SENATE—*Monday, July 11, 1994*

The Senate met at 1 p.m., and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The Senate will be led in prayer by the Senate Chaplain, the Reverend Dr. Richard C. Halverson.

Dr. Halverson.

PRAYER

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

Let us pray:

* * * *the powers that be are ordained of God.*—Romans 13:1.

Living Father, revive the Senate. Infuse it with new life. Dissolve the frustration, the disappointment, the disenchantment.

Ignite the fire that burned in the Senators' hearts when first they convinced the people to send them here. Restore the faith, the sense of purpose, the enthusiasm, the dream, the vision.

Mighty God, from whom comes all authority, the world waits for the Senate to be the powerful, intelligent, deliberative, legislative leaders so desperately needed today in the Nation and the world. Let it be true, dear Lord. Let it be true.

In Jesus' name. Amen.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Also under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 2 o'clock p.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

No Senator seeks recognition.

The Chair, in his capacity as a Senator from the State of West Virginia, notes the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator is recognized for not to exceed 5 minutes.

Mr. COVERDELL. Mr. President, I ask unanimous consent to speak for 10 minutes.

The PRESIDENT pro tempore. Is there objection? Hearing no objection, the Senator from Georgia is recognized for not to exceed 10 minutes.

THE FLOODS IN GEORGIA

Mr. COVERDELL. Mr. President, I have just returned from my flood-ravaged State. I suspect that anybody who has ever witnessed such a national disaster of these proportions cannot but be terribly affected in grieving for the ache being experienced and felt by so many of our fellow citizens.

In particular, I know everybody in our country joins me in offering sympathy to those families who have lost loved ones and those that will lose members of their family in these tragic circumstances we are confronted with in our region of the State.

I would like to take just a moment to thank my colleagues, in particular, from South Carolina and Florida and the midwestern Senators who have called to express their concern and worry about the citizens of my State and region. I want to thank the President for being so prompt in declaring a national disaster and emergency in Georgia.

I also want to take just a moment to thank the many heroes and heroines that none of us will ever know—the person that reached out and grabbed one person about to be lost in the marauding waters; the individuals, nameless, that showed up to fill sandbags to protect a critical water plant, a key facility in one of the many jurisdictions that have been so ravaged by these floods; and, as most would appreciate, that unique American quality, that neighbor-to-neighbor value of our countrymen that causes them to appear from nowhere to help another neighbor in trouble.

It is happening throughout our region—thousands upon thousands of people that have stepped forward with no call, no call to arms, on their own, there at the water's edge, trying to help those that have been so severely harmed by this disaster.

I think it worthy of noting the scope of the damage. Georgia is the largest State east of the Mississippi and nearly one-third of her land mass has been directly affected by these floods. It is just hard to imagine 2 feet of water dropping from the skies in a 24-hour period. We have at latest count around 2,000 roads that have been severed by the flood; 100 Federal highways; Interstates I–75 and I–16, vital links north and south for our entire Nation, have been ravaged and severed by the force of these unpredicted waters.

Currently, somewhere between 40,000 and 50,000 people have been evacuated and are living in temporary shelters. One out of four Georgians has been affected by the flood itself. I have just had a report come to me that in Albany, which is one of the many affected cities, 23 square miles are now under water, 22,800 people have been directly impacted and 8,500 homes are in flood waters.

As you travel and look down across these bleak rooftops, I think everybody can empathize to think of all the personal letters, the home effects that are cherished and gathered over the years of a family's life. To see it all washed away just deepens the ache that we know these people are experiencing.

I am convinced from my review of the area that we are going to be confronted with—I know this is of particular interest to the President pro tempore—a need for supplemental appropriations. I think that is almost indisputable as we look at the growing value of the losses. The number I have heard offered as a preliminary number is in the range of $200 million. I personally think it will be double that. Of course our sympathy goes out to the States in the West that are experiencing another kind of disaster with the fires ravaging in Colorado and California. I am convinced the national disaster list of 31 counties in our State will grow by at least another 5 to 10 counties before we are through with the assessment.

As difficult as the last few days have been—and they have been exceedingly difficult—unfortunately we have to look at local officials or involved citizens and say to them this is just the beginning. Not many have thought about what happens to those in the shelters when the water goes down, when you go to the home that is pushed off its foundation, the soybean crop that has been under water for 5 days, mud-filled homes, businesses closed, cash registers that have been shut down for weeks, the loss of the water system, the loss of the sewer system, an inability to provide the basic necessities of human life. The buildback is going to be a long and arduous one. It is going to require the patience of those directly involved.

But more important, it is going to call for unprecedented coordination among Federal officials. Again, I want to compliment the Director of the Federal Emergency Management Agency and all Federal agencies and the executive branch for their attention to this disaster. They have worked well with our Governor's office and local officials. But now comes the long period I have alluded to. We will have many sister counties and sister States that will

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

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offer support: Clothing, personal effects, housing, trucks, earth-moving equipment. But that is going to require enormous coordination. I have dedicated my office and all our energies to working with Federal and State officials to be a participant in facilitating coordination, making sure the will of the country—which is so enormous and so encouraging—is not lost, as it tries to move to be of assistance to these citizens.

Already we can see the signs of strain—strain because we are dealing with public officials who have not slept in 72 hours. We are dealing with a rush of offers of good will and support which can overrun the capacity of those with the best intentions, trying to deal with this major disaster.

So I call on the President, call on the Federal agencies: Agriculture, IRS, HUD, the Small Business Administration—to make every effort to be prepared for the long haul, this long buildout period. And I call on local officials and all of our Federal delegation to do the same. We should be as one because this problem is so severe, affecting so many lives and futures. This is the time for the ultimate form of neighbor-to-neighbor work in coordination.

In closing, Mr. President, let me simply again thank all of my colleagues who have expressed sympathy, all the local officials, and again the unsung heroes and heroines who have done so much to reduce what would have been far, far worse without this neighborly support.

I yield the floor.

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

The PRESIDENT pro tempore. The question of a quorum having been noted, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Missouri [Mr. BOND], is recognized for not to exceed 5 minutes.

HEALTH CARE REFORM

Mr. BOND. Mr. President, a Boy Scout leader approached an elderly lady who had just been helped across the street by one of his Scouts, so the story goes. When the Scout leader inquired if the Scout had rendered good and courteous service, the lady replied: "He was very nice, but I did not want to cross the street."

In the battle over health care reform, I have been an advocate of achieving universal coverage by requiring every citizen to take responsibility for their health care coverage, either obtained at work, through a Government program, or by the individual's purchase of a health care policy assisted by tax credits and/or deductions. In fact, an individual requirement lies at the heart of the Clinton health reform package. Every individual would have to have health care coverage for which the individual would be responsible for at least a portion, or the individual, if not employed, would have to purchase the health care policy themselves.

The so-called employer mandate alone in the Clinton plan does not achieve universal coverage without the requirement that the individual participate and, if self-employed, buy that coverage for himself or herself and the family.

The employer mandate is simply a thinly disguised way of hiding health care costs by imposing what amounts to a payroll tax on employees, and that, in my view, would significantly curtail job creation and cost millions of jobs.

As I have traveled around my State of Missouri in recent weeks, I have heard more and more people telling me that while they want to fix what is wrong with health care, they also do not want to be told by Government that they have to purchase a certain package of health care insurance. In effect, they are saying that we do not want to cross that street, as the lady told the Scoutmaster.

There are three basic reasons why universal health care coverage, or significantly increased health care coverage, is very desirable.

First, much human suffering could be alleviated, lost time avoided and health care costs reduced if everyone received regular, primary, and preventive health care. When people do not have health care, they too often wait until late stages of an illness to seek health care, often in an expensive emergency room and have to have much more costly treatments which may or may not be effective.

Much of that problem can be solved by eliminating the tax inequities which discourage and penalize farmers, ranchers, other self-employed people and employees who do not receive health care coverage at work from obtaining their own coverage.

In addition, under the Chafee health plan, the HEART proposal which I helped draft, and most of the other plans, low-income individuals would be provided with subsidies to enable them to purchase health care coverage.

A recent study by Lewin-VHI suggested that a system of tax equality and low-income assistance could achieve coverage for significantly over 90 percent of Americans even without a mandate. For those initially who do not choose to receive health care, education, effective public advocacy and economic incentives can significantly raise the level of coverage under a voluntary system.

The second problem with a lack of universal coverage when it is accompanied by insurance market reform, such as most plans now before us include, is what is referred to as adverse risk selection. Most proposals before Congress would eliminate the ability of health care insurers or other providers to refuse to cover preexisting illnesses and to discriminate against those who are sick. If a person could wait until he was very sick to purchase insurance on his way to the hospital, then the cost of insurance could be driven further out of reach of many citizens who would be faced with the high premiums for health insurance policies purchased only by sick people.

This adverse risk selection can be dealt with by limiting the coverage of preexisting conditions to allow insurance companies to impose a waiting period to cover preexisting illnesses for people who have chosen not to purchase insurance. Under that provision, there would be less an incentive to delay the purchase of insurance until illness strikes.

A third frequently cited problem with a lack of universal coverage is the phenomenon of cost shifting. When a hospital, a physician or other health care provider provides basic care to people who cannot or will not pay, these costs have to be shifted onto the bills of the middle-class patients and others who pay their bills personally or through health insurance.

Some estimates indicate that as high as 30 percent of health insurance premiums or other health care charges on paying customers are imposed to pay for the uncompensated care given to those who have inadequate coverage or no coverage at all.

One of the greatest villains in this piece is the Federal Government. Under pressure from Congress to save on health care costs, arbitrary price controls have been placed on the amount reimbursed for patients under Medicare and Medicaid. We do that when we ratchet down the payments made for Medicare and Medicaid patients.

As a result of the underpayment by the Federal Government, ratcheting down the reimbursement for Medicare and Medicaid, which amounts to about $15 billion a year in cost shifting and the uncompensated care that must be provided by the health care system, charges for private patients are about 130 percent of their costs in most areas of the country.

It seems to me that if the Federal Government makes fully deductible the cost of a reasonable health insurance policy, provides a 100-percent subsidy for health care premiums for those at the poverty level and below, and declining subsidies with those just above the poverty level, the health care consumers and providers would be in a better position to protect themselves against uncompensated care. If an impoverished patient seeks health care

and has no coverage, then the health care provider could require that he or she apply for the subsidies available to participate in a health care program. For those who have ample resources but have not chosen to purchase health care, the health care provider could insist prior to providing such care, other than an emergency setting, that the patient must make arrangements to pay for the health care charges. Under a system with full tax deductibility plus subsidies, the likelihood of uncompensated care and its amount should be substantially reduced.

Apparently my colleagues in this body and in the House are hearing similar complaints from constituents who do not want to be faced with a Government directive saying that they must purchase health care. That is why the Senate Finance Committee has come forward with a bipartisan compromise that provides for Federal assistance but no requirement that people purchase health care policies. It seems to me that there are not the votes to impose individual mandates in this body, as I have talked with colleagues and I have listened to their comments on the floor.

Another way, of course, to provide universal coverage is to have the Government provide health care for everybody. I do not believe that there is anywhere near a majority for that, and even that Government-provided health care does not ensure that it will be utilized by those who need it.

