gentleman from Florida [Mr. MICA].

Mr. MICA. Mr. Chairman, I yield myself such time as I may consume.

I rise tonight to ask this body to recognize a crisis that faces our country today. That crisis is the crisis of unfunded Federal immigration policy.

I am asking this body to do something about the burden forced upon our States and local governments. Let me make very clear at the outset that this amendment does not cut the low energy assistance program. While I had originally intended to propose a cut in that program, I reserved the right to offer that amendment at a future time. Instead, tonight at this time I am offering an amendment which will simply reimburse the States for funds they have spent educating children of illegal immigrants.

I am not advocating a corresponding cut. This amendment makes no cuts, let me make that perfectly clear, because I believe the immigration situation at the State level has achieved the status of an emergency.

My request and amendment are within the existing budget authority. I know that the unfunded mandate of educating illegal immigrants is a concern of many of my colleagues. But we sat late into the evening last night and we discussed this issue. Here we have an opportunity to do something about this issue. And we are not going to cut any other program, I am not proposing at this time to eliminate any program. What I am going to do tonight is to say that we, as a Congress, must address a problem.

I know that this question of illegal immigrants and their education, the education of their children and reimbursing the States for expenses is of interest to all of my colleagues here in the House, because I have with me a letter signed by almost 100 of my colleagues which was sent to the honorable chairman from Iowa stating their desire to see the Emergency Immigration Education Act fully funded.

My amendment would do exactly that. My amendment simply increases the appropriation for the immigration account by $25 million. Although I have not cut other funds in the bill, I offer this amendment on the grounds that the immigration situation which we find ourselves in today in this country is an emergency. We cannot continue to expect the States to fund a failed national immigration policy.

The Federal Government has responded to natural disasters, including hurricanes, floods, and earthquakes. Today our schools are being jolted by a disastrous Federal immigration policy, and they are drowning financially.

Three States have sued the Federal Government for refunds and others will follow. Is this the way we conduct the business of our Nation and our States, by States suing the Federal Government to be responsive? I say "no." Is this the manner in which we assist our local governments, as they cope with the disaster created here in Washington? Let us look at the cost of educating illegal immigrants.

The total cost to the United States for educating illegal immigrants, the children of illegal aliens in this country, is $4.25 billion per year. In my State of Florida, it costs an average of $4,000 to educate one immigrant child. And do my colleagues know that the State is only reimbursed somewhere between $35 and $40 per student?

I urge the adoption of this amendment. Give our States the opportunity to get a little bit back for the money that they have spent on taking care of a national disaster created at the national level by national policy.

Again, this does not cut any program. This does not eliminate any program. What it does is, it says we have a problem. We must address the problem, and this Congress is willing to step forward and see that we reimburse our States for a small fraction of the expense that they have incurred in the education of these illegal aliens.

Mr. Chairman, I reserve the balance of my time.

□ 2040

The CHAIRMAN. Who rises in opposition to the amendment of the gentleman from Florida [Mr. MICA]?

Mr. SMITH of Iowa. Mr. Chairman, I have no speakers. I would ask if the gentleman from Florida [Mr. MICA] has other speakers.

Mr. MICA. Mr. Chairman, I do not.

Mr. SMITH of Iowa. Mr. Chairman, I reserve the right to close.

The CHAIRMAN. The Chair would indicate that we are under the time limit, and neither the gentleman from Iowa [Mr. SMITH] nor the gentleman from Florida [Mr. MICA] needs to make a speech. We may proceed to a vote.

Mr. MICA. Mr. Chairman, if the gentleman has no comment at this time, but would like to close, then I would like to reclaim my time.

May I inquire, Mr. Chairman, as to how much time I have remaining?

The CHAIRMAN. The gentleman from Florida [Mr. MICA] has 5½ minutes remaining.

Mr. MICA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, again I make this appeal, because I come from a State that has been badly impacted by our national immigration policy. We have borne the brunt of immigration, Mr. Chairman, not in relation to, say, a State like California. California is foremost. The cost of illegal immigration to California is absolutely staggering, the amount of money that that State spends on education. Florida only spends a fraction of it in educating illegal aliens. That State is tremendously impacted by this.

Mr. Chairman, I would expect every member of the California delegation to come down here and vote for this amendment, to say that this is a Federal obligation, that we must assume a Federal obligation here, even though it means expanding slightly the outlay of money for this particular program.

However, Mr. Chairman, it does not exceed, and I might add, Mr. Chairman, this does not exceed the budget authority given to this committee. What it does is, it says we have a problem. California has been ravaged by the problem.

We are ending up in the State of Florida, and I know in California, New York, other States, where we are increasing our local property taxes. Many of these local governments have caps, such as in Florida, where they cannot raise them any more. The cost of education, the cost to local government of handling this illegal immigration problem, has reached its cap in many of these jurisdictions.

Mr. Chairman, this is one of the greatest increases in costs to local government that costs this country, whether it is California, whether it is New York, whether it is Pennsylvania, New Jersey. Again, Mr. Chairman, if we do not address the problem at the Federal level, we end up passing this on to the States, which we have done, requiring the States, in fact, to pick up the tab, the local taxpayer to pick up the tab.

Mr. Chairman, here we have an opportunity to stand up and be counted tonight. We are not going to do away with anything, Mr. Chairman, again, with any program that may be of any particular interest to anyone in this body or the House of Representatives in any way.

What we are doing, Mr. Chairman, is we are making a commitment that we in fact recognize there is a problem, we are willing to fund that problem, we are willing to address that here, we are willing to assist our States in meeting the obligation that started here at the Federal level, whether it was at the White House or whether it was in this body. We have an obligation to the

local governments, to our school districts, again, to meet this need.

Mr. Chairman, I ask everyone of the Members to look at their States, look at the impact of illegal immigration. We have more illegal immigrants in the State of California than there are in 16 States in the Union. Is this fair, that we allow our States to absorb this burden and not address this problem?

We did not address this problem last night when it came to cutting funds for international peacekeeping forces. We did not address this in any other sections of legislation that came before us. This is the opportunity that we have, again, without cutting anything, without upsetting anyone's apple cart, to say that we do in fact admit that we have an obligation and the obligation is above the funding level provided in this piece of legislation.

Mr. Chairman, this is a small amount, but it is a meaningful amount. At the proper time I am going to call for a recorded vote on this. I do want the Members to come down here. They should go back to their local districts, back to their school boards, back to their States, and look those people in the eye and say, "We had an opportunity to fund this. It was well within the budget constraints provided by the Committee on the Budget in Congress, but I did not meet my obligation. I did not take care of the obligation and the tragedy that was set forth here by our national policy." That is the policy of illegal immigration.

Mr. Chairman, I know that there are many other issues of importance, but I come from one State that has been severely impacted by this. I ask the Members' assistance in this matter, and also to assist the other States, California, New York, New Jersey, Pennsylvania, Illinois, Ohio, and the list goes on and on, States that have been severely impacted by failed Federal policy.

Mr. Chairman, with that, I submit this amendment for the Members' consideration, and intend to call a vote for it and ask for Members' support.

The CHAIRMAN. The gentleman from Iowa [Mr. SMITH] is recognized for 10 minutes in opposition to the amendment.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am compelled to oppose the amendment because there is no offset. I know the House rules say the limitation is on BA, rather than outlays. In the Senate the rule is that the bill cannot exceed the outlay ceiling. When we go through the House with these bills, we have to be within the outlays or else we are going to be in trouble in conference.

What the gentleman does is add $25 million but there is no offset.

Mr. Chairman, we have in this bill many, many places where we could add money for budget authority, and there are many places we would like to. For example, in the fund for handling disability claims, Mr. Chairman, I would like to add some money there, but there are no outlays to go with it, so we have not done that.

Mr. Chairman, I just think Members ought to vote against this on the basis that we are supposed to present a bill here, and we have presented a bill that is within the outlays in our 602(b), and to vote for this amendment means that we exceed the 602(b).

Mr. MICA. Mr. Chairman, I yield back the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. MICA].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. MICA. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to the order of the House of today, further proceedings on the amendment offered by the gentleman from Florida [Mr. MICA] will be postponed.

It is now in order to consider the amendment to be offered by the gentleman from California [Mr. BAKER].

AMENDMENT OFFERED BY MR. BAKER OF CALIFORNIA

Mr. BAKER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BAKER of California: On page 52, line 9, strike "$114,996,000" and insert in lieu thereof "$115,996,000".

The CHAIRMAN. The gentleman from California [Mr. BAKER] is recognized for 10 minutes, and a Member opposed to the amendment will be recognized for 10 minutes.

The Chair recognizes the gentleman from California [Mr. BAKER].

Mr. BAKER of California. Mr. Chairman, it was my intention to stand up here and point out the growth of the administration's budget in the Department of Education. Last year they had to suffer over at the Department of Education with a growth in their administrative budget of only 14 percent. That is when 1 million Californians were out of work and most corporations were cutting their overhead drastically.

Mr. Chairman, I wanted to take $2 million out of this growth in administrative overhead and give it to the library budget, which Members will see next to the administrative overhead budget. The library budget has been cut some $37 million. In other words, we are reinventing government this year. Bureaucracy is in, libraries are out.

As a symbolic gesture, and also as a much-needed addition to the libraries, I wanted to take $2 million from administration and put it into libraries. Unfortunately, the gentleman from Illinois [Mr. PORTER] got here first, and he took, with a successful vote earlier this evening, $7 million from administration, which is this year's growth rate, and took it for the community health facilities and others, so the amendment as it is now drafted would take $1 million of that $7 million in savings and apply it under the cap, there is $1 million left under the cap, and give it to the public libraries.

Mr. Chairman, I am waiting for a signal from the chairman to see if that is within the budget cap of CBO. We will find out later.

Mr. SMITH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. BAKER of California. I am happy to yield to the gentleman from Iowa [Mr. SMITH], the chairman of the committee, for his opinion on the amendment as drafted.

Mr. SMITH of Iowa. Mr. Chairman, we do not have any scoring from CBO, and we have found out the hard way that we do not dare move without a scoring from CBO. We came up at one point, while we were trying to put this bill together, with a $247 million difference between what we thought the scores would be and what they thought it should be, but we have to go by their scoring. We do not have any way to know what the scoring is.

Mr. BAKER of California. Mr. Chairman, would the gentleman allow me to go to the back of the line? There are two other amendments affecting this title of the Education Act, and I could wait until the end, when we hear from CBO.

Mr. SMITH of Iowa. If the gentleman will yield further, we will not hear from CBO for 2 or 3 or 4 days. We are not going to hear from CBO tonight. That is not going to do any good.

Mr. BAKER of California. Mr. Chairman, even if we roll these over, we are not going to roll them over for 3 or 4 days. We will have to vote.

Mr. Chairman, let me just continue, then. It is very important we stop the downward slide of library funding. Libraries are important.

□ 2050

Libraries are important to every community. They are important to our children. To take $1 million and increase that $37 million slide does not seem to be unrealistic.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does the gentleman from Iowa [Mr. SMITH] rise in opposition to the amendment?

Mr. SMITH of Iowa. Yes, Mr. Chairman, I oppose the amendment.

The CHAIRMAN. The gentleman from Iowa [Mr. SMITH] is recognized for 10 minutes.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, to start with, we do not have an offset. In the second place, public library services are being treated like the average in the bill. It is 96.5 percent of current services.

There are numerous programs, I will bet there are 200 programs in the bill that would like to be better than average in the bill. There are more than 500 programs in the bill. If you reach in and just pick out any one program, we can make a good argument for why it ought to be treated better than others in the bill. But we had to put together a bill that on an average is 96.5 percent of current services. We cannot just reach in and pick out one of 200 and not give consideration to the others. It is not a good program, but we cannot increase this without an offset, and even if we had an offset, I do not think that libraries ought to be treated differently than a couple of hundred other programs that are in the bill.

Mr. BAKER of California. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from California.

Mr. BAKER of California. On this chart, I am showing what we are doing to libraries this year. It is not that I want to treat this program any better. I think it has been treated in this process very shabbily.

Mr. SMITH of Iowa. I do not know about the graph. We are giving it 96.5 percent of current services and that is as good as most programs in this bill. I do not know about the gentleman's graph, but that is the fact. It is getting 96.5 percent of current services in the bill.

Mr. BAKER of California. If the gentleman will continue to yield, if we adopted my amendment, then, to give the administrative overhead 96 percent of their current services, we would have my $2 million.

Mr. SMITH of Iowa. Without anything in the bill, the gentleman is getting 96.5 percent of current services.

Mr. BAKER of California. The gentleman is correct.

Mr. SMITH of Iowa. Yes.

Mr. BAKER of California. If I applied that same standard to the administrative overhead of the Department of Education, I would have more than $2 million to give to libraries.

Would the gentleman find that acceptable, because we are holding the administration at an equal.

Mr. SMITH of Iowa. We are putting out a very delicate bill. Every time we increase something, we had to decrease something below 96.5 percent. This was one of 200 or 300 programs that we thought were average programs, that ought not be treated different than others. It is a matter of fiscal responsibility. Either we abide by the caps and on an average have 96.5 percent of current services or we do not. We cannot just pick out all the programs and say they are over average. This was one of them we did not put more money than the average in for. It is a delicate balance and anybody can make a good argument for 200 or 300 programs in here.

Mr. BAKER of California. If the gentleman will continue to yield, I am making an argument that we cut the libraries $37 million. I do not think that is 96 percent. I am also arguing that the budget of the administrative overhead of the Department of Education is increasing.

Mr. Chairman, I yield 1 minute to the gentleman from Arkansas [Mr. HUTCHINSON].

Mr. HUTCHINSON. Mr. Chairman, I rise in strong support of the amendment offered by my colleague, the gentleman from California. The Federal Government spends about $146 million on library programs. This is .01 percent of the Federal budget and going down. So while the Department of Education budget skyrockets, Federal support for local libraries continues to fall. Federal support for local libraries works out to about 57 cents per person in the United States, or about the cost of a small ballpoint pen or a cup of coffee. For that very small investment, we generate enormous returns in providing for our constituents a wealth of information resources.

Mr. Chairman, this amendment is very simple. It would shift a very, very small amount of money, of dollars, from the Department of Education bureaucracy to public library service. It seems to me to be a very simple amendment, a very simple choice. It is books or bureaucrats, it is a simple choice, and for me that choice means books.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I had pointed out to me why the chart is in gross error. The chart refers to the total amount for libraries including construction and college libraries. The chart refers to the total amount for libraries including construction. The amount for services is only $745,000 below 1994, out of $82 million, so it is 3.5 percent below current services.

Mr. Chairman, I would also point out that the money the libraries get from this account is probably less than 3 percent of the amount local libraries operate on. If they cannot squeeze a little out of that 3 percent, they are in pretty bad shape. It just should not be treated different than several hundred other programs in the bill.

Mr. BAKER of California. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia [Mr. LINDER].

Mr. LINDER. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I would like to point out that this is a very, very small amendment to do a very, very important thing. For 15 or 20 years, we have been bleeding our libraries and enhancing our bureaucracy. In the last 20 years, we have increased our spending per pupil in real terms by double. We have increased our spending in terms of the bureaucracy by triple. One third of every dollar we spend on education now goes to the classroom. There have been hundreds of stories or thousands of stories of people who have learned what they have learned in the libraries. I, in fact, have six or seven books by Eric Hoffer, a longshoreman from California, who quit school in the fifth grade and went to the libraries and became a famous author and a writer because of what he learned.

Mr. Chairman, we are bleeding our libraries. We are taking away from the children and giving to the bureaucrats and the owners of the National Education Association, the lobby, the money we should be putting back into education.

Until 1952, our schools were run at the local level by parents and teachers. Then when the teachers lobby took over, we started declining. We had increasing SAT scores in every single year until 1964, which just happens to coincide with the year that the Federal Government got involved in elementary and secondary education, and we have declined in every year since except for a small blip in 1985 or 1986, and it has been going down since.

Mr. Chairman, this is not a major overhaul of education. This is a small effort to say the kids are more important than the bureaucrats. The effort we put into their opportunity to learn is more important than we put into offices and the chandeliers of the bureaucrats.

Let us vote just this one time for the kids.

Mr. BAKER of California. Mr. Chairman, I yield myself the balance of my time to close debate.

Mr. Chairman, we have just voted to give $8 million to a program that has a $9 billion trust fund. We say it is OK to cut the libraries because we are getting rid of the construction program. Apparently no one needs a new library this year. Yet we allowed last year the bureaucracy in the Department of Education to grow by 14 percent and this year by another $7 billion, although that has been recently cut back.

It is not too much to ask for $1 million for the libraries. Libraries in California run the best literacy programs available, their one-on-one personal introduction to reading and writing to people of all ages who somehow got through school and are still illiterate. Libraries are where we introduce young children to the adventure of history and of mathematics and of science through reading. I ask for an aye vote for $1 million for the library. I ask that Members reduce the bureaucracy an equal amount. There is room under the

cap and some day CBO will come out of the cave and tell us that it is all right to restore some of the money to public libraries.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, the gentleman talks about taking money out of salaries and expenses for the Education Department. But we did that on the amendment that passed earlier. We did that on the big amendment that passed for community health centers. The money is already gone. How many times can we spend it? We cannot take the $1 million that we already voted to spend and spend it again on libraries. There is no offset for this. That is the fact of the matter.

Mr. Chairman, I have to oppose the amendment, although it is not a big amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. BAKER].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. BAKER of California. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to the order of the House of today, further proceedings on the amendment offered by the gentleman from California [Mr. BAKER] will be postponed.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair would announce for the benefit of Members that we are proceeding more rapidly than the time allowed. Therefore, if rollcall votes are ordered, they could come earlier than many Members are expecting.

It is now in order to consider the amendment to be offered by the gentleman from Illinois [Mr. CRANE].

□ 2100

AMENDMENTS OFFERED BY MR. CRANE

Mr. CRANE. Mr. Chairman, I have an en bloc amendment and I would like to make a unanimous consent request that it might be made in order in lieu of the original amendment I submitted. If I may, I would like to indicate briefly to the Chairman what it involves, and then I would be happy to yield.

The CHAIRMAN. The Clerk will report the amendments, and then the gentleman may propound his unanimous consent request.

The Clerk read as follows:

Amendments offered by Mr. CRANE:

Page 56, Line 11, strike "$20,100,000" and insert "$292,640,000".

Page 35, Line 20, strike "$320,000,000" and insert "$520,000,000".

Mr. CRANE. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to consideration of the amendments en bloc?

Mr. SMITH of Iowa. Mr. Chairman, I have to object. I am sorry. But I cannot permit reaching back into the bill, or others will want to do the same thing.

I have to object.

The CHAIRMAN. Objection is heard.

Mr. CRANE. Mr. Chairman, I will submit my original amendment.

AMENDMENT OFFERED BY MR. CRANE

Mr. CRANE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CRANE:

Page 56, line 11, strike "$20,100,000" and insert "$292,640,000".

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

Mr. CRANE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am deeply regretful that my unanimous-consent request was rejected, because I think it is something everyone in this Chamber can relate to, and that was to divert $200 million of the projected $274 million savings under my amendment to processing Social Security disability claims.

The average processing time has grown by more than a month between 1990 and 1993, on average from 87 days to currently roughly 128 days. And disability claims will have grown by 75 percent from 1990 to 1995. That means over 1 million backlog cases, and we have constituents communicating with each and every one of us on the importance of trying to deal with this aggravated problem which is spiraling out of control.

But so be it. What my amendment, Mr. Chairman, will do is have the effect of saving the taxpayers an enormous amount of money.

In 1967, it had only been 22 years since the Chicago Cubs won a pennant. In 1967 Woodstock was still just a farm. In 1967 man had not yet set foot on the Moon, and in 1967 Congress created the Corporation for Public Broadcasting.

Back in 1967, there were only three television networks, and Congress perceived the need for more diversity in broadcasting. The CPB was designed to meet that need, giving consumers access to quality programming that was not commercially viable. Without a doubt, many fine programs have been broadcast because of public television.

But it is no longer 1967. The choices of consumers are no longer limited to the three networks, and we no longer need the CPB.

Television has added a fourth network, and hundreds of independent stations have sprouted up throughout the country. More importantly, the popularity of cable television has given consumers literally, in some cases, hundreds of choices. From CNN to ESPN to the Home Shopping Club, consumers have adequate choices today without a Federal subsidy.

In fact, most Americans can even choose among public television stations, as 58 percent receive more than one public station.

Despite the wide spectrum of programming now available, Congress continues to give more and more money to the CPB. We now appropriate more than 5 times the amount dedicated to public broadcasting 20 years ago. Even with such exponential growth, Federal funding for the CPB still accounts for only about 15 percent of the total funding for public broadcasting, and the fact of the matter is that even without any Federal funding, the Corporation would still have a budget of more than $1.5 billion.

In the years since 1967, the CPB has become increasingly less dependent upon Government funds. Through grants from foundations, corporate sponsors, and individual donations, the CPB has built a financial base strong enough to survive and, indeed, thrive without Federal funding. For example, the Children's Television Workshop which produces the most visible PBS program, Sesame Street, has $58 million invested in stocks and bonds, enough to keep even Big Bird's feeder full for many years.

In short, eliminating Federal funding will not force the cancellation of any programming and will not dissolve the Corporation for Public Broadcasting. What it will do is save the American taxpayers more than a quarter of a billion dollars. With so much diversity, we no longer need the CPB, and with our growing budget deficit, we can no longer afford it.

I hope my colleagues will vote for fiscal responsibility and will vote for my amendment to rescind Federal funding for the Corporation for Public Broadcasting.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield 7 minutes to the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Illinois [Mr. CRANE] and urge Members to support the bill as reported by the Committee on Appropriations.

I do want to say, however, that unless there are some substantial changes in Public Broadcasting and its relationship to the working people of America, my vote and my position might be very different next year.

Mr. Chairman, one of the great dangers in America today, and something that frightens me and many other Americans very much is the growing concentration of ownership in the mass media. Fewer and fewer and larger and

larger corporations increasingly control what we see on television, what we hear on the radio, and what we read in the newspapers and magazines.

The noted journalist and author Ben Bagdikian has written in his book "The Media Monopoly" that by the turn of the century a handful of huge multinational corporations will not only control what we see and hear in America but in fact will be controlling what much of the world sees, hears, and reads. That is a very dangerous trend.

Mr. Chairman, it is not an accident that the Rush Limbaughs, the Pat Buchanans, and the G. Gordon Liddys dominate commercial radio talk shows. Their views reflect the interests of the corporations which own those radio networks. It is also not an accident that on commercial radio and television there is very little serious discussion about the enormous problems facing the working people and the poor of this Nation.

The average working family in America is in trouble. They are under stress. They are hurting. But that reality is not reflected in the corporately controlled media.

Yes, we do have round-the-clock analysis of the O.J. Simpson case and the Menendez brothers saga and the Bobbitt family adventures and the Tonya Harding and Nancy Kerrigan adventure. Yes, we have in-depth analyses of why the Houston Rockets were able to defeat the New York Knickerbockers and why the Washington Redskins did not do so well this last session. Yes, the airwaves are filled with violence and blood and 30-second commercials which are having an extremely negative impact on the cognitive abilities of the young kids of America.

But somehow, just somehow there is virtually no programming which explains to the American people why the standard of living of American workers has gone from 1st place in the world 20 years ago to 13th place today. Somehow we do not have programming which deals with that. Somehow there is very little discussion or portrayal on television about the growing gap between the rich and the poor in America.

I guess we do not have time on TV for that or about the fact that the wealthiest 1 percent of our population owns more wealth than the bottom 90 percent, or about how multinational corporations are moving to the Third World and are hiring workers at 15 to 20 cents an hour while they are throwing American workers out on the street. I guess that is just not interesting enough to put on our TV airways.

Should we be surprised that General Electric's NBC or the corporations that own the other networks do not focus very much on these issues? Well, I am not surprised, and I think the average American is not surprised.

Mr. Chairman, the reason that Public Broadcasting was established and why taxpayers are contributing to Public Television and Radio is that it is supposed to offer an alternative point of view to that offered by the corporately owned networks. It is supposed to give a voice to those who have no voice. It is supposed to be able to deal with controversy without being afraid of offending corporate sponsors. That is the reason that it exists.

□ 2110

It is supposed to take on the entrenched special interests because it is funded by the ordinary people of this country, the people who are not wealthy, the people who are not powerful, the people who do not own ABC, CBS, or NBC. In other words, radical thought that it may be, public television is supposed to represent the interests of the public.

I know that is a radical thought, but that is the way it is supposed to be.

Sadly, despite what its original mandate was, despite the fact that there is some excellent programming on public television, some very fine children's programming on public television, despite all of that, very few people can argue that public television has fulfilled its original mandate. In fact, year after year it appears that public television is more and more coming to resemble commercial television. Mr. Chairman, I do not object that there are three regularly scheduled business shows on PBS. I do not object that there are three regularly scheduled shows—Wall Street Week, the Nightly Business Report, and Adam Smith's Money World. I have no problem with those programs. I do have a problem, however, that there is not one regularly scheduled program on the PBS which focuses on the needs and the problems of the working people of America. If there are three regularly scheduled business shows, why is there not at least one, just one, regularly scheduled show reflecting the interests of working people and organized labor?

I do not object that three weekly public affairs shows on the PBS stations are hosted by individuals who have been associated with the National Review, a leading right-wing magazine: William Buckley's Firing Line, John McLaughlin's McLaughlin Group, and McLaughlin's One on One. I do not object to these shows. But I do object that there is not one weekly PBS show which is hosted by a journalist from a labor or a progressive point of view.

Our side also has articulate, well-informed journalists and commentators who are capable of presenting interesting and informative television, and that point of view has a right to be heard.

Mr. Speaker, it seems to me that the Corporation for Public Broadcasting is at a crossroads. If it wants to resemble commercial television, Mr. CRANE has a point. If it wants to resemble commercial television, if it wants to go out and hunt for more and more corporate money, then maybe we should say once and for all that it should become a private entity which competes in the marketplace with the corporate media. Mr. CRANE does have a point. But I do not think that is what it should be. It seems to me that in a time when more and more of the media is controlled by big money, it is imperative that we really do have a public broadcasting system which deals with the real problems facing the working people of America.

Tonight I will oppose Mr. CRANE's amendment. I hope PBS changes, or next year I will not.

Mr. CRANE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as an unblushing socialist, I understand my colleague's commitment to the concept of Government ownership and/or control of the means of production and distribution. And for that reason I have respect for his argument from his perspective.

However, I would argue that we are not in that kind of an economic situation. I would deny further that labor has not had an opportunity to be heard through the media. We have had radio stations in Chicago that were initially founded by the labor unions, controlled by the labor unions. That opportunity always exists, and it exists today and it is not something that requires Government intervention to resolve that kind of problem.

Censorship, I would say "no" to the gentleman about. In effect, what he is calling for is Government censorship of program content.

Free enterprise is our answer to these problems and free enterprise provides a free field with no favors. And anyone who wants to join in the game is able to join in the game.

In addition to that, I would remind the gentleman that 22 cents of every dollar right now to the Corporation for Public Broadcasting comes from individual donations, not from the corporate giants. And the number of private subscribers and the total amount of donations has risen very rapidly in the last few years.

Sesame Street, I might remind the gentleman also, grosses more from merchandising than does the National Hockey League. And that is one of those children's programs very widely watched and very popular.

So I think the gentleman has made an impassioned plea, but I think the gentleman is off base in terms of the approach to dealing with the problem before us today. That is not, as I think is implied in his remarks, calling for a major increase in the Government component of this Corporation for Public Broadcasting, because only 15 percent of that is now Government. The

rest is all outside of Government, in the hands of a variety of people. And to be sure, some of them may be corporations.

But the fact is we do not need this in a climate when we have literally hundreds and hundreds of channel outlets. At the time this was founded, with only three networks, there was a case that could be made for an alternative voice. But I think that has long since passed. For that reason, I would ask Members to support our amendment.

Mr. ROHRABACHER. Mr. Chairman, will the gentleman yield?

Mr. CRANE. Yes, I yield to the gentleman.

Mr. ROHRABACHER. I thank the gentleman for yielding to me.

Mr. Chairman, I was listening to this debate, and I do not know what planet some of my colleagues are living on, sometimes, when I hear them talking about the bias of the media in different areas.

The news media, from a conservative point of view, is way over on the left. We are always complaining about this. I will acknowledge that my friends on the other side of the aisle may indeed think that the media does not reflect their point of view either. But that is the whole point: In a free enterprise system people can listen to what they want to listen to, and they can turn off the dial. But if you have a socialist approach, which I know that my colleague really appreciates, the socialist approach believes it will be inherently fairer, but the fact is people are forced to pay for programming that they do not support. Whether they listen to it or not, they are going to pay for it.

The fact is the free enterprise system today provides us with more alternatives. We have video disks, we have videotapes, we have satellites, we have radio, we have FM, we have AM, we have tapes to listen to when we go in our car. We have got newspapers, we have got magazines, we have information and entertainment coming out of our ears. There is absolutely no reason why, when we have other needs, for us to be taxing money away from our people to subsidize entertainment and information.

I agree totally with my colleague from Illinois [Mr. CRANE] that the time is past, if there ever was a need, that this need now can be handled totally by the private sector. And neither one of us should then complain, because we can say if we do not support what is on the air, we just turn the channel, as compared to the Corporation for Public Broadcasting and other socialist approaches when you have to pay for what you disagree with.

Mr. CRANE. Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. I thank the gentleman from Iowa for yielding this time to me.

Mr. Chairman, let me make some very simple points. Notwithstanding the fact that we have had a cable revolution in this country over the last 20 years, we should all be cognizant of the fact that 40 percent of all Americans do not subscribe to cable. Most of them, because they cannot afford cable.

Sixty percent of all Americans who come from families of $15,000 income or less do not subscribe to cable.

As the 1980's introduced an era where the chairman of the Federal Communications Commission said that a television set was nothing more than a toaster with pictures, we saw more and more of the commercial broadcasters do away with their children's television programming. From a peak of 11 hours a day in 1980 to a low of 2 hours per week in 1993, we saw the commercial broadcasters walk away from children's television.

On children's television, on an average, on public broadcasting, an average day, there are 6 to 10 hours of children's television programming. For the 60 percent of the children of the families with incomes under $15,000 a year, that is their only access to quality broadcasting. They do not have cable. It is unrealistic to expect that their families can afford all of these wonderful discretionary video opportunities that are out there in the marketplace, as wonderful as they may be for middle-class Americans, they are not affordable for working-class and poor America.

□ 2120

Public broadcasting is the only alternative for those children. It is the only way that working class, and blue collar, and poor families can have access to quality programming on a daily basis. Let us not confuse this issue at all. The reason public broadcasting is there is to ensure that all Americans have access to quality programming, not just those who can afford to pay for it, which is what the cable revolution is all about.

Mr. CRANE. Mr. Chairman, I yield myself the balance of my time.

Let me say in response to what we have heard that the Lyons Group, which produces Barney and Friends, makes an estimated $50 million just from licensing Barney products, yet has received some $2.5 million from public broadcasting to produce episodes of the show.

PBS continues to subsidize Sesame Street to the tune of $6 million annually. The Children's Television Workshop, which produces the program, nets about $100 million a year in related product sales, with $40 million alone coming from Sesame Street Magazine's 4.5 million readers.

"This money-machine feature of public television is a far cry from the original assumption that a public system was needed to give access to programming with no commercial appeal," said Laurence Jarvik, director of the Center for the Study of Popular Culture.

I think it is important to recognize that we are not talking about eliminating public broadcasting networks. It is not going to be eliminated; a far cry from that. It is so commercially viable, is my point, that we no longer need its existence, and the public contribution is down to only 15 percent of the total. They are not going to fold up and go home. They are making out like gangbusters, and they will continue to produce, and they will continue to direct their programming toward that audience which has guaranteed them such an enormous success.

So, Mr. Chairman, I think we are not talking on the same wave length, and the point I would reiterate before closing out is the one my colleague from California made, and that is:

Why, when you have a viable entity in a competitive market must you involuntarily force American overburdened taxpayers to pay for it?

Mr. Chairman, I urge the adoption of my amendment.

Mr. SMITH of Iowa. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Illinois [Mr. CRANE].

Mr. Chairman, I am not sure there was any other program that I heard more from in the mail, from colleagues, than public broadcasting. They want more money. They did not want even to go back to 96.5 percent of current services because it was advanced funded. It is just not realistic, I do not think, for us to take out of the bill the remaining amount of money we have got in here, which is 96.5 percent of what was funded last year. I just think that this is a program that is very much supported all over the country, and I have to oppose the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. CRANE].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. CRANE. Mr. Chairman, on that I demand the yeas and nays, and I understand that the vote will be put off until the next amendment is completed.