We have seen the shocking statistics of the large number of children under 2 in this country who have not had their recommended immunizations. In my State in our two largest cities, only 50 percent and 30 percent of infants have been fully immunized. Thus, 50 percent and 70 percent of infants have not been fully immunized, even though vaccines are widely available through Medicaid and public health departments for parents who could not afford to buy them. The failure to obtain immunizations strongly indicates that these infants are also not receiving the vitally important well-baby preventive care that should be among the highest priority preventive programs that we have.

A pediatrician who practices in rural Missouri tells me that his office must triple book Medicaid patients. That is, book three Medicaid patients for children at each given hour because roughly two out of the three Medicaid-recipient parents who make appointments do not show up.

Senator DALE BUMPERS of Arkansas introduced an amendment to cut welfare payments—AFDC—to parents who fail to immunize their children. Although the amendment was overwhelmingly adopted in this body, it never made it out of the House-Senate conference.

A bipartisan welfare reform measure, S. 2009, which I have introduced with Senator TOM HARKIN, would require AFDC recipients to sign family responsibility agreements obligating them to obtain health care including immunizations for their children. Failure to sign the agreement or to comply with its provisions would lead to a reduction and ultimately termination of AFDC payments.

In my view, we can correct many of the things that are wrong in health care without damaging the health care system, as I believe the Clinton plan or the plan reported out of the Senate Labor Committee would do. I believe that a significant majority in this body can be mustered for a health care proposal that does take the necessary steps of reforming the insurance market, providing for fair tax treatment, offering subsidies for low-income people, setting standards for electronic filing, processing of health care claims to reduce administrative costs, lessening the cost of malpractice litigation, and reducing defensive medicine.

If we are willing to recognize the realities of health care and listen to the people we represent, I am convinced Congress can pass health care reform that will remedy the flaws in the current system. This can be done without destroying the benefits we receive from having a high-quality health care system that is run by the private sector.

I look forward to working with my colleagues in this body and, we hope, ultimately in the House, to achieve a workable compromise that achieves what is needed in health care and does not fix that which is not broken.

I thank the Chair.

TRAGEDY IN COLORADO

Mr. CRAIG. Mr. President, I am terribly saddened by the wildfire tragedy near Glenwood Springs, CO, which took the lives of 14 firefighters last week. My deepest sympathies go out to the families and friends of all who were lost.

Two of these, Jim Thrash and Roger Roth, were experienced smokejumpers who were dispatched to the fire from our smokejumper base at McCall, ID. Jim had jumped out of McCall for 15 seasons, and Roger for 3. Both were highly regarded for their knowledge and skill as firefighters. Coworkers at the McCall Smokejumper Base and the community at large mourn their loss.

This tragedy strikes me personally, as I knew Jim Thrash in his capacity as president of the Idaho Outfitters and Guides Association. Jim and his wife Holly established their own hunting guide business in 1983, and they have been active in the organization through the years. I have met with both Jim and Holly on issues related to the management of natural resources in Idaho. Their advice has been very helpful to me.

Jim's 14-year commitment to his Forest Service career, his professional leadership and his devotion to family are commendable. His accomplishments will continue to benefit the community and all those who knew him.

My thoughts will be with him and his family as well.

Mr. President, I am submitting a memorial to Jim. I ask unanimous consent it be printed in the RECORD.

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

JIM THRASH (1949–1994)

Idaho Outfitters and Guides Association (IOGA) President Jim Thrash was one of at least a dozen firefighters killed while fighting fire near Glenwood Springs, Colorado on Wednesday, July 6. Apparently, Jim was caught when flames, fanned by a sudden shift in winds, jumped the fire line that was being established. The fire was moving at a rate that did not allow some of the firefighters time to deploy their fire shelters. Details on the tragedy are still being pieced together.

Jim has been a Forest Service smoke jumper based out of McCall, Idaho for the past 14 summers with 213 career jumps. In 1985, Jim and Holly purchased and began a hunting business on the Payette National Forest. Their business later expanded to include a whitetail deer clientele on the Nez Perce National Forest. Jim was also one of Idaho's most respected bighorn sheep outfitters.

Jim wasted no time in becoming involved in IOGA (1983) and quickly established himself as a good listener and reasoned voice. Beginning in 1988, Jim served two terms as a Board of Director, was elected Vice President in 1992 and became President in 1993.

Jim personified volunteerism and leadership within the Association and believed strongly in the diversity of IOGA. He worked behind the scenes to encourage the membership to serve on a committee, seek an elected position or pursue a nomination to the Licensing Board. He was consistently proactive and a savvy negotiator regarding issues and concerns at the state and national levels. Jim was a champion of IOGA's Code of Ethics. He was a thoughtful and articulate leader for the industry at the Legislature, in Fish and Game matters, and in his role as chairman of the Wilderness Committee, Jim also was IOGA's chief spokesman in the ongoing effort to monitor and work with the Idaho Outfitters and Guides Licensing Board. Active with national wildlife conservation organizations, he was recently chosen by his peers to be the chairman of the Foundation for North American Wild Sheep outfitter advisory board.

Like all outfitters and guides, he was at home in the backcountry. He practiced what he preached when it came to responsible, shared use of our public lands and waters. He knew, understood and respected the role of fire in the ecosystem. Needless to say, his leadership will be sorely missed.

Jim was a very devoted husband and father. Like many outfitter spouses, Holly shared the day-to-day duties of running Salmon Meadows Lodge-Warren Outfitters and providing quality service. Jim leaves two children a ten year old daughter, Ginny, and seven year old son, Nathan. Jim's parents were visiting the family at their home near New Meadows at the time of the tragedy. Jim is also survived by a sister, Loretta Beecher.

Decisions on IOGA tributes, memorials and remembrances are pending. Holly asks that

Jim's many friends and acquaintances in the outfitting world contact the IOGA office (208/342-1438) for additional information.

LEGITIMIZING KIM IL-SONG

Mr. DOLE. Mr. President, last Saturday upon hearing of the death of North Korea's President Kim Il-song, President Clinton offered condolences to the North Koreans on behalf of the American people. By personally offering friendly condolences on behalf of the American people and failing to mention the criminal history of Kim Il-song's dictatorship, President Clinton helped to lend legitimacy to the North Korean regime.

Let us not forget, Kim Il-song was not just the leader of another country. He was the dictator of one of the most evil and repres.ive regimes of this century—a regime opposed to every value and principle our great Nation stands for; a regime hostile to any notion of human rights; a regime that has threatened our friends, the South Koreans, and our interests in the region for decades.

Historically Kim Il-song is in the same league as Joseph Stalin—'aving enslaved the North Koreans in his own brutal brand of communism. And, even though Joseph Stalin was the dictator of a country we recognized and were allied with during the Second World War, the Eisenhower administration only sent perfunctory condolences from the State Department when he died.

Finally, let us not forget that the sufferings of the American people during the Korean war: 54,000 Americans lost their lives—54,000 families lost their loved ones. Over 100,000 Americans were wounded and over 5,000 are missing.

So, it seems to me that we need to keep things in perspective. Yes, we want to see the North Korean nuclear crisis resolved. However, that does not mean that we should be insensitive to the generation of Americans who suffered as a result of the Korean war, in particular our Korean war veterans and their families. Nor should we ignore the threat posed to present and future generations by North Korea's nuclear program.

The bottom line is that Kim Il-song was a brutal dictator of a government that is neither a friend, nor an ally of the United States—a government whose policies and actions have threatened and continue to threaten U.S. security and interests.

TRIBUTE TO CAROLINE McKISSICK BELSER DIAL

Mr. THURMOND. Mr. President, established in 1801 and located in the center of my State's capital city, the University of South Carolina is one of the Southeast's oldest and most prominent educational institutions. For almost two centuries, it has educated young men and women from not only South Carolina, but from throughout the United States and the world.

The heart of the university is an area known as the Horseshoe. This is the site of the original campus and it contains a number of historic buildings that serve as dormitories, a library, and a museum. Also among these buildings is the beautifully restored president's house, where distinguished visitors to the university, including American Presidents and the Pope, have been entertained.

The woman most credited with renovating the president's house is Caroline McKissick Belser Dial, who resided in those quarters with her then husband, President J. Rion McKissick, from 1936–44. Since her days as the first lady of the university, Mrs. Dial has always been known to South Carolinians for her devotion to Carolina, and she has been one of the university's strongest supporters over the years. I am saddened to report that this fine and gracious woman passed away last week at the age of 93, and while Mrs. Dial will be greatly missed by all those who knew her, she will never be forgotten. Her contributions to the University of South Carolina have forever strengthened that institution and have benefited my State.

Mr. President, I would like to take this opportunity to extend my deepest condolences to the family and friends of Mrs. Dial; and, to request unanimous consent that a copy of an article about Mrs. Dial that appeared in a recent issue of the State newapaper be included in the RECORD following my remarks.

FORMER USC FIRST LADY, LONGTIME SUPPORTER DIES

(By Warren Bolton)

Caroline McKissick Belser Dial was a University of South Carolina Gamecock—one of the most graceful and supportive ever—until her death Wednesday at age 93, those who knew her say.

Dial is credited with transforming the University of South Carolina's president's house into a showplace for entertaining dignitaries and other visitors while she was the wife of the late J. Rion McKissick. McKissick served as USC president from 1936 until his death in 1944.

Even after McKissick's death, Dial, known as "Miss Caroline," continued to show her ardent love and support for the university and was considered one of its most gracious benefactors.

"She was somebody who was literally involved with the university all of her life up until the time of her passing," USC Vice Provost George Terry said. "She was a constant benefactor and supporter of the institution."

Born in Sumter on July 15, 1900, Dial was the daughter of late George William and Caroline Hutchison Dick. After McKissick's death, she married Irvine Belser. In 1976, she married George Louis Dial.

A memorial service will be held at 3 p.m. Sunday at Rutledge Chapel at USC.

As the wife of USC's president, Dial had a flair and polish that impressed students and visitors when they came to the campus, said Daniel W. Hollis, professor emeritus at the university and Dial's son-in-law.

He recalls being awestruck as a freshman in 1938.

"She was a very strikingly handsome lady, dressed beautifully. She radiated style and class, particularly for us bushers from the boondocks," Hollis said. "She was very popular with the students. We were all charmed by her."

Dial, an outgoing woman, decorated the president's home and added the president's rose garden to the grounds. Many of the functions held at the president's house today were started by Dial, Hollis said.

"She was the first president's wife to open up the house and make it the center of entertaining and welcomed students and alumni in," Hollis said. "She just opened up a new dimension of the president's house."

Dial served the university and the public diligently, Terry and Hollis said.

In addition to making an untold number of visits to the university to attend meetings and other functions, Dial also made frequent stops at the South Caroliniana and Thomas Cooper libraries to view her extensive gamecock collections.

She collected everything from ceramics to photos, "literally anything with the picture of a gamecock," Terry said. "She had probably more gamecocks, more different type gamecocks, than any person on the face of the earth."

The hood ornament of her car was a gamecock.

Dial served on many boards at the university, Terry said. She also was a leader in civic affairs around the state.

Dial was chairwoman emeritus of the Board of Visitors at her death. It was a position she held for decades. She was the last living member of the founders of the South Caroliniana Society. She funded a chair in the USC history department.

In 1947, she organized Palmetto Girl's State in South Carolina on USC's campus, which introduces high school seniors to public office.

She was honored as a Distinguished USC Alumnus and awarded an honorary doctor of laws degree from USC. In 1984, the McKissick Library was rededicated as the McKissick Museum in her honor to include her with J. Rion McKissick in recognition of her contributions to the school.

Dial, of 15 Heathwood Circle, graduated from Winthrop College in 1921 and taught at several schools in North Carolina and South Carolina.

Surviving are stepsons, George Louis Dial Jr., and Irvine F. Belser Jr.; stepdaughters, May Belser Douglass, Anne Belser Boas, Catherine Belser Barnhardt, Harriet Belser Deas, Peggy Belser Hollis and Mildred Belser Reid; nieces and nephews.

TRIBUTE TO JAMES L. ISENOGLE

Mr. JOHNSTON. Mr. President, on July 2, 1994, this country lost one of its best public servants and a great man. From 1957 until his retirement in 1987 James L. Isenogle served the United States as an officer of the National Park Service. His legacy, however, will continue to serve the Park Service, Louisiana, and this Nation for many years to come.

Jim Isenogle was the first superintendent of the Jean Lafitte National

Historical Park and Preserve in Louisiana. It was in large part thanks to Jim that so many historically and biologically rich areas of Louisiana are being preserved and maintained for future generations. The Lafitte Park complex includes not only the Barataria wetlands south of New Orleans, but also the Chalmette battlefield and a string of institutions celebrating the cultures of the Acadians, Italians, Germans, Spanish, and native Americans who settled in south Louisiana and added diversity to what can be called the Louisiana Culture Gumbo.

We were very fortunate to have had Jim Isenogle's talent, vision, patience, and commitment for a time. It was because of Jim's extraordinary capability that the Jean Lafitte Park truly is as the New York Times once described it "America's most unique park."

He cared deeply about the land, but he also cared deeply about people. Jim worked hard to give them dignity and recognition and to include everyone in the park, which he firmly believed was truly for the people.

In beginning to establish the Jean Lafitte Park, many would have concentrated on natural resource protection alone; that would have been a legacy by itself. But from the beginning, Jim aggressively led the effort to implement immediately the mandate in the legislation to include cultural interpretation in the park. Through Jim's insight, the first cooperative agreement was signed to establish the Islenos Unit in St. Bernard Parish. This unit not only tells the story of, but also celebrates the many contributions of the too often forgotten Canary Islanders to Louisiana's cultural, economic, and political development. Jim reached out to them, and found a way to include them in the park and in the history of the area.

Jim reached out to others as well. He began a Black History Month Program in 1982—long before such programs were expected—and established a contact point in Armstrong Park to begin a dialog which has helped lay the foundation for what we hope will be a new park celebrating jazz in New Orleans. One of the first posters he commissioned was of George "Big Chief Jolly" Landry, head of the Wild Tchopitoulas Mardi Gras Indian Tribe, forging the way for a farsighted and sensitive cultural interpretation program.

With Jim's help and leadership, the foundation was also laid for the development of the three Acadian cultural centers in Eunice, Lafayette, and Thibodaux. In his life of full service he also made great contributions in Pennsylvania, Utah, and Colorado, and he participated in studies for parks including sites in Florida and Alaska. Jim was recognized for his great contributions by the Park Service with two commendations and by the Department of the Interior with the Meritorious Service Award.

James Isenogle has left us a great legacy and a great challenge. He created the vision for the Jean Lafitte National Historical Park and Preserve; it is up to us to see that we implement and continue to develop it to keep this vision alive. He will be truly missed.

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 $4,618,832,031,822.90 as of the close of business Friday, July 8. Averaged out, every man, woman, and child in America owes a share of this massive debt, and that per capita share is $17,716.29.

THE BLACK CRIME GAP

Mr. DOLE. Mr. President, freedom from crime is the most important civil rights issue for the 1990's.

In an article appearing in today's Wall Street Journal, Prof. John Diiulio, Jr., points out that while the "poverty gap between blacks and whites may be shrinking, the crime gap is growing." According to Professor Diiulio, in 1992 the violent-crime victimization rate for blacks was the highest ever recorded. Blacks suffer disproportionately at the hands of parolees who have slipped through the revolving prison door—legally—only to commit more violence and destroy more lives.

No doubt about it, white racism still persists in America. Our criminal justice system is not perfect. Unfortunately, justice is not always meted out in a colorblind fashion, as it should be. But whatever these shortcomings may be, they pale in importance when matched against the carnage inflicted on the black community by violent crime each year. Fighting crime is, and should be, our No. 1 civil rights priority.

Mr. President, I ask unanimous consent that the article by Professor Diiulio be reprinted in the RECORD immediately after my remarks.

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

[From the Wall Street Journal, July 11, 1994]

THE BLACK CRIME GAP

(By John J. DiIulio, Jr.)

The poverty gap between blacks and whites may be shrinking, but the crime gap is growing. No group of Americans is more devastated by crime than black inner-city citizens and their children. No wonder black urban residents overwhelmingly cite crime as the single biggest problem in their neighborhoods.

In 1992, the violent-crime victimization rate for blacks was the highest ever recorded. Some 113 out of 1,000 black teenage males were victims of violent crimes. This compared with 95 for black teenage females, 90 for white teenage males and 55 for white teenage females. The rate was 80 for young (age 20–34) black men, compared with 52 for young white men. And the rate was 35 for adult (age 35–64) black males vs. 18 for adult white males. The chances that a black male teenager would be victimized by violent crime were 6.2 times that of a white adult male, 7.5 times that of a white adult female, 18.8 times that of an elderly white male and 37.6 times that of an elderly white female.

Black residents of cities are most at risk. From 1987 to 1989, the average rate of violent-crime victimization among city residents was 92% higher than among rural residents, and 56% higher than among suburban residents. In 1992 the rate at which black males in central cities experienced violent crimes was 2.5 times the rate at which nonmetropolitan white males experienced them. Even within central-city populations, the rate at which black males experienced violent crimes was 53% higher than the rate for white males (up from 31% higher in 1989).

CRIMINAL DATA

Now let's look at the data about those who commit crimes.

Statistics show that the vast majority of violent crime is intraracial. About 84% of violent crimes committed by blacks are committed against blacks, while 73% of violent crimes committed by whites are committed against whites.

In 1991 black youths were arrested for weapons-law violations at a rate triple that of white youths. In the same year, the violent-crime arrest rate for black youths was five times higher than that of white youths (1,456 vs. 283 per 100,000). From 1976 to 1991, the murder rate among white youths was stable at two to three per 100,000. Between 1976 and 1986 the murder rate for black youths fluctuated between around seven and 10, then rose steadily to about 14 in 1988, 18 in 1990 and 20 in 1991.

The tragedy of thousands of black youths killed by black youths might be expected to concentrate hearts and minds on the question of how to stop the violence. Instead, this national tragedy has been trivialized by those who spout errant nonsense about racial disparities in the justice system.

In fact, once one controls for such characteristics as the offender's criminal history or whether an eyewitness to the crime was present, racial disparities melt away. To cite a typical example, a 1991 study of adult robbery and burglary defendants in 14 large urban jurisdictions found that a defendant's race or ethnic group bore almost no relation to conviction rates or other key outcome measures.

In 1980, 46.6% of state prisoners and 34.4% of federal prisoners were black. As the prison population increased during the 1980s, the percentage of blacks changed little. By 1990 48.9% of state prisoners and 31.4% of federal

prisoners were black. Compared with white prisoners of the same age, black prisoners are more likely to have committed crimes of violence. In 1988 the median time served in confinement by violent offenders was 24 months for whites vs. 25 months for blacks. For crimes of violence, the mean sentence for whites was 110 months vs. 116 months for blacks, while the mean time in confinement differed by only four months (33 months for whites vs. 37 months for blacks).

At the federal level, a 1993 study showed that the imposition from 1986 to 1990 of stiffer penalties for drug offenders, especially crack cocaine traffickers, did not result in racially disparate sentences. The amount of the drug sold, the offenders' prior criminal records, whether weapons were involved, and other characteristics that federal law and sentencing guidelines establish as valid considerations accounted for all the observed variation in sentencing.

In short, the best available evidence indicates that race is not a significant variable in determining whether a criminal is arrested, sentenced to probation or prison, or given a long or short term.

Of course, American justice is not yet fully color-blind. But rather than celebrate our progress in approximating this ideal, some prefer to focus attention on whatever evidence of racial disparities they can muster.

For example, there are hundreds of post-1969 studies of minorities in the juvenile justice system. Barely two dozen, however, actually offer evidence of any overall pattern of racial discrimination. But based on an interpretation of 46 of 250 of these studies, a much-cited "research summary" published by the federal Office of Juvenile Justice and Delinquency Prevention last December asserted that there was "substantial" evidence of racial discrimination against minority juvenile offenders. This report was drafted in October 1989, peer reviews were ready in February 1991 and the report itself was not published until December 1993. But the report's postscript states that because of "time pressures" and "numerous requests for the final document," OJJDP "decided not to update the research" or "make any major substantive changes." Congressional overseers should see to it that OJJDP, a bureaucratic bastion of sociological cant on crime that has enjoyed large budgetary increases under Attorney General Janet Reno, straightens house.

There is also some evidence that blacks who kill whites are more likely to be sentenced to death than blacks who kill blacks. This is the focus of the Racial Justice Act, which some House Democrats have made the perverse price of their support for the proposed crime bill. But most of the evidence centers on pre-1972 rural Southern jurisdictions; it is hardly conclusive.

The black crime gap is real, not rhetorical or racist, and black Americans' rising fear of crime at a time of declining crime rates nationwide must be addressed. There are at least three things that government can do.

First, give low-income people vouchers so they can protect their homes against crime. The private foundations that have spent tens of millions of dollars to analyze inner-city problems have never spent a penny on such mundane things as deadbolt locks for public-housing residents or private security for public housing complexes. Uncle Sam should also lend a hand in erecting gates on crime-plagued inner city streets, automatically evicting drug dealers from public housing, installing metal detectors in public schools and cutting aid to cities that don't zone away liquor stores in areas where they serve as magnets of crime and disorder.

Second, redirect existing police personnel to high-crime neighborhoods, add new police manpower and target it on the same neighborhoods, and empower police to work with law-abiding residents and community leaders, aggressively check disorders (vagrancy, graffiti, public drunkenness, aggressive panhandling) that are associated with crime and citizens' fear of crime, and last but not least, arrest the bad guys, charging them to the full extent of the law.

Third, follow through with truth-in-sentencing and related measures, and start keeping track of how many citizens from which neighborhoods are victimized or murdered each year by the roughly 3.5 million probationers and parolees. The federal government can tell us how many prisoners are in various treatment programs. But it cannot tell us how many poor black children have been gunned down by plea-bargained violent criminals. Existing data are limited, but we know that about one-quarter of those arrested for murder are on probation or parole at the time of the offense. Blacks suffer disproportionately from crimes by parolees and probationers since many violent and repeat offenders call the inner city home.

A CIVIL-RIGHTS ISSUE

Inner-city crime must be understood as a civil-rights issue. The little Linda Browns of today's urban neighborhoods are being deprived of basic governmental protections and civil rights. It is a contorted conception of civil rights that requires government action against segregated schools but does not require it against violence-ridden ones. It is an empty jurisprudence that sees a civil-rights interest in enabling children to attend the local public school of their choice but sees none in enabling children to walk to school without having to dodge stray bullets or run from drug dealers.