The CHAIRMAN. Pursuant to the order of the House of today, further proceedings on the amendment offered by the gentleman from Illinois [Mr. CRANE] will be postponed.

It is now in order to consider the amendment to be offered by the gentleman from Minnesota [Mr. GRAMS].

AMENDMENT OFFERED BY MR. GRAMS

Mr. GRAMS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GRAMS: Page 49, line 11, strike "$954,686,000" and insert "$939,766,000".

The CHAIRMAN. Pursuant to the rule, the gentleman from Minnesota [Mr. GRAMS] will be recognized for 10 minutes, and the gentleman from Iowa [Mr. SMITH] will be recognized for 10 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. GRAMS].

Mr. GRAMS. Mr. Chairman, all of us have heard a lot of jokes about lawyers and Congress, but there is one joke being played on the American taxpayer that is not so funny.

Buried deep within this Labor/HHS appropriations bill is $15 million in grants for law schools to establish or expand legal clinic programs.

That is right taxpayers: the Federal Government is now in the business of subsidizing the education and training of future lawyers. And with your tax dollars.

The amendment I am offering today would put an end to this practice by striking the $15 million set aside for this program.

According to the committee report, the purpose of the clinical experience program is to provide law students with hands-on experience in delivering legal services for low-income Americans. But while this goal has some merit, there is no reason why we need this program or additional tax dollars to accomplish it.

First, we already have programs in place to address the legal needs of the poor. In fact, just yesterday, this body approved the Commerce-Justice-State appropriations bill which included $415 million for the Legal Services Corporation—ironically, an increase of $15 million from last year. Eliminating the funding for the law school clinical experience program will not leave low-income Americans without legal representation.

Second, law schools should be able to fund clinical programs on their own. With many private law schools charging annual tuitions of $20,000 or more, does it make sense to bill the American taxpayer another $15 million for this program?

I do not think so—and neither did the Clinton administration which eliminated funding for this program in its budget proposal.

Finally, the American taxpayer simply cannot afford this program. We are currently facing a huge budget deficit and a $4.7 trillion national debt.

A majority of this body argued in March that our Nation's fiscal crisis is so bad we cannot afford to provide a $500 per child tax credit to working middle-class American families. How then can we turn around and give to law schools enough Federal dollars to provide tax relief for up to 30,000 families with children? My colleagues, if the choice is between lawyers or families, I will choose families first.

For these reasons, I urge my colleagues to support my amendment to cut the $15 million for the law school clinical experience program. This is one legal bill the American taxpayer can no longer afford.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Minnesota [Mr. GRAMS] without knowing it made an argument for this program. He said that yesterday we voted $415 million for Legal Services. This is $15 million to supplement what was done yesterday.

Law schools will pay for much more than this $15 million to help supplement Legal Services. They serve the same people that the $415 million serves. It is to help poor people get some legal services.

I have been to these law schools, including the one at Hamlin in the gentleman's area. It is a poverty law center just like the Gillis Long Poverty Center at Loyola in Louisiana. I have been down there, too. They do great work. Poor people come in. They may have a contract. They do not know what it means. Somebody is trying to sell them some health insurance. They do not know what it means. They need some place to go. They cannot go to a law firm and pay $200 before they will even let them sit down in a chair. They need some help. A lot of this has to do with contracts for apartments or for their living conditions, or they may get a bill that is not even their bill. They need legal help. This is for legal help to poor people.

Mr. Chairman, law schools furnish this, and they pay a lot more money than what the Federal Government puts into it. This is a cheap way to get an additional supplement to Legal Services. If we were to fund Legal Services at the amount that they were funded at back in 1981, they would be $800 million now instead of $415 million. We have been running behind every year on the amount of legal services for the amount of people that can be served with the amount of money that we have in the Legal Services Corporation fund.

In addition to that, Mr. Chairman, these students are the greatest recruiting source we have for Legal Services. In Legal Services we only pay about $25,000 a year, and they will take 2 years out of their life to serve in the Legal Services Corporation and at a fraction of what they can make if they go to a Minneapolis law firm or one of those New York law firms. But they will take 2 years out of their life because they have some experience in this program.

That is the greatest recruiter that we have. In fact, it is about the only recruiter we have. This would be a very bad mistake, and I know that some other programs were recommended for deletion by the administration, too, because they wanted more money for some of their programs, including impact aid and Perkins capital contributions. State student incentives grades.

□ 2130

We did not accept all the cuts that they put in there, and that is no excuse for this one. We just should not accept this amendment.

Mr. GRAMS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to take a little time to answer some of the questions that my colleagues raised. As the gentleman mentioned, this money is to be used to help fund legal services for the poor. But as we mentioned earlier, yesterday this body approved a Commerce, Justice and State appropriations bill, $415 million, to provide this type of legal services. As we noted, this is a $15 million increase over last year's budget.

This money mainly goes to law schools. It does not go to law students. it helps to fund clinical services programs to help give them extra training. He called it a recruitment tool. Most of this is done by third-year law students, who have probably already made up their mind as to whether they are going to go into legal services or not. Whether this is a recruitment tool or not, I think would be very subjective.

Mr. Chairman, I yield 2 minutes to the gentleman from Wisconsin [Mr. BARCA].

Mr. BARCA of Wisconsin. Mr. Chairman, overall I would like to congratulate you on a very difficult bill and I think a very sensible bill that I intend to vote for. We need some key cutbacks at a time when we also add more investments for employment and training and vocational education. But this is an area that President Clinton had suggested cutting.

Now, why can he suggest cutting this? Because the Congressional Budget Office in their review of this program stated this was meant to be a temporary program, not a permanent program.

Now, the problem that I have is that in this same budget we are cutting special education by $188 million, which is a mandate, which is a key human need. While the author of this amendment does not agree to transfer part of this money to that, which I certainly would prefer, I just believe that as a matter of priority, we should follow the CBO, follow President Clinton's lead, and I do not believe this is nearly the priority that many of the other areas we have cutback are.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself 15 seconds to point out it is not correct to say this is an increase. This is the same amount of money that was in last year's bill. The gentleman talks about $20,000. That may be so at Harvard, but it is not the private law

school in Des Moines, IA, which is $12,000, and most State universities are $8,000. The gentleman is talking about Harvard, not this program.

Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. STOKES].

Mr. STOKES. Mr. Chairman, I thank the chairman for yielding.

Mr. Chairman, I rise in opposition to the gentleman's amendment. I think it is important for us to understand that this program has been put into existence by our subcommittee and really provides the secretary an opportunity to provide grants to accredited law schools for clinical programs in which qualified attorneys provide legal services to poor people.

The gentleman who is the proponent of the amendment has admitted that this program is for low income or poor people, but indicates in his statement that he feels that they are already being served by the legal services programs.

The fact is that there are still an awful lot of poor people, a lot of low income people, who are unable to get services even through the legal services programs. So at the same time that law students are provided the type of training they ought to be given in a law school, and that is to be able to learn how to interview people, how to interview clients, how to produce and provide services, while they are doing this, they are also providing services to very low income people.

These clinics also have become a prime source for recruiting attorneys who are willing to work for below average salaries for legal services field offices. I think this is another point that ought not to be lost in terms of this legislation.

This 1994 funding will provide an estimated 23 grants, serving approximately 2,910 students. That is 2,910 students who will be given a little better education at the law school by virtue of being provided this type of clinical training. I think it makes sense. I hope that we will vote down the gentleman's amendment.

Mr. GRAMS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just like to say this is all based on priorities. I think if this is such an important program to the students or to the poor who need these services, that the law school would build these priorities into their curriculum and fund it through their own curriculum, rather than through the Federal Government.

We, as a Congress, have to set our priorities. We are $4.7 trillion in debt. If a law school is carrying any kind of a debt like this, they would end up going bankrupt. We cannot afford to fund these types of low priorities when we are facing, as the gentleman from Wisconsin, [Mr. BARCA], said earlier, larger priorities in education that we should be addressing.

Mr. ROHRABACHER. Mr. Chairman, will the gentleman yield?

Mr. GRAMS. I yield to the gentleman from California.

Mr. ROHRABACHER. Mr. Chairman, what the gentleman is suggesting is we do not need to fund a program that will produce more lawyers for our society. Is that right?

Mr. GRAMS. They are already going to be there.

Mr. ROHRABACHER. I seem to remember when I was young that the legal profession actually encouraged their people to volunteer to help the less fortunate. Do you think that this $25 million could be perhaps made up by having bar associations, which are, after all, one of the richest elements in the communities throughout the United States of America, focus a little bit more on community service, rather than putting money in their pockets for doing what they should be doing voluntarily?

Mr. GRAMS. I should mention this money goes directly to the schools and not to the students providing the services. It is like a class exercise, a clinical service. If this is such an important priority of the classes that these students need, the college should work this into their curriculum and not look to the Federal Government to spend money on this type of priority.

Mr. Chairman, I yield back balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

I would encourage the gentleman from Minneapolis, if I may have his attention, the gentleman obviously has not been to one of the three law schools in Minneapolis that have this program or he would not say some of the things he said. Those three law schools, all of them, I have been to Hamline, I have not been to the other two, they put in more money than the Federal Government is putting in. This is just an encouragement to them. It pays part of the salary of the person to run the law school clinic. They have to also have attorneys to help, they have to supervise those students, they have to have a place for them to do it. So this is furnishing legal services for the poor.

Now, I have heard all of the same arguments about Legal Services Corporation. I heard them for 10 years. Some people are just against legal services for the poor, period. That is it. If you are against legal services, you should have moved to cut $15 million yesterday out of the Legal Services Corporation. If you cut $15 million out of that, it would not have affected as many people as this will.

A lot of these people being served by the law schools that I am talking about are seeking to establish their right to Social Security. Lots of them are. They get ready to retire, they have been minimum income people, they find our two or three employers did not turn in the reports that they should have. They have got to have help.

Social Security does not do that for them. Members of Congress do not either. They refer them to Legal Services Corporation to help them. This is to help poor people.

Mr. BUYER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Indiana.

Mr. BUYER. Mr. Chairman, just for the moment, sir, when you referred to the poor, I as a third year law student was part of the clinical program that received these kinds of funds. That program, though, sir, was not going out to service the poor, it was going to serve criminals who are in Westville Institution of Corrections.

Mr. SMITH of Iowa. You are absolutely wrong. This is not permitted under this program. You cannot do criminal legal work because the Constitution already provides for that. So we do not permit this money to be used for that purpose. If they did that, it is because the law school had a separate fund. You are surely wrong about that. This is only for those people who could be served or are eligible to be served by the Legal Services Corporation.

□ 2140

That is the only people that can be served out of this money.

Mr. BUYER. Mr. Chairman, I appreciate the clarification.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. GRAMS].

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. GRAMS. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

The following Members responded to their names:

[Roll No. 296]

ANSWERED "PRESENT"—413

Abercrombie	Bachus (AL)	Bartlett
Ackerman	Baesler	Barton
Allard	Baker (CA)	Bateman
Andrews (ME)	Baker (LA)	Becerra
Andrews (NJ)	Ballenger	Beilenson
Andrews (TX)	Barca	Bereuter
Applegate	Barcia	Berman
Archer	Barlow	Bevill
Armey	Barrett (NE)	Bilbray
Bacchus (FL)	Barrett (WI)	Bilirakis

Bishop
Blackwell
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burton
Buyer
Byrne
Callahan
Calvert
Camp
Canady
Cantwell
Cardin
Carr
Castle
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooper
Coppersmith
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cunningham
Danner
Darden
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Derrick
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doolittle
Dornan
Dreier
Duncan
Dunn
Durbin
Edwards (CA)
Edwards (TX)
Ehlers
Emerson
Engel
English
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Filner
Fingerhut
Flake
Foglietta
Ford (MI)
Ford (TN)
Fowler
Franks (CT)
Franks (NJ)
Furse
Gallegly
Gallo
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Grams
Grandy
Green
Greenwood
Gunderson
Gutierrez
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings
Hayes
Hefley
Hefner
Herger
Hinchey
Hoagland
Hobson
Hochbrueckner
Hoekstra
Holden
Horn
Houghton
Hoyer
Huffington
Hughes
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Inslee
Istook
Jefferson
Johnson (CT)
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klein
Klink
Klug
Knollenberg
Kolbe
Kopetski
Kreidler
Kyl
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Laughlin
Lazio
Leach
Lehman
Levin
Levy
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
Lloyd
Long
Lowey
Lucas
Machtley
Maloney
Mann
Manton
Manzullo
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McHale
McHugh
McInnis
McKeon
McKinney
McMillan
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murphy
Myers
Nadler
Neal (MA)
Neal (NC)
Norton (DC)
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Petri
Pickett
Pickle
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quillen
Quinn
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Reynolds
Roberts
Roemer
Rogers
Rohrabacher
Romero-Barcelo (PR)
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal-Allard
Royce
Rush
Sabo
Sanders
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schenk
Schiff
Schroeder
Scott
Sensenbrenner
Serrano
Sharp
Shaw
Shays
Shepherd
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slattery
Smith (IA)
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stark
Stearns
Stenholm
Stokes
Strickland
Studds
Stump
Stupak
Sundquist
Swett
Swift
Synar
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Underwood (GU)
Unsoeld
Upton
Valentine
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Waters
Watt
Waxman
Weldon
Wheat
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

□ 2157

The CHAIRMAN. Four hundred thirteen Members have answered to their name, a quorum is present, and the Committee will resume its business.

The Chair would indicate that on the proceedings to follow, each vote shall be restricted to 5 minutes, and the Chair will try to hold Members to that 5 minutes.

RECORDED VOTE

The CHAIRMAN. The pending business is the demand of the gentleman from Minnesota [Mr. GRAMS] for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 194, noes 232, not voting 13, as follows:

[Roll No. 297]

AYES—194

Allard
Andrews (NJ)
Archer
Armey
Bachus (AL)
Baker (CA)
Baker (LA)
Ballenger
Barca
Barrett (NE)
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Blute
Boehner
Bonilla
Brewster
Bunning
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Coble
Collins (GA)
Combest
Condit
Cooper
Costello
Cox
Crane
Crapo
Cunningham
DeLay
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Emerson
Everett
Ewing
Fawell
Fingerhut
Fowler
Franks (CT)
Franks (NJ)
Gallegly
Gekas
Gillmor
Gingrich
Glickman
Goodlatte
Goodling
Goss
Grams
Greenwood
Gunderson
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hayes
Hefley
Herger
Hoagland
Hobson
Hoekstra
Hoke
Holden
Horn
Houghton
Huffington
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Inslee
Istook
Johnson, Sam
Kanjorski
Kasich
Kim
King
Kingston
Klug
Knollenberg
Kolbe
Kyl
Laughlin
Leach
Levy
Lewis (CA)
Lewis (FL)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
Lucas
Machtley
Manzullo
Margolies-Mezvinsky
McCandless
McCollum
McCrery
McCurdy
McDade
McHale
McHugh
McInnis
McKeon
McMillan
McNulty
Meehan
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Myers
Nussle
Orton
Oxley
Packard
Paxon
Penny
Peterson (MN)
Petri
Pickett
Portman
Poshard
Pryce (OH)
Quillen
Quinn
Ramstad
Ravenel
Regula
Roberts
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Rowland
Royce
Sangmeister
Santorum
Sarpalius
Schaefer
Schiff
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Skelton
Smith (MI)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stenholm
Stump
Sundquist
Swett
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (WY)
Torkildsen
Upton
Vucanovich
Walker
Weldon
Wolf
Zeliff
Zimmer

NOES—232

Abercrombie
Ackerman
Andrews (ME)
Andrews (TX)
Applegate
Bacchus (FL)
Baesler
Barcia
Barlow
Barrett (WI)
Becerra
Beilenson
Berman
Bevill
Bilbray
Bishop
Blackwell
Boehlert
Bonior
Borski
Boucher
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Byrne
Cantwell
Cardin
Clay
Clayton
Clement
Clinger
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coppersmith
Coyne
Cramer
Danner
Darden
de la Garza
de Lugo (VI)
Deal
DeFazio
DeLauro
Dellums
Derrick
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Dooley
Durbin
Edwards (CA)
Edwards (TX)
Engel
English
Eshoo
Evans
Farr
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Furse
Gallo
Gejdenson
Gephardt
Geren
Gibbons
Gilchrest
Gilman
Gonzalez
Gordon
Grandy
Green
Gutierrez
Hall (OH)
Hamburg
Harman
Hastings
Hefner
Hinchey
Hochbrueckner
Hoyer
Hughes
Jacobs
Jefferson
Johnson (CT)
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnston
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Klein
Klink
Kopetski
Kreidler
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Lazio
Lehman
Levin
Lewis (GA)
Lloyd
Long
Lowey
Maloney
Mann
Manton
Markey
Martinez
Matsui
Mazzoli
McCloskey
McDermott
McKinney
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Morella
Murphy
Murtha
Nadler
Neal (MA)
Neal (NC)
Norton (DC)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Parker
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pickle
Pomeroy
Porter
Price (NC)
Rahall
Rangel
Reed
Reynolds
Richardson
Roemer
Rogers
Romero-Barcelo (PR)
Rose
Rostenkowski
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Saxton

Schenk
Schroeder
Scott
Serrano
Sharp
Shepherd
Sisisky
Skaggs
Slattery
Slaughter
Smith (IA)
Smith (NJ)
Spratt
Stark
Stokes
Strickland
Studds
Stupak
Swift
Synar
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Underwood (GU)
Unsoeld
Valentine
Velazquez
Vento
Visclosky
Volkmer
Walsh
Waters
Watt
Waxman
Wheat
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)

NOT VOTING—13

Carr
Chapman
Faleomavaega (AS)
Fields (TX)
Fish
Hilliard
Michel
Moran
Pombo
Ridge
Schumer
Washington
Whitten

□ 2204

Mr. BALLENGER changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Pursuant to the order of the House of today, proceedings will now resume on those amendments on which further proceedings were postponed in the following order:

An amendment offered by the gentleman from Florida [Mr. MICA]; an amendment offered by the gentleman from California [Mr. BAKER]; and an amendment offered by the gentleman from Illinois [Mr. CRANE].

The Chair will reduce to 5 minutes the time for any electronic vote.

AMENDMENT OFFERED BY MR. MICA

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Florida [Mr. MICA] on which further proceedings were postponed and on which the "noes" prevailed by voice vote.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. MICA:

BILINGUAL AND IMMIGRANT EDUCATION

Page 45, line 21, strike "$247,572,000" and insert "272,572,000," and, line 22, strike "$50,000,000' and insert "$75,000,000."

RECORDED VOTE

The CHAIRMAN. The pending business is the demand for a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 35, noes 393, not voting 11, as follows:

[Roll No. 298]

AYES—35

Baker (CA)
Becerra
Bilirakis
Bonilla
Calvert
Canady
de la Garza
Deutsch
Diaz-Balart
Eshoo
Farr
Filner
Fowler
Franks (NJ)
Goodling
Goss
Gutierrez
Harman
Hutto
Johnson (CT)
Kim
Knollenberg
Lewis (CA)
Lewis (FL)
McCollum
Mica
Miller (FL)
Molinari
Oxley
Pastor
Ros-Lehtinen
Schenk
Shaw
Stearns
Thurman

NOES—393

Abercrombie
Ackerman
Allard
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Archer
Armey
Bacchus (FL)
Bachus (AL)
Baesler
Baker (LA)
Ballenger
Barca
Barcia
Barlow
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bateman
Bellenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Bishop
Blackwell
Bliley
Blute
Boehlert
Boehner
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Bunning
Burton
Buyer
Byrne
Callahan
Camp
Cantwell
Cardin
Carr
Castle
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooper
Coppersmith
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cunningham
Danner
Darden
de Lugo (VI)
Deal
DeFazio
DeLauro
DeLay
Dellums
Derrick
Dickey
Dicks
Dingell
Dixon
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Durbin
Edwards (CA)
Edwards (TX)
Ehlers
Emerson
Engel
English
Evans
Everett
Ewing
Fawell
Fazio
Fields (LA)
Fingerhut
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Franks (CT)
Frost
Furse
Gallegly
Gallo
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodlatte
Gordon
Grams
Grandy
Green
Greenwood
Gunderson
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Hancock
Hansen
Hastert
Hastings
Hayes
Hefley
Hefner
Herger
Hinchey
Hoagland
Hobson
Hochbrueckner
Hoekstra
Hoke
Holden
Horn
Houghton
Hoyer
Huffington
Hughes
Hunter
Hutchinson
Hyde
Inglis
Inhofe
Inslee
Istook
Jacobs
Jefferson
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
King
Kingston
Kleczka
Klein
Klink
Klug
Kolbe
Kopetski
Kreidler
Kyl
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Laughlin
Lazio
Leach
Lehman
Levin
Levy
Lewis (GA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
Lloyd
Long
Lowey
Lucas
Machtley
Maloney
Mann
Manton
Manzullo
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCandless
McCloskey
McCrery
McCurdy
McDade
McDermott
McHale
McHugh
McInnis
McKeon
McKinney
McMillan
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Moorhead
Moran
Morella
Murphy
Murtha
Myers
Nadler
Neal (MA)
Neal (NC)
Norton (DC)
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Packard
Pallone
Parker
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quillen
Quinn
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Reynolds
Richardson
Roberts
Roemer
Rogers
Rohrabacher
Romero-Barcelo (PR)
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sangmeister
Santorum
Sarpalius
Sawyer
Saxton
Schaefer
Schiff
Schroeder
Scott
Sensenbrenner
Serrano
Sharp
Shays
Shepherd
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter
Smith (IA)
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stark
Stenholm
Stokes
Strickland
Studds
Stump
Stupak
Sundquist
Swett
Swift
Synar
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thompson
Thornton
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Underwood (GU)
Unsoeld
Upton
Valentine
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Waters
Watt
Waxman
Weldon
Wheat
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—11

Chapman
Faleomavaega (AS)
Fields (TX)
Fish
Hilliard
Michel
Pombo
Ridge
Schumer
Washington
Whitten

□ 2213

Ms. DUNN, and Messrs. GREENWOOD, DICKEY, and LINDER changed their vote from "aye" to "no."

Messrs. PASTOR, GUTIERREZ, AND BECERRA changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. BAKER OF CALIFORNIA

The CHAIRMAN. The pending business is the demand of the gentleman from California [Mr. BAKER] for a recorded vote on which further proceedings were postponed and on which the "noes" prevailed by voice vote.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. BAKER of California:

On page 52, line 19, strike "$114,996,000" and insert in lieu thereof "$115,996,000".

RECORDED VOTE

The CHAIRMAN. The gentleman from California [Mr. BAKER] has demanded a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 319, noes 109, not voting 11, as follows:

[Roll No. 299]

AYES—319

Allard
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Archer
Bachus (AL)
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barca

Barcia
Barlow
Barrett (NE)
Barrett (WI)
Bartlett
Bateman
Bereuter
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Borski
Brewster
Brooks
Browder
Brown (FL)
Brown (OH)
Bryant
Bunning
Burton
Buyer
Byrne
Callahan
Calvert
Camp
Canady
Cantwell
Castle
Clinger
Coble
Collins (GA)
Collins (IL)
Combest
Condit
Cooper
Coppersmith
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cunningham
de la Garza
de Lugo (VI)
DeFazio
DeLay
Derrick
Diaz-Balart
Dickey
Dicks
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Durbin
Edwards (TX)
Ehlers
Emerson
Engel
English
Everett
Ewing
Farr
Fawell
Fields (LA)
Filner
Fingerhut
Foglietta
Fowler
Franks (CT)
Franks (NJ)
Frost
Furse
Gallegly
Gallo
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Grams
Grandy
Green
Greenwood
Gunderson
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hayes
Hefley
Herger
Hinchey
Hoagland
Hobson
Hochbrueckner
Hoekstra
Hoke
Holden
Horn
Houghton
Huffington
Hunter
Hutchinson
Hyde
Inglis
Inhofe
Istook
Jacobs
Jefferson
Johnson (CT)
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Kanjorski
Kaptur
Kasich
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
Kyl
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Laughlin
Lazio
Leach
Lehman
Levy
Lewis (CA)
Lewis (FL)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
Lloyd
Long
Lucas
Machtley
Maloney
Manzullo
Margolies-Mezvinsky
Mazzoli
McCandless
McCollum
McCrery
McCurdy
McDade
McHale
McHugh
McInnis
McKeon
McMillan
Meehan
Menendez
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Minge
Moakley
Molinari
Montgomery
Moorhead
Moran
Morella
Murphy
Myers
Nadler
Neal (MA)
Neal (NC)
Norton (DC)
Nussle
Oberstar
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickle
Pomeroy
Porter
Portman
Poshard
Pryce (OH)
Quillen
Quinn
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal-Allard
Royce
Rush
Sanders
Sangmeister
Santorum
Sarpalius
Saxton
Schaefer
Schenk
Schiff
Schroeder
Sensenbrenner
Sharp
Shaw
Shays
Shepherd
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stenholm
Studds
Stump
Stupak
Sundquist
Swett
Talent
Tanner
Tauzin
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thornton
Thurman
Torkildsen
Torricelli
Tucker
Underwood (GU)
Upton
Valentine
Velazquez
Vucanovich
Walker
Walsh
Weldon
Williams
Wilson
Wolf
Wynn
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—109

Abercrombie
Ackerman
Armey
Bacchus (FL)
Barton
Becerra
Beilenson
Bentley
Berman
Bevill
Blackwell
Bonior
Boucher
Brown (CA)
Cardin
Carr
Clay
Clayton
Clement
Clyburn
Coleman
Collins (MI)
Conyers
Danner
Darden
Deal
DeLauro
Dellums
Deutsch
Dingell
Dixon
Edwards (CA)
Eshoo
Evans
Fazio
Flake
Ford (MI)
Ford (TN)
Frank (MA)
Gejdenson
Gephardt
Gibbons
Hamburg
Hastings
Hefner
Hoyer
Hughes
Hutto
Inslee
Johnston
Kennedy
Klein
Kopetski
Kreidler
Levin
Lewis (GA)
Lowey
Mann
Manton
Markey
Martinez
Matsui
McCloskey
McDermott
McKinney
McNulty
Meek
Mineta
Mink
Mollohan
Murtha
Obey
Olver
Pelosi
Penny
Pickett
Price (NC)
Reynolds
Richardson
Romero-Barcelo (PR)
Sabo
Sawyer
Scott
Serrano
Skaggs
Slattery
Smith (IA)
Spratt
Stark
Stokes
Strickland
Swift
Synar
Taylor (MS)
Thompson
Torres
Towns
Traficant
Unsoeld
Vento
Visclosky
Volkmer
Waters
Watt
Waxman
Wheat
Wise
Woolsey
Wyden

NOT VOTING—11

Chapman
Faleomavaega (AS)
Fields (TX)
Fish
Hilliard
Michel
Pombo
Ridge
Schumer
Washington
Whitten

□ 2220

Messrs. BAESLER, NADLER, and UNDERWOOD, Mrs. SCHROEDER, Mr. HOCHBRUECKNER, Mr. STUDDS, Ms. BROWN of Florida, Ms. CANTWELL, Ms. ROYBAL-ALLARD, and Mr. GORDON changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 2220

AMENDMENT OFFERED BY MR. CRANE

The CHAIRMAN. The pending business is the demand of the gentleman from Illinois [Mr. CRANE] for a recorded vote on which further proceedings were postponed and on which the "noes" prevailed by voice vote.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. CRANE:

Page 56, line 11, strike "$20,100,000" and insert "$292,640,000".

RECORDED VOTE

The CHAIRMAN. The gentleman from Illinois [Mr. CRANE], has demanded a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 42, noes 384, not voting 13, as follows:

[Roll No. 300]

AYES—42

Archer
Armey
Bartlett
Barton
Boehner
Bunning
Burton
Canady
Collins (GA)
Combest
Cox
Crane
DeLay
Doolittle
Dornan
Dreier
Emerson
Grams
Hancock
Hastert
Hunter
Hyde
Istook
Johnson, Sam
Kim
Kingston
Laughlin
Linder
Manzullo
McCandless
Paxon
Rohrabacher
Roth
Royce
Santorum
Sensenbrenner
Shuster
Smith (TX)
Solomon
Stump
Walker
Zimmer

NOES—384

Abercrombie
Ackerman
Allard
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Bacchus (FL)
Bachus (AL)
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barca
Barcia
Barlow
Barrett (NE)
Barrett (WI)
Bateman
Becerra
Beilenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Blackwell
Bliley
Blute
Boehlert
Bonilla
Bonior
Borski
Boucher
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Buyer
Byrne
Callahan
Calvert
Camp
Cantwell
Cardin
Carr
Castle
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Cooper
Coppersmith
Costello
Coyne
Cramer
Crapo
Cunningham
Danner
Darden
de la Garza
de Lugo (VI)
Deal
DeFazio
DeLauro
Dellums
Derrick
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Dooley
Duncan
Dunn
Durbin
Edwards (CA)
Edwards (TX)
Ehlers
Engel
English
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Filner
Fingerhut
Flake
Foglietta
Ford (MI)
Ford (TN)
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frost
Furse
Gallegly
Gallo
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Grandy
Green
Greenwood
Gunderson
Gutierrez
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Hansen
Harman
Hastings
Hayes
Hefley
Hefner
Herger
Hinchey
Hoagland
Hobson
Hochbrueckner
Hoekstra
Hoke
Holden
Horn
Houghton
Hoyer
Huffington
Hughes
Hutchinson
Hutto
Inglis
Inhofe
Inslee
Jacobs
Jefferson
Johnson (CT)
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
King
Kleczka
Klein
Klink
Klug
Knollenberg
Kolbe
Kopetski
Kreidler
Kyl
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Lazio
Leach
Lehman
Levin
Levy
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lewis (KY)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowey
Lucas
Machtley
Maloney
Mann
Manton
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McHale
McHugh
McInnis
McKeon

McKinney
McMillan
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murphy
Murtha
Myers
Nadler
Neal (MA)
Neal (NC)
Norton (DC)
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pickle
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quillen
Quinn
Rahall
Ramstad
Rangel
Ravenel
Reed
Regula
Reynolds
Richardson
Roberts
Roemer
Rogers
Romero-Barcelo (PR)
Ros-Lehtinen
Rose
Rostenkowski
Roukema
Rowland
Roybal-Allard
Rush
Sabo
Sanders
Sangmeister
Sarpalius
Sawyer
Saxton
Schaefer
Schenk
Schiff
Schroeder
Scott
Serrano
Sharp
Shaw
Shays
Shepherd
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter
Smith (IA)
Smith (MI)
Smith (NJ)
Smith (OR)
Snowe
Spence
Spratt
Stark
Stearns
Stenholm
Stokes
Strickland
Studds
Stupak
Sundquist
Swett
Swift
Synar
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Underwood (GU)
Unsoeld
Upton
Valentine
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Walsh
Waters
Watt
Waxman
Weldon
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)
Zeliff

NOT VOTING—13

Chapman
Faleomavaega (AS)
Fields (TX)
Fish
Hilliard
Michel
Owens
Pombo
Ridge
Schumer
Washington
Wheat
Whitten

□ 2227

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to the section that has just been read?

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT:

Page 49, line 8 after "title VI", insert; including Part C,".

Mr. TRAFICANT. Mr. Chairman, I yield to the chairman of the subcommittee, the gentleman from Iowa [Mr. SMITH].

Mr. SMITH of Iowa. I thank the gentleman for yielding.

Mr. Chairman, I have seen the amendment, and I have no objection to it.

Mr. TRAFICANT. Mr. Chairman, I yield to the distinguished ranking member, the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. I thank the gentleman for yielding.

Mr. Chairman, we have no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to this section?

AMENDMENT OFFERED BY MR. HEFLEY

Mr. HEFLEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HEFLEY:

Page 56, line 11, strike $20,100,000 and insert "$21,100,000".

Mr. HEFLEY. Mr. Chairman, I yield to the gentleman from Iowa [Mr. SMITH].

Mr. SMITH of Iowa. I thank the gentleman for yielding.

Mr. Chairman, in the interest of time I am willing to accept the amendment and take it to conference.

Mr. HEFLEY. Mr. Chairman, I yield to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. I thank the gentleman for yielding.

Mr. Chairman, we have no objection.

Mr. HEFLEY. Mr. Chairman, my amendment would increase the recission for the Corporation for Public Broadcasting by $1 million.

This is roughly what the Pacifica Radio Network receives yearly.

Taxpayer-subsidized Pacifica has shown a consistent pattern of hate-programming that I don't believe any member can justify paying for with our tax dollars.

Some will say I only cite quotes from a single program as evidence of Pacifica's hate-programming.

I wish the hate-programming that this network spews was confined to a single broadcast which occurred 2 years ago. It's not.