In a speech last November to black pastors, President Clinton imagined that if the Rev. Martin Luther King Jr. could return to the pulpit today, he would say: "I fought to stop white people from being so filled with hate that they would wreak violence on black people. I did not fight for the right of black people to murder other black people with reckless action." Amen.

TRIBUTE TO DAVID J. LUCIER

Mr. CHAFEE. Mr. President, I rise today to salute David J. Lucier, a certified public accountant who was recently honored by the Small Business Administration as the 1994 Rhode Island Small Business Accountant Advocate of the year.

After gaining experience in several Rhode Island C.P.A. firms and a large jewelry manufacturer, Mr. Lucier started his own accounting firm. Today, this firm provides accounting and business consulting services to small and medium-sized businesses including manufacturing, retailing, and construction.

The success of Mr. Lucier's firm is, without a doubt, a result of his personal interest in his clients' success and his understanding of the issues facing small businesses in today's world. Mr. Lucier also works as a consultant for the Small Business Development Center, providing accounting management, and marketing assistance to struggling small businesses.

Presently, he is serving as the honorary chairman of the business advisory group of the Providence Chamber of Commerce and vice president and director of the North Central Chamber of Commerce in Rhode Island.

Mr. President, David Lucier is an outstanding member of Rhode Island's business community. I ask my colleagues to join me in congratulating him on receiving the 1994 Rhode Island Small Business Accountant Advocate Award.

TRIBUTE TO RUTH ANN MYERS

Mr. DECONCINI. Mr. President, I rise to pay tribute to Ruth Anne Myers for her 32 years of Federal service with the Immigration and Naturalization Service [INS]. Ms. Myers is to be commended for her many accomplishments throughout her career, including her most recent achievements in Arizona during her tenure as District Director of the INS in Phoenix.

Prior to coming to Arizona, Ms. Myers accumulated a distinguished record of service to the INS in a number of capacities throughout the world. Among her many accomplishments, I would like to particularly recognize Ms. Myers' participation in the 1962 Cuban Bay of Pigs prisoner exchange, in the 1975 Operation Babylift of Vietnamese orphans, in 1981 representing the INS with the U.N. High Commission for Refugees in Africa, and in 1982 with Cambodian refugee processing. Ms. Myers also served in administrative capacities in 1986 in Minnesota and 1990 in Texas, and was Chief of Staff for the INS Commissioner in 1988 and 1989.

During Ms. Myers' tenure as District Director in Phoenix, new INS facilities were built throughout the area, including the district office in Phoenix, the Phoenix Sky Harbor International Airport, with suboffices in Reno and Las Vegas, NV, the ports of entry at Douglas, Nogales, Sasabe, and San Luis, and service processing centers [SPC's] at Florence and Eloy. Under her direction, the Florence SPC received accreditation in 1993 by the American Correctional Association for meeting detention standards and to date holds the record for the highest score obtained by any INS facility for meeting such standards. In addition, because of Ms. Myers leadership, the Phoenix district became one of the first in the Nation to be totally computer automated, including ports of entry and all suboffices. Furthermore, Ms. Myers has been extremely visible in various community groups in Arizona and throughout the Nation to communicate a better understanding to the public of the mission of the INS and to promote a positive image.

Mr. President, Ruth Anne Myers exemplifies the very finest tradition of

career Federal service. I am proud to recognize her life and accomplishments on behalf of my constituency and all Americans.

THE 75TH ANNIVERSARY OF THE DELAWARE STATE FAIR

Mr. BIDEN. Mr. President, this month we are celebrating a proud and important occasion in my State, the 75th anniversary of the Delaware State Fair.

I've had the pleasure and privilege of being an annual participant in the Delaware State Fair for more than 20 years, almost a third of its proud history. In that time, a lot has changed about our annual gathering in Harrington, with the fair's ever-increasing stature attracting more visitors and more entertainers of national and international renown each year.

Yet the foundation of the Delaware State Fair has remained very much the same. It is a foundation that has been built and maintained by people whose extraordinary personal commitment has ensured not only the fair's endurance but its success and its meaning to our State. To give you an idea of the level of dedication I'm talking about, there have been just three fair managers during my 20-plus-years association with the event. And there are many others who make a similar commitment, year in and year out, and whose efforts make everyone else's enjoyment possible, from the staff, to the board of directors and superintendents, to the exhibit area and event volunteers.

Organizations, too, like 4-H and Future Farmers of America, have made a sustained and defining contribution to the Delaware State Fair. Long before offering substance abuse prevention programs won a place among our national priorities long before there were seminars on how to combat the negative influences of today's world on our young citizens, such organizations were at work in our communities, and at the Delaware State Fair. The constancy and quality of their involvement have contributed not only to the fair's growth and appeal, but also to its value and character.

I use words like "character," "value," and "meaning" in describing the Delaware State Fair, because this anniversary represents more than the 75th recurrence of a successful and enjoyable public event. It represents the endurance of a cherished spirit, a defining sense of community. We celebrate not only what the fair is, but also how it makes us feel.

The State fair, is, truly, Delaware's annual reunion. It brings us together in celebration of the best that our State has to offer—the products of our farms, our homes, our community organizations, and our stores. It is a celebration of the talents, skills, and creativity of our citizens, a vibrant expression of why Delawareans have so much to be proud of.

It is an occasion that renews our bond to one another not only as fellow citizens but as members of a true State family. After 75 years of growth and change, the Delaware State Fair remains a family-made, family-oriented event, centered around the values and relationships that matter most.

It inspires a remarkable feeling of community—not a naive or simple or nostalgic diversion, but a genuine and lingering feeling of shared pride, shared purpose, and shared hope. In this annual gathering of family and friends, we not only enjoy ourselves, we rediscover ourselves, and we rediscover the promise of what a community of neighbors can be at its best.

So as we in Delaware mark the 75th anniversary of our State fair, Mr. President, we celebrate the annual renewal of a spirit that deserves to be celebrated every day and in every community. And we do so with gratitude to the people who have kept that spirit at the foundation of the Delaware State Fair, and shared it with all of us, for so many years.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. DORGAN). The Chair advises the Members of the Senate morning business is now closed.

NATIONAL LABOR RELATIONS ACT AND RAILWAY LABOR ACT AMENDMENTS

MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the motion to proceed to S. 55, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to the consideration of S. 55, a bill to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes.

The Senate resumed consideration of the motion to proceed.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, today we begin debate on S. 55, the Workplace Fairness Act. This legislation would ban the hiring of permanent striker replacements, but ultimately it is about much more than that. It is about fairness to workers. It is about restoring a degree of balance to labor-management relations. And it is about preserving our collective bargaining system.

The Workplace Fairness Act has the strong support of our President. It passed the House of Representatives last year by a substantial margin. A majority of the Senate supports it as well. I want to emphasize that point. A majority of the Members of this body are in favor of this legislation. Most importantly, according to a recent poll by Fingerhut/Powers, the American people support it by a margin of more than two-to-one.

So why is not this bill about to become a law? Because the Republican leadership opposes this bill, and is blocking the Senate from even debating it.

I have been in the Senate for 19 years, and while I strongly disagree with the Republican leadership's position, I must say that I am not surprised. In fact, the Republican Party has a long and rich tradition of turning its back on American workers.

In the past two decades, the GOP has consistently served as the tool of America's corporate giants, ignoring the needs of America's working families. The Republican Party has fought the battle for the National Association of Manufacturers. It has stood shoulder to shoulder with the U.S. Chamber of Commerce. It has fought for other big business groups. But when it comes to fighting for American workers, the Republican Party is nowhere to be found.

In fact, when the chips are down, the Republican Party is consistently against fairness in the workplace. Just take the last 5 years as an example. In 1989, the Republican Party fought against minimum wage legislation, turning its back on millions of low-wage workers struggling to make ends meet. In 1990, the Republican Party fought against civil rights legislation, turning its back on women, minorities, older workers, and the disabled who suffered harm from intentional discrimination or harassment on the job.

In 1991, in the midst of a serious recession, the Republican Party fought against an extension of unemployment compensation benefits, turning its back on millions of working families hard hit by layoffs and plant closings. In 1992, the Republican Party fought against this very bill, after it had passed the House of Representatives, turning its back on thousands of workers who lost their jobs for exercising their Federal right to strike.

In 1993, the Republican Party fought against the Family and Medical Leave Act, turning its back on workers who need time off to care for sick or dying family members. And this year, consistent with its previous actions, the Republican leadership has talked about filibustering health care reform, turning its back on 37 million Americans who have no health care at all, and on all working Americans who are fed up with spiralling health care costs.

So it is no surprise that today, the Republican leadership, as a policy matter, is fighting against the Workplace

Fairness Act. A majority of the American people and the Congress support this bill, but the Republican Party is blocking the Senate from even moving to the point of debating it. We are on a motion to proceed to be able to get to the point of debating the merits of the bill, but the Republican Party is filibustering the motion to proceed.

The Republican Party has turned its back once again on working families in this country.

Let me make it clear. Not every Republican Senator has opposed these measures, and I am grateful for the support some have given. In fact, some have had to rise above their own colleagues to stand up and vote for some of these measures that I previously mentioned, and there will be some in on the opposite side of the aisle who will vote to make it possible to proceed forward with this debate. But as a policy matter the Republican Party's position is against even moving forward to debate this legislation. But time after time after time, when the interests of American workers have been before this body, the Republican Party leadership has turned its back. It may be a "no" vote, it may be a filibuster, it may be a Presidential veto, but the result is the same: The Republican Party gives a leg up to big business and corporate greed, while American workers get the cold shoulder.

The Workplace Fairness Act is not just about restoring the right to strike—it is about the very survival of the American labor movement. For decades, American workers have helped make this country a great and progressive nation. But the growing practice of hiring permanent striker replacements has stripped workers of the economic leverage they once had, and crippled the American labor movement.

Today, we are at a critical juncture. I would say to my colleagues, you have two choices: You can restore the right to strike, or you can turn your backs on the working men and women of this great Nation. The American people are watching, and they want to know: Which side are you on?

First, I would ask my colleagues, are you on the side of history? Since 1935, our Federal labor law has expressly protected the right to strike as an integral part of our collective bargaining system. For decades, workers were free to exercise this right without fear of losing their jobs. With this economic balance, workers were an equal partner in a fast-growing American economy.

In the last decade, however, all that has changed. The General Accounting Office has reported that employers hire or threaten to hire permanent replacements in one out of every three strikes. This year, the Bureau of National Affairs reported that an incredible 82 percent of employers indicated that if struck, they would attempt to replace their work force to keep operating, or would consider doing so. More specifically, roughly one-third said they would definitely hire replacements, and half said they would consider doing so. Finally—and this is a critical point—of the employers who said they would hire replacements, or consider doing so, more than 1 in 4 said the replacements would be permanent.

True, this deplorable practice was first suggested by the Supreme Court in 1938 in the Mackay Radio case. But for decades, employers virtually never hired permanent replacements. Instead, they valued their workers and counted on them to return after a strike.

In the merger-crazed 1980's, however, this union-busting practice exploded. A new breed of employer emerged, one that does not hesitate to replace its union work force. These employers treat loyal workers—many of whom have given 10, 20, 30, and in some cases, 40 years of their working lives to build a successful enterprise—as just another commodity to be used up and tossed aside.

This issue is of critical importance to working Americans, but the Republican Party does not even think it deserves to be debated by the Senate—that is why the Republican leadership is filibustering this bill.

If you are on the side of history, you must vote to restore the historical balance between labor and management that existed for decades before this despicable practice developed.

Second, I would ask my colleagues, are you on the side of fairness? The very purpose of our Federal labor policy is to enable workers to join together to improve their wages and working conditions. As part of that policy, our Federal labor law expressly protects the right to strike. But what good is that right if you can lose your job for exercising it?

In the last few years, tens of thousands of American workers have lost their jobs at companies like Eastern Air Lines, International Paper, Greyhound, Phelps Dodge, and dozens of other companies. Hundreds of thousands more have refrained from exercising their right to engage in collective action because of the threat of permanent replacement.

There is no shortage of examples. At Diamond Walnut in California, workers earning between $5 and $10 an hour agreed to cut their own pay by up to 40 percent when the company was struggling. They were not making much. They were making between $5 and $10 an hour. They agreed to cut their own wages by up to 40 percent because the company was in tough times. But after their sacrifices turned the company around, the company demanded even more givebacks, leaving workers with no choice but to strike.

I do not understand the attitude of a company like Diamond Walnut, a name that is very well known in this country; how they could ask their workers to give back part of their wages, accept the givebacks that they gave them in order to help the company survive, and then turn around and fire the workers when they had to go on strike in order to regain some of the losses that they had given up. Then the company hired permanent replacements. Hundreds of loyal workers have been left out in the cold for 3 years, losing their jobs for exercising what they thought was a protected right.

Thanks, Diamond Walnut. You are sure a great employer. And anybody who buys Diamond walnuts knowing of these conditions has to have their head examined.

Similarly, in Hope, AR, 300 low-wage workers at Champion Parts Rebuilders were permanently replaced after the company demanded sweeping cuts in health benefits. At first, the workers did not want to strike, so they offered to take substantial health insurance cuts. But the company absolutely refused to budge from its position, which would have left many workers unable to afford health coverage at all. The workers continued to negotiate for 5 months after the contract expired, but finally found themselves with no choice but to strike. The company hired permanent replacements several days later.

For these and thousands of other hard-working Americans, the practice of hiring permanent striker replacements has had a devastating impact. It is absurd to force workers to choose between their right to strike and their livelihoods. But that is just what the Republican Party is doing today, by preventing the Senate from even debating this legislation, when a majority of the Senate and the House and the American people support it. If you are on the side of fairness, you must vote for the Workplace Fairness Act.

And not permitting this Senate to move on to get to the substance of the legislation itself is an impropriety and certainly does not serve the Republican Party well, except as they serve the U.S. Chamber of Commerce and the National Association of Manufacturers.

Third, I would ask my colleagues, are you on the side of collective bargaining? Since 1935, our national labor policy has favored the resolution of labor disputes through collective bargaining. As the Supreme Court has recognized, Congress specifically protected the right to strike as "an economic weapon which in great measure implements and supports the principle of the collective bargaining system." Although the right to strike is exercised in less than 1 percent of all bargaining negotiations, it serves to bring the employer to the table.

Without a meaningful right to strike, collective bargaining becomes little more than collective begging. As Secretary of Labor Robert Reich said in

his testimony before Congress, "management that has the option of simply eliminating the other side has little commitment to finding a mutually satisfactory resolution of differences." No matter what the opponents of the Workplace Fairness Act say, there is one very simple, indisputable fact: The hiring of permanent replacements triggers longer and more bitterly divisive struggles, and turns a limited dispute about wages and working conditions into a much broader, and much more destructive conflict about every worker's job. That is why the average strike lasts several times longer when the employer hires permanent replacements.

Some employers have actually used the practice of hiring permanent striker replacements to attack the very concept of collective action. More specifically, these employers have precipitated strikes in order to replace striking workers, and decertify the union once and for all. For example, in a study covering strikes between 1983 and 1994, the steelworkers found that in two-thirds of the strikes involving permanent replacements, the union was decertified or the plant was closed, destroying the bargaining relationship altogether.

In short, the hiring of permanent replacements creates an imbalance of power that jeopardizes the continued effectiveness of the American labor movement. Without an effective labor movement, our collective bargaining system cannot work. That does not seem to trouble the Republican leadership, which has fought this legislation at every turn. If you are on the side of collective bargaining, you must give back to workers the economic leverage to make collective bargaining work.

Fourth, I would ask my colleagues, are you on the side of competitiveness? In the coming years, we must meet the tremendous challenges of the new global economy. But we cannot hope to compete in world markets if those who labor cannot work with those who manage.

Hiring permanent replacements sends an unmistakable message that workers are disposable, reducing employee morale and lowering productivity. The practice can tear a community part, as was the case in Jay, ME, several years ago when International Paper disposed of second and third generation workers like so many paper cups.

It is no wonder that our principal competitors—including Germany, Canada, France, and Japan—have long recognized that using permanent replacements is unwise, as a matter of both public policy and good business. A majority of the Senate recognizes this too—but because of the Republican leadership filibuster, we may never get to vote on this issue. If you are on the side of competitiveness, you must ensure that workers and managers can face these global challenges as partners, rather than adversaries.

Let me take a moment to tell you what the Workplace Fairness Act does, and what it does not do. The act prohibits the hiring of permanent striker replacements, or other discrimination against workers engaged in a lawful economic strike.

Does it preclude employers from operating during a strike? Absolutely not. Employers would be free to operate during strikes, using temporary replacements or managerial personnel, or subcontracting or transferring work, as they have done successfully for 59 years under the National Labor Relations Act.

Does it beckon workers to strike? Of course not. Those who say S. 55 will trigger many more strikes do not have a clue about what a strike means for workers. The right to strike is labor's most effective weapon, but workers are loathe to exercise it. Striking means foregoing wages, walking the picket line, and exhausting the family's life savings. It is a decision of last resort, and not one taken lightly. That is why S. 55 would not trigger a flood of strikes.

Fifth, I would ask my colleagues, are you on the side of democracy? Our democracy is premised on the principle of majority rule. As I have said, a substantial majority of the House has already passed this bill, and a majority of this body supports it as well. Two years ago, the Members of this body never got a chance to vote on it, because of a Republican-led filibuster. This year, we face the same tactics of obstruction.

If the last election taught us anything, it is that Americans are tired of gridlock. American workers deserve a vote on this bill. If it passes, the President will sign it. If it does not pass, so be it. But let the Senate decide, based on the democratic principle of majority rule. So if you are on the side of democracy, you must vote for cloture, and allow this measure to stand or fall on its merits.

Finally, I would ask my colleagues this fundamental question: Are you on the side of the American labor movement? That is ultimately what is at stake here. The labor movement was built on some of this country's highest ideals—fairness, social justice, and the right to earn a decent living. And the labor movement has won many battles over the years—for fair wages, safe workplaces, basic benefits and a secure retirement—not just for their members, but for all working Americans.

But the future of our labor movement depends on restoring the right to strike as an effective economic weapon. In turn, a healthy labor movement will restore balance to labor-management relations, facilitate greater labor peace, and contribute much toward ensuring U.S. competitiveness in world markets.

That is why the American people support this bill, by more than 2 to 1 according to the most recent poll. That is why the House of Representatives passed it. That is why a majority of the Senate and the President of the United States support it. But today, the Republican leadership is blocking the Senate from even debating the bill. Once again, the Republican Party has turned its back on America's working families, siding instead with big business and corporate greed.

For America's hard-working men and women, whose hours are growing longer and whose paycheck is growing smaller, this is an issue of basic fairness. This week, they are asking each one of us, "which side are you on?"

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

Mrs. KASSEBAUM. Mr. President, I rise in strong opposition to S. 55, which, as the Senator from Ohio has said, is legislation which will prohibit the hiring of permanent replacements during an economic strike. The implications of this, as the Senator from Ohio pointed out, go beyond just the stark words of this legislation.

Two years have passed since the Senate last considered this bill. If anything, the passage of time has only confirmed that this measure is ill-considered and ill-founded. Frankly, I do not believe that there are any changes that could possibly be made to salvage this bill. No matter how you dress it up, S. 55 will turn 50 years of labor law on its head, creating new incentives for longer strikes that will wreak havoc on our economy.

More strikes, more disruptions in the workplace, and more antagonism between labor and management will only add to the uncertainty about our economic future, at a time when workers are seeking more stability and greater job security.

This bill is not about turning our backs on the American worker. This bill is about trying to assure that there will be a greater sense of stability and security in the workplace.

This bill does not destroy the right to strike. The right to strike is certainly retained. But that is one side of the coin. Just as an employer's right to hire permanent replacement workers has, for 50 years, been the other side of the coin. Now some are trying to say, "No, that is not fair. It should be just one way, not two sides of the coin."

Our current Federal law already establishes an appropriate balance between the interests of labor and management. On the one hand, the law guarantees labor the right to strike—and that is as it should be. But the law balances this right against an employer's right to operate his or her business. On rare occasions, this may require hiring permanent replacements. This balance provides a key element to stable labor relations—an incentive towards settling labor disputes. Mr.

President, we all wish to see the settling of disputes and cooperation between labor and management.

Companies have invested large amounts of time and energy into developing the skills of their work force. Their institutional memory, their knowledge, skills and abilities, are not something that can be easily replaced.

Businesses will not replace their work force knowing that they will have to retrain replacements at great cost, unless there is no alternative. The decision to strike and the decision to hire permanent replacements both carry great risk.

These choices, although painful, are precisely the incentives that lead both labor and management to settle, without disruption, the overwhelming number of contract negotiations. The competing rights of the parties, and the hardships that they impose, are what compel management and labor—far more often than not—to resolve their differences at the bargaining table.

By contrast, S. 55 will overturn a half-century of established Federal labor law. The bill would upset the delicate balance that has worked so well. It would, for the first time, create the unqualified right for labor to walk off the job, for any reason, without advanced notice, no matter how unreasonable the demands.

Current law draws a distinction between workers who strike because their employers are violating the law, and workers who strike because they are dissatisfied with their wages and benefits. Workers who strike because their employer commits an unfair labor practice cannot be replaced. However, if a union strikes over demands for higher wages or greater benefits, an employer may have to resort, ultimately, to permanent replacements in order to keep the business open and in operation.

S. 55 would eliminate this critical distinction in the law. Under this bill, workers may strike for any reason with complete impunity, even if their demands for wages and benefits are completely unreasonable. Simple common sense tells us that this will lead, I would argue, to more strikes.

The Senator from Ohio said that anyone who makes that statement does not know what this is all about. But I suggest that S. 55 would create a great sense of uncertainty and antagonism at the very time that we most need to restore a sense of security in our workplace. The ability to strike for wages and benefits without risk or adverse consequences is bound to encourage—not discourage—the use of strikes, with devastating effect on our economy.

In fact, this conclusion is borne out by the evidence of what has occurred in Canada, where several provinces have banned replacements. According to one comprehensive study, a prohibition of replacement workers in Quebec significantly increased both the incidence and duration of strikes.

The fact is, that over the past 25 years, under our current system we have witnessed a dramatic decrease in the number of strikes. In 1974 there were 424 major strikes. By 1984, that number had declined to 62. And in 1993, there were just 35 major strikes, an all-time low.