New programs that are just as divisive and racist have taken the place of past programs. Here are some quotes from a January 5, 1994 broadcast of "Family Tree":

* * * organized Jewry has targeted the Black population. Black progress seems to be one of its major sort of targets. (Jewry) seems bent on trying to thwart Black progress.

Here's another:

The Jew was an integral part of the whole apparatus of slavery. (Jews) had a higher per capita slave ownership than other white people in this country.

* * * All two or three hundred million Africans who died in slave trade died because Jewish * * * scholars invented the Hamidic myth.

From a May 25, 1994 broadcast of "Freedom Now":

Christianity was used as a justification to enslave Africans . . . , giving birth to racist regimes all over the world.

How can anyone who hears this say that hate-programming is no longer a part of Pacifica's broadcasts?

Next, opponents of this amendment will assert that the Pacifica station apologized for hateful comments made by Dr. Leonard Jeffries to a caller during a broadcast.

What about an apology for comments about how real Jews are black and that white Jews are "hypocrites" for claiming to be Jewish?

How about an apology for the statement: "The white man is Satan himself."

How about an apology for calls on Pacifica where the caller said, "The Jews haven't seen anything yet. What is going to happen to them is going to make what Hitler did seem like a party."

How about an apology for the statement that a recent measles epidemic was a "genocidal plot" by whites against the black community?

My question remains: Why are we subsidizing Pacifica to broadcast this stuff?

A member of CPB's own board, Victor Gold, regularly monitors Pacifica nationwide and calls Pacifica's hate-programming consistent and persistent. These ongoing broadcasts prove it.

Regarding the commentaries by convicted cop-killer Abu-Jamal, National Public Radio itself pulled the commentaries at the last minute from their broadcast.

According to NPR managing editor Bruce Drake, NPR had serious misgivings about the appropriateness of the commentaries, citing that because National Public Radio had not provided for "contrasting points of view" as required by the 1992 authorization, the commentaries were pulled.

If the commentaries are unfit for NPR, why are they appropriate for taxpayer-subsidized Pacifica radio network?

CONCLUSION

It is a fact that the Pacifica network, which receives Federal funds from the Corporation for Public Broadcasting, has broadcast hate-programming in the past.

It is a fact that Pacifica is still broadcasting hate-programming.

Pacifica will continue this programming whether taxpayers help pay for it or not.

CPB Board Member Mr. Gold wonders why the Federal Government is subsidizing Pacifica's sustained campaign of hate-programming. I wonder too.

Mr. MARKEY. Mr. Chairman, the Hefley amendment represents the most dangerous form of direct government censorship. It targets a particular station for the broadcast of a particular program that someone in the government did not like.

There will always be programs on public broadcasting stations that any one of us might object to for some reason. But we cannot allow the government to censor programming or editorial decisionmaking of public broadcasting stations.

A commentator on a Pacifica radio station made statements during a program that were objectionable. They set ground rules, and the commentator chose not to appear again on the air under those rules. The station offered reply time to those who objected to the comments. The station responded to this event in a reasonable manner.

While I also object to the statements allegedly made on this program, I must strongly object to any effort to place the government directly in the role of a censor of programming. This violates our national commitment to freedom of expression and freedom of the press from direct government censorship.

While we must demand accountability. While we must, and do, demand objectivity and balance from public broadcasters. We must say no to efforts to target any particular program, station or newscast from direct political retribution. This is government censorship in its most virulent and destructive form and I strongly object to the acceptance of this amendment by the committee without debate and without a vote.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Colorado [Mr. HEFLEY].

The amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

FEDERAL MEDIATION AND CONCILIATION SERVICE

SALARIES AND EXPENSES

For expenses necessary for the Federal Mediation and Conciliation Service to carry out the functions vested in it by the Labor-Management Relations Act, 1947 (29 U.S.C. 171–180, 182–183), including hire of passenger motor vehicles; and for expenses necessary for the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a); and for expenses necessary for the Service to carry out the functions vested in it by the Civil Service Reform Act, Public Law 95–454 (5 U.S.C. chapter 71), $31,078,000.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Federal Mine Safety and Health Review Commission (30 U.S.C. 801 et seq.), $6,200,000.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

SALARIES AND EXPENSES

For necessary expenses for the National Commission on Libraries and Information Science, established by the Act of July 20, 1970 (Public Law 91–345, as amended by Public Law 102–95), $901,000.

NATIONAL COUNCIL ON DISABILITY

SALARIES AND EXPENSES

For expenses necessary for the National Council on Disability as authorized by title IV of the Rehabilitation Act of 1973, as amended, $1,643,000.

NATIONAL LABOR RELATIONS BOARD

SALARIES AND EXPENSES

For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management Relations Act, 1947, as amended (29 U.S.C. 141–167), and other laws, $173,388,000: *Provided*, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935 (29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203), and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 per centum of the water stored or supplied thereby is used for farming purposes.

NATIONAL MEDIATION BOARD

SALARIES AND EXPENSES

For expenses necessary to carry out the provisions of the Railway Labor Act, as amended (45 U.S.C. 151–188), including emergency boards appointed by the President, $8,119,000.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Occupational Safety and Health Review Commission (29 U.S.C. 661), $7,595,000.

PHYSICIAN PAYMENT REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary to carry out section 1845(a) of the Social Security Act, $4,176,000 to be transferred to this appropriation from the Federal Supplementary Medical Insurance Trust Fund.

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

SALARIES AND EXPENSES

For expenses necessary to carry out section 1886(e) of the Social Security Act, $4,667,000 to be transferred to this appropriation from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds.

RAILROAD RETIREMENT BOARD

DUAL BENEFITS PAYMENTS ACCOUNT

For payment to the Dual Benefits Payments Account, authorized under section 15(d) of the Railroad Retirement Act of 1974, $261,000,000, which shall include amounts becoming available in fiscal year 1995 pursuant to section 224(c)(1)(B) of Public Law 98–76; and in addition, an amount, not to exceed 2 percent of the amount provided herein, shall be available proportional to the amount by which the product of recipients and the average benefit received exceeds $261,000,000: *Provided*, That the total amount provided herein shall be credited in 12 approximately equal amounts on the first day of each month in the fiscal year.

FEDERAL PAYMENTS TO THE RAILROAD RETIREMENT ACCOUNTS

For payment to the accounts established in the Treasury for the payment of benefits under the Railroad Retirement Act for interest earned on unnegotiated checks, $300,000, to remain available through September 30, 1996, which shall be the maximum amount available for payment pursuant to section 417 of Public Law 98–76.

LIMITATION ON ADMINISTRATION

For necessary expenses for the Railroad Retirement Board, $73,881,000, to be derived from the railroad retirement accounts: *Provided*, That $200,000 of the foregoing amount shall be available only to the extent necessary to process workloads not anticipated in the budget estimates and after maximum absorption of the costs of such workloads within the remainder of the existing limitation has been achieved.

LIMITATION ON RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

For further expenses necessary for the Railroad Retirement Board, for administration of the Railroad Unemployment Insurance Act, not less than $17,031,000 shall be apportioned for fiscal year 1995 from moneys credited to the railroad unemployment insurance administration fund.

SPECIAL MANAGEMENT IMPROVEMENT FUND

To effect management improvements, including the reduction of backlogs, accuracy of taxation accounting, and debt collection, $1,640,000, to be derived from the railroad retirement accounts and railroad unemployment insurance account: *Provided*, That these funds shall supplement, not supplant, existing resources devoted to such operations and improvements.

LIMITATION ON THE OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General for audit, investigatory and review activities, as authorized by the Inspector General Act of 1978, as amended, not more than $6,682,000, to be derived from the railroad retirement accounts and railroad unemployment insurance account.

UNITED STATES INSTITUTE OF PEACE

OPERATING EXPENSES

For necessary expenses of the United States Institute of Peace as authorized in the United States Institute of Peace Act, $10,912,000.

TITLE V—GENERAL PROVISIONS

SEC. 501. No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan, a grant, the salary of or any remuneration whatever to any individual applying for admission, attending, employed by, teaching at, or doing research at an institution of higher education who has engaged in conduct on or after August 1, 1969, which involves the use of (or the assistance to others in the use of) force or the threat of force or the seizure of property under the control of an institution of higher education, to require or prevent the availability of certain curricula, or to prevent the faculty, administrative officials, or students in such institution from engaging in their duties or pursuing their studies at such institution.

SEC. 502. The Secretaries of Labor, Health and Human Services, and Education are authorized to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations provided in this Act: *Provided*, That such transferred balances are used for the same purpose, and for the same periods of time, for which they were originally appropriated.

SEC. 503. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 504. (a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress.

SEC. 505. The Secretaries of Labor and Education are each authorized to make available not to exceed $15,000 from funds available for salaries and expenses under titles I and III, respectively, for official reception and representation expenses; the Director of the Federal Mediation and Conciliation Service is authorized to make available for official reception and representation expenses not to exceed $2,500 from the funds available for "Salaries and expenses, Federal Mediation and Conciliation Service"; and the Chairman of the National Mediation Board is authorized to make available for official reception and representation expenses not to exceed $2,500 from funds available for "Salaries and expenses, National Mediation Board".

SEC. 506. Notwithstanding any other provision of this Act, no funds appropriated under this Act shall be used to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug unless the Surgeon General of the United States determines that such programs are effective in preventing the spread of HIV and do not encourage the use of illegal drugs, except that such funds may be used for such purposes in furtherance of demonstrations or studies authorized in the ADAMHA Reorganization Act (Public Law 102-321).

SEC. 507. No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act").

SEC. 508. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

SEC. 509. None of the funds appropriated under this Act shall be expended for any abortion except when it is made known to the Federal entity or official to which funds are appropriated under this Act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest.

SEC. 510. No funds appropriated herein shall be used to implement any regulation promulgated under section 481(b)(6) of the Higher Education Act of 1965, as amended, prior to July 1, 1995.

SEC. 511. None of the funds appropriated or otherwise made available under this Act may be obligated in violation of existing Federal law or regulation already prohibiting such benefit or assistance.

Mr. SMITH of Iowa (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of the bill through page 65, line 16, be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The CHAIRMAN. Are there any points of order to this section of the bill?

The Chair hears none.

Mr. SMITH of Iowa. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

□ 2230

Accordingly, the Committee rose and the Speaker pro tempore [Mrs. UNSOELD] having assumed the chair, Mr. SHARP, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4606) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1995, and for other purposes, had come to no resolution thereon.

PROVIDING FOR COMPLETION OF DEBATE AFTER ONE HOUR WHEN COMMITTEE OF THE WHOLE HOUSE RESUMES CONSIDERATION OF H.R. 4606, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1995

Mr. GEPHARDT. Madam Speaker, I ask unanimous consent that when the Committee of the Whole resumes consideration of the bill, H.R. 4606, all debate on the bill and amendments thereto be closed after 1 further hour.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 3355, VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

Ms. MOLINARI. Pursuant to clause 1(c) of rule XXVIII, Madam Speaker, I am announcing to the House that I intend to offer a motion to instruct conferees on the bill, H.R. 3355, the Violent Crime Control and Law Enforcement Act of 1993.

The form of the motion is as follows:

Ms. MOLINARI moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the Senate amendment to the bill H.R. 3355 be instructed not to make any agreement that does not include Subtitle E of Title VIII of the Senate amendment, providing for the admissibility of evidence of similar crimes in sex offense cases.

CONFERENCE REPORT ON H.R. 4454, LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1995

Mr. FAZIO submitted the following conference report and statement on the bill (H.R. 4454) making appropriations for the Legislative Branch for the fiscal year ending September 30, 1995, and for other purposes:

CONFERENCE REPORT (H. REPT. 103-567)

The committee of conference on the disagreeing votes of the two Houses on the amendments for the Senate to the bill (H.R. 4454) "making appropriations for the Legislative Branch for the fiscal year ending September 30, 1995, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 24 and 31.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 27, 28, and 29, and agree to the same.

Amendment numbered 11:

That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$60,084,000*; and the Senate agree to the same.

Amendment numbered 21:

That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$12,483,000*; and the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$3,441,000*; and the Senate agree to the same.

Amendment numbered 25:

That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows:

In lieu of the amount proposed by said amendment insert: *$4,293*; and the Senate agree to the same.

Amendment numbered 26:

That the House recede from its disagreement to the amendment of the Senate numbered 26, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 207. Section 207(a) of the Legislative Appropriations Act, 1993 (Public Law 102-392) is amended—

(1) in paragraph (2)(A) by inserting after "as certified by the Public Printer," the following: "if the work is included in a class of work which"; and

(2) by amending paragraph (3) to read as follows:

"(3) As used in this section, the term 'printing' includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes.".

And the Senate agree to the same.

Amendment numbered 30:

That the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 310. Upon enactment of this Act, $2,015,000 is made available under the headings "Architect of the Capitol, Capitol Buildings and Grounds, Capitol Buildings" to remain available until expended for all necessary expenses relating to he purchase and installation of x-ray machines and magnetometers: Provided, That the cost limitation for security installations, which are approved by the Capitol Police Board, authorized by House Concurrent Resolution 550, Ninety-Second Congress, agreed to September 19, 1972, is hereby further increased by $2,015,000: Provided further, That the amount made available shall be derived by transfer from the funds appropriated to the Clerk of the House in the Fiscal year 1986 Urgent Supplemental Appropriations Act, Public Law 99-349, and subsequently transferred to the Architect of the Capitol pursuant to the Legislative Branch Appropriations Act, 1989, Public Law 100-458, for Capitol Complex Security Enhancements.

And the Senate agree to the same.

Amendment numbered 32:

That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows:

Retain the matter proposed by said amendment amended as follows:

In lieu of the section number proposed by said amendment insert: *311*; and the Senate agree to the same.

Amendment numbered 33:

That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 312. ARCHITECT OF THE CAPITOL HUMAN RESOURCES PROGRAM.—(a) SHORT TITLE.—This section may be cited as the "Architect of the Capitol Human Resources Act".

(b) FINDING AND PURPOSE.—

(1) FINDING.—The Congress finds that the Office of the Architect of the Capitol should develop human resources management programs that are consistent with the practices common among other Federal and private sector organizations.

(2) PURPOSE.—It is the purpose of this section to require the Architect of the Capitol to establish and maintain a personnel management system that incorporates fundamental principles that exist in other modern personnel systems.

(c) PERSONNEL MANAGEMENT SYSTEM.—

(1) ESTABLISHMENT.—The Architect of the Capitol shall establish and maintain a personnel management system.

(2) REQUIREMENTS.—The personnel management system shall at a minimum include the following:

(A) A system which ensures that applicants for employment and employees of the Architect of the Capitol are appointed, promoted, and assigned on the basis of merit and fitness after fair and equitable consideration of all applicants and employees through open competition.

(B) An equal employment opportunity program which includes an affirmative employment program for employees and applicants for employment, and procedures for monitoring progress by the Architect of the Capitol in ensuring a workforce reflective of the diverse labor force.

(C) A system for the classification of positions which takes into account the difficulty, responsibility, and qualification requirements of the work performed, and which conforms to the principle of equal pay for substantially equal work.

(D) A program for the training of Architect of the Capitol employees which has among its goals improved employee performance and opportunities for employee advancement.

(E) A formal performance appraisal system which will permit the accurate evaluation of job performance on the basis of objective criteria for all Architect of the Capitol employees.

(F) A fair and equitable system to address unacceptable conduct and performance by Architect of the Capitol employees, including a general statement of violations, sanctions, and procedures which shall be made known to all employees, and a formal grievance procedure.

(G) A program to provide services to deal with mental health, alcohol abuse, drug abuse, and other employee problems, and which ensures employee confidentiality.

(H) A formal policy statement regarding the use and accrual of sick and annual leave which shall be made known to all employees, and which is consistent with the other requirements of this section.

(d) IMPLEMENTATION OF PERSONNEL MANAGEMENT SYSTEM.—

(1) DEVELOPMENT OF PLAN.—The Architect of the Capitol shall—

(A) develop a plan for the establishment and maintenance of a personnel management system designed to achieve the requirements of subsection (c);

(B) submit the plan to the Speaker of the House of Representatives, the House Office Building Commission, the Committee on Rules and Administration of the Senate, the Joint Committee on the Library, and the Committee on Appropriations of the Senate and the House of Representatives not later than 12 months after the date of enactment of this Act; and

(C) implement the plan not later than 90 days after the plan is submitted to the Speaker of the House of Representatives, the House Office Building Commission, the Committee on Rules and Administration of the Senate, the Joint Committee on the Library, and the Committees on Appropriations of the Senate and the House of Representatives, as specified in subparagraph (B).

(2) EVALUATION AND REPORTING.—The Architect of the Capitol shall develop a system of oversight and evaluation to ensure that the personnel management system of the Architect of the Capitol achieves the requirements of subsection (c) and complies with all other relevant laws, rules and regulations. The Architect of the Capitol shall report to the Speaker of the House of Representatives, the House Office Building Commission, the Committee on Rules and Administration of the Senate, and the Joint Committee on the Library on an annual basis the results of its evaluation under this subsection.

(3) APPLICATION OF LAWS.—Nothing in this section shall be construed to alter or supersede any other provision of law otherwise applicable to the Architect of the Capitol or its employees, unless expressly provided in this section.

(e) DISCRIMINATION COMPLAINT PROCESSING.—

(1) DEFINITIONS.—For purposes of this subsection:

(A) The term "employee of the Architect of the Capitol" or "employee" means—

(i) any employee of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants;

(ii) any applicant for a position that is to be occupied by an individual described in clause (i); or

(iii) within 180 days after the termination of employment with the Architect of the Capitol, any individual who was formerly an employee described in clause (i) and whose claim of a violation arises out of the individual's employment with the Architect of the Capitol.

(B) The term "violation" means a practice that violates paragraph (2) of this subsection.

(C) Notwithstanding subparagraph (A), the terms "employee of the Architect of the Capitol" and "employee" do not include any individual referred to in clause (i), (ii), or (iii) of such subparagraph who is a House of Representatives garage or parking lot attendant (including the Superintendent), with respect to whom supervision and all other employee-related matters are transferred to the Sergeant at Arms of the House of Representatives pursuant to direction of the Committee on Appropriations of the House of Representatives in House Report 103–517 of the One Hundred Third Congress.

(2) DISCRIMINATORY PRACTICES PROHIBITED.—

(A) IN GENERAL.—All personnel actions affecting employees of the Architect of the Capitol shall be made free from any discrimination based on—

(i) race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(ii) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a); or

(iii) handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102 through 104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112–14).

(B) INTIMIDATION PROHIBITED.—Any intimidation of, or reprisal against, any employee by the Architect of the Capitol, or by any employee of the Architect of the Capitol, because of the exercise of a right under this section constitutes an unlawful employment practice, which may be remedied in the same manner as are other violations described in subparagraph (A).

(3) PROCEDURE FOR CONSIDERATION OF ALLEGED VIOLATIONS.—

(A) Any employee of the Architect of the Capitol alleging a violation of paragraph (2) may file a charge with the General Accounting Office Personnel Appeals Board in accordance with the General Accounting Office Personnel Act of 1980 (31 U.S.C. 751–55). Such a charge may be filed only after the employee has filed a complaint with the Architect of the Capitol in accordance with requirements prescribed by the Architect of the Capitol and has exhausted all remedies pursuant to such requirements.

(B) The Architect of the Capitol shall carry out any action within its authority that the Board orders under section 4 of the General Accounting Office Personnel Act of 1980 (31 U.S.C. 753).

(C) The Architect of the Capitol shall reimburse the General Accounting Office for costs incurred by the Board in considering charges filed under this subsection.

(4) AMENDMENTS TO THE GENERAL ACCOUNTING OFFICE PERSONNEL ACT OF 1980.—

(A) Section 751(a)(1) of title 31, United States Code, is amended by inserting "or of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants," after "Office".

(B) Section 753(a) of title 31, United States Code, is amended—

(i) in paragraph (7) by striking "and" at the end of the paragraph;

(ii) in paragraph (8) by striking the period and inserting"; and"; and

(iii) by inserting at the end thereof the following:

"(9) an action involving discrimination prohibited under section 312(e)(2) of the Architect of the Capitol Human Resources Act."

(C) Section 755 of title 31, United States Code, is amended—

(i) in subsection (a), by striking "or (7)" and inserting ", (7) or (9)"; and

(ii) in subsection (b)—

(I) by striking "or applicant for employment" and inserting "applicant for employment, or employee of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants"; and

(II) by inserting "or under section 312(e)(2) of the Architect of the Capitol Human Resources Act" after "of this title".

(f) CONFORMING AMENDMENTS.—

(1) Section 301(c) of Public Law 102–166 is amended—

(A) by striking subparagraph (B);

(B) by striking "or (B)" in subparagraphs (C) and (D); and

(C) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(2) Section 305(c) of Public Law 102–166 is amended to read as follows:

"(c) EMPLOYEES OF THE CAPITOL POLICE.—In the case of an employee who is a member of the Capitol Police, the Director may refer the employee to the Capitol Police Board for resolution of the employee's complaint through the internal grievance procedures of the Capitol Police Board for a specific period of time, which shall not count against the time available for counseling or mediation under this title.".

(3) Section 312 of Public Law 102–166 is amended by striking "or by the Architect of the

Capitol, or anyone employed by the Architect of the Capitol,".

(4) Section 501(h)(2) of the Family and Medical Leave Act of 1993 is amended by striking "or (B)".

And the Senate agree to the same.

VIC FAZIO,
JAMES P. MORAN,
DAVID R. OBEY,
JOHN P. MURTHA,
BOB CARR,
MARTIN O. SABO,
BILL YOUNG,
RON PACKARD,
CHARLES H. TAYLOR,
JOSEPH M. MCDADE,
Managers on the Part of the House.

HARRY REID,
BARBARA A. MIKULSKI,
PATTY MURRAY,
ROBERT C. BYRD,
CONNIE MACK,
CONRAD BURNS,
MARK O. HATFIELD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE ON CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4454) making appropriations for the Legislative Branch for the fiscal year ending September 30, 1995, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

TITLE I—CONGRESSIONAL OPERATIONS

SENATE

Amendment No. 1: Appropriates $437,580,500 for the operations of the Senate, and contains several administrative provisions, as proposed by the Senate. Inasmuch as the amendment relates solely to the Senate and in accord with long practice under which each body concurs without intervention, the managers on the part of the House, at the request of the mangers on the part of the Senate, have receded to the Senate amendment.

HOUSE OF REPRESENTATIVES

It is the sense of the conferees that the Committee on House Administration should have authority to utilize the Congressional Management Foundation in any training seminars the Committee on House Administration deems its services might be appropriate.

CAPITOL POLICE BOARD

CAPITOL POLICE

SALARIES

Amendment No. 2: Appropriates $69,382,000, including authority for hazardous duty pay differential and a clothing allowance, for the salaries and related personnel expenses of the Capitol Police as proposed by the Senate instead of $65,991,000 as proposed by the House. The conferees have agreed to the Senate amendment which deleted the matter contained in the House bill, and which provides $33,463,000 to the Sergeant at Arms of the House, to be disbursed by the Clerk of the House, for the salaries and related personnel expenses of the Capitol Police assigned to the House rolls as proposed by the Senate instead of $31,833,000 as proposed by the House, and $35,919,000 to the Sergeant at Arms and Doorkeeper of the Senate, to be disbursed by the Secretary of the Senate as proposed by the Senate instead of $34,158,000 as proposed by the House. The additional funds are provided for comparability pay purposes in the event the appropriate authorities in House and Senate make such an adjustment in police salary schedules. It has long been the sense of Congress that products of American manufacture be purchased where feasible. The conferees direct the Capitol Police Board to conduct a study to determine the feasibility of utilizing only American-made motorcycles and bicycles and report its findings back to the Committees on Appropriations of the House and Senate.

OFFICE OF TECHNOLOGY ASSESSMENT

SALARIES AND EXPENSES

Amendment No. 3: Appropriates $21,970,000 for salaries and expenses, Office of Technology Assessment as proposed by the Senate instead of $21,931,000 as proposed by the House.

CONGRESSIONAL BUDGET OFFICE

SALARIES AND EXPENSES

Amendment No. 4: Appropriates $23,188,000 for salaries and expenses, Congressional Budget Office as proposed by the Senate instead of $23,133,000 as proposed by the House.

ARCHITECT OF THE CAPITOL

OFFICE OF THE ARCHITECT OF THE CAPITOL

SALARIES

Amendment No. 5: Appropriates $9,103,000 for salaries, Office of the Architect of the Capitol as proposed by the Senate instead of $8,927,000 as proposed by the House.

CONTINGENT EXPENSES

Amendment No. 6: Deletes authority contained in House bill for funds to remain available until expended for contingent expenses, Office of the Architect of the Capitol as proposed by the Senate.

CAPITOL BUILDINGS AND GROUNDS

CAPITOL BUILDINGS

Amendment No. 7: Appropriates $22,797,000 for Capitol buildings as proposed by the Senate instead of $22,340,000 as proposed by the House.

CAPITOL GROUNDS

Amendment No. 8: Appropriates $5,270,000 for Capitol grounds as proposed by the Senate instead of $5,201,000 as proposed by the House.

SENATE OFFICE BUILDINGS

Amendment No. 9: Appropriates $47,619,000 for Senate office buildings, of which $7,709,000 shall remain available until expended, as proposed by the Senate, including authority to complete improvements to property acquired pursuant to section 1202 of Public Law 103-50. Inasmuch as the amendment relates solely to the Senate and in accord with long practice under which each body concurs without intervention, the managers on the part of the House, at the request of the managers on the part of the Senate, have receded to the Senate amendment.

CAPITOL POWER PLANT

Amendment No. 10: Appropriates $33,437,000 for the Capitol power plant as proposed by Senate instead of $33,342,000 as proposed by the House.

LIBRARY OF CONGRESS

CONGRESSIONAL RESEARCH SERVICES

SALARIES AND EXPENSES

Amendment No. 11: Appropriates $60,084,000 for salaries and expenses of the Congressional Research Service instead of $58,938,000 as proposed by the House and $60,459,000 as proposed by the Senate. The conferees have allowed $216,000 for the COLA differential, $455,000 for locality pay, $200,0000 for data base services, and $275,000 for subscriptions.

GOVERNMENT PRINTING OFFICE

CONGRESSIONAL PRINTING AND BINDING

Amendment No. 12: Appropriates $89,724,000 for Congressional printing and binding, Government Printing Office as proposed by the Senate instead of $87,717,000 as proposed by the House. The conferees direct that the Office of Law Revision Counsel and GPO should seek to improve the utility of the CD-ROM version of the cumulative edition of the United States Code, such as inclusion of the parallel reference tables. This is particularly important because the funding request of $1.1 million to provide the traditional paper bound sets to depository libraries has not been provided. The conferees acknowledge that depository library priorities and needs may warrant some flexibility in managing the transition of cost-effective CD-ROM and other electric formats for certain publications. This may require the distribution of paper copies of the Code provided that the cost can be offset by other reductions to ensure that program resources are used most effectively.

TITLE II—OTHER AGENCIES

BOTANIC GARDEN

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

Amendment No. 13: Adds a heading as proposed by the Senate.

Amendment No. 14: Appropriates $3,230,000 and, in addition, $7,000,000 by transfer to remain available until expended as proposed by the Senate instead of $3,182,000 as proposed by the House. The $7,000,000 is provided to begin an extensive renovation of the conservatory and the funds are transferred from funds previously made available without fiscal year limitation under the heading "Architect of the Capitol".

LIBRARY OF CONGRESS

SALARIES AND EXPENSES

Amendment No. 15: Provides $210,164,000 for salaries and expenses, Library of Congress as proposed by the Senate instead of $207,857,000 as proposed by the House. Funds are provided in the event the Library of Congress police receive a salary adjustment under the terms of the first section of the Act entitled "An Act relating to the policing of the buildings and grounds of the Library of Congress", approved August 4, 1950 (2 U.S.C. 167), as amended by P.L. 100-135 (101 Stat. 811).

COPYRIGHT OFFICE

SALARIES AND EXPENSES

Amendment No. 16: Provides $27,456,000 for salaries and expenses, Copyright Office as proposed by the Senate instead of $27,186,000 as proposed by the House.

Amendment No. 17: Provides that $2,911,000 of the funds made available to the Copyright office shall be derived by collections under 17 U.S.C. 111(d)(2), 119(b)(2), 802(h), and 1005 as proposed by the Senate instead of $2,891,000 as proposed by the House.

Amendment No. 18: Provides that the total amount available to the Copyright Office shall be reduced by the amount collections are less than $17,411,000 as proposed by the Senate instead of $17,391,000 as proposed by the House.

BOOKS FOR THE BLIND AND PHYSICALLY HANDICAPPED

SALARIES AND EXPENSES

Amendment No. 19: Appropriates $44,951,000 for salaries and expenses, books for the blind

and physically handicapped as proposed by the Senate instead of $44,622,000 as proposed by the House.

Amendment No. 20: Provides that $11,694,000 shall remain available until expended as proposed by the Senate instead of $10,896,000 as proposed by the House.

ARCHITECT OF THE CAPITOL

LIBRARY BUILDINGS AND GROUNDS

STRUCTURAL AND MECHANICAL CARE

Amendment No. 21: Appropriates $12,483,000 for structural and mechanical care, library buildings and grounds, Architect of the Capitol instead of $9,860,000 as proposed by the House and $13,483,000 as proposed by the Senate. The conferees have provided the funds for the COLA differential, locality pay, and $2,500,000 for the renovation of the Coolidge Auditorium and the Whittall Pavilion.

Amendment No. 22: Provides that $3,441,000 shall remain available until expended for structural and mechanical care instead of $941,000 as proposed by the House and $4,441,000 as proposed by the Senate.

GOVERNMENT PRINTING OFFICE

SUPERINTENDENT OF DOCUMENTS

Amendment No. 23: Appropriates $32,207,000 for Superintendent of Documents, Government Printing Office as proposed by the Senate instead of $30,600,000 as proposed by the House.

Amendment No. 24: Restores House bill language stricken by the Senate which provides that the objectives of the Government Printing Office Electronic Information Access Enhancement Act of 1993 shall be carried out through cost savings. The GPO is directed to submit in its fiscal year 1996 budget a description of program cost savings attributed to the funding of activities authorized under chapter 41 of title 44, United States Code.

GOVERNMENT PRINTING OFFICE

REVOLVING FUND

Amendment No. 25: Limits the full-time equivalent employment at the Government Printing Office to 4,293 instead of 4,193 as proposed by the House and 4,493 as proposed by the Senate.

Amendment No. 26: Amends language inserted by the Senate regarding the Federal printing procurement program. The conferees have agreed to amend the $1,000 threshold exemption to include a "class of work" exemption, which should facilitate the process and reduce paperwork, and have added "duplicating" to the current definition of printing for procurement purposes. The conferees did not agree to expand the scope to include funds "made available from any source" to the procurement requirements set out in Sec. 207. Several agencies have expressed concerns with expanding the scope in this manner, including the Federal Prison Industries and the Department of Defense. The conferees direct that the Government Printing Office work out memorandums of understanding with these agencies, and others who have similar circumstances, that will enable those agencies to conduct their printing procurement programs in a cost-effective manner, and to achieve the specific objectives of agency missions. If such memorandums of understanding are not agreed upon, the conferees intend to review the matter again and legislation may be necessary. On the issue of distribution of copies of documents to the depository libraries, the Senate amendment was designed to reduce the "fugitive document" problem. But it does that by more or less restating current law. The conferees believe that the problem isn't the law—the problem is *enforcement*. The Government Printing Office and the Joint Committee on Printing are in an ideal situation to help enforcement. GPO has a nationwide structure of procurement offices and printing plants. JCP has extensive connections with private printers, Federal printing executives, and the depositories. Instead of restating current law, JCP and GPO should be using their resources to ferret out the agencies and documents which are escaping the requirements of the depository law. Also, this amendment would create an unfair and unworkable situation by exposing low level Federal employees to violations of law where none are intended.

Finally, the conferees have agreed to incorporate "duplicating" within the definition of printing for procurement purposes. It should be noted this only applies in the case of procured printing. The conferees have not included the additional matter regarding "production of an image on paper or other substrate." That conceivably would encompass ADP output, CD-ROMs, video discs, and other material that fall within the Brooks Act or other statutes.

The conferees do not intend for this language to affect the internal printing or duplicating operations of the Federal Bureau of Investigation or any other law enforcement agencies in any way. Rather, this provision makes clear that procurement of printing and duplicating orders from sources external to the agency originating the procurement must be by or through the Government Printing Office. The current exceptions provided in section 207(a)(2) of Public Law 102-392 are retained.

GENERAL ACCOUNTING OFFICE

SALARIES AND EXPENSES

Amendment No. 27: Appropriates $443,360,000 as proposed by the Senate instead of $439,525,000 as proposed by the House.