The current system, I believe, works well. It could work even better if, indeed, labor and management recognized the importance of cooperation in resolving their differences instead of ever greater antagonism.

In fact, the Dunlop Commission, appointed by President Clinton to study worker-management relations, recently concluded that:

> In most workplaces with collective bargaining, the system of labor/management negotiations works well. Conflict is relatively low, and unions and firms have developed diverse forms of new cooperative arrangements. * * * The relations among workers, their unions, and management in these workplaces are well regarded by these parties.

Even the Secretary of Labor has recognized that "The vast majority of collective bargaining contracts are settled without strikes * * *."

I suggest, if the system is not broken, why are we trying to fix it?

The Senator from Ohio has said we will not have time to debate this issue. We have today, tomorrow, the next day—and potentially the next day after that—during which we will be debating this issue. I hope that during the course of this debate arguments both pro and con will be made which will help the American people to understand what is at stake.

Hiring permanent replacements is hardly a standard practice. A recent General Accounting Office report found that only 3 percent of striking workers were permanently replaced in 1989. We should not ban this seldom-used practice when the consequences will be devastating to the vast majority of our Nation's workers.

Mr. President, in response to the Senator from Ohio on the issue of Diamond Walnut, I would like to go through a bit of the history at Diamond Walnut.

Another relatively recent strike that highlights the dangers, I suggest, of S. 55 becoming law, is the one that happened at Diamond Walnut. The Teamsters struck Diamond Walnut, a California agricultural cooperative, on September 4, 1991, at the beginning of the annual walnut harvest. All the crop must be harvested immediately to avoid spoilage. Diamond Walnut is a cooperative, owned by more than 2,000 growers who own, on the average, 36 acres of walnut orchards. We are talking about family farms, not some huge, enormous agribusiness.

The union timed this strike to place maximum pressure on Diamond Walnut. The only way to avoid the devastating losses of an entire year's crop was to hire permanent replacements.

The labor relations history is important. Diamond Walnut found itself in an uncompetitive labor cost situation in 1985 and negotiated wage rate reductions, as was mentioned by the Senator from Ohio.

Nevertheless, Diamond Walnut remained an industry leader in employee compensation. So while they reduced their compensation, they were still paying more than their competition. In 1991, negotiations centered on health care employee copayments, with Diamond Walnut suggesting that workers pay about 9 percent of that burden. The company also wanted to implement a profit-sharing plan as part of the compensation package.

Mr. President, I think it might be helpful to look at the wage and benefit package that was offered by Diamond Walnut and that the Teamsters rejected in 1991, because it was a very generous package.

According to Diamond Walnut management, a "general laborer" at Diamond Walnut earned about $6 per hour and would have received a 10-cent-per-hour raise. Competitors, mostly nonunion we would assume, paid $4.99 per hour. The union demanded $7 per hour. So Diamond Walnut was paying $1 per hour more than its competitors, and the union wanted the company to pay $2 an hour more than its competitors.

The situation was equally troubling for "machine operators." Diamond Walnut paid $10 per hour; the union demanded $11 per hour. Diamond Walnut competitors were paying $6.30 per hour. After the strike, the company implemented their final offer, which was $10.10 an hour.

Diamond Walnut paid highly competitive wages, but that was not good enough for the union business representative. So they ordered a strike.

Mr. President, health care was an important issue in the Diamond Walnut strike. Health care costs had increased from 74 cents per hour to $2.21 per hour from 1988 to 1990. Something had to be done.

Diamond Walnut asked their employees to pay about 9 percent of their monthly health care costs, which was $12 per month for individuals and $33 per month for families, with no deductible. Before the strike, the union plan had $100 per individual and $300 per family yearly deductibles.

I ask my colleagues to note that this proposed health care copayment was well below the 20 percent copayment that the Clinton health care plan envisions.

Diamond Walnut also proposed several improvements to the health care plan, including the addition of an annual physical for $20; eye exams for $10; out-of-pocket limit reduced from $2,100 to $1,000 for individuals; $6 for generic

prescription drugs; and a modification of the maximum benefit from $1 million to unlimited amounts.

The union chose to walk away from this offer. That was their choice. But should we say to the small farmers who belonged to the Diamond Walnut cooperative and to the thousands of workers who will lose their jobs if this legislation passes, that the union can shut you down even when you are paying well above the market rate of compensation? That was really the issue here.

Mr. President, the Caterpillar Co. and Diamond Walnut strikes are both excellent examples of how out of touch union leaders can be with the best interests of their membership. Both Caterpillar and Diamond Walnut offered generous contract proposals, but the union leadership thought the union should hold out for more.

I suggest in both these instances that the workers probably were ill-served by their union leaders. Nevertheless, our Federal law should not bail out these leaders for their mistakes, because the system worked just as it should have in each of these strikes.

That is not to say that there are not two sides to every labor dispute. Management does not always recognize the value of their employees. There have been times in the past when that was certainly true. But I believe we must also recognize that union leadership has not always acted in their members' best interest.

Our economy is just now recovering from a recession. We have seen a long-term restructuring of our economy. Americans are anxious about their jobs. They are concerned about having a job to go to in the week ahead, let alone the next year. They are not interested in legislation that promotes strikes and costs jobs. They want legislation that promotes real job growth.

Over the past several months, we have heard a great deal about the jobless recovery. Even as our economy expands, our blue chip companies continue to downsize their work forces. President Clinton has stated that his top priority at the G-7 summit in Naples will be to create jobs. Regrettably, S. 55 will not help us meet that goal.

S. 55 will adversely affect our Nation's competitiveness. Companies must respond to the needs of the marketplace. Yet, S. 55 will force U.S. companies to engage in global competition with one arm tied behind their backs.

I know that unions have had a tough time over the past two decades, but the fact is our whole economy has been in transition. Employers and workers have all had a difficult time. My concern is that striker replacement legislation will force companies to adopt uncompetitive labor contracts, and this will lead to further layoffs and further downsizing.

A Kansas City Star editorial called the striker replacement bill "an ill-considered time bomb" that, if passed, would be "one of the most irresponsible acts of the modern Congress." I would like to quote at length from that editorial because I think it states the case so well:

> The long-term damage a striker replacement law would do to this country's competitiveness is beyond calculation * * * If organized labor is given the leverage to push up wages faster than productivity, it will surely use that leverage. If companies can never replace employees who refuse to work, unions will steadily undermine the very trends that are erasing America's labor disadvantage relative to developing countries.
>
> Organized labor cannot have it both ways. It is inconsistent to complain that jobs are moving off-shore and then lobby for measures that will, over time, undermine the course that makes American workers more productive. If a striker replacement ban becomes law, it will increase the incentive of employers to move work to overseas labor markets that are more flexible—and less hostile.

Mr. President, rather than encouraging more strikes, more divisiveness, and more antagonism between labor and management, we should be seeking ways to encourage greater cooperation. I can think of nothing more beneficial.

But if S. 55 becomes law, it will turn the clock back to an era in which everyone loses, not only the workers but the economy as well.

I oppose S. 55 and urge my colleagues to vote "no" on the cloture motion, which I suggest is not just a procedural vote in this instance but a vote on the merits of the bill itself. And during the course of these days of debate, I hope that not only my colleagues here on the Senate floor, but all those who are listening, will listen carefully. The consequences of our action on this particular bill will go far in determining what kind of work force and what type of security and stability we will have in our labor market in future years. I feel strongly, Mr. President, that S. 55 will work to the detriment of the future of our labor force.

I thank the Chair. I yield the floor.

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

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

Mr. METZENBAUM. Mr. President, I listened with interest to my colleague from Kansas talk about how much better it would be if we do not change the law and how this is so necessary to permit permanent replacements in order to protect employers of this country and the economy of this country.

I previously pointed out that our major industrial competitors in the world already protect strikers and do not permit the bringing in of permanent replacements. But the fact is—and I think we ought to be realistic about this—we live by the laws of this country going all the way back to the Mackay Radio decision, which was a decision in the thirties that made it possible for employers to bring in permanent striker replacements. But employers did not do that. They had an ethic about them. They were decent employers. Then some of the leveraged buyout artists and the fast-buck boys came in and started buying up companies. And as soon as they came in, they started terminating worker pension rights, taking the excess pension funds, and then deciding they were going to cut back on wages so that they could make up for the debts they had in buying up the companies.

Now, why did they do that? What happened for the 50 years when permanent striker replacements were permissible but were not used? I will tell you what happened. There was a wonderful President, a President who was really concerned about workers, who came into office. That President was supported in his election effort by two unions. One was the Teamsters Union and the other was PATCO, the Professional Air Traffic Controllers.

Now, between the time he was elected and shortly after he took office or thereabouts—and I do not remember the specific times—those PATCO employees went out on strike. It was an illegal strike. They did not have the right to do so. But that wonderful defender of the American worker, President Ronald Reagan, what did he do to this union that supported him? Bang, he fired them all. And suddenly the employers of this country said, well, if the President can do that, so can we.

And so a practice that had not been used for the past 50 years, although it was legal to do so, suddenly became the rule of thumb, and today more and more employers are using this procedure of bringing in striker replacements. It is an unfair, inhumane procedure. It is a procedure that says we do not care how many years you have worked for us. We do not care how hard you fought to make our machines operative. We do not care how cooperative you have been in the last 10, 20, or 30 years. We are going to fire you if you go on strike.

I remember conducting a hearing up in New York at the New York Daily News. Those employees did not even go on strike. I remember testimony before our committee which said: "I wasn't on strike. I walked outside to take a smoke and I couldn't get back into the plant because the company said I was on strike. But I wasn't on strike."

The companies have used this whole concept of permanent striker replacements to break unions. My distinguished colleague from Kansas quotes

an editorial from the Kansas City Star. I would like her to point out to me once—not twice, once—in the history of this Nation that the Kansas City Star was ever on the side of working people. The Kansas City Star is a retrogressive newspaper that has been consistently Republican, consistently antiworker, consistently antiunion. And the fact that they write an editorial saying that this is the right thing to do does not make it so. I think the paper ought to come forward and start to get common with this century. It has not been in this century for many years. And with all due respect to the fact that it is the leading paper in the Senator's State, I have to say to her that quoting that paper and making it right to use striker replacements is very irritating to this Senator, as is quite obvious at this point.

Let me make it clear. When we talk about Diamond Walnut, Diamond Walnut, that great employer that was so concerned about bringing in permanent replacements, they really talk out of both sides of their mouth. When they took the permanent replacements on, they made each of them sign a statement that says the following:

> I understand that the company has the same right to terminate my employment at any time and for any reason and without any notice.

What a wonderful employer Diamond Walnut is. They bring in permanent replacements and then say to them, "Oh, but you are not permanent. We can fire you at a moment's notice."

Now, I would guess that the Republicans will win on this issue because there are enough of them to keep this matter from moving forward toward the vote. But the reality is that a majority of the Members of the Senate do not believe that bringing in permanent striker replacements is the right thing to do.

It is only by reason of the rules of the Senate that make it possible to filibuster and require 60 votes in order to cut off that filibuster that Republicans are saying they will not even permit us to get into the substance of the legislation. What we are on now is a motion to proceed, and a motion to move forward with respect to the whole issue rather than to debate the issue itself of striker replacement. The legislation is not yet before the body.