Amendment No. 28: Provides that, notwithstanding 31 U.S.C. 9105, hereafter amounts reimbursed to the Comptroller General pursuant to that section shall be deposited to the appropriation of the General Accounting Office then available and shall remain available until expended, and not more than $6,000,000 of such funds shall be available for use in fiscal year 1995 for the sole purpose of asbestos removal and related renovation of the General Accounting Office Building, as proposed by the Senate.

TITLE III—GENERAL PROVISIONS

Amendment No. 29: Provides a date change in Public Law 101-302 regarding Senate artwork as proposed by the Senate.

Amendment No. 30: Provides that $2,015,000 shall be available to the Capitol Police Board under H. Con. Res. 550, from funds appropriated for Capitol Complex Security Enhancements, for the purchase and installation of magnetometers and x-ray machines. The Senate bill proposed that these funds be made available for the same purpose but did not cite the obligating authority. The conference agreement assigns that authority to the Capitol Police Board under the conditions of H. Con. Res. 550, agreed to in 1972, which established a funding mechanism for security equipment in the Capitol complex.

Amendment No. 31: Deletes language proposed by the Senate which provides that no funds appropriated in the 1995 Legislative Branch Appropriations Act may be used to carry out the provisions of sections 8335(d) or 8425(b), title 5, United States Code relating to the mandatory separation of a member of the Capitol Police. The Capitol Police Board is directed to review the statutory requirements, regulations, and practices of other Federal law enforcement agencies to ensure that the mandatory retirement regulations and practices of the Capitol Police are consistent with those of comparable organizations.

Amendment No. 32: Changes section number and provides that funds provided within certain appropriating paragraphs shall be withheld from obligation and shall only become available to the extent necessary to cover the costs of increases in pay and allowances authorized pursuant to the enactment of H.R. 4539, or pursuant to the pay order of the President or other administrative action pursuant to law as proposed by the Senate.

Amendment No. 33: Enacts the "Architect of the Capitol Human Resources Act" as proposed by the Senate, amended to exempt House of Representatives garage and parking lot attendants (including the Superintendent) with respect to whom supervision and all other employee-related matters are transferred to the House Sergeant at Arms, and also amended to include the Committees on Appropriations as recipients of the plan to be submitted, to simplify the procedure for consideration of alleged violations, and to enact conforming amendments. The House garage and lot attendants will be covered under the employment practice procedures that apply to House employees and exercise their rights pursuant to the provisions of Rule LI of the Rules of the House as if they were employees in employment positions in the House of Representatives.

The managers agree that the Architect of the Capitol (AOC) must take immediate action to correct pervasive and systemic management problems which led to numerous employee complaints of discrimination, harassment and unfair hiring and promotion practices. To address serious shortcomings in AOC personnel management systems, the managers have adopted the "Architect of the Capitol Human Resources Act" which is intended to codify those improvements which must be made within AOC. The legislation provides the Architect with one year to implement necessary reforms. The Architect has indicated that he already has in place, or intends to develop promptly: a position classification system, an office of Equal Employment Opportunity and an affirmative employment program, a training program, a career staffing plan including procedures for competitive hiring and promotion and a formal performance evaluation system. The managers understand that adoption of a formal performance evaluation system will require several months, both for the development of objective and accurate criteria for the many positions within AOC, and for the training of managers in carrying out evaluations. For this reason, the managers have agreed to the timeframe contained in the Act. However, the managers expect the Architect to adopt without delay those requirements under the Act that can be adopted now. The Architect has also established an Employee Assistance Program under the direction of a professional counselor. The managers suggest that the Architect work to restore employees' confidence that this program will be operated independently of the AOC personnel office and kept strictly confidential. The conferees agree that any cases relating to employees of the Architect now pending or on appeal pursuant to Public Law 102-166 should be disposed of through the procedures for resolving such matters specified in that Act.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1995 recommended

by the Committee of Conference, with comparisons to the fiscal year 1994 amount, the 1995 budget estimates, and the House and Senate bills for 1995 follows:

New budget (obligational) authority, fiscal year 1994	$2,270,713,300
Budget estimates of new (obligational) authority, fiscal year 1995	2,509,703,500
House bill, fiscal year 1995	1,857,787,600
Senate bill, fiscal year 1995	2,368,796,100
Conference agreement, fiscal year 1995	2,367,421,100
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1994	+96,707,800
Budget estimates of new (obligational) authority, fiscal year 1995	−142,282,400
House bill, fiscal year 1995	+509,633,500
Senate bill, fiscal year 1995	−1,375,000

VIC FAZIO,
JAMES P. MORAN,
DAVID R. OBEY,
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RON PACKARD,
CHARLES H. TAYLOR,
JOSEPH M. MCDADE,
Managers on the Part of the House.

HARRY REID,
BARBARA A. MIKULSKI,
PATTY MURRAY,
ROBERT C. BYRD,
CONNIE MACK,
CONRAD BURNS,
MARK O. HATFIELD,
Managers on the Part of the Senate.

WAIVING CERTAIN POINTS OF ORDER AGAINST AND DURING CONSIDERATION OF H.R. 4624, DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1995

Ms. SLAUGHTER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 465 and ask for its immediate consideration.

The Clerk read as follows:

H. RES. 465

Resolved, That during consideration of the bill (H.R. 4624) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1995, and for other purposes, all points of order against provisions in the bill for failure to comply with clause 2 or 6 of rule XXI are waived. The amendment numbered 1 in the report of the Committee on Rules accompanying this resolution may be offered only by a Member designated in the report, may amend portions of the bill not yet read for amendment, shall be considered as read, shall be debatable for two hours equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. Points of order against the amendments printed in the report of the Committee on Rules for failure to comply with clause 2 of rule XXI are waived.

The SPEAKER pro tempore. The gentlewoman from New York [Ms. SLAUGHTER] is recognized for 1 hour.

Ms. SLAUGHTER. Mr. Speaker, during consideration of this resolution, all time yielded is for the purpose of debate only. I yield the customary 30 minutes, for the purpose of debate only, to the gentleman from Florida [Mr. GOSS], and pending that, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 465 is an open rule providing for the consideration of H.R. 4624, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development and for sundry independent agencies, boards, commissions, corporations and officers for fiscal year 1995.

Since general appropriations bills are privileged, the legislation will be considered under the normal legislative process for consideration of appropriations bills. The time devoted to general debate will be determined by an unanimous consent request. The bill will be open to amendment under the 5 minute rule. Any amendment which does not violate the rules of the House or is printed in the Rules Committee report will be in order.

The rule waives points of order under clause 2 and clause 6 of Rule XXI against all provisions of the bill. Clause 2 of Rule XXI prohibits unauthorized appropriations or legislative provisions in general appropriations bills. The Appropriations Subcommittee has requested this waiver because many housing, environmental, space, science, and emergency management programs covered by the bill lack authorizations. Clause 6 of Rule XXI prohibits reappropriating unexpended balances of appropriations in general appropriations bills.

The rule provides for Representative ROEMER to offer en bloc amendments on the space stations. The en block amendments, printed in the report to accompany the rule, shall be considered as read when offered, shall be debatable for 2 hours equally divided and controlled by the proponent and an opponent, are not subject to a demand for a division of the question, and may amend portions of the bill not yet read for amendment.

Finally, the rule waives clause 2 of Rule XXI, prohibiting unauthorized appropriations or legislative provisions in a general appropriations bill, against the amendments printed in the report.

Mr. Speaker, H.R. 4624 provides $70.4 billion in discretionary spending and $20.1 billion in mandatory spending in fiscal year 1995 for the activities of the Departments of Veterans Affairs and Housing and Urban Development and nineteen independent agencies and offices including the National Aeronautics and Space Administration, the Environmental Protection Agency, the Federal Deposit Insurance Corporation, and the National Science Foundation. This open rule will allow full and fair debate on the provisions of this important bill.

I ask my colleagues to support the rule so that we may proceed with consideration of the merits of this legislation.

Mr. GOSS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am told that back in the good old days, it was a rare occasion when the House had to adopt a rule to provide for the consideration of an appropriations bill. The authorizing committees did their job, the appropriators did their job, and the full House did its job—all within the structure established by the rules of the House.

Now it is a rare occasion for an appropriation bill to be considered by the House without first adopting a rule. Why? Because almost every appropriation bill contains legislative provisions and/or provides unauthorized appropriations. And as my colleague from New York, Ms. SLAUGHTER, has explained, this bill is no exception.

When we asked for a list of those provisions which were not authorized in this VA–HUD appropriations bill, we, instead, received a list of those programs which were authorized because the list of unauthorized appropriations was too long. In fact, somewhere in the neighborhood of 95 percent of this bill is unauthorized. Part of that, of course, is the hearings on Whitewater RTC issues.

I certainly don't want to point the finger of blame, but I do want to make the point that this trend reinforces the urgent need for congressional reform legislation—which is hanging out there in limbo. We need to get the House back on the right track so that we can perform our legislative functions in a responsible, deliberative manner.

Still, I am pleased that we are considering this and most of this year's appropriations bills under an open amendment process. And I understand the rationale for allowing waivers for the amendment to be offered by Chairman STOKES and for the amendment to be offered by Mr. ROEMER and Mr. ZIMMER dealing with funding for the space station. Of course, I should note that I am opposed to the Roemer/ZIMMER amendment, which proposes to cut the space station for fiscal reasons but actually saves no money, because it allows the funds to be reallocated to other programs. I do, however, see the need to have this debate on the House floor and let Members work their will. In granting the necessary waivers for these amendments, the Rules Committee merely afforded the same privilege

to members seeking to offer amendments that was granted to the committee in developing its bill. That's certainly fair. Mr. Speaker, I do understand the difficulties the appropriators faced in crafting this bill, and clearly there are not enough resources to go around. But I remain greatly concerned about the prioritization of veterans funds—with projects of great need apparently losing out to those of lesser immediate need but perhaps of more political merit. I am especially troubled by the sometimes not-so-subtle pressure that's being brought on Members with serious veterans needs—as Members are told that all veterans projects are tied up in passage of the President's health care bill. In my opinion, the needs of people who risked their lives for our country should not be held hostage to a political struggle. Mr. Speaker, I will not oppose this rule.

□ 2240

Mr. Speaker, I have no further requests for time and yield back the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. MORAN). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid upon the table.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of February 11, 1994, June 10, 1994, and under a previous order of the House, the following Members are recognized for 5 minutes each.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. GOSS) to revise and extend his remarks and include extraneous material:)

Mr. MICHEL, for 5 minutes each day, on today, June 29, and June 30.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. GOSS) and to include extraneous matter:)

Mr. GILMAN in three instances.
Mr. GUNDERSON.
Mr. YOUNG of Alaska.
Mr. EWING.
Mr. LAZIO.
Mr. MCCOLLUM.
Mr. KLUG.
Mr. COMBEST.
Mr. HYDE.
Mr. CRAPO.
Mr. BOEHLERT.
Mr. SOLOMON.
Mr. HUNTER.
Mr. SMITH of New Jersey.
Mr. DUNCAN.
Mrs. MORELLA in three instances.
Ms. PRYCE of Ohio.
Mr. GINGRICH.

(The following Members (at the request of Mr. OLVER) and to include extraneous matter:)

Mr. LANTOS.
Mr. TOWNS in six instances.
Mr. SAWYER.
Mr. OBEY.
Mr. KENNEDY.
Mr. FRANK of Massachusetts.
Mr. UNDERWOOD.
Mrs. KENNELLY.
Mr. STARK in three instances.
Mr. FROST.
Mr. SCHUMER.
Mr. DOOLEY.
Mr. NEAL of Massachusetts.
Mr. MONTGOMERY.
Mr. ANDREWS of New Jersey.
Ms. SLAUGHTER.
Mr. VISCLOSKY.
Ms. SHEPHERD.
Mr. HINCHEY.
Mr. BARCIA.
Ms. PELOSI.
Mr. FAZIO.
Mr. GEJDENSON.
Mr. GEPHARDT.
Mr. LANCASTER.

ENROLLED BILL SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 2559. An act to designate the Federal building located at 601 East 12th Street in Kansas City, Missouri, as the "Richard Bolling Federal Building" and the United States Courthouse located at Ninth and Locust Streets, in Kansas City, Missouri, as the "Charles Evans Whittaker United States Courthouse."

ADJOURNMENT

Mr. BARLOW. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 46 minutes p.m.), the House adjourned until Wednesday, June 29, 1994, at 10 a.m.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. GORDON: Committee on Rules. House Resolution 466. Resolution waiving certain points of order against the bill (H.R. 4649) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes (Rept. 103-564). Referred to the House Calendar.

Mr. DERRICK: Committee on Rules. House Resolution 467. Resolution providing for consideration of the bill (H.R. 4600) to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed rescissions of budget authority (Rept. 103-565). Referred to the House Calendar.

Mr. BEILENSON: Committee on Rules. House Resolution 468. Resolution providing for consideration of the bill (H.R. 4299) to authorize appropriations for fiscal year 1995 for intelligence, and intelligence-related activities of the U.S. Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Rept. 103-566). Referred to the House Calendar.

Mr. FAZIO: Committee of Conference. Conference report on H.R. 4454. A bill making appropriations for the legislative branch for the fiscal year ending September 30, 1995, and for other purposes (Rept. 103-567). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 or rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. SMITH of New Jersey (for himself, Mr. ZIMMER, and Mr. SAXTON):

H.R. 4661. A bill to establish congressional findings and amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation and disposal of municipal solid waste, and for other purposes; to the Committee on Energy and Commerce.

H.R. 4662. A bill to amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation and disposal of municipal solid waste, and for other purposes; to the Committee on Energy and Commerce.

By Mr. HAMILTON:

H.R. 4663. A bill to provide authority to control exports, and for other purposes; to the Committee on Foreign Affairs.

By Mr. HUTTO (for himself and Mr. PETERSON of Florida):

H.R. 4664. A bill to amend the Tariff Act of 1930 to provide relief from antidumping and countervailing duty orders in cases of short supply; to the Committee on Ways and Means.

By Mr. YOUNG of Alaska:

H.R. 4665. A bill to amend the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Natural Resources.

By Mr. ANDREWS of Maine:

H.R. 4666. A bill to amend title 46, United States Code, to prohibit overhaul, repair, and maintenance of Coast Guard vessels in foreign shipyards; to the Committee on Merchant Marine and Fisheries.

By Mr. ANDREWS of New Jersey (for himself, Mr. WELDON, and Mr. KOLBE):

H.R. 4667. A bill to allow State and local governments to design their own programs

for moving welfare recipients from dependency to economic self-sufficiency, and to allow low-income individuals to use personal savings as a foundation for achieving independence; jointly, to the Committees on Ways and Means, Banking, Finance and Urban Affairs, Agriculture, Energy and Commerce, and Education and Labor.

By Mr. HUGHES (for himself and Mr. PALLONE):

H.R. 4668. A bill to make improvements in the protection of coastal waters, enhance implementation of the Marine Plastic Pollution Research and Control Act of 1987, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. SANDERS (for himself, Mr. ANDREWS of Maine, Ms. COLLINS of Michigan, Mr. DEFAZIO, Mr. DELLUMS, Mr. ENGEL, Mr. FOGLIETTA, Mr. GONZALEZ, Mr. GUTIERREZ, Mr. HINCHEY, Mr. JOHNSTON of Florida, Mrs. KENNELLY, Mr. KLECZKA, Mrs. MINK of Hawaii, Mr. MORAN, Mr. NADLER, Mr. OBERSTAR, Mr. OBEY, Mr. OLVER, Mr. OWENS, Mrs. UNSOELD, Mrs. SCHROEDER, Mr. SHAYS, Ms. VELAZQUEZ, Mr. VENTO, Mr. WASHINGTON, and Mr. YATES):

H.R. 4669. A bill to amend the Federal Food, Drug, and Cosmetic Act to require labeling for milk and milk products produced from cows which have been treated with synthetic bovine growth hormone, to direct the development of a synthetic bovine growth hormone residue test, and for other purposes; to the Committee on Energy and Commerce.

By Mr. SANGMEISTER (by request):

H.R. 4670. A bill to amend title 38, United States Code, to provide an increase in the specially adapted housing grant; to the Committee on Veterans' Affairs.

H.R. 4671. A bill to amend title 38, United States Code, to provide direct loans and set asides for disabled veterans; to the Committee on Veterans' Affairs.

By Mr. GEJDENSON:

H. Con. Res. 262. Concurrent resolution to express the sense of the Congress that marinas should not be treated as offshore facilities for purposes of financial responsibility requirements of the Oil Pollution Act of 1990; jointly, to the Committees on Merchant Marine and Fisheries and Public Works and Transportation.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII.

Mr. CARR introduced a bill (H.R. 4672) to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade and on the Great Lakes and their tributary and connecting waters in trade with Canada for each of 3 barges; to the Committee on Merchant Marine and Fisheries.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 123: Mr. MCDADE, Mr. LUCAS, Mr. KANJORSKI, and Mr. NUSSLE.

H.R. 349: Mr. BARRETT of Nebraska.

H.R. 404: Mr. GRANDY.

H.R. 431: Mr. MARKEY.

H.R. 642: Mr. OLVER.

H.R. 702: Ms. BROWN of Florida and Mr. MANN.

H.R. 1475: Mr. GRANDY.

H.R. 1673: Mr. SHAYS.

H.R. 1722: Mr. MINETA.

H.R. 1900: Mr. SKELTON.

H.R. 2873: Mr. KIM, Mr. ANDREWS of New Jersey, and Mr. COLLINS of Georgia.

H.R. 2967: Mr. BEILENSON and Mr. OBERSTAR.

H.R. 3121: Mr. MONTGOMERY, Mr. CLINGER, and Mr. RIDGE.

H.R. 3271: Mr. MOORHEAD.

H.R. 3288: Mr. SWETT.

H.R. 3293: Mr. MCCRERY.

H.R. 3434: Mr. GUTIERREZ and Mr. VENTO.

H.R. 3446: Mr. ARCHER.

H.R. 3526: Mr. DE LUGO, Mr. NEAL of Massachusetts, Ms. SHEPHERD, Mr. ENGEL, Mr. HAMBURG, Mr. GEJDENSON, Mr. VENTO, Mr. MARTINEZ, Mr. BURTON of Indiana, Mr. STUDDS, Mr. MOORHEAD, Mr. COYNE, and Mr. KLEIN.

H.R. 3580: Mr. BLUTE.

H.R. 3611: Mr. CONDIT.

H.R. 3630: Mr. THOMPSON, Ms. FURSE, and Mr. VENTO.

H.R. 3797: Mr. ROYCE, Mr. THOMAS of Wyoming, Mr. CRAPO, and Mr. EMERSON.

H.R. 3873: Mr. MARTINEZ, Ms. WATERS, and Mr. YATES.

H.R. 3880: Mr. DELAY.

H.R. 4040: Mr. FILNER and Mrs. UNSOELD.

H.R. 4162: Mr. INSLEE.

H.R. 4198: Mr. BALLENGER.

H.R. 4233: Mr. BONILLA and Mrs. THURMAN.

H.R. 4251: Mr. PAYNE of Virginia.

H.R. 4271: Mr. MANN.

H.R. 4281: Mr. MCHUGH and Mr. STRICKLAND.

H.R. 4314: Mr. SANDERS.

H.R. 4386: Mr. STUPAK, Mr. SHAYS, Mr. SPENCE, Ms. KAPTUR, Mrs. MALONEY, Mr. WASHINGTON, and Mr. MINETA.

H.R. 4388: Mr. BEREUTER.

H.R. 4412: Mr. BONILLA.

H.R. 4493: Mr. BARRETT of Wisconsin.

H.R. 4514: Mr. OLVER and Mr. GALLEGLY.

H.R. 4589: Mr. CASTLE.

H.R. 4592: Mr. DELAY and Mr. INGLIS of South Carolina.

H.R. 4605: Mr. LAFALCE.

H.J. Res. 38: Mr. SCHAEFER.

H.J. Res. 356: Mr. MCNULTY and Mr. BLACKWELL.

H.J. Res. 378: Mr. SISISKY, Mr. BEVILL, Mr. KING, Mr. LIVINGSTON, Mr. PETE GEREN of Texas, Mr. DICKS, Mr. SMITH of New Jersey, Mr. STUPAK, Mr. WILSON, Mrs. MORELLA, Mr. FLAKE, Mr. MINETA, and Mr. WASHINGTON.

H. Con. Res. 148: Mr. KLUG and Mr. FAWELL.

H. Con Res. 166: Mr. WELDON, Mrs. UNSOELD, and Mr. SUNDQUIST.

H. Con. Res. 233: Mr. MINETA, Mr. MORAN, Ms. MCKINNEY, Mr. HAMBURG, Mr. DICKS, Mr. CONYERS, Mr. PICKLE, Mr. SCHUMER, Mr. FOGLIETTA, Mr. LAUGHLIN, Mr. BLUTE, and Mr. SAWYER.

H. Con. Res. 243: Mr. STEARNS and Mr. MCCOLLUM.

H. Con. Res. 255: Mrs. MALONEY, Mr. NEAL of Massachusetts, and Mr. ROSE.

H. Res. 291: Mr. YOUNG of Alaska.

H. Res. 463: Ms. SHEPHERD.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 4624

By Mr. ROEMER:

—Page 56, line 16, strike "$5,592,900,000" and insert "$4,653,200,000".

—Page 57, line 4, strike "$5,901,200,000" and insert "$6,727,587,000".

—Page 57, line 25, strike "$2,549,587,000" and insert "$2,662,900,000".

—Page 60, after line 12, insert the following:

None of the funds made available in this Act to the National Aeronautics and Space Administration may be used for the space station program.

H.R. 4650

By Mr. EHLERS:

—Page 107, after line 4, insert the following new section:

SEC. 8121. None of the funds made available in this Act may be used by the Department of Defense to sell any surplus mercury.

EXTENSIONS OF REMARKS

SENSE OF THE CONGRESS RESOLUTION

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. GEJDENSON. Mr. Speaker, today I am introducing a sense of the Congress resolution relating to the Oil Pollution Act of 1990. My resolution states that marinas should not be classified as offshore facilities for the purpose of guaranteeing financial responsibility under the act.

Section 1016 of the Oil Pollution Act requires offshore facilities which could pollute the navigable waters of the United States to demonstrate $150 million in financial responsibility to cover the costs of comprehensive environmental restoration in the event of an oil spill. As my colleagues know, the act was passed in large part as a response to the *Exxon Valdez* spill which released 11 million gallons of crude oil into Prince William Sound in Alaska. This was the Nation's worst oil spill ever and its ramifications continue to be felt today in abnormally low fish harvests and ongoing legal battles between fishermen, residents, native groups, and Exxon. It is entirely appropriate to require that major corporations which transport and handle large quantities of heavy oil products to have $150 million in financial backing to cover cleanups.

However, large multimillion dollar corporations are not the only ones which would have to comply with this section. The Minerals Management Service [MMS], which is writing the regulations to enforce section 1016, has so broadly defined offshore facilities that marinas coast to coast would be covered by this provision. Moreover, it would apply to marinas in any navigable waters of the United States. In an advanced notice of proposed rulemaking, the MMS would require marinas, which are overwhelmingly small businesses, to secure a letter of credit, self-insure, or obtain an insurance policy worth $150 million. I think it goes without saying that this would place an unfair and unwarranted burden on marinas, and ultimately, on the boating public.

Congress didn't intend for this section to apply to marinas. Marinas do not pose the threat the Oil Pollution Act was passed to address. Marinas handle gasoline and diesel fuel only and fuel spills are infrequent. According to the Coast Guard, there were 64 fuel spills with a volume of 9,642 gallons nationwide in fiscal year 1993. Moreover, while I would rather spills never occurred, small fuel spills do not have the long-term negative environmental impacts of heavy oil spills. The bottom line is that our Nation's marinas do not pose an environmental threat warranting this level of coverage.

As I mentioned above, the vast majority of marinas are small, family-run businesses. According to the National Association of Marine Manufacturers [NAMM], 68 percent of marinas have fewer than 100 slips and 87 percent have fewer than 200 slips. These businesses do not have the capital to self-insure or secure letters of credit for $150 million. Moreover, according to NAMM insurance policies for this amount are not available for this purpose. In fact, it appears that marinas would not be able to secure any of the forms of financial responsibility enumerated in the MMS proposal. If they are unable to comply with these regulations, they will be forced to discontinue fuel sales. This will adversely impact their businesses as well as millions of boaters who fuel their boats safely and conveniently where they dock their craft.

Mr. Speaker, my resolution would provide relief to marinas by expressing the sense of Congress that marinas should not be classified as offshore facilities. It is clear to most that they are onshore facilities and should be treated as such. By passing this resolution, Congress can send a clear signal to the MMS that marinas are not offshore facilities and they should not be covered by section 1016. This measure does not reopen the Oil Pollution Act and it will not undermine environmental protection. It will provide relief to many small businesses and ensure that millions of recreational boaters will have convenient and safe sites to fuel their boats. I urge my colleagues to support this resolution.

TRIBUTE TO PERCY ALLEN II

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. TOWNS. Mr. Speaker, I would like to bring to the attention of my colleagues, the outstanding work done by a leader in my congressional district, Percy Allen II.

Mr. Allen and I share a deep interest in health care. Mr. Allen has made a career as a health care provider. It is a special honor to recognize this man because of his contributions to the greater Brooklyn community.

Percy Allen II was born on April 7, 1941. In 1973 he received a B.A. from Oakland University and later received his M.P.A. from Cornell University Graduate School of Business and the Sloan Program of Hospital and Health Services in 1975.

Since 1975 he has worked on the administrative staff of several hospitals. In 1975 after graduating, he worked as a senior assistant administrator at Parkview Memorial Hospital in Fort Wayne, IN. In 1982 he served as vice president for administration at Sinai Hospital of Detroit, in Detroit, MI. In 1987 he came to New York and accepted the position of assistant vice president of hospital operations at Harlem Hospital. Between 1987 and 1989 Mr. Allen quickly moved up the administrative levels of the hospital. Currently he is employed as the vice president for hospital affairs and chief executive officer at the University Hospital of Brooklyn.

His résumé personifies service to the community and symbolizes he has worked hard to improve the health conditions of not only residents in my district, but residents throughout New York City. I rise today to honor Mr. Percy Allen's achievements as a health care administrator.

IN MEMORY OF THOSE WHO FOUGHT FOR FREEDOM

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. STARK. Mr. Speaker, I join my colleagues in honoring the memory of three courageous civil rights pioneers: Andrew Goodman, Mickey Schwerner, and James Chaney. These martyrs tried to register disenfranchised black Americans. By expanding our democracy, these three men brought to our Government the thoughts and ideas of people whose individual rights and liberties had been trampled for generations. The deaths of these crusaders serve as a vivid reminder of how poorly we treated a 10th of our people.

Andrew Goodman, James Chaney, and Mickey Schwerner worked to include in our Government people who had been ignored and set aside. By trying to unite our country they ran into those who wanted to discriminate and ended up paying the ultimate price. They should be remembered because their struggles and achievements are responsible for making our country more peaceful and democratic for everybody, not just black Americans.

TRIBUTE TO SUZANNA G. BRUGLER

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. GILLMOR. Mr. Speaker, I would like to take this opportunity to recognize an exceptional young woman from my district who has recently accepted her appointment as a member of the class of 1998 at the U.S. Naval Academy.

Suzanna Brugler graduated Defiance High School in 1993 after 4 years of outstanding academic achievement as well as extracurricular involvement. While in high school Suzanna distinguished herself as a leader among her peers. She was an honor roll student and captain of the swimming team. In addition, she was a member of the National

Honor Society and the high school band. This past year, she has been attending the Perkiomen School in Pennsburg, PA.

Mr. Speaker, one of the most important responsibilities of Members of Congress is to identify outstanding young men and women and to nominate them for admission to the U.S. service academies. While at the Academy, they will be the beneficiaries of one of the finest educations available, so that in the future they might be entrusted with the very security of our Nation.

I am confident that Suzanna has both the ability and the desire to meet this challenge. I ask my colleagues to join me in congratulating her for her accomplishments to date and to wish her the very best as she begins her career in service to our country.

TRIBUTE TO ETHEL STEINBERG

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. SCHUMER. Mr. Speaker, one of the pleasures of serving in this legislative body is the opportunity we occasionally get to publicly acknowledge outstanding individuals of our Nation. I rise today to recognize one such individual, Ethel Steinberg, and to add my words to those of friends and colleagues who will be giving a testimonial in her honor on June 27, 1994.

In her years as a special education teacher and supervisor she was a leader in mainstreaming special education children so that they too could be prepared for the future. It is clear that she understands the value of investing in this country's most precious resource, our children.

We must never forget nor underestimate the contribution educators make to the lives of our children and to the health of our community. It is an honor to be given the opportunity to thank an individual who has dedicated her life to educating and fostering understanding and acceptance among our children. As she begins her retirement, I know that her time will be well spent with her husband, Sid, her children, Roy and Cindy, and her five grandchildren; but I also know that her presence in district 15 will be sorely missed.

I'm sure I speak on behalf of many members of the community who have either worked with Ethel, or have experienced the benefits of her hard work when I thank this remarkable individual.

SIGN DISCHARGE PETITION NO. 19

HON. THOMAS W. EWING

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. EWING. Mr. Speaker, I want to bring to the attention of my colleagues a letter which many of them have received asking them to sign Discharge Petition No. 19.

The letter is signed by 57 small business trade associations representing hundreds of thousands of small businesses in dozens of industries throughout the country. These associations, representing everything from roofers to florists to glassmakers, have come together because they all have one common interest. They are all affected by excessive Federal regulations written by Washington, DC, bureaucrats who do not have an adequate understanding of the small businesses they regulate.

Discharge Petition No. 19 would discharge an open rule for the consideration of H.R. 830, the Regulatory Flexibility Amendments Act of 1993. The Regulatory Flexibility Act [RFA] became law in 1980 and was designed to require Federal regulators to examine the potential impact of new regulations on small businesses and take steps to minimize that impact. However, because judicial review of the RFA was expressly prohibited, many Federal regulators view their compliance as voluntary and have virtually ignored the Act. H.R. 830 would put some "teeth" into the RFA by allowing judicial review and otherwise strengthening the Act.

Mr. Speaker, H.R. 830 has 252 bipartisan cosponsors, well over half the House. Both the ranking member and the chairman of the House Committee on Small Business have been steadfast supporters of H.R. 830.

Judicial review of the RFA is not only supported by a majority of the House and by small business groups, it is also strongly supported by Vice President GORE'S National Performance Review [NPR]. As part of their effort to make Government more responsive to it's customers," the NPR studies how the RFA might make Federal regulations more responsive to the special circumstances of small businesses. After a great deal of study, the NPR concluded that judicial review was essential, and made this its No. 1 recommendation for the U.S. Small Business Administration.

Despite strong support from a majority of the House of Representatives, from Vice President GORE, and from virtually all small business organizations, this important legislation has been held hostage in subcommittee. While one hearing was held on the bill last fall, the chairman of the subcommittee with jurisdiction over H.R. 830 has refused to take any further action on the bill.

I urge my colleagues who have cosponsored H.R. 830 to demonstrate their continued support for this important regulatory reform legislation by signing Discharge Petition No. 19. Your small business constituents will thank you.

REG FLEX COALITION,
JUNE 24, 1994.

DEAR REPRESENTATIVE: Because you are a cosponsor of H.R. 830, the Regulatory Flexibility Amendments Act of 1993, we are writing to ask that you sign Discharge Petition #19, which would discharge H. Res. 415, an open rule for the consideration of H.R. 830.

Small businesses and local governments have seen the level of federal regulation increase dramatically in recent years. While many federal regulations are meant to protect public health and safety, we believe that federal agencies have not taken adequate steps to find ways to minimize the impact of regulations on small businesses and governments. H.R. 830 can help solve this problem.

The Regulatory Flexibility Act (RFA) was designed to address the fact that regulations disproportionately affect small businesses and small governmental entities. The RFA requires federal agencies to study the impact that regulations may have on small entities and find ways to minimize those effects. However, because the Act does not allow judicial review of agency compliance, most federal agencies have ignored the Act for the past fourteen years. H.R. 830 would give the RFA the "teeth" it needs by allowing judicial review.

Legislation to provide judicial review of the RFA is strongly supported by the small business community and small local governments, and we are pleased that over 250 House members have cosponsored H.R. 830. Federal regulatory agencies have ignored this important common-sense act for too long, and we believe the time to take action to strengthen the RFA is now.

Vice President Gore's National Performance Review (NPR) examined agency compliance with the RFA. After a careful study, the NPR concluded that judicial review of the RFA was necessary, and made this its number one recommendation for the Small Business Administration.

Throughout the fourteen years since the RFA became law, the House and Senate Small Business Committees have held oversight hearings on RFA implementation. Each of these hearings has led us to the conclusion that the only way to force regulatory agencies to start complying with this important law is to provide for judicial review.

You have already indicated your support for strengthening the RFA by cosponsoring H.R. 830. We ask that you continue support by signing Discharge Petition #19, so that this legislation may be debated and voted on by the full House.

Your small business and local governmment constituents will thank you for your support. If you have any questions, please contact Eric Nicoll in Representative Tom Ewing's office at 225-2371.

Sincerely,

Air Conditioning Contractors of America.
American Association of Nurserymen.
American Boiler Manufacturers Association.
American Portland Cement Alliance.
American Road & Transportation Builders Association.
American Small Business Association.
American Subcontractors Association.
American Trucking Associations.
Associated Builders and Contractors.
Associated General Contractors of America.
Associated Landscape Contractors of America.
Associated Specialty Contractors.
Automotive Parts & Accessories Association.
Automotive Parts Rebuilders Association.
Automotive Warehouse Distributors Association.
Business Advertising Council, Inc.
Council of Fleet Specialists.
Florist's Transworld Delivery Association.
Independent Business Association of Illinois.
Independent Electrical Contractors, Inc.
International Council of Shopping Centers.
International Dairy Foods Association.
Mason Contractors Association of America.
Mechanical Contractors Association of America.
National Aggregates Association.
National Association for the Self-Employed.
National Association of Manufacturers.

National Association of Plumbing, Heating and Cooling Contractors.
National Association of the Remodeling Industry.
National Association of Towns and Townships.
National Association of Wholesaler-Distributors.
National Electrical Contractors Association.
National Electrical Manufacturers Association.
National Federation of Independent Business.
National Glass Association.
National Insulation and Abatement Contractors Association.
National Pest Control Association.
National Ready Mixed Concrete Association.
National Restaurant Association.
National Roofing Contractors Association.
National Small Business United.
National Society of Public Accountants.
National Stone Association.
National Tooling and Machining Association.
National Utility Contractors Association.
Northeast Texas Nursery Growers.
Painting and Decorating Contractors of America.
Professional Lawn Care Association of America.
Resilient Floor Covering Institute.
Sheet Metal & Air Conditioning Contractors' National Association.
Smmall Business Exporters Association.
Small Business Legislative Council.
Society of American Florists.
Texas Association of Nurserymen.
The Refractories Institute.
The Society of the Plastics Industry, Inc.
U.S. Chamber of Commmerce.

TRIBUTE TO JEFFERYSON ALEXANDER BARNES

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. TOWNS. Mr. Speaker, "Jeff" Barnes was born on November 11, 1945, in Kingston, Jamaica. He attended Kingston College and began his broadcasting career at the Jamaica Broadcasting Corp. [JBC] in 1964. He was recognized nationally in 1965 as a television and radio broadcaster. In 1964 and 1965 he was the national champion in the Jamaica festival speech competition. He later worked at Radio Jamaica until 1967 when he returned to the JBC and became a nationally recognized radio and television broadcaster.

In 1971 Jeff came to the United States and attended Pace University; however, he changed his major and matriculated at New York Institute of Technology. In 1976 he received a bachelor of fine arts.

Jeff quickly found his way back into broadcast communications and in 1972 he became an air personality on WWRL radio in Queens. In 1981 Jeff worked briefly at WHBI which is now WNWK. Later in 1981 he accepted his current position at WLIB. Mr. Barnes has a community-oriented program called "Positive Personality" and is known throughout New York City as a popular air-personality.

Mr. Barnes has been able to balance a career in law and in communications. He attended Brooklyn Law School and graduated in 1982 receiving a doctor of jurisprudence [J.D.]. In addition to working on the radio show he also has a law practice in the Bronx.

Mr. Barnes is married to Ethel McQueen and they have two sons. I rise to honor Mr. Jefferyson Alexander Barnes for his shining example as a pillar in the Brooklyn community.

WELCOMING PARTICIPANTS OF THE ULSTER PROJECT TO ARLINGTON, TX

HON. MARTIN FROST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. FROST. Mr. Speaker, I would like to acknowledge the Ulster Project, a most admirable program established to foster peace and understanding in a land where peace and understanding are so desperately needed.

The Ulster Project brings teenagers from Northern Ireland to the United States for 1 month in order to promote harmony and mutual cooperation. The group is composed of teenagers of both the Catholic and Protestant faiths. Each Irish teenager is placed with a host American family in which a teenager with similar interests resides. The hope is that while here, the teenagers will observe the peaceful interaction of American teenagers of different faiths. They can then take those positive experiences back to Ireland when they return.

Living in Arlington, TX, this summer are the following teenagers, listed with their hometowns: Michael Brendan Bell, Bangor; Seana Boyle, Bangor; Colin Braniff, Newtonards, Elaine Caughey, Newtonards; Elizabeth Carwford, Newtonards; Alastair Lindsey Demick, Newtonabbey; Andrew Kerr, Glengormley; George Kidd, Newtonabbey; Darragh Lewis, Carryduff; Janine Lyttle, Templepatrick; Robert McElhinney, Newtonabbey; Siobban Claire McElory, Holywood; Paul Milne, Ballygowan; Naomi Reid, Glengormley; Linsey Anne Robinson, Belfast; and Hilary Roberta Smyal, Glengormley. Mary Gallagher and Martin McKenna, both of Belfast, are the counselors accompanying the teenagers on this trip.

Again, I commend this project as a sincere effort to bring about a peaceful solution to a violent problem that has lasted much too long. The progress that Ulster has made, and will continue to make, is an encouraging example of the positive changes people can make when they learn the importance of working with, rather than against, one another.

CONGRATULATING LAWRENCE PENDON, GUAM'S ART CONTEST WINNER

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. UNDERWOOD. Mr. Speaker, as you and many of our colleagues may have already noticed, the subway to the Capitol has been given new life due to the displays generated by this year's art competition. Already in its 13th year, the Congressional Arts Caucus, as always, yielded some of the best work produced by the youth of America. Through this collection of artworks, we gain insights regarding our youth's abilities, perceptions, and aspirations. We must also bear in mind that through these subtle hints given by our youth—our Nation's lifeblood—we could foresee the path that our country's destiny will take in the future. I am glad to say that, after examining this year's artworks, we see a bright and optimistic picture.

Guam's entry this year was submitted by Lawrence Pendon. Soon to be entering his senior year, Lawrence hopes to receive a scholarship and major in art at the Los Angeles University of Arts and Crafts. Encouraged by his teacher to join the competition, Guam's budding artist emphasized the theme of "Progress through Education" in his painting. His collection of figures shows the educational process from the very basics interwoven with island culture. The obvious results: beauty, harmony, success, and happiness.

I would like to congratulate Lawrence, his mother, Rose Pendon, his art teacher, Mrs. Zucker, and all of America's young artists for their commendable efforts, brilliant imagination, and admirable skills. I would also like to urge them to keep up the good work knowing that this Nation expects nothing less of them.

IN HONOR OF MEGAN M. MOORE

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. STARK. Mr. Speaker, today I would like to take a few minutes to recognize Miss Megan Moore's outstanding academic accomplishments, culminating in her selection as 1 of the 120 presidential scholars for 1994.

Through the years, Megan has distinguished herself as an stellar student and committed community volunteer. Her academic activities have ranged from attending the 1993 Research Science Institute at MIT, where she wrote a treatise on the population dynamics of topologically distributed systems, to cultural exchanges in Japan and France. Megan has been recognized with scholarships among various departments of her high school in areas such as social studies and science. In 1993, she was accepted to UC Berkeley's Accelerated High School Student Program and was a finalist in the Telluride Association Summer Program.

Her talents also include the field of music, where she has established herself as a principal cellist in the Youth Orchestra of Southern Alameda County and as a student at the San Francisco Conservatory of Music.

She also has a gift for sports. She has set records within her swimming league for the 50-yard breaststroke, 50-yard backstroke, and 100-yard individual medley. She has excelled in cross-country running, competing in regional and State championships.

Megan has worked equally hard to give back to her community. In the summer of

1991, she served as a volunteer at a local public library; from 1991 to 1992 she served in a local animal shelter, and during 1992–93 she volunteered at Kaiser Hospital in Walnut Creek, CA in the maternity and emergency room departments.

On July 1, 1994, Megan will be honored at an afternoon ceremony for the presidential scholars and their teachers at the White House, during which President Clinton will present her and her colleagues with medallions signifying their accomplishments. I would like to join with those who have recognized Megan for her lifelong commitment academic study and community service and her outstanding abilities as artist and athlete.

Megan will be attending Williams College this fall and will be missed by all of her friends and advisers that she leaves behind. I wish her much happiness and success in all of her future endeavors.

A TRIBUTE TO JIM GANULIN

HON. CALVIN M. DOOLEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. DOOLEY. Mr. Speaker, I rise today to recognize and honor Jim Ganulin, a personal friend of mine and a man whose efforts have been crucial in making the San Joaquin Valley the most fertile agricultural land on Earth. Jim is retiring July 14 after 28 years of service to the Westlands Water District.

For the past 17 years, Jim has been general counsel to Westlands, and has also served as assistant general manager to the district, a district which about equals the State of Rhode Island in area.

Jim joined Westlands when it was still in its formative stages and helped build it into one of the largest water-delivery systems in the world.

He was a key participant in the negotiations that led to the Reclamation Reform Act of 1982 and the subsequent development of acreage limitation rules and regulations, and has since participated in a number of legislative activities, including most recently, negotiations for the Central Valley project Improvement Act of 1992.

Jim has ably represented Westlands in numerous contractural and legal negotiations with the United States. His most memorable case was, perhaps, the Barcellos case, which resulted in the reaffirmation of Westlands' contract with the United States.

He has also served the district by serving on the board of directors of the Association of California Water Agencies and on the resolution committee of the National Water Resources Association.

He served his country ably, retiring as a lieutenant colonel in the Air National Guard after 20 years of service.

He has also served his community as a member of the board of directors of St. Agnes Hospital in Fresno, CA, and as a member of the Fresno Rotary.

Jim Ganulin has spent the past 28 years earning our respect in his work. He is equally deserving of our respect in his retirement. Mr. Speaker, please join me and my colleagues in recognizing Jim Ganulin.

TRIBUTE TO CHAD L. LAUBENTHAL

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. GILLMOR. Mr. Speaker, I would like to take this opportunity to recognize an exceptional young man from my district who has recently accepted his appointment as a member of the Class of 1998 at the U.S. Air Force Academy.

Chad L. Laubenthal graduated Ottawa-Glandorf High School after 4 years of outstanding academic achievement as well as extracurricular involvement. While in high school Chad distinguished himself as a leader among his peers. This past year, he has been attending the New Mexico Military Institute in Roswell, NM.

Mr. Speaker, one of the most important responsibilities of Members of Congress is to identify outstanding young men and women and to nominate them for admission to the U.S. service academies. While at the Academy, they will be the beneficiaries of one of the finest educations available, so that in the future they might be entrusted with the very security of our Nation.

I am confident that Chad has both the ability and the desire to meet this challenge. I ask my colleagues to join me in congratulating him for his accomplishments to date and to wish him the very best as he begins his career in service to our country.

TRIBUTE TO RICHARD B. WAIT

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. TOWNS. Mr. Speaker, I would like to bring to the attention of my colleagues the outstanding work done by a leader in my congressional district, Dr. Richard B. Wait.

Dr. Wait was raised in Montclair, NJ. He went to St. Lawrence University in Canton, NY, and received his B.S. After receiving his undergraduate degree he went to the University of Vermont for 12 years and earned his M.D. and Ph.D. While in Vermont, Dr. Wait completed his surgical training at the Medical Center Hospital of Vermont.

In 1983, Dr. Wait came to Brooklyn as an attending surgeon at Kings County Hospital Center and assistant professor of surgery at the State University of New York Health Science Center at Brooklyn. Within a few years he moved up to active director of surgical research, chief of surgical oncology and associate residency program director. He was named professor of surgery at SUNY Health Science Center as well as chief of surgery at King's County Hospital.

Throughout the years Dr. Wait has been the recipient of several research grants from the National Institutes of Health. Dr. Wait has authored scientific articles in the leading medical journals, in addition, his work is included in various book chapters.

Currently, he is the president of the Brooklyn Surgical Society and the University Physicians of Brooklyn. In addition, Dr. Wait has received his certification from the Fellow of the Americans College of Surgeons.

Dr. Wait and his wife Mary have been married for 22 years and have three children. I would like to acknowledge the significant medical contributions of Dr. Richard B. Wait to the Brooklyn community.

TRIBUTE TO RICHARD GLOVSKY

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. FRANK of Massachusetts. Mr. Speaker, in the February/March issue of Frontline, the newsletter of the Anti-Defamation League, a profile appeared describing the extraordinary work that Richard Glovsky has done on behalf of the principles of an America in which all of us are judged on our merits, and which prejudice of various sorts does not poison our lives. Dick Glovsky, as the article demonstrates, has had a long career in a fairly short time on behalf of a variety of good causes. As the immediate past chairman of the New England Regional Board of the ADL, Dick Glovsky was an exemplar of a citizen who fights to protect the rights of his own group, not by diminishing the rights of others but by respecting and helping enlarge them as well. Richard Glovsky used his legal talents and other skills in the fight against antisemitism while he was simultaneously engaged in defending the rights and liberties of others, and in particular in helping preserve strong ties between the Jewish and African-American communities in New England. I have been privileged to enjoy the friendship, advice and counsel of Dick and his wife Nancy Korman for many years, and I want to share this article with my colleagues to emphasize the continued importance of dedicated volunteers like Richard Glovsky, and to show that those who argue that religious and ethnic groups can only protect themselves at the expense of others are completely wrong. We all complain that the news is dominated by the negative. I am delighted to counteract that trend by sharing with my colleagues a very important example of the positive in intergroup relations.

RICHARD GLOVSKY: A MAN WHO LEARNED TO APPRECIATE BEING DIFFERENT

Richard Glovsky, the immediate past chairman of the ADL New England Regional board, traces his lifelong commitment to civil rights to an early childhood illness that left him with a hearing deficit. "It was horrible," he said, recalling the unmerciful teasing of his classmates when a hearing test revealed that he was deaf in one ear. As a result, he bonded with other children with disabilities. His best friend in those years was a retarded child and he observed how cruelly his friend was treated by other children. "My disability paled in comparison with his," he said. As he grew older, Dick said, he formed

friendships with African-Americans and saw connections between their experiences with discrimination and the unfair treatment people with disabilities encountered.

What else could he do but become a lawyer and specialize in civil rights? He is a graduate of Dartmouth College and Boston College Law School where he was an editor of the Law Review.

Dick Glovsky began his legal career with the U.S. Justice Department where he worked under now Supreme Court Justice Antonin Scalia. While in the Justice Department, he co-authored a comprehensive treatise on the impeachment of President Nixon and handled hundreds of cases on a wide variety of issues facing the U.S. government.

He was named chief of the Civil Division of the U.S. Attorney's office in Boston in 1978, a post he held for two years before entering private practice. He is very proud of the fact that he initiated the first affirmative civil rights litigation by the Federal government in Massachusetts, a case regarding housing discrimination. In 1983, he founded Glovsky & Associates, a law firm specializing in Federal and state civil rights matters, which has handled numerous precedent-setting civil rights cases.

His involvement with ADL began in the 1980's when he was chairman of the Newton, Massachusetts, Human Rights Commission. He worked on special projects with ADL professionals in Boston and in 1985 was asked to join the New England Regional Board, Prior to being named chairman in 1991, he served as vice chairman, treasurer and chair of the Public Affairs Committee. He is also a ADL National Commissioner and member of the National Executive Committee.

"It is not until you have the responsibility of being chairman," he said, "that you can appreciate how important the position is and how much it can be used to make the world better."

Deeply disturbed by the outbreaks of anti-Semitism and bigotry in this country and overseas, he says, "I'm not surprised easily but I have been startled by the number of incidents and the extent to which hatred and misunderstanding exist. You can go along thinking you've made progress with certain groups, and then there will be a serious incident that is devastating."

Being involved in Jewish communal activities is a Glovsky family tradition. Dick's grandfather—the first Jewish lawyer to practice on Boston's North Shore—was a B'nai B'rith officer and his father also was active.

Although his work with ADL has been his first priority, he is deeply involved with numerous other organizations. He is president of the Dartmouth College class of '69, which this year convenes its 25th anniversary reunion. He is finance chair for Attorney General L. Scott Harshbarger; a founder of The Wellness Community, a retreat for cancer patients established at the behest of the late comedienne Gilda Radner; an originator of For Love and Life, a wish organization for AIDS patients; and chairman of the Thomas J. Drinan Fellowship, an intern program for young attorneys.

His good works earned him the Hecht-Shaw Award from the Lena Park Community Development Center in 1992.

Dick and his wife, Nancy Korman, are the parents of four children.

HONORING "TOMB OF THE UNKNOWN SOLDIER" ESSAY CONTEST WINNERS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. GILMAN. Mr. Speaker, it is with great pleasure that I rise today to honor four outstanding students from Crispell Middle School in my district who were the winners of the "Tomb of an Unknown Soldier" essay contest. The contest asked the eighth graders why they would want to lay a wreath at the Tomb of the Unknown Soldier on behalf of the school. Although all of the essays received for the contest were excellent, the essays of Julie Nickerson, Harry Steinhilber, Robin Meade, and John Tobin were truly superb.

Mr. Speaker, I include the full text of the essays at this point in the CONGRESSIONAL RECORD as a tribute to these Crispell Middle School students:

Just going to Washington, DC, as an eighth grader is wonderful. Now the Crispell Middle School is allowed to lay a wreath on the Tomb of the Unknown Soldier. Now that is an honor!

Laying this wreath isn't just something anyone should do. It should be one who wants it for the right reasons. I wouldn't be laying this wreath for me it would be for all the families and friends that don't have any idea whether their grandparents, parents, siblings, spouses, or children are dead. It would be in dedication to the people that weren't getting the respect that they deserved until now. I know that if a member of my family or one of my friends went off to war and I never saw or heard from them again not one day would go by without thinking where and how they had died or if they are still living and being held prisoner.

Every day I make a decision about what I'm going to wear or how I'm going to do my hair, then when I sit and think about all the people who died to give me the freedom to make those choices myself and I can't give them the credit they deserve.

Then I stopped and asked myself why I feel it would be such an honor to place the wreath on the Tomb of the Unknown Soldier. So I thought about my father going off to war and I felt a hand around my heart. Then I imagined receiving news that he was missing in action and that hand around my heart started squeezing. Next my family and I received news his body was not recovered and possibly never will be. That hand was like a vise grip around my heart, squeezing so hard I could hardly breathe. I watched the sadness and despair encircling my family but there was always a glimmer of hope. Perhaps they were wrong. Maybe my father was not dead, perhaps he would walk through that kitchen door and pick me up and toss me in the air like he used to.

I imagine now that many years have passed and I have a family of my own. A son old enough to join the army. My father never walked through that door, never tossed me in the air, and his body was never returned to us. That hand is still around my heart not squeezing as hard or as tight, but still there.

So after my fantasy, I decided it's not only an honor for me to place the wreath, but an honor to all those soldiers, parents, grandparents, children, siblings, and spouses, who lived and suffered through the reality of my fantasy.

Fom this day on when I'm deciding what to wear and how to do my hair, I will also think about all the soldiers of the unknown tomb and their families and say a prayer.—By Julie Nickerson.

We live at a time when our men and women in the Armed Forces serve over seas and fight for freedoms that we hold dear to our heart.

Television brings the fighting into our living room and it becomes as common place as Nintendo. Unfortunately these are real men and women putting their lives on the line, not just for people at home to remain free but for the oppressed people of the world.

Many people die in war and are honored for their heroism.

In todays technology my generation tends to loose sight of history. Television shows it all, war becomes just another day.

I would like the honor of representing my school and place the wreath at the Tomb of the Unknown Soldiers. These Soldiers gave the great sacrifice, dying for their country. Unfortunately their names were lost. By placing a wreath on this tomb not only do we honor these great men, but all who died serving their country valiantly and those who continue to do so today.

In closing I would like to say, in placing this wreath, I feel it will help bring the reality of freedom and the importance of peace back into the foreground not only for myself but for my fellow students.—By Harry Steinhilber.

To place a wreath on the tomb of the unknown soldier in Arlington National Cemetery, in Arlington Virginia would be a great honor for anyone. The tomb, a simple structure made of white marble is engraved with the not so simple phrase, "Here rests in honored glory an American soldier known only to God."

The soldiers who were buried in the tomb are buried there for more of a reason than the fact that they were not able to be identified. They are buried there as representatives of all the people who lost their life fighting for our country. My first thought about the soldiers was they were just that, soldiers who gave their all for us, but when I thought about it longer the reality came to me. These people were more than soldiers, they were fathers, brothers, husbands, uncles, neighbors, and in some unusual cases mothers, and sisters. They were people who gave their own life to make better ones for others. I feel in giving a wreath in honor of them is like saying thank you for allowing me to be free, for allowing me to have friends of any color or race, and most all thank you for allowing me to be alive.

This is why it is so important to me to be chosen to have the great honor of placing the wreath on the tomb of the unknown soldier.—By Robin Meade.

One of the reasons I would like to bring the wreath up to the Tomb of the Unknown Soldiers is because it would be such an honor to represent my school in our nation's capitol.

I would feel like I was doing something for my country; I would have the honor to do something that our country's President does.

Another reason I would feel honored is because I have had grandfathers in WW II, uncles in Korea and my father was in Vietnam.

Ever since November 11, 1921, that monument has been there for all the soldiers in our country's wars who were never identified or found, somewhere their families can go to mourn in memory of their loved ones that were never brought back from fighting for their country.

Those are the reasons why I would like to bring the wreath from our school to the

Tomb of the Unknown Soldiers.—By John Tobin.

A BILL TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. YOUNG of Alaska. Mr. Speaker, I am pleased to introduce a bill to amend the Alaska Native Claims Settlement Act of 1971 at the request of Cook Inlet Region Incorporated [CIRI].

Congress enacted the Alaska Native Claims Settlement Act [ANCSA] in 1971 to address claims to lands in Alaska by its Eskimo, Indian, and Aleut Native people. Lands and other benefits transferred to Alaska Natives under the act were conveyed to corporations formed under the act. Alaska Natives enrolled to these corporations were issued shares in the corporation. Cook Inlet Region, Inc. [CIRI] is one of the corporations formed under ANCSA and has approximately 6,262 Alaska Natives enrolled, each of whom were issued 100 shares of stock in CIRI, as required under ANCSA.

ANCSA stock, unlike most corporate stock, can not be sold, transferred, or pledged by the owners of the shares. Rather, transfers can only happen through inheritance, or in limited cases by court decree. The ANCSA provisions restricting the sale of stock were put in place to protect Native shareholders from knowledgeable or unscrupulous transactions, and to allow the corporation to grow and mature in order to provide long lasting benefits to its shareholders.

The drafters of ANCSA initially believed that a period of 20 years would be sufficient amount of time for the restrictions on sale to remain in place. Therefore, the restrictions were to expire 20 years after passage of ANCSA on December 31, 1991.

As 1991 approached, bringing with it the impending change in the alienability of Native stock. The Alaska Native community grew concerned about the effect of the potential sale of Native stock. The Alaska Federation of Natives, a statewide organization representing the State's 90,000 Natives, spearheaded a legislative initiative to address the 1991 stock sale issue. Many of the Native corporations, including CIRI, actively solicited their shareholders' views on this critical matter, through meetings, questionnaires, polling, and formal votes. In 1987, 3 years prior to the 1991 restriction-lifting date, Congress enacted legislation which reformed the mechanism governing stock sale restrictions in a fundamental way. Under the 1987 amendments, instead of expiring automatically in 1991, the restrictions on alienability continue automatically unless and until the shareholders of a Native corporation vote to remove them. The 1987 amendments provided several procedural mechanisms to bring such a vote, including action by the board of directors and petitions by shareholders.

To date, no Native corporation has sought to lift the alienability restrictions. Fundamentally, this is because Native shareholders continue to value Native ownership of the corporations and Native control of the lands and other assets held by them.

CIRI has conducted a number of continuing surveys, focus groups, and special shareholder meetings to ascertain the views of its shareholders regarding the alienation restrictions on CIRI stock. Two results have consistently stood out in these assessments.

First, the majority of CIRI shareholders favor maintaining Native ownership and control of CIRI. These shareholders, whose numbers consistently register at the 70- to 80-percent level, see economic benefits in the continuation of Native ownership, and also value the important cultural goals, values, and activities of their ANCSA corporation.

Second, a significant percentage, albeit a minority of shareholders, favor accessing some, or all, of the value of their CIRI stock through sale of that stock. These shareholders include, but, are not limited to elderly shareholders who have real current needs, yet doubt that sale of stock will be available to them in their lifetime; holders of small, fractional shares received through one or more cycles of inheritance; non-Natives who have acquired stock through inheritance but without attendant voting privileges; and shareholders who have few ties to the corporation or to Alaska, 25 percent of CIRI shareholders live outside of Alaska.

Under current law, these two legitimate but conflicting concerns cannot be addressed, because lifting restriction on the sale of stock is an all or nothing proposition. In order to allow the minority of shareholders to exercise their desire to sell some or all of their stock, the majority of shareholders would have to sacrifice their important desire to maintain Native control and ownership to CIRI.

CIRI believes this conflict will eventually leave the interests of the majority of its shareholders vulnerable to political instability. In addition, CIRI recognizes that responding to the desire of those shareholders who wish to sell CIRI stock is a legitimate corporate responsibility. More importantly, CIRI believes that there is a way to address the needs and desires of both groups of shareholders, those who wish to sell stock and those who desire to maintain Native ownership of CIRI, so that the sale of stock will not compromise the "nativeness of the company, and will not jeopardize the economic future of the company for those who choose not to sell. The method embodied in the proposed legislation is one that other companies routinely use: the buying back its own stock. The newly acquired stock would then be canceled.

Mr. Speaker, I have discussed this bill at length with CIRI and am convinced this bill is the best and only option available for their shareholders to voluntarily sell their stock back to CIRI. I plan to distribute this legislation to the Department of the Interior, the State of Alaska, and all other Alaska regional corporations for official comments and to begin the process of reviewing the bill. I welcome all input with regard to this legislation.

THE GREAT CIRCUS FIRE

HON. BARBARA B. KENNELLY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mrs. KENNELLY. Mr. Speaker, 50 years ago, as the United States was immersed in war, the people of Hartford, CT, and surrounding towns looked forward to an opportunity to temporarily escape. The Ringling Brothers and Barnum & Bailey Circus was in town, with its clowns and animals and laughter and fun. And so, on July 6, 1944, almost 10,000 people crowded under the largest canvas tent in the world seeking a few hours of fun.

The show began flawlessly; first clowns and then trained lions and leopards thrilled the audience. But the day's joy was to be short-lived. As the highwire performers took their places, a spectator noticed a small flame burning a piece of the tent. A circus employee desperately tried to douse the fire with a bucket of water, but the effort failed. Before anyone could prevent it the flame shot up, fanned by the wind and buoyed by gasoline from a mixture that had been used to waterproof the tent. The circus band attempted to maintain calm by striking up "Stars and Stripes Forever." But many in the crowd panicked, as people rushed in all directions, frantically seeking a path to safety.

Witnesses later recounted stories of heat so great as to fuse coins, of people falling and being trampled, of terrible human tragedy. One mother emerged from the tent screaming for a child only to find that the child had reentered the inferno to search for her. She returned to the blaze and died.

Numerous heroes prevented the fire's toll from being even more brutal. A 13-year-old boy created a makeshift exit by slashing through the canvas. A man lifted his own child to safety and then remained in the tent to help others until he, himself, was overcome. Efforts by these and other brave souls saved many lives.

But the final count of the day's losses was nonetheless dreadful. The fire had taken only 10 minutes to reduce the entire tent to ashes, and after firefighters had doused the last embers, the bodies of 168 circus-goers were discovered, 1,200 others were injured.

Children comprised a disproportionate share of the casualties, including one young girl who, despite not being badly scarred by the fire, was not identified in the confusion of the following days. Her grave was marked only by her morgue number, and she became "Little Miss 1565." A picture of her quiet composure in death served as a haunting reminder of the terrible fire. So tragic was her fate that two policemen who were on duty in the morgue the night of July 6 kept her picture with them and several times a year placed flowers on her grave. So compelling was the case that even 40 years later a man not yet born when she died, fire investigator Rick Davey, was willing to spend years searching for her identity. In 1991, thanks to his efforts, she was identified as Miss Eleanor Cook.

Today, as we remember the fire of 1944, let us remember the strength of the community, the tireless efforts of firefighters, hospitals, and

volunteers who helped pull the Hartford area through such a terrible tragedy. Let us remember young Eleanor Cook and all the victims of the fire.

But let us also recognize the progress which has been made in the past 50 years toward improving fire safety and community preparedness. The fire safety laws which have been enacted in Connecticut and throughout the country have been inspired in no small measure by the tragedy in Hartford.

And let us recognize the brave men and women who lay their lives on the line every day as they fight fires in Hartford and across the Nation. We owe them a debt of gratitude which can never be repaid.

The Great Circus Fire of 1944 was a tragedy. Let us work to ensure it is not repeated.

TRIBUTE TO MR. CHARLES A. "CHUCK" STERLING

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. TOWNS. Mr. Speaker, I would like to bring to the attention of my colleagues, the outstanding work done by a great leader in my congressional district, Charles A. "Chuck" Sterling.

His success in life started early. Graduating with honors from Lake Forest College, he went on to play with the Chicago Cardinals professional football organization. After his playing days ended, Mr. Sterling went back to his studies and pursued a post-graduate degree in business, marketing, and advertising at Northwestern University.

He held positions in these areas for several corporate firms including Helene Curtis Industries and Johnson Publications. His biggest achievement in his professional career came as the founder of Saratoga Geyser Mineral and New York State Seal Water, two of the top successful bottled waters in the world. At that time, Mr. Sterling was the only African-American owner of a bottled water company.

Even with all of this success, Mr. Sterling has never turned his back on his community, especially the needy. Presently, he uses his talents and expertise as an advocate for the development of the Oceanhill, Bushwick, Bedford-Stuyvesant areas as chairman of the local development corporation [OBUSTY]. He is responsible for the commercial revitalization effort on the East Broadway commercial corridor.

His efforts toward community improvement can be seen in such projects as the reopening of the Saratoga Branch Library, the Bushwick Shadow Internship Program for school district 32, and the Mt. Paran/OBUSTY Share Food Program.

He also serves as the pro-bono executive director for the East Broadway Merchants Association, a board member and former chairman of the Bushwick Resource Coalition, and an adviser of several community-based organizations.

Among his numerous awards and recognitions, Mr. Sterling has been listed in "Who's Who Among Black Americans" and in the "Two Thousand Men of Achievement."

I hope my fellow colleagues will join me in paying tribute to Mr. Charles A. Sterling for excellence in entrepreneurial spirit, and in service to his community.

WALL STREET JOURNAL ARTICLE "ADVANTAGES OF EMPLOYER HEALTH PLANS ARE DISAPPEARING"

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. STARK. Mr. Speaker, Members' offices are getting lots of mail urging that companies of any size continue to be allowed to self-insure the health of their workers.

There is another side to company managed self-insured health plans. The following article from the June 17, 1994 Wall Street Journal spells it out.

ADVANTAGES OF EMPLOYER HEALTH PLANS ARE DISAPPEARING

(By Ellen E. Schultz)

Employees who have health coverage in the workplace usually consider themselves more fortunate than people who have to buy individual coverage on their own.

After all, they believe, group coverage is always cheaper, and they are automatically covered, regardless of their health problems. Right?

Not necessarily.

What few employees realize is that the difference between individual coverage and employer-provided group coverage has eroded profoundly during the past few years. Not only have most of the advantages of group coverage largely disappeared, but many employees risk losing not only their coverage, but their jobs. In the past, all a person had to do to join an employer's health plan was to fill out a form. All employees were in the same "pool," and all paid the same costs, regardless of health.

But as medical costs have climbed, employers have begun abandoning their own version of universal coverage (for their employees) and started adopting the same practices used by insurance companies when people apply for individual policies.

IDENTIFYING HEALTH RISKS

Like health insurers, more and more employers are engaging in "underwriting," which is the process of identifying the current and potential health risks of their employees. This usually involves requiring employees to take blood, drug, and urine tests, and a physical exam. In many cases, individuals are required to provide information about a family history of such things as heart disease, cancer and genetic disorders.

Many employers also ask about off-duty behavior, such as whether the employee rides a motorcycle, wears a seatbelt, participates in sports, has a happy marriage or gets enough sleep.