So I say to my colleague from Kansas, for whom I have tremendous respect, this is an embarrassing situation for the Republicans. It is an embarrassing situation to say that we are consistently against American working people, we consistently carry the hod for the U.S. Chamber of Commerce, the National Association of Manufacturers, and so many other right-wing groups. It is time in this Senator's opinion for my colleagues on the other side of the aisle to catch up with the present and realize that there is a desire in this country by the people in this country to move forward; that harmonious labor relations make good business, make for a strike-free enterprise system.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Minnesota [Mr. WELLSTONE].

Mr. WELLSTONE. Thank you, Mr. President.

Mr. President, I would just echo the sentiments of the distinguished Senator from Ohio. I hope that we will in fact get a chance to have a discussion and a debate in the U.S. Senate about this piece of legislation, S. 55, which I think is one of the most important workplace fairness pieces of legislation ever to be introduced in the Senate. I commend Senator METZENBAUM for his leadership, most importantly because the bill is designed to combat an unfair labor practice which strikes at the very heart of the collective bargaining process: the permanent replacement of striking workers.

Mr. President, during the hearings that we had in the labor subcommittee of the Labor and Human Resources Committee, many men and women came in and talked in very personal terms about what this legislation meant to them. I have seen some of this out in Minnesota as well. It is really quite heartbreaking when you think about what our country is about, which I think is fair wages and decent working conditions, and making sure that working people get a fair shake, to see people who go out on strike be permanently replaced, to see people afraid to go out on strike because they know they will be permanently replaced, to see an erosion of any kind of fair balance of power between management and labor. Too often, working people do not feel like they are in a position to really negotiate because they are put in the impossible position of being forced to go out on strike and then being permanently replaced.

What has happened is that the right to strike has become the right to be fired in the United States. This piece of legislation which is now being filibustered on the floor of the U.S. Senate is an attempt to restore some fairness and balance to labor-management relations.

During the 1980's, as a January 1991 General Accounting Office study and other studies have observed, the use of permanent replacement has increased dramatically. Private sector employers emboldened—as Senator METZENBAUM said—by what happened with PATCO in the early 1980's have used the permanent replacement of striking workers as a way of abrogating collective bargaining agreements and bringing in new hires often screened for their antiunion biases.

Mr. President, the process is fairly simple: require major and unreasonable concessions of a union. Force them to strike, then permanently replace them with workers unsympathetic to the union, and then move to decertify the union.

We should call this what it is, Mr. President: "Outright union busting." That is what has been going on in our country. Twenty years ago, Mr. President, this approach was used by just a few renegade American employers. But as Senator METZENBAUM has already said on the floor of the Senate today, given all the mergers and acquisitions, the leveraged buyouts and the rise of a new breed of employer, not locally owned businesses but firms who make business decisions halfway across the country or halfway across the world, too often communities no longer matter, workers are expendable, and collective bargaining agreements are essentially being torn up.

Mr. President, there are an estimated 14,000 workers covered by the NLRA that are replaced each year by American employers, and thousands more under the Railway Labor Act.

The GAO report indicates that from 1985 to 1991, employers hired permanent replacements in 1 out of every 6 strikes, and threatened to hire replacements in 1 out of every 3. But ultimately, this is not a quibble about the numbers. The essential point is this: all workers engaged in legal economic strikes must be protected from permanent replacement.

Mr. President, during this debate we are going to hear from some urging us not to meddle with "the delicate balance of labor-management relations established over 50 years." But I think we should be frank. This is an attempt to restore some balance. From my own point of view, I think that it is extremely important that we have high levels of productivity. I think it is extremely important that employers and employees are partners. I think it is extremely important that there be high morale. But that cannot be the case when all too often some employers—I think the good employers do not have any problem with this at all—force people out of work and them permanently replace them.

Mr. President, the debate boils down to this: We must restore two principles which have undergirded the collective bargaining process established by the Railway Labor Act, and the National Labor Relations Act, in the 1930's.

The two principles: one, employees have a right to pursue their interests collectively without fear of employer reprisal; and, two, the representation questions must be separated from the substantive issues in disputes, and a Government-supervised procedure should be established to ensure fair representation. Remaining substantive disputes are to be resolved through the collective bargaining process. But this system can work only if the right to

strike, in the words of the National Labor Relations Act, is not "interfered with or impeded or diminished in any way." Sadly, this is no longer the case. It is no longer the case in the face of all attempts today on the floor of the Senate to focus attention away from the central issue that is before us today: The right to organize and bargain collectively. That is what is at issue here.

It is no longer the case in the face of efforts today to point to this legislation as special interest legislation. It is no longer the case in the face today of attempts to present this bill as a "solution in search of a problem."

Mr. President, I have seen people in Minnesota recently going out on strike. They did not want to. They felt they had no other choice. Then they were permanently replaced. It is all over for them and their families.

When you see all the people who can no longer bargain, can no longer bargain collectively, and have no way of getting decent wages and decent working conditions, this is hardly a solution in search of a problem. This problem is all too real in the face of an alarming increase in hard hitting antiunion activity among some employers and their hired consultants.

It is helpful to remember these two principles. Workers have a right to organize without being retaliated against for exercising that right, and they have a right to negotiate decent wages, decent benefits, and decent health and safety conditions through collective bargaining. Those are the rights that have been so severely undercut by what has been going on in this country for more than the last decade.

Mr. President, let me just go through for a moment the legislative history of Section 7 of the National Labor Relations Act which, in the words of its author, Senator Wagner, are described as "an omnibus guaranty of freedom for American workers." The purpose of this act is clearly stated and quite unequivocal.

> Employers shall have the right to self-organization, to join, form, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other forms of mutual aid or protection.

It sounds simple and straightforward, and it is. Again, in section 8 of the act we see that it provides explicit assurances that workers who engage in the concerted union activities protected by section 7 will not be subject to employer reprisals. It says:

> It shall be an unfair labor practice for an employer * * * to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in section 7.

Even more specifically, it prohibits employers "by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization * * *."

It goes on, and section 2 states that employees do not lose their status when their "work has ceased as a consequence of, or in connection with, any current labor dispute."

Given these protections, Mr. President, the notion that permanent replacement is somehow practically different from being fired is not only untenable, but it is ludicrous. We say on the one hand that a company cannot fire people for going out on strike, but, on the other hand, a company can permanently replace them. It ignores the central, practical reality of such labor-management disputes. In either case, whatever you call it, the employee loses his or her job because he or she has exercised the right to strike.

Mr. President, this piece of legislation—I will give a short history of this, because I see my colleagues, Senator SIMON and Senator COHEN, on the floor here. This legislation simply overturns the judicially-created "permanent strike replacement doctrine" first stated in Labor Board versus Mackay Radio in 1938 and amplified in other cases in the 1980's. This decision said that a company cannot fire those workers who had gone out on strike, but a company can permanently replace them. It is absurd logic. It has resulted in some truly bizarre and, I think, very tragic results.

Mr. President, to those who argue that this is a solution in search of a problem, to those who argue that this bill is unnecessary, to those who are unwilling to even let us proceed and have a debate for several days or weeks or whatever it takes to pass this piece of legislation, for those who say that we should not pass this piece of legislation because we do not need to do anything to restore some kind of balance and fairness in labor-management relations, let me invite them to smaller cities and towns in Minnesota where I went to talk to working people who have been permanently replaced by their employers. Let me invite them out to CF Industries in Pine Bend, MN, where many workers have been permanently replaced, again, for exercising their legal right to strike.

I say to my colleague from Illinois, I went out to CF Industries several weeks ago knowing that we were going to have this debate. I had to pinch myself to remind myself that this is 1994. I felt like it was in the 1930's and we had turned the clock back. These were a group of people together on a Sunday morning, it was raining, and they were out there with their spouses and children. Without going into a long history of this strike, they were essentially given no other choice but to go out on strike. They were permanently replaced the day they went out on strike. These were people who had done extremely well in terms of productivity. The fertilizer company had done extremely well in terms of its profits. These were people who worked for the company for a long period of time. These were people who wanted nothing more than to work and to make a decent wage to support their families.

As the rain came down and I looked at the fences and at the security guards and was wondering, is this the United States of America in 1994? I asked them: "Why did you go out on strike?" They said that it just came to the point where it was a matter of dignity, just in terms of the way they were treated by a company for whom they had worked for years—although a different management was brought in. They said, "We simply could not work under those conditions. We are men and women of dignity, worth, and substance. We could not work under those conditions. We had to take on what we felt were very unfair conditions." When they spoke up and when they tried to negotiate and tried to reach a settlement, the company said no, no. They believed that CF Industries wanted them to go out on strike because, given the current law, they could permanently replace them. That is precisely what they did. That is what this debate today is all about.

So to the workers of Hormel Meat Packing in Austin, to the employees at Quality Tool, to the employees at Union Brass and Metal Manufacturing in Saint Paul, to the employees at Jennings Red Coach Restaurant—these are all people who were permanently replaced—Midwest Motor Freight in Roseville, or Fargo/Moorhead, to the "Hibbing Seven," seven women who were permanently replaced for years and finally won their jobs back in Hibbing, MN, to all of those men and women in my State, much less other strikers that we hear about—New York Daily News, Pittston Coal, Eastern Airlines, Greyhound, Ravenswood Aluminum—let me simply say that I think it is really an injustice that we cannot proceed and go on with a full debate, whenever the final vote is, if we do not get the 60 votes.

I think it will be a real injustice if this piece of legislation gets filibustered. I think it will be a real injustice to "regular" people, which I do not use in a pejorative sense—whether they are in unions or whether they are not in unions, by the way—because I feel, for working people, there ought to be a way that they have decent representation. There ought to be fairness for them. I think this would not only be important for working people in this country, moderate and middle income, whether in unions or not; I frankly think it is the key as to how we compete in the international economic market.

I mean that sincerely, because when we look at our competitors, I kind of lose patience with people who say that if we pass S. 55, we will not be able to compete. Look at the other advanced

economies in the world: Japan, Germany, France, Belgium, Greece, Italy, Netherlands, Sweden, Canada; all of those countries do not permit the permanent replacement of workers. I think one of the things they have done well is they built up a partnership. I thought we were talking about employees becoming more involved in the decisionmaking, not being shut out completely.

I thought we were talking about people who build a partnership where there is a real stake, a real sense of ownership of the company. I thought we were talking about how we build higher levels of morale. I thought we were talking about how to have a skilled work force that believes in the companies, and the companies that believe in that work force.

I am telling you, Mr. President, this is not just an issue of justice to working people; this is an issue of how we as a country compete in the international arena. We are an advanced economy. We do not compete by depressing wages. We do not compete by unsafe working conditions. We do not compete with an unhealthy work force. We do not compete with low morale. We do not compete when we have some companies—thank goodness not all—that make the workers expendable, force them out on strike and permanently replace them.

We compete when we have the framework set up through this kind of legislation that brings employees and employers together, brings workers and management together, and restores fairness in the workplace.

I think that is what this legislation is about. There is not a piece of legislation I feel more strongly about. I have seen what this means in human terms in my State. I do not want to continue to see people driven out, squeezed out, permanently replaced. I do not want that to be part of what our country is about.