The employers use this information the same way insurers do: to exclude pre-existing conditions, to deny coverage or to charge higher premiums.

"Insurance companies for years have identified risks and charged more for them. The practice is just now finding its way to employers' group-health plans," says Kenneth Sperling, heath-care consultant for Hewitt Associates, in Rowayton, Conn.

SAVING MONEY

And no wonder. Underwriting by private employers is saving the companies billions of dollars by reducing claims. Those that buy coverage from insurance carriers pay lower premiums if they have fewer claims. Meanwhile, if the employer is self-insured, as are about 75% of large employers, each dollar saved is a dollar earned. And self-insured or not, all but the smallest employers must pay workers compensation premiums, which are lower if injuries are fewer.

A survey of 461,208 employees at private companies shows that 31% of employees had no medical claims, and another 50% had claims of less than $1,000. Another 14% of employees had claims ranging from $1,000 to $5,000.

The survey was conducted at the request of The Wall Street Journal by Medstat Systems, a medical-information firm in Ann Arbor; Mich. The survey was of a random sample of claims filed in 1991 by employees and dependents at self-insured companies in Medstat's proprietary database of more than 100 of the largest U.S. employers. Of the 461,208 employees, only 32 had big-ticket claims greater than $300,000.

"It's no secret that private employers 'cherry pick' healthier individuals using underwriting practices," says Arthur Caplan, director of the Center for Bioethics at the Universify of Pennsylvania

REQUIRING MORE INFORMATION

One way that employers are able to keep claims so low is that they can be more aggressive than health insurers in their underwriting practices. "The private sector can weed out claimants in the underwriting process with more impunity than any other provider of health insurance," says Dr. Caplan.

For one thing, they can force employees to provide far more information about their health and personal lives—as a condition of employment.

ConAgra Poultry Co. in Longmont, Colo., requires employees of the ConAgra Inc. unit to tell it what prescription and over-the-counter medications they are taking and to sign releases giving the company complete access to their medical records.

When benefits clerk Carmella Mares refused, she was fired. A spokesman for ConAgra says the company needed the information to ensure the accuracy of its drug testing and has no further comment.

Mrs. Mares, who as a Navy reservist is often randomly tested for drugs, says she was willing to take a drug test. But she thought the company was going too far, and sued. Says the former nun: "It's the principle of the thing." However, in late 1992, a federal appeals court in Denver ruled that employers can require employees to provide medical information.

"What makes this case extremely troubling is it's the first time the courts have upheld the employer's demand that an employee reveal the nature of their private illnesses," says Gilbert Roman, a lawyer in Denver with the American Civil Liberties Union. "It sets a dangerous precedent—that any employee can be fired if they refuse to turn over their medical records."

POWER TO HIRE, FIRE

In addition to compelling employees to provide more health information, employers can be more aggressive than insurers when it comes to shaping their "risk pools" because they have the power to hire and fire.

For example, Lockheed Aeronautical Systems Co., a subsidiary of Lockheed Corp. in Marietta, Ga., recently announced it

wouldn't hire smokers. Turner Broadcasting System Inc. in Atlanta hasn't hired smokers since 1986.

Thirty percent of occupational physicians who responded to a survey by the University of Chicago's hypertension clinic said their companies wouldn't hire someone with high blood pressure. "I was surprised by the ubiquity of the responses and the arbitrary nature of how it was used," says Dr. Michael B. Murphy, a professor of clinical pharmacology, now at University College in Cork, Ireland, who conducted the survey.

The findings are similar to a report by the U.S. Congress Office of Technology Assessment in 1991, in which 42% of the companies surveyed considered a job applicant's health-insurance risks as factors in determining their employability. Further, more than half of the personnel executives interviewed considered it acceptable to use pre-employment health exams to identify applicants who might be medically expensive.

It also is routine for employers to screen job applicants to see if they have had workplace injuries. Sixty-four percent of employers surveyed by benefits consulting firm Tillinghast Inc. said they use pre-employment screening of workers' compensation claims.

While the Americans with Disabilities Act makes it generally illegal for employers to consider an employee's health as a condition of employment, it is virtually impossible for a job applicant to know whether the prospective employer considered health information, which is widely available in databases and often in personnel files.

The consequences of this trend are that as private companies seek to hire younger, healthier employees with healthy dependents, those who are older, sicker, and have children with medical or emotional problems will find themselves clustered at nonprofit and government jobs, or at smaller businesses that have no coverage. "There's been a lot of traffic of higher risk employees from the private sector into public-sector jobs," says Dr. Caplan.

Even healthy employees are affected by the underwriting process. Virtually all employers hire benefits consulting firms and medical cost-containment companies to analyze the claims filed by employees, to tell employers what types of claims are costing the most money.

Armed with this knowledge, employers are shifting more costs to employees, by redesigning their benefits packages to increase co-payments and deductibles.

They also are restricting access to care, by excluding pre-existing conditions and other conditions, and by introducing caps on coverage. For example, employers with many professional married employees in their 30s and 40s are dropping fertilization treatment and capping what they pay for Caesarean deliveries.

Further, many employers are creating different risk pools among their employees. Those who smoke, are overweight, have high blood pressure or other health risks pay higher premiums.

A TRIBUTE TO FRIENDSHIP HEIGHTS ON ITS 80TH ANNIVERSARY

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mrs. MORELLA. Mr. Speaker, I would like to take this opportunity to congratulate the Village of Friendship Heights, MD, on its 80th anniversary. Friendship Heights is aptly named, a fine model of an American community epitomized by its sense of community, its special spirit, and its dedication to community service. The village is widely known for its beautiful village center: a focal point for the arts, for civic discourse, and for continuing education for all its citizens. It is also recognized for the pastoral Hubert H. Humphrey Park.

Friendship Heights was incorporated as a special taxing district in 1914 and, in 1973, residents received the right to vote in village elections. Friendship Heights has always been an informed community; its residents have remained knowledgeable about legislation and other issues affecting the community.

At this year's celebration on July 4, Jane Lawton will receive the Elizabeth Scull Outstanding Community Service Award. Ms. Lawton, currently serving as special assistant to County Executive Neal Potter, has devoted much time and energy to the people of Montgomery County. I would also like to extend my congratulations to Dr. Alfred Muller, Mayor of Friendship Heights, and to the members of the Village Council: Frank Valeo, Melanie Rose White, Saul Goldberg, Patricia Forkan, Martin Kuhn, and Eric J. Ellman, as well as to the Village Manager—Leslie Strathmann. They have provided outstanding leadership to the village.

If history is any guide, the people of Friendship Heights will continue to enrich Montgomery County and the State of Maryland through their commitment to community participation and service. I am proud to serve as their Representative in the Congress of the United States.

HEALTH CARE REALISM

HON. DAVID R. OBEY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. OBEY. Mr. Speaker, Avrum Lank, business columnist for the Milwaukee Sentinel, recently wrote a column which makes clear that a requirement for universal health coverage is the key to reforming our flawed health care system.

His column is sensible, frank, and blunt. I commend it to any Member of Congress who believes we can achieve true reform without a requirement for universal coverage.

[From the Milwaukee Sentinel, June 27, 1994]

MANDATES KEY TO REFORMING FLAWED SYSTEM

(By Avrum D. Lank)

We don't always do what is good for us, or even what the law requires.

Those truisms should be remembered as Congress heads into the homestretch of the health care insurance reform debate this week.

One of the biggest bones of contention in the discussion is whether employers should be required to buy insurance for their workers, or whether the workers should be required or encouraged to do so themselves.

This is a silly argument.

Unless there is a universal employer mandate to provide insurance, the reform will be a sham.

If you find that hard to believe, consider automobile insurance.

In 41 states and the District of Columbia, not including Wisconsin, there is an individual mandate to buy auto insurance.

To register and drive a car you must have insurance. That's the law.

But in all of those states, coverage is far from universal, according to a February report by the Insurance Information Institute, New York City.

In Maine, for example, 15% of drivers go without insurance.

In Florida, 31% of drivers flout the law, in Washington State, 8% to 12%.

The report notes:

"Many people are uninsured not out of a desire to defy the law but because they lack the financial assets to comply."

It continues:

"The National Association of Insurance Commissioners, which studied the issue of compulsory auto insurance, suggests that strict enforcement of the law, with mandatory and 'signficant' fines for first-time offenders, may be the key to lowering the uninsured motorist population."

On the evidence of automobile insurance then, an individual mandate to buy health insurance will fall to provide anything near universal coverage unless Congress wants to go to the extreme of sending violators to jail or fining them severely.

Now you might say, "so what."

If a person does not want to buy health insurance, that is their choice. In this nation, no one should be forced to spend money for something he does not want.

But that viewpoint is wrong, because in the United States today if an uninsured person gets sick, he will get treatment and everyone else will get the bill.

Again a comparison to automobile insurance helps in understanding this.

Many people who buy automobile insurance pay an additional premium for so-called "uninsured motorist coverage." This protects them in case they are involved in an accident with someone who has chosen not to have automobile insurance.

This subsidizes uninsured drivers in the same way health insurance premiums are raised to pay for treatment of uninsured patients. It is just that the extra health insurance premium is not labeled "uninsured patients coverage."

In both cases, the responsible members of society are paying for the choices of those less responsible.

The only way to restore fairness is to require universal coverage.

But we have seen with automobile insurance that just requiring universal coverage is not sufficient to right this wrong.

Given the mandate to buy their own auto coverage, people still drive around uninsured.

So compulsion is required.

And in our nation, we compel compliance with many things through the work place.

Income tax withholding is the best example I can think of.

There are other advantages to having employers involved in providing health insurance for their workers.

Per capita, group policies are less costly to administer than are individual policies. And businesses are in a better position to negotiate prices than are individuals.

So let Congress argue over other parts of the plan—how much to subsidize premiums of less-profitable businesses, how much workers might be asked to contribute directly to premiums, exactly what a policy must cover.

But decide quickly that a universal employer mandate must be part of any real reform of the health insurance system.

Because we don't always do what is good for us, or even what the law requires.

Sometimes, we must be compelled.

HUMAN RADIATION EXPERIMENTS

HON. JOSEPH P. KENNEDY II

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. KENNEDY. Mr. Speaker, the Clinton administration and the Department of Energy Secretary Hazel O'Leary, in particular, are to be commended for launching their investigation of the Government's role in the human radiation experiments which started in the late 1940's. The Advisory Committee on Human Radiation Experiments has been established to investigate these concerns and consider the need for compensation to the victims.

In my efforts to find an equitable settlement for those unjustly exposed to radiation during these experiments, I have been presented with a proposed compensation model, "Calculating Compensation for Radiation Victims Based on a Retrospective Probability Analysis," by Robert Gary, one of the most knowledgeable and experienced litigators in the field. Mr. Gary has represented approximately one-third of all radiation related cases tried in the United States, including the class-action suit of 200,000 service personnel exposed to atomic radiation at the Nevada Test Site in the 1950's, and 600,000 people from the four counties surrounding Three Mile Island during the nuclear accident there.

From his extensive study of the issue, Mr. Gary has devised the following model, which I recommend for consideration by my colleagues and members of the Advisory Committee on Human Radiation Experiments.

CALCULATING COMPENSATION FOR RADIATION VICTIMS BASED ON A RETROSPECTIVE PROBABILITY ANALYSIS

(By Robert Gary, Esq.)

Let us examine first the concept of a doubling dose, since that is the way the biological effects of ionizing radiation are currently measured and described. A doubling dose is that amount of radiation which will double the natural incidence of a certain kind of harm in a population. For example, if we have 100 test subjects and the natural incidence of cancer is 17%, then if we expose that population to one doubling dose of radiation, instead of getting 17 cancers in that population, over time, we will get 34 cancers in that population over time.

If the doubling dose is 150 rems of radiation, then one doubling dose will double the baseline figure for the occurrence of the harm to which that doubling dose applies. A second doubling dose would add another increment equal to the baseline figure. For example, 300 rems, two doubling doses, would produce an occurrence level of 34 + 17 = 51, and 450 rems, three doubling doses, would produce an occurrence level of 34 + 17 + 17 = 68. If there were no doubling doses, i.e. no special radiation exposure, there would be an occurrence level of 17 which is the natural or background incidence.

The biological effects of special radiation exposures have traditionally been expressed in terms of the probability of future harms occurring, or the number of future harms that can be expected to occur, as results of a specific known level of special radiation exposure. For example, if 100 mice are exposed to 150 rems of radiation each, in a special exposure, then 34 of them will develop harms consistent with radiogenic origin, instead of the 17 that would have done so without the special radiation exposure. We are looking forward from the point of the known special radiation exposure, and projecting anticipated effects in the future caused by the known special radiation exposure. This is known as a prospective probability analysis since it is looking forward from the point of exposure.

But the question that Congress has to address is: Is this patient's condition the result of a special radiation exposure he/she is known to have undergone in the past?" This requires a retrospective probability analysis projecting backward from the known present harm to the known past radiation exposure and asking, "What is the probability of causal connection?"

For purposes of the argument presented here, we must know that the patient received a special radiation exposure, and we must know the number of rems received. Given these variables, a retrospective probability analysis will help us to fairly compensate radiation victims.

We start with a thought experiment. The kind of harm that will be considered is major birth defects. The baseline incidence for these is approximately 10%. Scientific papers including The Biological Effects of Ionizing Radiation Report, (1972 Edition and all subsequent editions, suggests that the doubling dose for major birth defects is approximately 150 rems. If a human population is exposed to 150 rems, and each member becomes one of a pair of parents, (assuming the other parent is not part of the exposed population); and if each pair of parents has one child, we would expect 20 children with major birth defects instead of 10. In other words the occurrence of the specific harm, major birth defects, is doubled, by the administration of the doubling dose to one parent in each parent pair.

The child is the one that comes before the Judge or the Congressperson, and the question is, "What is the probability that the child's birth defect was caused by the special radiation exposure his/her father or mother received?"

The doubling dose was administered, in this thought experiment, so the incidence went up from 10 to 20. One of those 20 is in the office. The subcategories within the 20, those who would have had a major birth defect without the special exposure of their parent, and those that have the defect because of the special exposure of their parent are completely indistinguishable. They are indistinguishable in principle, unalterably, and because of the laws of quantum physics. But plainly the probability is P=.50 that our patient's major birth defect was caused by the special radiation exposure. This will always be true if exactly the doubling dose is received. Half of the 20 were caused by the special radiation insult, so, ceteris paribus, each of the 20 has a 50% chance of being a victim of that special radiation insult.

Prospectively, right after the exposure, each exposed parent only had a P=.20 probability of having a child with a major birth defect. How can the prospective probability be P=.20 while the retrospective probability is P=.50? The prospective probability is based on just doubling the baseline incidence (10 goes to 20 so P=.20) but the retrospective probability is based on the attributable proportion out of the known injured population (10 out of 20 so P=.50).

Let P_b represent the baseline probability.

Let P_r represent the part of the total risk as elevated by a special radiation exposure which is attributable to that special radiation exposure.

Let P_t represent the total risk as elevated by a special radiation exposure.

It follows that:

$P_t=P_b + P_r$

and

$P_r=P_t - P_b$

In general P_t may be calculated using the following formula: $P_t=P_b\ [(100/D)(x)+100]\div 100$.

Where x = the number of rems in the special radiation exposure, and

Where D = the doubling does for the kind of harm being considered

Say the client is a cancer case and was exposed to 75 rems.

P_b for cancer is about .17 (according to the literature), and doubling dose will be taken as 150 rems for purposes of this calculation. We want to find P_c which we'll call the probability of causal connection. $P_c=P_r/P_t$.

So we start out finding P_t: $P_t=.17[(100/150)(75)]+100=.2550$

Now we find P_r:

$P_r=P_t - P_b$

$P_r=.2550 - .1700=.0850$

Now, P_c or the probability of causal connection, is the ratio between the risk attributable to the special radiation exposure and the total risk after elevation by that special radiation insult.

$P_c=P_r/P_t$

$P_c=.0850/.2550=.3333$

So the answer is that this patient has a probability of .3333 that his/her cancer was caused by the special radiation exposure specified for this case.

A quick table of P_c values might be helpful. All values not included on the table can be calculated using the formula and the method outlined.

x	P_c
10	.0625
50	.2500
100	.4000
150	.5000
300	.6667
400	.7273
450	.7500

Intuitively it checks out that the doubling does yield a P_c of .5000, and we can see that two doubling does (300 rems) would create an attributable proportion of 2 out of 3 parts or .6667, similarly 3 doubling doses would result in an attributable proportion of 3 out of 4 parts of .7500. We don't need the formula for these obvious cases, but the formula is useful for the less obvious cases like 10 rems or 400 rems.

The literature is not always consistent about what the doubling dose is for a particular kind of harm. If we assume 150 rems

is the doubling dose the expression in the P_t equation is (100/150)x, but if we took 50 rems as our doubling does the P_t equation would have (100/50)x, and if 5 rems were the doubling dose it would be (100/5)x. Similarly if 500 rems were the doubling dose it would be (100/500)x.

Apart from radiation, there are other toxic agents that have a linear or doubling dose relationship to the harms they cause. These equations will work for all of them and provide compensation guidelines for clients injured by any toxic agent within this broad category which may include Agent Orange, Sarin, and Isomethylcyante.

In the end we want to convert our P_c value into dollars because that's what the compensation client is asking for. This is done by taking the Fair Jury Value (FJV) of the injury, assuming no question about causation, and simply multiplying it by the probability of causal connection P_c.

We put proximate cause on a sliding scale. The question is not, "Is causation more probable than not?" but rather, "How probable is causation?" The more probable causation is the more compensation the alleged victim gets. The darkness that surrounds the causation issue in radiation cases, and which must do so because of the rules of quantum physics, is left unobscured. We will never know, nor can we ever know, who is really a victim of a special radiation insult (unless its an immediately lethal dose). What we are looking for is fairness. We want to provide compensation, but not clean out the Federal Treasury. We want to pay victims, or possible victims, but not provide a windfall to everyone who has been exposed to any amount of any toxic agent. Most important, we want to avoid sending real victims away emptyhanded because they haven't been able to meet the "more probable than not" standard of the *Restatement of Torts, 2d*. The Agency or organization releasing radiation or other toxins should take responsibility for the uncertainties that are inevitably connected with those materials or physical processes. It's not fair to expose people to radiation and then say that the uncertainties which cannot in principle (because of quantum realities) be overcome are a bar to their recovery of damages. The "more probable than not" standard would send about half of the legitimate radiation victims away emptyhanded. The releaser of the radiation would get a windfall by not having to pay any of the claims for lesser radiation exposures when it is quite possible that among those claims are real victims that actually get cancer and die.

It is appropriate to note that Fair Jury Value (FJV) means just that. It's not just medical special damages, but it can include pain and suffering, loss of consortium, loss of earnings, and even an adjustment to compensate for the moral circumstances under which the exposure occurred. An innocent and hapless victim of medical experimentation that violates international law and all peremptory norms of human conduct (i.e. the Nuremburg and Helsinki Accords), might get more in a Fair Jury Value than a similarly injured worker in a nuclear power plant or radiation laboratory. FJV is what fair jury, or administrative panel, would or does award in the state where the claimant makes his/her claim. There legitimately might be federal guidelines for FJV's in cases against the government where the entire compensation scheme arises out of a single piece of Federal legislation.

TRIBUTE TO DR. STEPHAN L. KAMHOLZ

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. TOWNS. Mr. Speaker, I rise today to pay tribute to Dr. Stephan L. Kamholz a foremost expert in his field, pulmonary medicine. He is applying his skills for the good of his community.

Dr. Kamholz was appointed chairman of the department of medicine of the Health Science Center at Brooklyn in October 1993. He has served on the faculty since 1986 and was named a professor of medicine in 1988. His will deserved appointment as chairman is the culmination of 8 years of service.

Prior to assuming the chairmanship, Dr. Kamholz served as chief of the division of pulmonary medicine at University Hospital and Kings County Hospital Center, and was academic chief of pulmonary medicine at the Brooklyn VA Medical Center. He has also been director of the internal medicine training program since 1991.

Dr. Kamholz is also the author or coauthor of more than 60 scientific articles, as well as numerous abstracts and textbook chapters. He is a fellow of the American College of Physicians, the New York Academy of Medicine, and the New York Society for Thoracic Surgery. He is a member of the association for Academic Minority Physicians, as well as a member of the steering committee of the clinical pulmonary medicine section of the American College of Chest Physicians.

Dr. Kamholz has also been active in direct patient care at New York City Health and Hospitals Corp. institutions including Morrisania City Hospital, North Central Bronx Hospital, and Brooklyn's own Kings County Hospital Center where he has been practicing for the past 8 years.

After earning his bachelor of arts degree from New York University in 1968, he received his doctor of medicine degree from New York Medical College in 1972. He completed his training as an attending physician at the Montefiore Medical Center in internal medicine and pulmonary disease and was an associate professor of medicine at Albert Einstein College of Medicine.

Dr. Kamholz has shown incredible range and expertise in the attending administrative, and academic aspects of medicine. Countless numbers of patients have felt his healing touch. It is with great pleasure that I ask my fellow members to join me in commending Dr. Stephan L. Kamholz, a man dedicated to his work.

JOSEPH COTCHETT: ONE OF THE NATION'S 100 MOST INFLUENTIAL LAWYERS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. LANTOS. Mr. Speaker, I rise to bring recognition to Joseph Cotchett of Burlingame, CA, on the occasion of his being named one of the "Nation's 100 Most Influential Lawyers," according to the April issue of the National Law Journal. The following article from the Hillsborough Boutique & Villager outlines the career that has brought national attention to this champion of the little guy over the big guy. This national attention only confirms what I know personally, that Joseph Cotchett is an exceptional lawyer and a credit to his profession. I offer him my most heartfelt congratulations.

[From the Hillsborough Boutique & Villager, June 22, 1994]

LOCAL ATTORNEY MAKES JOURNAL'S LIST OF AMERICA'S 100 MOST INFLUENTIAL LAWYERS

(By Heather Hayes)

Joseph Cotchett is one of the "Nation's 100 Most Influential Lawyers", according to the April issue of the National Law Journal. He and 99 other attorneys were selected from a field of 900,000 in the United States.

Cotchett, of Cotchett, Illston & Petrie in Burlingame, has had a law career spanning 30 years, during which he has played a role in some of the most notorious cases in recent history.

He is the man who helped put Charles Keating behind bars in the Lincoln Savings & Loan Association scandal. He represented the animals killed in the Exxon Valdez oil spill.

Cotchett has been heralded as defender of the underdog, something he said he learned growing up in New York. He said he tends to favor the little guy over the big guy.

"I really enjoy that. While learning on the streets, you quickly learned who the bullies were," Cotchett said.

"It was a competitive society, A very, very competitive society," he said of life on Long Island.

Growing up, he always tried to rescue his friends from bullies, which he said had a hand in his preparation for a career in law.

"On the playgrounds of New York, it became quite a trick. You had to do a lot of fast-talking, and that eventually evolved into the law," he recalled.

Cotchett mourns the lack of ethics residing in government and big business, and revels in the fact that our society allows such scrutiny of public officials. He recently brought an action against Pacific Gas & Electric Co. on behalf of all the counties in California, charging the mammoth company with price-fixing.

Cotchett graduated from California Polytechnic, San Luis Obispo as an engineering major in 1959. In 1964, he graduated from University of California, Hastings College of Law.

In 1964, he moved to Millbrae and has lived on the Peninsula ever since.

He said deciding to be a lawyer never came to him in a blinding flash. He realized engineering was "excellent background for law," as it taught him to be a precise thinker. Eventually, he realized what he wanted to do.

"It became clear I was more people-oriented than slide-rule oriented," Cotchett said.

As for the future, Cotchett doesn't seem to have much interest in a judgeship, a move common for renowned lawyers.

"I'm not sure I would be a good judge. I'm too much of an advocate to be good. You have to be less aggressive than my personality," he said.

THE PASSING OF EDWARD "POP" STEWART

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. GILMAN. Mr. Speaker, it is with sadness that I rise to inform our colleagues of the passing of a dedicated Capitol Hill employee and a friend to all.

"Pop" Stewart spent his entire life serving others. He treated all as equals, whether they were heads of state or just an ordinary citizen. His career began in the 1920's at the White House as a waiter and finished in the House Office Building catering operation where he had worked since the late 1960's. It is from his work in the catering service that many of us came to know and appreciate this kind, gentle man.

He was always optimistic and cheerful about life. "Pop" constantly offered kind words and compliments to anyone who was fortunate enough to come into contact with him.

A former New Yorker, "Pop" Stewart was dedicated to his community where he was a lifetime member of the Pigskin Club of Washington, the Elks Club, AARP, and the NAACP. As a senior Mason, he was the oldest living member, with over 60 years of service, of Lodge 20, Jefferson Lodge in Charlottesville, VA.

I invite my colleagues to join in extending our heartfelt condolences to "Pop" Stewart's sister, Juanita Stewart Hargrove, his daughter, Annie Harris, and his 8 grandchildren, 21 great grandchildren and 2 great great grandchildren.

TRIBUTE TO WILLIAM C. MOHRMAN

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. HYDE. Mr. Speaker, today, I want to recognize the extraordinary achievements of Bill Mohrman of the Office of Legislative Council who will soon be retiring from his service to this Chamber. One of the finest legislative wordsmiths ever to ply his craft, it is only fitting that our tribute to Bill take the form of a House resolution.

Whereas, over a period of 20 years William C. Mohrman has developed a distinguished reputation for professionalism and excellence.

Whereas Bill's creative genuis and remarkable drafting skills have generated significant contributions to the body of law governing America's foreign relations.

Whereas, in the fact of often unreasonable and intemperate demands, Bill always maintained his equanimity, and unfailingly lived up to our elevated expectations of him.

Whereas, in the most important of all measures, Bill is unquestionably a gentleman of the highest ethical standards whose good nature and humor masked one of the brightest minds in this business.

Therefore, it is the Sense of Congress that—

We today recognize William C. Mohrman and extend to him our deep appreciation and sincere thanks for his fine work, his generous spirit, and his loyal friendship.

I am sure my colleagues on both sides of the aisle will agree that this is one resolution that can be agreed upon by unanimous consent. Thanks, Bill, and Godspeed.

MELINE KASPARIAN: MASSACHUSETTS EDUCATION LEADER

HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. NEAL of Massachusetts. Mr. Speaker, I take this occasion to recognize Meline Kasparian of Springfield, MA., for her tireless and unfailing commitment to the field of education. The list of Ms. Kasparian's accomplishments and contributions to the educational system is long and impressive.

Ms. Kasparian's work in education, over the past 25 years, has had an immense impact, and she will continue to be a strong influence in education at both the local and State level for many years to come. Her work in the Springfield School System is well known. Not only is she an English teacher at both Kennedy and Kiley Schools, but she has also been president of the Springfield Education Association since 1987 and was recently elected vice president of the Massachusetts Teachers Association. Besides a career in education, she has also been politically involved in the community as a delegate to the Democratic National Convention in 1984 and 1988.

Her selfless contributions and dedication can be attributed to her parents' strength of character, both of whom survived the Armenian genocide. In addition, it was this strength that also influenced her sister and brother to become educators.

Ms. Kasparian is a courageous advocate for human rights and dignity for people of all races and creeds. She is known as a loyal friend, one who lives by her moral values and convictions. Her integrity has earned her respect and friendship from many renowned authors and artists as well as those less well known.

Ms. Kasparian embodies the spirit of the educator and has extraordinary ability as a storyteller, who comprehends the teaching and learning value of parables. It is this aspect that has given her the capability of molding the future, by being a proper role model for her students.

Finally, I would like to take this opportunity to thank her for all of her efforts. They are much appreciated by the entire community. I am sure she will prosper as the new vice president of the Massachusetts Teachers Association.

TRIBUTE TO ROBERT K. DAVIS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. TOWNS. Mr. Speaker, I would like to call attention to the special achievements and outstanding hard work of Mr. Robert K. Davis. Mr. Davis has devoted the past 25 years to serving the people of New York in several public service positions in the Lindsay, Beame, Koch, Dinkins, and Giuliani administrations. His retirement this year is a great loss for the community, and he will be sorely missed.

Mr. Davis, in all his posts, has always put the needs of New York families first, especially the children. His numerous achievements include the revamping of the outdated public children's institutions into more efficient local organizations which could better handle the sensitive needs of the community. This was accomplished while Mr. Davis handled the needs of approximately 15,000 dependent, neglected, and abused children in his capacity as the director of institutions and facilities in the department of Social Services, special services for children.

Mr. Davis also played a key role in reforming child development programs as the assistant commissioner for development in the city's agency for child development. He was responsible for establishing standards for the physical facilities of day-care centers and helped in increasing the number of day-care centers from 80 to over 400.

Housing was another area improved under Mr. Davis' authority. Advocating the needs of the elderly and minorities, he facilitated the allocation of rent subsidies for the elderly and promoted the rehabilitation of economically distressed minority neighborhoods.

Mr. Davis has been an advocate for promoting the overall security of residents. He is directly responsible for ensuring the safety of homes by leading the push to remove lead paint in housing units with high lead levels. He also enforced the mandatory installation of window guards where landlords were delinquent and in noncompliance of housing code requirements. He also led a crusade against corruption. In his current position as the housing preservation and development deputy commissioner, Office of Rent and Housing and Maintenance, he revamped inspection procedures to minimize the chance of corruption.

After graduating from Morehouse College, Mr. Davis received a masters in social work from Columbia University. He has put his skills to good use for the betterment of the New York community. Mr. Speaker, I urge my colleagues in the House of Representatives to join me in recognizing the many achievements of Mr. Robert K. Davis.

A TRIBUTE TO THE ST. CATHERINE LABOURE SCHOOL

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mrs. MORELLA. Mr. Speaker, I speak today to congratulate the St. Catherine Laboure School in Wheaton, MD upon its recognition as a Blue-Ribbon School of Excellence. This national award shows the school's abilities to nurture and guide its students successfully. The leadership, educators, and organization of this school are truly exemplary.

A Catholic parish supported school, St. Catherine Laboure seeks to enhance each child's life spiritually and academically. The student population unites students from 52 countries and who speak 24 different languages; the school stresses appreciation of this wonderful diversity. Children in pre-kindergarten through eighth grade are constantly challenged to develop strong work habits and a dedication to higher learning.

Under the leadership of Sister Mary Gilbart, D.C., Principal, and the Sisters of Charity, St. Catherine Laboure School prides itself on flexible, cooperative educational practices. Implementing hands-on learning, the computer technology has been continuously updated so that all students can benefit. New programs and adaptations to the curriculum are a constant concern; a Homework Assistance Program, a CD-ROM machine, and a gifted and talented program have been added this year to help students reach their potential.

The school's efforts to involve the community and parents reflect the important of unity in creating a successful environment. Parents volunteer their time and resources generously for the benefit of students and staff. An open door policy of site-based management gives everyone at the school access to the principal and policies of St. Catherine Laboure.

I commend the effort of the school to improve the lives of each student. Enrichment and guidance serve as the keys to the future; St. Catherine Laboure School winningly combines its resources to achieve great success. Mr. Speaker, I am proud of the achievements of the students, parents, teachers, and administrators at St. Catherine Laboure School and wish them continued success for the future.

A TRIBUTE TO IVYMOUNT SCHOOL

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mrs. MORELLA. Mr. Speaker, I rise in recognition of the Blue Ribbon Award given to the Ivymount School in Rockville, MD, my Congressional District. This national award focuses on schools of remarkable leadership, vision and vitality. It is my pleasure to congratulate the faculty, students, and parents at Ivymount on this prestigious award. Ivymount continues its high standards of excellence, receiving this award for the second time in 5 years.

Ivymount serves the greater Washington area, concentrating on those children with developmental, physical, and emotional disabilities. Director Shari Gelman, Assistant Director Lillian R. Davis, and a nurturing staff provide a quality education to students whose needs cannot be met in the public school system. Ivymount works as a nonprofit day school for children referred from public schools.

Catering to each child's individual needs, the school's administrators nurture the personal growth of each student. Counselors, therapists, doctors, and special education teachers combine resources to best serve each child. The ultimate goal of Ivymount is for students to build independence in preparation for life in the community.

Beyond caring for students, Ivymount serves parents and the community at large. Support for the families of Ivymount students through counseling, medical consultations, and other available resources helps them provide for each child's future. Ivymount offers numerous programs for the benefit of the community. Sharing the school's knowledge and experience helps all those in the area of special education.

I commend Ivymount School's dedication to serving those most in need with conscientious and dedicated service. Schools like Ivymount provide much needed leadership and support. It is a great pleasure to recognize Ivymount for their continuing success.

GERA: MORE THAN JUST A TOWN

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. BARCIA of Michigan. Mr. Speaker, I rise today in celebration of the Centennial of Gera, MI. This small community has a great sentimental value to the people who reside in it. Having a neighbor in Gera means more than just someone living next to you; it also means friendship. This grand event will take place on July 3, 1994.

This small town has quite a history. There is a possibility that Gera would not even exist today if the railroad would have been built through the town of Frankenmuth as originally planned. Frankenmuth refused to have the railroad run through town because they were concerned about the adverse influences that the railroads were thought to attract. Today Gera welcomes the railroad as the very reason for its existence. The railroad line was built in 1881 and was placed in operation on February 21, 1882. Originally the first sign placed at the depot read "Frankenmuth Station." In 1894 Frank Gilbert advised the railroad company that it should rename the station. The company officially did so on April 23, 1894. It was renamed Gera, after a town in Germany, and as they say "the rest is history."

Currently, there are 40 residents within official city limits. However, since Gera has a reputation for being more than just a town, 500 people consider themselves a part of the community. I am very excited to share in the celebration of the Centennial of Gera. I urge all my colleagues to wish the people of Gera the very best.

GANG THAT COULDN'T GIVE SHOTS STRAIGHT

HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. DUNCAN. Mr. Speaker, the column below shows how big government can screw up almost anything, and how even programs that sound good on the surface can end up hurting the very people who were supposed to be helped.

I call this column by Robert Goldberg to the attention of my colleagues and other readers of the RECORD.

[From the Wall Street Journal, June 20, 1994]

GANG THAT COULDN'T GIVE SHOTS STRAIGHT

(By Robert Goldberg)

By its own account the Clinton administration regards carrying out the Vaccine for Children program as a "dress rehearsal" for health care reform. If so, the show will close before it ever opens.

There has not been a social program in recent history so badly flawed as Vaccine for Children. The administration's initiative is based on misleading information about immunization levels in the U.S. It is determined to create an entitlement even though immunization rates are at record levels. At a time when local health officials have more free vaccine than they can use, it is spending money to set up a government-run delivery service of unknown cost and questionable utility. Ignoring calls to delay the program, the administration has arrogantly dug in its heels to carry out a campaign pledge that borrows against our children's future and spends against their needs.

SIN OF OMISSION

Originally the administration proposed buying up all childhood vaccines. Health and Human Services Secretary Donna Shalala told Congress that immunizations should be a right, just as access to water and other public services is a right. There were only three problems with Ms. Shalala's statement: Water is not free; immunizations, with rare exceptions, are affordable; and vaccination rates are high. Of course, Ms. Shalala never mentioned that a $200 million federal program already allows any child to receive free vaccines at local health clinics.

The administration maintained Vaccine for Children was necessary to meet a goal of immunizing 90% of all preschoolers with DPT (diptheria, pertussis, tetanus), polio and measles vaccines by the year 2000. At a congressional hearing the secretary said: "The United States has one of the lowest immunization rates for preschool children compared to European countries." Yet Ms. Shalala used 1985 immunization measures for DPT, polio and measles even though 1992 information was available.

While the outdated survey showed that slightly over half of all preschoolers were immunized, the 1992 immunization survey in Ms. Shalala's possession showed rates of nearly 80%. And 1993 data showed that the nation had largely met the goal of a 90% immunization rate. In fact, Walter Orenstein,

the director of the Centers for Disease Control and Prevention's National Immunization Program, noted at a recent Senate Appropriations Committee hearing: "Immunization levels among preschool children are the highest ever."

Congress killed the Clinton plan to buy up all childhood vaccines and provide them to rich and poor alike. Instead Vaccine for Children will cover the poor, Medicaid patients, the uninsured and the "underinsured"—an amorphous category that includes anyone whose health insurance does not cover shots. To get the free vaccines, all people need to do is show up at public health clinics and "assert" they have no coverage. Further, Vaccine for Children would go out of existence when health care reforms added immunization to a standard benefits package. Citing these assumptions, the Congressional Budget Office estimated that the program would cost $430 million over five years.

Congress assumed and the administration said that private vaccine companies would distribute the government-supplied vaccine. But the price controls the government imposed on vaccines to meet the CBO estimate left no margin for paying delivery costs. Therefore, the Department of Health and Human Services decided to set up its own distribution system. The rush to fulfill a campaign pledge now threatens to compromise the nation's vaccine supply.

First, HHS wanted the Veterans Administration and the Defense Department to operate a vaccine depot system for the program. The offer was rejected: Both agencies were getting out of the vaccine and medical distribution business; two government studies showed that private companies distributed health care products more cheaply and efficiently.

With only two months remaining before vaccines are supposed to be shipped, HHS has gotten the General Services Administration to create a new distribution system. However, GSA lacks both the infrastructure and experience to move hundreds of millions of fragile and highly sensitive biological products safely on a tight schedule and under strict Food and Drug Administration requirements. What GSA does have is space in a New Jersey warehouse now used for storing paint solvent, where the administration plans to store up to 40% of the nation's entire childhood vaccine supply.

The warehouse lacks the private vaccine industry's state-of-the-art distribution systems, computer equipment and managerial expertise for handling and accounting for every single dose of vaccine according to complicated FDA safety guidelines. For example, the Centers for Disease Control states that it will save time and money by packing different vaccines in the same container. The problem is, different vaccines can't be shipped and stored in the same way without jeopardizing their safety. Oral polio vaccine must be shipped frozen, while others must be kept at temperatures between 2 degrees and 8 degrees Celsius. Not even the Clinton administration can change the laws of physics.

Further, by creating another level of bureaucracy, HHS is adding to the already significant amount of waste and spoilage that already results from the handling of vaccines by state and local public health programs. HHS is in such a panic to distribute the vaccines that it is discouraging states from tracking and accounting for vaccine deliveries, despite the fact that the FDA would shut down a private company that neglected those duties. States are planning accordingly: Recently Illinois told the Centers for Disease Control that it was ordering 25% more vaccine in anticipation of waste under Vaccine for Children.

There is a real danger in storing so much vaccine in one place. A catastrophe is not out of the question. In May 1992, the Illinois public health service's supply of Hepatitis B vaccines was stored in a meat locker with carcasses. Blood and other matter was found dripping over the vials, contaminating the entire lot. In Washington, D.C., refrigeration in the District government's central vaccine warehouse broke down. The warehouse lacked a backup system, and 23,000 doses of measles vaccine—a year's supply for the entire District—was lost.

'WE HAVE ENOUGH'

Worst of all, the administration is diverting funds to the warehousing scheme at a time when public health officials insist they have plenty of free vaccine. State and local health officials such as F.E. Thompson of the Mississippi State Department of Health note: "We have enough vaccine. . . . What we do not have enough of is nurses to give it, clerical staff to track the children, and outreach workers to bring them."

In fact, a number of states, including Arkansas, have told the Centers for Disease Control that the Vaccine for Children program will actually hurt immunization efforts by taking time and staff away from their own vaccine initiatives. The Centers for Disease Control is understaffed and cannot keep up with the state and local health officials' demand for technical assistance.

Appeals to delay or scrap Vaccine for Children have been ignored. Instead, HHS is working overtime to get deliveries going by August. The Clinton administration will probably throw some operation together so it can claim victory. But in fulfilling a campaign pledge, it will fail to improve the lives of children.

MILITARY OFFICERS WAITING ON THE PRESIDENT

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. SOLOMON. Mr. Speaker, the White House is yet again scurrying to explain why uniformed military officers were used as waiters at last week's Democratic Party soiree for 650 donors. According to Saturday, June 25th's issue of the Washington Post, a White House official said the officers are overreacting at expressed embarrassment. "They shouldn't be so sensitive," the official said. Sensitive. Perhaps officers are sensitive to the fact that American soldiers will live and die upon the orders of a Commander in Chief who fails to display any understanding of the military.

This continuing poor treatment and disrespect of military officers is yet another prime example of how the Clinton Presidency views the military. Does President Clinton think that officers sworn to defend the Constitution of the United States are best used to hand out hors d'oeuvres and white wine. Perhaps we should explain to the President that military service doesn't mean the service of platters.

This administration continues to belittle the importance of our military's mission. If our Commander in Chief, who lacks any military experience, thinks that our uniformed military officers' time is best maximized waiting tables then we indeed have reason to be concerned.

[From the Washington Post, June 25, 1994]

FROM WHITE HOUSE OFFICERS TO AIDES-DE-CANAPES

(By Ann Devroy)

The White House on Tuesday night was Looking for a Few Good Waiters. And now White House officials say, somewhat red-faced, they meant no disrespect when they temporarily transformed uniformed military officers into canape passers.

With a commander in chief who lacks military service and has been accused—along with his aides—of insensitivity to the military, the Clinton White House worked overtime yesterday to explain what probably would and did go unnoticed in prior White Houses.

As best as can be determined, military aides assigned to a Democratic Party soiree for 650 big donors, scheduled to be held under a tent in the White House Rose Garden, were pressed briefly to join the domestic help serving hors d'oeuvres because a storm forced the party indoors.

One of the White House military social aides said yesterday that such duty was humiliating: "We are military officers, not waiters." The aide went on to say that it was "embarrassing to us and should be embarrassing to the president" to have uniformed officers who are in the White House to represent the uniformed services fill in for the waiters and waitresses.

But a White House official who was at the reception said the aides are overreacting. "Everyone was pitching in when the party was moved," he said. "They were just asked to pitch in too. They shouldn't be so sensitive just because they're in uniform."

Neel Lattimore, a deputy press secretary, said the sudden shift of the party indoors resulted in White House senior staff aides and others helping out. "We also asked the assistance of the military social aides. This was meant to be a team effort" in which no disrespect was intended, he said.

Chief White House Usher Gary Walters said he recalled "several other occasions" in previous administrations where the social military aides helped out in emergencies.

Two types of military aides work at the White House. There are the officers from each service who are the president's military aides, traveling with him and carrying the nuclear codes and performing other such duties. And there is a rotating group of about 40 young, single officers selected by the services to represent the best of their military branches to work for at least one year at the White House in a variety of protocol and social duties.

TRIBUTE TO HENRY LEGASPI

HON. DUNCAN HUNTER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. HUNTER. Mr. Speaker, I rise today to honor the retirement on June 30, 1994, of an outstanding citizen in my district, Mr. Henry Legaspi. Hank Legaspi is finally turning out the light as manager of the power department of the Imperial Irrigation District in the southern California desert.

A native of Calexico, CA, the transborder sister city of Mexicali, Mexico, Hank has continued the remarkable legacy of the Legaspi

family's commitment to community service. Along with his brothers' many years of civic and public service, Hank has added his own 4 years, in several different capacities as an employee and a manager at the IID, one of the largest public utilities in the country.

Through his leadership at the IID, the district has gone through a period of rapid growth, moving from a small, local customer base to become a provider of electric service throughout the southern California desert reaching from the Arizona and Mexican borders to the lush club of Palm Springs.

I know I speak for the countless friends of Hank's and mine in the Imperial Valley in thanking him for his energy, drive, and sense of pride that he brought to the IID—a legacy to be honored for those who remain and those who will follow.

TRIBUTE TO CARL B. STANKOVIC

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. VISCLOSKY. Mr. Speaker, it is my distinct honor to recognize Carl B. Stankovic, and the men of the Eighth Armored Division Association. These brave men served in Company B of the 78th Medical Battalion during World War II.

The men of Company B will be celebrating their 45th annual convention reunion in King of Prussia, PA. Along with their families, they will be engaging in a week of festivities taking them through the Fourth of July weekend. The 78th Medical Battalion acquired the reputation for excellence in their assistance and treatment of wounded officers. The battalion is proud that not one officer's life was lost while tending to the injured and evacuating them from the front lines.

This unique group of veterans should take pride in their versatility at having been able to transfer their successes from country to country, as they traveled through England, France, Belgium, Holland, Germany, and Czechoslovakia. They coined themselves the Thundering Herd, which undoubtedly refers to their unfaltering strength while traversing vast countrysides.

The great sacrifices made by those who served in World War II have resulted in the freedom and prosperity of our country and in countries around the world. The responsibility rests within each of us to build upon the valiant efforts of these soldiers, so that the United States and the world will be a more free and prosperous place. To properly honor the heroism of our troops, we must make the most of our freedom secured by their efforts.

We will be forever indebted to our veterans and their families for the sacrifices they made so that we could be free. Mr. Speaker, I ask you and my colleagues to join me in saluting the men of the 78th Medical Battalion, Company B as they observe the 45th anniversary of their battles for freedom.

THE VIOLENCE AGAINST WOMEN ACT

HON. KAREN SHEPHERD

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Ms. SHEPHERD. Mr. Speaker, last Wednesday night in Salt Lake County, Deolyn Oliver was brutally shot and killed, leaving behind three young children. When police arrived, they found her husband standing in the doorway, speaking to his lawyer on the telephone. Salt Lake County officers had been called to her home five times over the past 7 months. When asked, the only thing her youngest child could say was that "his mom won't ever have to hurt again."

Last year, 19-year-old Tiffany Despain of Salt Lake was ruthlessly raped three times at knifepoint by her 22-year-old ex-boyfriend after he had repeatedly violated court restraining orders. Despite Despain's numerous complaints to the police, the attacker had only received warnings and before being arrested, he attempted to run Tiffany off the road. Tiffany Despain had to flee the State for her protection.

What happened to Deolyn Oliver and Tiffany Despain are not unique incidents. These women are only two of thousands of women every year who face fear and violence in the very place where they should feel safe—in their own homes.

Mr. Speaker, I urge my colleagues to join me in passing the strongest Violence Against Women Act possible. It may be too late for Deolyn Oliver, but there are many, many more women out there whose lives could be saved by the swift action of this body.

THE WELFARE INNOVATION AND EMPOWERMENT ACT OF 1994

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. ANDREWS of New Jersey. Mr. Speaker, on behalf of myself, Mr. WELDON, and Mr. KOLBE, I wish to introduce the "Welfare Innovation and Empowerment Act of 1994."

This bipartisan welfare reform bill is distinctly different. It would give the people closest to our welfare problems—those at the State and local level—the authority to develop solutions that make the system work better for those who rely on it and those who pay for it.

Our objectives under the bill are simple. We want to unleash our Nation's best problem solvers—our Governors, mayors, and county officials—to develop innovative programs for moving people from welfare to work. We want to empower low-income individuals to save money and invest it in their own futures. And, we want to strengthen families.

The Welfare Innovation and Empowerment Act of 1994 will do the following:

Grant States the authority to consolidate various streams of Federal welfare funding—AFDC, Food Stamps, Medicaid, housing assistance, child care assistance, et cetera—for the purpose of converting these funds into wages or other benefits provided to individuals and families participating in welfare-to-work programs.

Create a streamlined, one-step process for State waiver requests necessary to implement welfare-to-work demonstration programs.

Enable low-income individuals to save money for education, microenterprise development, first home purchase, and other select uses, without losing their welfare benefits.

Remove or modify current provisions of law that weaken families and perpetuate welfare dependency.

We believe that this bill will create an environment where State and local innovation will flourish and welfare recipients will be given their best shot at achieving self-sufficiency.

HONORING THE CATSKILL'S ENTERTAINMENT HALL OF FAME

HON. MAURICE D. HINCHEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. HINCHEY. Mr. Speaker, I would like to bring to the attention of this Chamber the Catskill's Entertainment Hall of Fame's newly chartered museum building in Loch Sheldrake, NY. On June 30, 1994, the museum will open with its inaugural exhibit, "The Impact of the Catskills." This exhibit will feature the works of Al Hirshfeld and of several playwrights, comedians, actors, and musicians who helped define the Catskill's entertainment experience.

One of the goals of the Catskill Entertainment Hall of Fame is to collect, preserve, and interpret for the general public the unique history of entertainment and vacationing in the Catskills and its continuing impact on American culture.

The likelihood of this new museum having such an impact on the area's cultural outlets is both exciting and commendable. Mr. Speaker, I ask that this Congress assembled today join the people of the Hudson Valley in honoring the Catskill's Entertainment Hall of Fame's board of trustees who are giving both their time and experience to better the cultural scope of the Hudson Valley for tomorrow.

LONG TRUCKS: TAKING A TURN FOR THE WORSE

HON. SHERWOOD L. BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. BOEHLERT. Mr. Speaker, I would like to share with my colleagues an article that appeared in the May 1994, issue of Progressive Railroading magazine. This article was written by a professional civil engineer and concerns the ability of long trucks to negotiate right turns. The article makes both a mathematical point and a public policy point, and I think it would be good for the Congress to review both.

The math point is that single tractor trailer trucks longer than 53 feet, today's standard,

cannot physically negotiate the right turn at most intersections without either running up over the curb or pulling out well into the oncoming lane of traffic. In both cases the required maneuver is dangerous to pedestrians and motorists and, in the case of curb encroachment, causes expensive damage that is paid for by local taxpayers. Today, more and more States are allowing 57-foot trucks, and there is an active movement to increase that length to 60 feet.

The public policy point is that by ignoring this simple fact today, we in Congress are inevitably creating an expensive and dangerous situation from which it will be hard, if not impossible, to extract ourselves once all the longer trucks have been built.

Sometimes we in Congress overlook the obvious, and I think this is just one of those cases. The article follows:

LONG TRUCKS: MAKING A TURN FOR THE WORSE

(By Bryan Haight)

There is a huge disconnect in the government's transportation policy and no one is paying attention to it, least of all, the government. On the one hand, government at every level is attempting to control spending and improve highway safety. On the other hand, it is allowing a steady increase in truck lengths that causes expensive damage to local roads and poses an increasing danger to automobile drivers and pedestrians.

The main problem with longer vehicles is simply this: trucks with single trailers greater than 48 ft. in length cannot make a right turn at most local intersections without either running over the curb on the right or encroaching into the oncoming lane of traffic on the left. Trucks, themselves, advertise the problem with the rear-end sign we have all read while sitting behind them at a light: "Danger, this truck makes wide right turns."

Government policy makers are contributing to this problem in two ways. First, individual states are allowing a steady increase in permissible truck lengths, and the federal government is doing nothing to stop them. Congress required states to accept 48-ft. trailers in 1982 and trailer lengths have grown dramatically ever since. Today 48 states allow 53-ft. trailers, 11 states have moved onto 57 footers, and a coalition called NR 60, standing for "No Restriction, 60 Feet," is pushing for an additional increase.

Second, individual states are expanding the distance that such extra-long trucks are allowed to travel off the main interstate system. Today 19 states allow unlimited travel off the interstate, three states allow between 10 and 20 miles of travel off the interstate road and 16 states allow between one and five miles. If you allow those vehicles to travel within a five-mile radius of interstate exits, you are allowing them unrestricted access to the majority of the local intersections in most metropolitan areas.

As an engineer by trade, I have studied this problem in great detail. And while I'm sure some of the working engineers in government transportation departments have done the same, the message does not appear to be getting through to the policy makers that this relentless march to larger and longer vehicles needs to be stopped.

The major problem with these long trailers is a phenomenon known as "offtracking." Simply put, offtracking is the degree by which the rear wheels fail to follow the path of the front wheels when making a turn on a local road. Offtracking to the right destroys curbs, light fixtures and sign posts. More important, it poses a serious threat to pedestrians standing on the curb. Offtracking to the left poses a hazard to oncoming traffic.

The most serious and common result is the so-called "rolling guillotine" effect that occurs when the rear of a trailer hits the oncoming automobile during the turn, with the underside of the trailer shearing off the roof of the automobile.

Two respected groups the American Association of State Highway and Transportation Officials (AASHTO) and the Transportation Research Board (TRB), have made detailed mathematical studies of this problem. Today the typical local intersection has curb radius of between 15 and 40 ft. and traffic lanes of no more than 12 ft. wide. Aggregating the data used in both the AASHTO and TRB studies, I prepared a table summarizing which trucks can make turns without overrunning the curb or encroaching into an oncoming lane. As the table shows, the typical intersection cannot accommodate the lengths we have today, let alone the increases that are being sought. Indeed, in its 1989 report, Providing Access for Large Trucks, the TRB recommended that all states be encouraged to adopt a maximum trailer length of 48 ft. in order to minimize the serious consequences of offtracking.

In my own state of Wisconsin, the state Department of Transportation began a study of this problem in 1989. While confirming the above data, the study also addressed what compensatory measures could be taken by truck and automobile drivers at intersections that cannot accommodate these longer trucks. One of the study's conclusions is referenced in the TRB Access study and bears repeating: "The results of the research to date indicate that, subject to traffic volumes, right-turning trucks can negotiate turns by taking advantages of gaps in the oncoming traffic * * *" As a motorist, that gives me very little comfort.

INCREASING ROAD TAXES

Last year the federal government insisted on a gasoline tax increase of 31 percent because it claimed it did not have enough money to maintain the nation's roads. It is wrong for the government to be raising money from taxpayers to repair roads while at the same time allowing activities that dramatically increase those repair costs. If I ran my business that way, I would be fired.

To politicians, this may seem a highly technical issue with financial ramifications that cannot be easily quantified. In reality, it's really quite a simple mathematical issue—trucks over 53 ft. cannot make the turn without taking out the curb or encroaching into the oncoming traffic lane. Congress can change the law to allow longer trucks, but they can't repeal the laws of physics.

If Congress chooses to ignore the numbers, I hope they will at least consider the human factor. If it hasn't already happened somewhere, it is only a matter of time before school children standing on a curb are injured or killed by a truck that can't make a turn without encroaching on the curb. The time to limit that risk is now by putting a stop to this mad rush toward ever increasing truck lengths.

COMMENDATIONS TO MR. RICHMOND LAWSON SMITH

HON. H. MARTIN LANCASTER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. LANCASTER. Mr. Speaker, I would like to bring to your attention the remarkable efforts of an outstanding young American, Mr. Richmond Lawson Smith, who has reached the rank of Eagle Scout in the Boy Scouts of America.

In order to fulfill this tremendous accomplishment, a young man must earn a total of 21 merit badges including first aid; citizenship in the community, nation, and world; communications; emergency preparedness or lifesaving; environmental science; personal management; physical fitness, swimming, or sports; and camping. Richmond, a member of Troop 342 in Raleigh, NC, has earned not only the necessary number of merit badges, but also several more. He is also the recipient of such honors as the Arrow of Light. World Conservation Award, the God and Country Religious Award, and the Boy Scouts of America Philmont Scholarship Award presented by the American Legion of North Carolina.

One additional requirement for an Eagle Award is the completion of an approved service project benefiting the candidate's religious institution, school, or community. Richmond Smith chose to help out the Inter-Faith Food Shuttle, which receives, stores, and distributes food to organizations who feed the needy and homeless. Richmond designed, constructed, and installed shelves in a cold storage locker for the food shuttle.

Outside of his active life as a member of the Boy Scouts of America, Richmond served as cocaptain of the Millbrook High School tennis team in Raleigh, and was named to the Capital Five All-Conference Academic Team. He is also a member of the Saint Andrews Presbyterian Church Youth Group and holds a part-time job at the Raleigh Racquet Club.

Mr. Speaker, I invite you to join me in expressing my commendations to Richmond Lawson Smith, clearly an outstanding young man.

OPENING OF THE 13TH ANNUAL CONGRESSIONAL HIGH SCHOOL ART EXHIBITION

HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Ms. SLAUGHTER. Mr. Speaker, as chair of the Congressional Arts Caucus, it was my great honor today—along with 279 of my House colleagues—to open the 13th annual Congressional High School Art Exhibition, "An Artistic Discovery." The result of high school competitions in Members' Districts, the exhibition showcases the enormous creativity and artistic talent of young people throughout the country.

Since the start of the competition, more than 600,000 students have participated in this outstanding undertaking. All of us on Capitol Hill

are indebted to the student artists for brightening and beautifying the passageway from the Cannon corridor to the Capitol and sharing their vision with us. I encourage my colleagues to take the time to view each of the winning works this year, as they form a truly amazing and vibrant panorama of the hearts and minds of America's youth.

We were very pleased this year to welcome one of America's most popular young actors, Dean Cain, who spoke movingly to the students present. In addition, we paid special tribute to House Republican Leader ROBERT H. MICHEL—who played a crucial role in establishing the exhibition and in supporting the project throughout the years—as well as James D. Johnston, vice president, industry-government relations for General Motors, who has consistently ensured General Motors generous sponsorship of the exhibition opening.

I submit for the RECORD the statements of the participants in the ribbon-cutting ceremony of "An Artistic Discovery," as well as a list of the House Members who participated in this year's competition along with the names of the winning artists from their districts.

OPENING REMARKS: CONGRESSIONAL HIGH SCHOOL ART COMPETITION

(By Louise McIntosh Slaughter)

As Chair of the Congressional Arts Caucus, it is my great pleasure to welcome all of you to this spectacular event—the opening of the Thirteenth Annual Congressional High School Art Exhibition.

For what has now been thirteen years, Members of Congress have sponsored local high school art competitions, involving talented young people, arts educators, families and local business and community leaders. Each year, we in the Capitol are treated to a panorama of outstanding artworks and are overwhelmed not only by the talent contained in the works, but by the vision and humanity which they express.

Congress can truly be proud of this bipartisan effort to recognize and encourage the arts and education throughout the country. Every student benefits from involvement in the arts. And, as we have seen, schools across the country and we as a society are greatly in need of programs which teach our young people the self-expression, discipline and creativity gained through the arts. Through this project, we are also helping to discover the next generation of outstanding American artists.

There are a countless number of people who have worked hard to make "An Artistic Discovery" such a success. Speaker of the House Tom Foley and Republican Leader Bob Michel—who we will be paying special tribute to shortly—have been steadfast supporters and participants in this project throughout the years. In addition, the 279 Members of Congress who conducted contests—the largest number of participating Members to date—and their staffs deserve much praise. We are grateful to George White, Architect of the Capitol, and his staff in facilitating this professional exhibit. We would also like to recognize General Motors for providing both resources and guidance for more than a decade. In addition, this opening ceremony could not have happened without the generosity of American Airlines, The Coca-Cola Company, Eskimo Pie, Nabisco Association, and the Snack Food Association.

NBC Television has also contributed to the success of this project through the person of Willard Scott and the Today Show. We hope all of you will tune in to tomorrow morning's show when Willard showcases this competition and some of the student artists.

Special recognition must go to Dean Cain, truly a "Superman," who has flown across the country to be with us here today—in a plane I might add.

Most importantly, though, we wish to thank the student artists themselves for sharing their enormous talent with us. We celebrate you today—your creativity and vision.

It is a privilege now to introduce Speaker of the House Tom Foley, who has once again generously agreed to join us in opening this Exhibition.

REMARKS AT THE OPENING OF AN ARTISTIC DISCOVERY

(By Thomas S. Foley)

I am both pleased and honored to be speaking to you today as a part of this celebration. I cannot emphasize enough the importance of art in our society, particularly in the development of our youth, so it is with great pleasure that I welcome each of you here today.

Art is a vital part of our society, a part that cannot be undervalued, particularly in the education of our youth. Art is not merely a diversion; it is a timeless requisite for the continuance of creativity and vitality in a society.

We on Capitol Hill take great pride in the Congressional High School Art Competition. It successfully celebrates the talent and creativity of students around the country and at the same time emphasizes the importance of nurturing these talents. I urge each of you to continue to foster your artistic talents. As you go on to make your life decisions, never relinquish that spark, that creativity which brought you here today. As Oliver Wendell Holmes Jr. once said: "Life is painting a picture, not doing a sum."

It is a joy to see the talent that is represented here today. Everyone on Capitol Hill takes great pride as we view and show our guests and visitors these art-works throughout the year. They speak volumes about our culture; they represent the families which support their children throughout their endeavors; they represent the talent that is innate in everyone, whether it is expressed artistically or not; they represent the ingenuity of the young mind that so readily surfaces when given a proper outlet; they represent a nation that takes pride in its diversity.

Again, I welcome each of you here today for this celebration. We are here today to celebrate you, the students and the families, and your efforts. I extend a further welcome and thanks to Dean Cain for taking the time to speak today and show his support for this endeavor.

REMARKS FOR HON. ROBERT H. MICHEL'S AWARD

(By James J. Jeffords)

Today, on the opening day of the annual high school art exhibition, it is my honor to bestow the Congressional Arts Caucus Award on a man who has played a crucial role in this competition. Not only was Republican Leader Robert Michel's support and unyielding commitment vital in bringing this competition to fruition 13 years ago, his continuing dedication to this event, through the participation of his district in the competition every year since its inception, is a tribute to his unyielding commitement to the exhibition and, more importantly, to the involvement of young people in the arts.

Leader Michel has played a direct role in the development of an entire generation of young artists. Over 600,000 high school students from all over America have participated in this competition since it began in 1982. The success of this and previous exhibitions is due, in large part, to his leadership.

We are pleased today to pay tribute to Leader Michel and and to let him know that he will be sorely missed.

REMARKS BY ROBERT H. MICHEL

Thank you very much for this honor. I would like to extend my warmest welcome to each of you today and congratulate you all on making this year's art competition the largest in the history of the event.

I have always been proud to support this art competition in the high schools of my own congressional district in Illinois. I would like to especially congratulate the student winners. Once again, I am astounded and pleased by the wealth of your artistic talent, skill, and vision. Your works will provide inspiration throughout the coming year.

I would also like to extend my thanks to all the proud parents and teachers here today. Your commitment to nurturing the artistic talents of these young people is crucial. We may be standing amidst the next Andrew Wyeth or Georgia O'Keefe in part because of our devotion.

Events like this embody the success of partnerships between the private and public sectors—businesses like General Motors, our congressional offices, art teachers, parents, and students. I commend your continued commitment and leadership in making the arts a vital part of education, community life, and our national cultural legacy. Enjoy the festivities today, for I know we will reap the benefits of your efforts all year.

PRESENTATION OF CONGRESSIONAL ARTS CAUCUS AWARD TO JAMES D. JOHNSTON, VICE-PRESIDENT, INDUSTRY-GOVERNMENT RELATIONS

(By Hon. Louise M. Slaughter)

Just this morning, we learned that Jim Johnston will be retiring from General Motors. Jim has been a tireless friend of the Congressional High School Art Exhibition, and, for this, we would also like to present him with the Congressional Arts Caucus Award, which reads: "Jim Johnston, who, through his unwavering dedication to the Congressional High School Art Exhibition, represents the best in the private and public partnership of arts support for America's youth."

STATEMENT OF JAMES D. JOHNSTON, VICE PRESIDENT, INDUSTRY-GOVERNMENT RELATIONS, GENERAL MOTERS CORP.

For 13 years, General Motors has participated in the Annual Congressional Arts Competition and I've had the pleasure of attending all of them in one capacity or another.

Frankly, it is the best day of the year for us. It's the day when everyone seems to have a good word for GM.

But, more than that—it's a day that brings to this Capitol—thanks to the members of Congress who sponsor the artists—some of the brightest and most promising young people in America.

On behalf of the 380,000 General Motors people from all over America, I want to thank the 150 students here today. I want to thank you for what you have done that got you here to Washington. And, more importantly, I want to thank you for what that means you can do in the future.

INTRODUCTION OF DEAN CAIN

(By Louise McIntosh Slaughter)

We are delighted today to welcome one of America's most talented and popular young actors and, to many, many viewers, a true superhero—Dean Cain. Dean has achieved critical praise and audience adulation in his role as Clark Kent and Superman on the hit ABC television series "Lois and Clark: The New Adventures of Superman."

Dean is actually a young man with many talents. As an All-American football player at Princeton University, Dean still holds the NCAA record for most interceptions in one season. After graduation, he became a professional football player with the Buffalo Bills. When a knee injury sidelined him, one might say that football's loss was the acting world's and our gain.

Dean has guest starred on many television series, including "Life Goes On," "A Different World," and "Beverly Hills 90210." On the big screen, he was seen in the critically acclaimed feature film, "The Stone Boy," directed by his father, Christopher Cain.

A true Renaissance man, Dean is also an accomplished writer with a burgeoning screenwriting career, including the development of television project entitle "Naked TV."

I might add that Arts Caucus Members met Dean briefly in Los Angeles and he is an articulate spokesman for giving young people the chance to develop their diverse interests.

We are pleased and grateful, Dean, that you can be here with us today.

REMARKS BY DEAN CAIN

It is truly an honor to be here with all of you today. I'd like to thank Congresswoman Slaughter, Senator Jeffords, Speaker Foley, Minority Leader Michel, and all the members of the Congressional Arts Caucus for asking me to take part in this day.

This creativity that each of you, the winning students, have put into your artworks is simply overwhelming. Each work is impressive on its own. Viewed in its entirety, the Exhibition is a powerful statement on the talent, thoughtfulness and ingenuity of high school students across the country.

But, I think this competition also shows the phenomenal results that can be gained when students are given the opportunity to pursue what interests them, to let their talents and their special abilities develop. It doesn't only have to be art. It can be science, music, writing, math, volunteering—truly anything. For me, the key was athletics. My involvement in sports helped me develop an individuality, to grow as a person, and, more importantly, learn the necessity of working with others to achieve goals.

Supporting programs like this Competition goes beyond just giving young people something to do, which, in many cities and many areas of the country is important in itself. It has to do with giving someone a sense of self, a pride in themselves that they will build on and carry with them the rest of their lives. Out of this self-awareness not only comes individuals who care about themselves and the community and world around them, but the artists, the athletes, the Nobel Prize Winners—even the Congresspeople of tomorrow.

Looking at the artwork displayed today is simply amazing. There is such talent and ingenuity displayed in each of these works, I can only wonder what the future holds for each of you. I can imagine that in a decade it will be I who tells the story of when I met you.

Again, thank you for letting me be here today to speak to you and to meet each of you. And, congratulations to all the artists, and their families, and the members of Congress who helped make this happen.

RIBBON CUTTING REMARKS

(By James M. Jeffords)

Please join me as we cut the ribbon to officially open the 13th annual high school art competition. This year's exhibition, the largest ever, profiles some of our country's most talented and promising young artists. Each year, it acts to remind us here in Washington of the importance of the arts to all Americans, especially our youth.

Whether inspired by the encouragement of an arts teacher, a family member, or from within yourselves, you have expressed your individualism through your paintings and even more, addressed important issues for us all. While some of this year's works portray strikingly realistic people and settings, others demonstrate the power of art to convey abstract images and ideas. It is this diversity of talent and creativity that speaks very strongly to the importance of encouraging our schools and communities to give young Americans the opportunity to pursue the arts.

Through this competition, we in Congress recognize your pursuit of excellence in the arts. On behalf of my colleagues, I congratulate you all and hope that you will continue to creatively express yourselves through your art.

13TH ANNUAL CONGRESSIONAL HIGH SCHOOL ART COMPETITION—PARTICIPATING MEMBERS AND WINNING STUDENTS

Alabama: Spencer Bachus, Michael Dailey, Tom Bevill, Tyler Landers, Glen Browder, Eun-Jin Suh, Sonny Callahan, Darius A. Bailey, Bud Cramer, Jr., Megan Gregory, Terry Everett, Jeremy Bagents, Earl Hilliard, Francesca Clark.

Alaska: Don Young, Josh Smart.

American Samoa: Eni Faleomavaega, Mary Hansen.

Arizona: Sam Coppersmith, Joshua White, Jim Kolbe, Ermalinda Gallardo, Ed Pastor, Santiago Perez Espinoza, Bob Stump, Ben Loehr.

Arkansas: Tim Hutchinson, Jennifer Birge, Blanche Lambert, Jeremy Rabuck.

California: William Baker, Victoria Livingston, Xavier Becerra, Rommel A.N. Cantal, George Brown, Jr., Heather Ryberg, Ken Calvert, Van Sengchanh, Randy Cunningham, Peter Kim, Ron Dellums, Carly Helgeson, Calvin Dooley, Joe Leia, David Dreier, Holly Lueras, Anna Eshoo, Alexander Vladimirskiy, Sam Farr, Buddy Perry, Vic Fazio, Eric Schmid, Bob Filner, Eric Tan, Jane Harman, George Amador, Michael Huffington, Kirsten Munson, Jay Kim, Ann Kim, Tom Lantos, Simon Jenner, Richard Lehman, Ryan Delp, Bob Matsui, Oanh Truong, Al McCandless, Hugo Gonzales, Howard McKeon, Ken Barnett, Nancy Pelosi, Peregrine Lannin-Honig, Richard Pombo, Dariene Stoecker, Lucille Roybal-Allard, Fabian Debora, Pete Stark, Christopher Gatmaitan, Bill Thomas, Clifford I. Picar, Esteban Torres, David Seymour, Walter Tucker, Patricia Walker, Lynn Woolsey, Nikki Tognetti.

Colorado: Joel Hefley, Landon Meier, Scott McInnis, Sunny Harrison, Dan Schaefer, Matt Schrott, David Skaggs, Frank Lee.

Connecticut: Rosa DeLauro, Lesley Holford, Cary Franks, Kelly J. Benoit, Chris Shays, Bethany Shorb.

Distruct of Columbia: Eleanor Holmes Norton, Craig E.R. Hall.

Delaware: Michael Castle, Jim Hoover.

Florida: Michael Bilirakis, Katarzyna Guzinska, Charles Canady, Anne Oldham, Tillie Fowler, Kerry Dunn, Porter Goss, Leslie Morrison, Alcee Hastings, Rebecca Frank, Earl Hutto, Stacey Mack, Bill McCollum, Jessica Tseng, Carrie Meek, Carlos Reyes, John Mica, Jina Kim, Dan Miller, Sam Dean, Peter Peterson, Reginald Harris, Ileana Ros-Lehtinen, Fernando Valero, Cliff Stearns, Troy Biggers, Karen Thurman, John Austin, C.W. Bill Young, Janine Duffy.

Georgia: Sanford Bishop, Brandi Myatt, Michael Collins, Malika Randall, Buddy Darden, Melissa Crawford, Don Johnson, Yolanda Bloodsaw, John Kingston, Heather Roach, John Lewis, Justin Winslow, John Linder, Trevor Green, Cynthia McKinney, Charles Atkinson, J. Roy Rowland, Elizabeth Shuman.

Guam: Robert Underwood, Lawrence Pendon.

Hawaii: Neil Abercrombie, Naomi Rombaoa, Patsy Mink, Janet Agapay.

Idaho: Mike Crapo, Alexa Filanowicz, Larry LaRocco, Star Suezzo.

Illinois: Cardiss Collins, Ted Burdett, Jerry Costello, Tina M. Seay, Phil Crane, Kristen Melby, Lane Evans, Courtney Blake, Harris Fawell, Devin O'Neal, Dan Manzullo, Eric Borchardt, Robert Michel, Janelle M. Allen, John Edward Porter, Matthew Beall, Glenn Poshard, Corey Evrard, Mell Reynolds, Paul Winkfield, Dan Rostenkowski, Katherine Bennett, Bobby Rush, James Dixon.

Indiana: Dan Burton, Emily Mayhill, Steve Buyer, Emily Gottschalk, Lee Hamilton, Shannon Grassman, Jill Long, Matt Knecht, Frank McCloskey, Jason, Davis, John Myers, Amy Norman, Tim Roemer, Jennifer Harney.

Iowa: Fred Grandy, Rachel Martin, Jim Lightfoot, Ashley Elizabeth Hagan.

Kansas: Dan Glickman, Jessica Evans, Jim Slattery, Erin Carlson.

Kentucky: Tom Barlow, Jerry Hobbs, Jim Bunning, Angie Palmer.

Louisiana: Richard Baker, Megan Hudson, Jimmy Hayes, Joshua Nero, William Jefferson, Betty Molette, Bob Livingston, Nicole Chauvin, Jim McCrery, Darin Coats.

Maine: Tom Andrews, Matthew Everett Herrick.

Maryland: Helen Bentley, LaShawna Nicole Wright, Ben Cardin, John Mancini, Wayne Gilchrest, Michael Cain, Steny Hoyer, Beth Monet Trott, Kweisi Mfume, Emmanuel Brown, Connie Morella, David Ward, Albert Wynn, Joseph Mbeh.

Massachusetts: Peter Blute, Sean O'Connell, Barney Frank, Katharine Tristaino, Joseph Kennedy, Emanuel Silva, Richard Neal, Ben Glushien, John Olver, Camille Maye, Gerry Studds, Jill Jordan, Peter Torkildsen, Jeffrey Ostergren.

Michigan: James Barcia, Jon R. Gajewski, David Bonior, Kate Kershiser, Dave Camp, Ji Yoon, Bob Carr, Julie Lucas, Barbara Rose Collins, Raquel Saez, John Dingell, Bess Beland, Peter Hoekstra, John Hartman, Joe Knollenberg, Janet Kemf, Sandy Levin, Matthew Stewart, Nick Smith, Steven R. Perry, Bart Stupak, Heather Dehlin, Fred Upton, Amy Mosier.

Minnesota: Tim Penny, Kevin Langmaack, Collin Peterson, Scott Surdez, James Ramstad, Doan Ly.

Mississippi: Mike Parker, Kelby Lamar Shows, Gene Taylor, Terri Garner, Bennie Thompson, Daniel Saffold.

Missouri: Pat Danner, Jennifer Giesler, Bill Emerson, Carrie Samples, Dick Gephardt, Jenny Wong, James Talent, Claire Bossert.

Montana: Pat Williams, Justin Clark.

Nebraska: Bill Barrett, Christina Lund, Doug Bereuter, Eric Wendt, Peter Hoagland, Christopher Ginn.

Nevada: Jim Bilbray, Orlando Illustrisimo Jr., Barbara Vucanovich, Billie Scott.

New Hampshire: Dick Swett, Patrick Rollins, Bill Zeliff, Sara O'Connor.

New Jersey: Bob Franks, Pallavi Sharma, Dean Gallo, Karen Nancy Menkens, Herbert Klein, Stephen Reinfurt, Robert Menendez, Martin Sanchez, Frank Pallone, Dena Mindick, Don Payne, Melissa James, Chris Smith, Mariya Gusev, Richard Zimmer, Ryan Capple.

New Mexico: Bill Richardson, Elisa Rivera, Steven Schiff, David Ondrik.

New York: Gary Ackerman, Anthony Ogg, Sherwood Beohlert, Beth Anne Ross, Hamilton Fish, Elizabeth Bettini, Floyd Flake, Richard Polanco Ben Gilman, Xenia Diente, George Hochbrueckner, Hae-Jin Jo, Amo Houghton, Tiffany Anne Dynda, Peter King, David Andrew Felice, Rick Lazio, Barry Gamble, David Levy, James Ashley, Nita Lowey, Bob-Sil Kim, Michael McNulty, Jessica Renaldi, Carolyn Maloney, Kathryn Van Pelt, Thomas Manton, Ji Eun Kim, Jerrold Nadler, Jeeyoung Sim, Major R. Owens, Stephen Mills, Jack Quinn, Allen Hardy, Charles Rangel, Sara Theophall, José Serrano, Carlos Cordero, Louise Slaughter, Michael S. Fickess, Ed Towns, Hong Gyu Lee.

North Carolina: Eva Clayton, Varick Taylor, Howard Coble, Dena Light, Martin Lancaster, Lori Weaver, Stephen Neal, Kim Speight, David Price, Greg Hoffman, Charlie Rose, Cory Barton, Charles Taylor, Eric Sams, Melvin Watt, Nichole Montgomery.

North Dakota: Earl Pomeroy, Paul Novak.

Ohio: Doug Applegate, Sara Giles, Tony Hall, Nicholas Fuhrer, Dave Hobson, John Hull, Martin Hoke, Jenniefer Homick, Marcy Kaptur, Demond Saunders, David Mann, Amy L. Viars, Deborah Pryce, Jan Warren, Ralph Regula, Robin Boswell, Louis Stokes, William Hernandez, Ted Strickland, David Jewell.

Oklahoma: Bill Brewster, Jerry McCraw, Jim Inhofe, Korena Bolding, Ernest Istook, Nathan Green, Dave McCurdy, Jamie Cruz.

Oregon: Elizabeth Furse, Becky Kading, Mike Kopetski, Maricela Zaragoza.

Pennsylvania: Lucien Blackwell, Preston Kennon, Tom Foglietta, Danny Lam, George Gekas, Melissa Clark, Bill Goodling, Matt Markovich, James Greenwood, Jeff Kronberger, Marjorie Margolies-Mezvinsky, Lori Leddy, Paul McHale, Maribeth Kradel, Austin Murphy, Tom Oziemblowsky, John Murtha, Susan Michelle Grela, Tom Ridge, Elizabeth Benson, Rick Santorum, Danielle Graham, Curt Weldon, Matt Metzger.

Puerto Rico: Carlos Romero-Barceló, Alex Irizarry Oquendo.

Rhode Island: Ron Machtley, Laura Vaillancourt, Jack Reed, Jason P. Audet.

South Carolina: James Clyburn, Richard W. Kirk III, Bob Inglis, Ronnie Jackson, Floyd Spence, Stephanie Lyford Watts, John Spratt, Misty Yates.

South Dakota: Tim Johnson, Emily French.

Tennessee: Bob Clement, William P. Brown, John Duncan, Jason Dickason, Harold Ford, Michael Pittman, Marilyn Lloyd, Devin Van Winkle, John Tanner, Bryan D. Moore.

Texas: Bill Archer, Brian Heiburg, Joe Barton, Chad Forsyth, Ronald Coleman, Diana Corral, Tom DeLay, Nora Torres, Martin Frost, DeNarcus T. Miles, Pete Geren, Christine Garver, Gene Green, Raul Martinez, Ralph Hall, Steven Novak, Eddie Bernice Johnson, Cesar Diaz, Greg Laughlin, Nathan Lee Post, Solomon Ortiz, Michael Elizalde, J.J. Pickle, Valerie Zelinski, Bill Sarpalius, Nicole Davis, Charles Stenholm, Jason Trussell, Frank Tejeda, Cody Cunningham, Craig Washington, Brian Jackson, Charles Wilson, Steven Kessinger.

Utah: Jim Hansen, Nathan Goodwin, Bill Orton, Randy Topham, Karen Shepherd, Julie Parr.

Vermont: Jim Jeffords, Stephen Dube, Bernie Sanders.

Virgin Islands: Ron de Lugo, Mark Milligan III.

Virginia: Tom Bliley, Terry A. Overholser, Rick Boucher, Eric Ball, Leslie Byrne, Ann Saliski, Bob Goodlatte, Monica Jones, James Moran, Cuong Phan, Owen Pickett, Carl Roughton, Robert Scott, Amy Ridgway.

Washington: Norman Dicks, Katherine Raby, Jennifer Dunn, James W. Mullin, Thomas Foley, Jamie Lynne Benedixen, Mike Kreidler, Shaun Peterson, Al Swift, Jason Wang, Jolene Unsoeld, Jason Grangroth.

West Virginia: Alan Mollohan, Bobby Cartwright, Nick Rahall, Tara Chavez, Bob Wise, Aaron Hill.

Wisconsin: Gerald Kleczka, Brad Weigel, David Obey, John Wolfe, Toby Roth, Kimberly M. Koch.

Wyoming: Craig Thomas, Jacob Bower.

INTRODUCTION OF THE WASTE FLOW CONTROL ACT OF 1994

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. SMITH of New Jersey. Mr. Speaker, today I am introducing legislation which authorizes State and qualified local government entities to regulate and manage the collection, transport, and disposal of their municipal solid waste. While local governments have exercised this authority for approximately two decades, and while Congress has presupposed this function for local governments, waste flow control authority has never been explicitly granted. My bill remedies that shortfall.

I would like to take this opportunity, Mr. Speaker, to offer my heartfelt thanks and deep appreciation to Mercer County, NJ county executive Bob Prunetti without whom this legislation would not have been possible. County Executive Prunetti assembled a team of top-notch environmental attorneys including Dave Brooman who provided crucial technical expertise in crafting this measure. I would also like to express my gratitude to the many waste management experts and local government officials, like Somerset County freeholder Mike Pappas who, as president of the New Jersey Association of Counties, successfully advocated the principles embodied in this bill and won statewide support for the same. The New Jersey Governor Whitman's office and the Department of Environmental Protection and Energy have offered insight as well.

The Waste Flow Control Act of 1994 is a response to the Supreme Court decision in C&A Carbone versus Clarkstown, New York in which the Court undermined the use of waste flow control measures by State and local government. Specifically, the bill provides a broad grandfather for all waste flow control laws, ordinances, provisions, related contracts, and solid waste management plans that had been in effect prior to the Court's decision. Furthermore, it explicitly grants States and localities the authority to flow control all residential municipal solid waste generated within the borders of the State or locality in the future. The Waste Flow Control Act of 1994 also strengthens the public comment and competitive bidding procedures for future waste management plans.

Mr. Speaker, approximately 28 States have adopted waste flow control ordinances over the past 20 years. These direct initiatives simply designate waste disposal and treatment facilities to which all municipal solid waste generated within the localities borders must flow. These facilities—which can include landfills, waste-to-energy systems, composting or sludge treatment plants, incinerators, and transfer stations—are generally part of an integrated waste management plan, necessary to meet public health, safety, and environment needs in a responsible manner.

Mr. Speaker, to fund the safe, sound, and environmentally progressive technologies as well as the successful recycling programs which the public rightfully demands, States and localities have relied upon resource recovery bonds. The key to securing these bonds has always been flow control in one form or the other. Only by ensuring that there will be a steady flow of waste to the facilities at a determined tipping fee can the local government assure Wall Street that the venture is worthy of investment.

Mercer County, for instance, has developed a solid waste disposal plan which hinges on the construction of a waste-to-energy facility in Hamilton Township. The county has gone to great lengths to secure general public approval and to ensure that all relevant environmental standards are met or exceeded. Financing, however, depends on the sale of up to $200 million worth of resource recovery bonds. In light of the recent Supreme Court decision, however, sale of these bonds has been put on hold and the preliminary construction deadline of July is unlikely to be satisfied. Not only is the county's highly successful curbside recycling program threatened; but also the waste management plan as a whole. Furthermore, county taxpayers face the prosect of additional taxes or reduced services to fulfill contract requirements for bonds already sold.

Burlington County faces a similar situation regarding its proposed sewage sludge composting plant. The plant is estimated to cost $70 million and the county has already borrowed $46 million from the State Wastewater Trust. However, financing is based on the assurance that sewage sludge from all 40 municipalities in Burlington County would be treated at the plant. Without this guaranteed revenue, the county may be forced to accept sludge from outside the county—thus breaking a longstanding promise to Burlington residents—or hike disposal fees which would inevitably mean higher local property taxes.

Without waste flow control, the management and disposal of municipal solid waste becomes a free-for-all with large hauling conglomerates searching for the cheapest but not necessarily the safest means of waste disposal. Only with our State or local governments at the helm can we be certain that the

Nation's goals of protecting our environment, health, and safety will be met effectively and cost-efficiently long-term. Furthermore, without waste flow control, the burden for waste management would fall directly on the already overburdened taxpayer.

Neither raising taxes nor resorting to lower environmental, health, and safety standards can be acceptable solutions to the problem raised by the Carbone decision.

Congress has, on several occasions, implied that States and localities have the authority to manage resource recovery through waste flow control ordinances. In the Resource Conservation and Recovery Act of 1976 [RCRA] the Congress authorized "State and regional solid waste plans" to "assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound" [42 U.S.C. § 6941].

Furthermore, in 6943(a)(5) or RCRA, Congress expanded on the parameters of these plans, ensuring that State and local governments not be "prohibited under State or local law from negotiating and entering into long-term contracts for the operation of such facilities." The House report, in reference to this specific section, states that "this prohibition, on State or local laws invalidating long-term contracts, is not to be construed to affect State planning which may require all discarded materials to be transported to a particular location * * *." [H.R. Rept. No. 94–1491, p. 34 (1976)].

In the Solid Waste Disposal Act Amendments of 1980, Congress authorized the Environmental Protection Agency [EPA] to provide technical assistance to State and local governments for the "removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities, for resource recovery]." [42 U.S.C. § 6948(d)(3)] Included in the list of obstacles which Congress sought to overcome are "impediments to institutional arrangements necessary to undertake projects * * * including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project."

Mr. Speaker, we have effectively written into law that waste flow control is an acceptable method for States and localities to carry out their responsibilities in resource recovery and solid waste management. However, as Justice Sandra Day O'Connor pointed out in her concurring opinion in the Carbone case, these references by Congress "neither individually nor cumulatively rise to the level of the 'explicit' authorization required by our dormant Commerce Clause decisions." My bill answers Justice O'Connor's call to arms and spells out congressional intent in the letter of the law in a concise, unambiguous, and unmistakably clear manner.

Since the Carbone decision, I have been working closely with many of my colleagues as well as representatives of States, county and local governments, small waste hauling companies, environmental agencies, securities corporations, and bond companies. All have been helpful in providing the input that has been necessary to produce this remedy which will protect the investments of State and local governments and will allow these governing bodies to continue to pursue their traditional responsibilities in ensuring their citizens' health and safety and the protection of the environment. Furthermore, The Waste Flow Control Act of 1994 is worded clearly, heeding the Court's recommendation and freeing States and localities from endless litigation.

Mr. Speaker, in closing, I would like to stress the absolute urgency with which Congress must address this issue in the remaining weeks of this session. The Carbone decision has left State and local governments high and dry—many with outstanding debt which they have acquired in their effort to meet their waste management responsibilities, some simply without recourse for meeting the needs of their constituents and ours. I appreciate the prompt action and sympathy with which Energy and Commerce Subcommittee on Transportation and Hazardous Materials Chairman AL SWIFT has met this matter and the work of our colleagues, particularly ALEX MCMILLAN and DAVID MINGE, who have been actively seeking legislative remedy even in anticipation of a Carbone decision much like that handed down.

The Waste Flow Control Act of 1994 is a sensible approach to a simple problem and I encourage my colleagues to join this effort on behalf of their local governing partners.

H.R. 4603: FISCAL YEAR 1995 COMMERCE-JUSTICE-STATE APPROPRIATIONS

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. FAZIO. Mr. Speaker, I wish to clarify my position on the Federal Government's responsibility to reimburse States for the costs of incarcerating undocumented felons.

Reimbursement to States for undocumented felon incarceration is an obligation which I strongly support. However, I opposed the amendments that my colleagues, Mr. CONDIT and Mr. ROGERS, offered as mechanisms for paying for these expenses because these proposals were neither reasonable nor realistic.

The first amendment, offered by Mr. CONDIT, would have financed these costs through an across-the-board cut to all programs in this appropriations bill. I did not support this amendment because it would have sacrificed drug enforcement agents, prison construction funds, the Border Patrol, community policing and the Byrne Program—a key element in California's fight against crime—to get up an entitlement program to pay for felons who are here, in this country, illegally, in jail.

Earlier this year, a delegation of law enforcement representatives from my congressional district was here in Washington attending the White House briefing on the crime bill. Immediately following the briefing, these representatives joined me in a private meeting with Attorney General Janet Reno and advised her of their concerns about the pending legislation. At the top of their list was their apprehension about losing their Byrne formula grant funding—funding which had been eliminated from the administration's anticrime proposal. Without Byrne formula grants, Glenn, Colusa and Yolo Counties would have to do away with their narcotics task forces, leaving these communities wide open to drugs and the violence that accompanies this persistent problem.

In response to this input I, along with my colleague from Michigan, Mr. STUPAK, introduced an amendment which was included in the House anticrime initiative as part of the chairman's en bloc amendment. This sense-of-Congress amendment stressed that Congress must maintain its support for the Byrne component of the anticrime effort. Due to this and similar efforts by other Members of the House, Chairman MOLLOHAN and the appropriations subcommittee provided a substantial increase in Byrne Program funding for the new fiscal year.

The subcommittee also, for the first time, provided funds to reimburse States for the costs of incarcerating undocumented felons by allowing States to use their sizable increases in Byrne funding at their discretion—for anti-drug-abuse strategies, to upgrade their criminal history records, and for the costs associated with incarcerating undocumented felons. Although the subcommittee was not able to provide full and separate funding for the undocumented felon program, pumping substantial increases into the expanded, flexible Byrne Program gives California—traditionally the largest recipient of Byrne funds—$85 million of the $804 million in Byrne dollars appropriated for next year.

The second amendment, offered by Mr. ROGERS, cut our U.N. peacekeeping dues in order to fund the undocumented felon program. I opposed this alternative because I realize how critical our investment in U.N. peacekeeping is. Peacekeeping is not charity. It is directly related to maintaining our national security and upholding our political and economic interests.

Our Nation cannot afford to act alone in the world's trouble spots, particularly with our defense budget shrinking. It is also not in our best financial interests to do so. The money that we invest in U.N. peacekeeping operations enables us to get our allies to send their troops into troubled areas, reducing the need for American forces and decreasing the pressure on our defense budget. To the extent that we fail to fund peacekeeping, we must fund peacemaking—our defense budget has to pick up the slack. Our peacekeeping dues therefore protect the billions of dollars that American taxpayers have already invested in our cold war victory.

Over 80 percent of the money requested in this bill for peacekeeping operations was obligated by President Clinton's predecessors. If we renege on these commitments, we will violate our treaty obligations and give other nations an excuse to do likewise. As Chairman OBEY pointed out last night, it is not in our financial interest for us to default on these debts. We can either pay now, or we can pay later. And if we pay later, as the peacekeeper of last resort, the price will be significantly higher. Once we have to resort to military action, the costs are overwhelming.

Having served in the California State Legislature prior to coming to Congress, I am extremely sensitive to our financial problems.

Reimbursement for the costs of incarcerating undocumented felons is critical to California, since we are affected by these costs to a greater extent than any other State. However, I am also aware that our Governor has balanced his budget based on unrealistic assumptions of Federal aid for undocumented felons.

As my colleague from California, Mr. DIXON, pointed out in his colloquy with Chairman MOLLOHAN, the subcommittee has taken an important first step toward full reimbursement of these authorized, but previously unfunded, expenses by providing some measure of assistance to those States that are burdened with the responsibility for our Nation's undocumented felons.

California's $85 million share of the expanded Byrne program represents an increase of $47 million—or 125 percent—over this year's funding. And, if the crime bill conferees are able to agree on some level of isolated funding that is specifically targeted toward the undocumented felon program, this figure would increase. Although I realize that full reimbursement for this program may not be likely during this funding cycle, I remain optimistic that, as we continue to work toward providing some significant measure of relief for affected States, we will ultimately achieve full reimbursement for these costs.

THE MARINE PLASTIC POLLUTION RESEARCH AND CONTROL ACT AMENDMENTS OF 1994

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. HUGHES. Mr. Speaker, I rise to introduce legislation that would improve implementation of the Marine Plastic Pollution Research and Control Act of 1987. This bill, the Marine Plastic Pollution Research & Control Act Amendments of 1994, is analogous to language introduced in the Senate by my distinguished colleague from New Jersey, Senator FRANK LAUTENBERG.

As many of my colleagues know, I have worked hard throughout my 20 years in Congress to improve the quality of our coastal waters and beaches. In the past, I have successfully sponsored legislation to end ocean dumping of sewerage sludge and to track medical waste to ensure that it doesn't wind up on our beaches as it did in 1988. I am also currently the sponsor of legislation to improve the monitoring of coastal recreational waters.

Marine Plastic Pollution Research and Control Act Amendments of 1994 is a natural counterpart to that legislation, because it seeks to improve the quality of our coastal waters through enhanced procedures for plastic pollution monitoring. The legislation provides the Coast Guard with additional authority and imposes stricter requirements on it, all aimed at improving compliance and enforcement of waste disposal practices abroad vessels and at ports.

An important way to attack the ocean dumping problem is to ensure the presence of adequate waste reception facilities at all ports and terminals. My bill does this by requiring on site inspection of reception facilities by the Coast Guard prior to issuance of a certificate of adequacy. It also seeks to assure those facilities are maintained by providing for automatic expiration of certificates after 5 years, or sooner if there is a change in operator or if the certificate is suspended or revoked. In addition, the bill prohibits a port from charging a separate fee for waste disposal—a practice that has contributed to problems with compliance because these separate fees are often unpredictable. The bill would require that these fees be included in the docking fee or another obligatory fee, thus making them more predictable.

Should a port fail to comply with the act, this bill authorizes the Coast Guard to assess a civil penalty against a noncomplying port for up to 30 days, after which time the agency must revoke the certificate and close the port.

The bill also addresses similar problems at marinas. My legislation requires the Coast Guard to establish a program to ensure that operators of marinas maintain adequate waste reception facilities. The program's efficacy will be tracked through mandatory biennial reports to Congress.

Unfortunately, the Coast Guard can't do the job alone. That's why the Marine Plastic Pollution Research and Control Act Amendments provides an avenue for citizen involvement. It does this by making available a current list of certificate status at ports and by requiring that ports post placards containing telephone numbers where citizens could call to report any inadequacy of reception facilities. In order to make it easy for individual citizens to report violations, the bill directs the Coast Guard to establish a toll-free telephone reporting system. Furthermore, the bill expands the crew and passenger education requirement to include a structured briefing about the Marpol Convention for everyone on board a ship before disembarkation—perhaps as part of the vessel's safety briefing. The bill would also extend the mandate to conduct public education and outreach on plastic pollution and authorizes USCG, EPA, and NOAA to award grants for carrying out such programs.

Other parts of the Marine Plastic Pollution Research and Control Act Amendments of 1994 would address compliance of foreign vessels with Marpol; states the sense of the Congress that domestic shipping insurance should not provide for the payment of penalties under this act; make whistleblower provisions applicable to employees of DOD, DOT, and DOA, so that Federal employees who report violations of this act are protected; and assure better coordination between DOT, DOD, and DOA to implement this act.

Mr. Speaker, this morning I listened to the new Commandant of the Coast Guard, Admiral Kramek, state that he wanted the Coast Guard to be world leaders in environmental protection. I applaud his vision, and I think the Coast Guard is well on the way to achieving that goal. This legislation fits in well with Admiral Kramek's vision because it will help the Coast Guard to ensure that our coastal waters are free of plastic debris and other garbage.

This bill is supported by the Coast Guard, as well as the Center For Marine Conservation. I hope my colleagues will join with me and those distinguished entities and lend their support to this legislation.

RUSSIA JOINS PARTNERSHIP FOR PEACE

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Mr. GINGRICH. Mr. Speaker, I want to take this opportunity to welcome Russia as the newest member of the Partnership for Peace. A free, democratic, and economically strong Russia is in America's vital interest, and this historic moment is a major step in bringing security and prosperity to the world.

The majority of people in Russia are committed to democracy, free enterprise, and change. The Russian people have told us they want to be "normal and civilized," basically America without the violent crime. They truly want the rule of law, the right to own property, contract rights, the right to work hard and keep what they have earned, the right to free speech, and free elections. We have an unparalleled opportunity to work with them to achieve these goals.

Depending on our actions, Russia faces several possible futures. How much we are willing to help is contingent upon what kind of future we want for our children and or grandchildren. It is possible that Russia could slide into an authoritarian dictatorship, and we could return to another cold war with a single identifiable enemy competing for influence around the globe. Or, Russia could collapse into a situation similar to the civil war now occurring in the Balkans, except that nuclear weapons will be involved. But, if we seize this opportunity, there is a chance that we can assist Russia in evolving into a relatively stable, open, and democratic society committed to similar ideals as ours. We gain the benefits of stable political systems, emerging open capitalist oriented markets, and political allies in a very important region of the world. We won the cold war; it is now time to win the peace. The Partnership for Peace is a tremendous step in United States relations with Russia, and I hope that we can continue to build on our successes and work together for a peaceful and more secure world.

IN SUPPORT OF STRONG VIOLENCE AGAINST WOMEN ACT PROVISIONS IN THE CRIME BILL

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 1994

Ms. PELOSI. Mr. Speaker, I rise today in support of the Violence Against Women Act and join my colleagues in calling for the strongest possible domestic violence provisions to be included in the crime bill conference.

Today, along with other California women Members of Congress, I will be sending a letter to the conferees on the crime bill urging them to accept the toughest provisions of both the House and the Senate versions of the crime bill.

Domestic violence and spousal abuse are among the most common and heinous crimes

in America. Imagine coming home every day to an abusive situation. Imagine living day-to-day with a violent person. Imagine waking up each morning not knowing if you will be able to make it to the next morning without suffering severe bodily harm. Imagine not feeling safe, not being safe, in your own home—not for fear of someone from the outside breaking in, but because you live with someone who threatens your life daily.

This is the tragic reality for many women and many children in our country today. Congress must act to change this situation by clamping down on the criminals who abuse and by protecting the victims of domestic violence. Congress must pass a crime bill which includes strong violence against women provisions.

The final crime bill must protect battered immigrant women. The House version of the crime bill includes provisions to prevent abusive spouses from using immigration law to control and continue abusing their undocumented spouses. Presently, abused immigrant spouses often cannot escape a violent household because leaving it would result in their deportation. Mr. Speaker, we must correct a system which allows a perpetrator of domestic violence the power to continue abusing because of immigration technicalities.

In addition, I join with my colleagues today in calling for the highest possible funding levels for domestic violence prevention and urge the conferees to recede to the Senate authorization of $1.8 billion for these purposes. Domestic violence programs must be supported with sufficient funds to combat these crimes.

We cannot afford to lose this opportunity to strengthen domestic violence prevention efforts and toughen the penalties for those who continue to break the law.

Mr. Speaker, I thank my colleague from California, Ms. ROYBAL-ALLARD, for organizing this morning hour on a very important part of the crime bill and I once again urge the crime bill conferees to accept the strongest possible violence against women provisions.