I hope my colleagues will not filibuster this. We have a majority of the Senate supporting this bill on the floor. We have majority support in the country. I hope we can go forward with this piece of legislation. I urge my colleagues strongly to vote "aye" on the motion to proceed to the Workplace Fairness Act.

The PRESIDING OFFICER (Mr. DASCHLE). The Senator from Maine.

Mr. COHEN. Mr. President, I have listened to the arguments of my colleagues on the other side. I must say the way in which the debate has been characterized is if you are for fairness for working people then you will vote for S. 55; if you are for unfairness for working people, you will oppose it; if you favor helping working people, you will vote for S. 55; if you are opposed to helping working people, then you will vote against it.

I must say I find this characterization not only simplistic but fundamentally wrong.

Over the years, I have supported and worked to help the working people of my State.

I supported the Worker Adjustment and Retraining Notification Act, for example, which requires employers to provide advance notice to workers who will be laid off, as well as passage of the Job Training Partnership Act, which provides training to those who have been laid off. I also supported extending emergency unemployment compensation benefits to the long-term unemployed and an increase in the minimum wage.

Creating new jobs and maintaining existing ones are two of the most important tasks facing Maine's citizens and elected officials. To this end, I have worked vigorously to keep the Portsmouth Naval Shipyard open and to bring its facilities up to date. This modernization, in which I played a large part, was a major factor in the Pentagon's decision to keep the yard open and thus preserve thousands of many Maine jobs.

In addition, I helped bring two new Federal programs—the Jobs Corps and the Defense Finance and Accounting Service [DFAS] to the area around Loring Air Force Base. Together they should create 850 to 900 new jobs, and the Job Corps is expected to spend an additional $4 to $6 million on local services.

Like labor, I also am concerned about the future of the Nation's maritime industry, which is in a serious state of decline that threatens our national security. To combat this trend, I have consistently opposed efforts to weaken cargo preference requirements, long a cornerstone of our maritime policy, which require goods purchased by the U.S. Government to be shipped on U.S.-flagged vessels.

Most recently, I supported legislation in the Senate Judiciary Committee to allow baseball players the right to sue owners under antitrust laws. All other sports allow players this right. In the case of baseball, I believed that the relationship between the players' union and management was out of balance, and I agreed with labor's position. Despite my support of numerous labor positions, today we are told if you are against S. 55 you must be fundamentally opposed to working people.

Again, I want to reiterate the simplistic nature of that particular argument and the erroneous conclusion.

I disagree with organized labor on the issue of striker replacement. In 1992, I joined a number of my colleagues in opposing similar legislation. At that time, I was disturbed by the intransigence of both labor and management in addressing the issue of permanently replacing striking workers. I suggested that further consideration should be given to establishing a more cooperative and harmonious relationship between labor and management.

Clearly, a strike represents the ultimate failure of opposing parties to compromise. In the end, everyone suffers. The workers and their families suffer because of lost wages and lost opportunities; the employer who has to spend time and money hiring and retraining the replacements also suffers.

We have heard a lot of talk of how important it is to maintain productivity, efficiency, and high morale. An employer can hardly do that if he or she is simply resorting to replacing striking workers on a permanent basis. And, given that both sides want to avoid a strike, my hope was that over the past 2 years both labor and management would see the mutual benefit in reaching a compromise on the issue of permanently replacing striking workers.

Unfortunately, I must say we are no further along today than in 1992. Both labor and management continue to insist vehemently that there is no room for compromise on this issue.

While certainly not perfect, the current law regarding striking workers is preferable than the legislation now before us. Unlike the striker replacement legislation, for example, current law creates economic incentives to bring both labor and management to the bargaining table. Workers who are on strike to protest wages or benefits will be more willing to negotiate with management if they know that at some point they might be replaced by others who are willing to accept those conditions. The striker replacement legislation, on the other hand, places all the bargaining chips on the side of labor. Labor unions could strike and return to their jobs at any point in time, and management would be left to hire temporary workers only—assuming they could find people who would be willing to work on a temporary basis in a very hostile and highly charged environment.

At the same time, current law preserves strong incentives for businesses to negotiate at the bargaining table. Companies have a tremendous amount of time and money invested in their employees. Like labor, they recognize that a well-trained work force is a company's most valuable asset.

In addition, it is costly, inefficient, and demoralizing to new workers who come on board as the permanent replacements because they know that somewhere down the line they too might be summarily fired or let go if they refuse to accept the conditions that they may find to be either economically unjust or fundamentally unfair. So knowing this, companies, I believe, would prefer to reach an agreement with their current employees rather than train permanent replacements.

Current law also creates an incentive for management to negotiate in good faith with striking employees. For example, if striking employees unconditionally offer to return to their jobs and the employer does not reinstate them because permanent replacements have been hired, an employer may be liable for back pay if the National Labor Relations Board finds that the workers were striking over unfair labor practices. Moreover, if an employer reinstates its striking workers, the individuals who were told they were permanent replacements also may have a right to sue.

Federal law should not distort these economic incentives for both labor and management to reach agreements. Federal laws should neither tip the scale in favor of striking workers nor penalize workers for exercising their right to strike.

In the past 2 years, I have met on nearly 20 occasions with a number of individuals from my State on both sides of this issue. Since April, I have heard from approximately 2,800 constituents and about 4,600 others who have expressed concerns on this issue. And I tried to make clear to all concerned that I do not believe that striker replacement legislation—at least this bill—offers the sort of balance that exists with current law.

I know there is concern that management either threatens or has an implied threat that if anyone goes out on strike they are immediately going to be replaced. If that is the case, if the replacement on a permanent basis of the striking workers becomes the rule rather than the exemption, I must tell my colleagues I would not hesitate to reconsider my position on this or any other modified legislation.

We have been through such a strike with the International Paper Co. in Jay, ME. Let me tell my colleagues it has torn that small town asunder where families do not even talk to each other anymore because of the way in which it was handled. I must say both labor and management misjudged and mishandled that entire situation. There were families who were thrown out of work, replaced by relatives, and others coming up from different parts of the country. The strike has made that town a place which does not bear much resemblance to a place it used to be.

So I understand some of the heartaches and hardship that can be created by such a situation. But I must say I still believe that employers should resort and will resort only as a last measure to hiring permanent replacements for strikers. If they turn to it as a first resort, then I believe it does undercut the right to strike in this country.

I would send a message to employers as well as to labor that I continue to hope that employers will work in a cooperative way with the employees to settle disputes without resorting to replacing striking workers. Moreover, I hope that management and labor will do everything possible to address some of the animosity that seems to exist at some worksites around this country. Our competitiveness in the international economy depends on it. And the well-being of our work force demands it.

If employers choose to simply summarily replace workers without a good-faith effort to end the strike on terms that are mutually agreeable, then I think they would invite legislation such as S. 55 and it will receive support of an overwhelming majority.

Mr. President, I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I am pleased to stand up and support S. 55.

I would like to use a word that our colleague from Minnesota, Senator WELLSTONE, used—"balance." This is what is lacking in our situation today.

In the past, when you had a Democratic President, the National Labor Relations Board had a slight tilt toward labor. When you had a Republican President, there has been a slight tilt toward management. But, basically, the National Labor Relations Board has been pretty balanced.

I do not say this as a partisan now, because I think privately many of my colleagues on the other side would agree with me. Then, when Ronald Reagan got elected President, it went way out of balance, and not only that went out of balance, but the whole business of labor-management relations went out of balance, and we have been hurt.

We are now at the point where 16 percent of our working force belongs to organized labor. No other Western industrialized country has that kind of a small percentage. And, if you accept the governmental unions, it is down to 11.8 percent; one-third of Canada, less than that from Western Europe and Japan.

I am not suggesting that this is solely because of this, but there has been slippage in our standard of living. There is no question our deficit has been a big part of that. That deficit has caused interest rates to be excessive; it has caused 37 to 55 percent of our trade deficit, according to the studies, and that has discouraged industrial development in South Dakota, in Illinois, in Kansas, in Idaho, in Minnesota, and the other States. But the combination has been devastating.

As late as 1986, the average manufacturing wage per hour in the United States was higher than any other country. Now there are 13 countries higher than the United States. The average manufacturing wage in Germany, for example, is approximately $7 an hour higher than it is in the United States of America. That is hard to believe. I was stationed in Germany in the Army after World War II when the Germans were desperately poor. Things have changed dramatically. And it is not because there is some magic in Germany. It is because of flawed policy. Things have gotten out of balance.

Part of this getting out of balance is that companies which had the ability for a long time to permanently replace workers now are taking advantage of that. The self-restraint is gone. And when self-restraint leaves on one side, it too easily leaves on the other side, too.

I am not saying that labor unions are all right and management is all wrong. There is a lack of self-restraint on both sides.

But where are the places you can legally fire your strikers and have permanent replacements? Great Britain, Singapore, Hong Kong. That is it. You cannot do it in Canada. You cannot do it in France. You cannot do it in our industrialized countries. In Quebec, you cannot even have temporary replacements.

And if there are permanent replacements, then there is a bitterness in the community that hurts in ways that none of us can measure.

Right now, we have a strike in Illinois at Caterpillar. This hurts many communities, but particularly Peoria, IL. I have been urging both sides to come together. I have been on the phone to both sides. But if there should be permanent striker replacements at Caterpillar, let me tell you, there would be violence in that community. I do not advocate it; no union official advocates it; no Caterpillar official advocates it. But there would be violence. Just as certain as I am standing here, that would be the case.

We have to have balance, and this bill moves us in the direction of balance.

Is this bill a substitute for better labor-management relations? Obviously, it is not. What you need is labor and management sitting down, working together.

Just a few days ago, I was visiting the Sunstrand Corp., whose corporate office is in Rockford, IL. It was not very many years ago when Sunstrand had terrible labor-management relations. But I sat down with the corporate officers and right there in that board room was the president of the UAW, as we talked about various aspects of Sunstrand and what they are trying to do and not do.

Let me add that, whether this is adopted or not, we need some changes in labor law in this country to help balance things. I think we have to recognize that things have gone out of balance.

Up to the north in Canada, if you want to organize a plant, for example,

you have to have a majority of the people sign a card and pay a dollar, and it is automatically organized. Here, the process can drag out for as much as 7 years to get organized. I think we have to modify that so that if a majority of workers clearly evidence they want to have a union represent them, that we move quickly on that. This cannot drag out.

Second, right now, even if the NLRB recognizes that a plant is organized, then the company can just negotiate endlessly on that first contract. I think we have to say, for the first contract after a plant is organized, that they have 60 days, 90 days, to work out a contract, and if they do not, then there is binding arbitration for that first contract so we can get things going.

Third, there has to be reasonable penalties for firing people who are active in trying to organize a company. Back a few years ago, there might be a few hundred people at the most fired during the course of a year because they advocated having a union in a company. Now, literally thousands are fired every year because the penalty is a slap on the wrist. It is back pay. But if, in the meantime, you have worked for McDonald's, or anyplace else, that pay is subtracted. So there is very little penalty for an organization.

Fourth, if you violate civil rights laws, then you cannot get a Federal Government contract. But if you have a pattern and practice of violating labor laws, you can still get a contract from the Federal Government. We should not be awarding Federal Government contracts to lawbreakers. It just seems to me that is basic.

There ought to be equal access for both sides when there is an attempt to organize. What happens now in some plants, let us just say you have a plant in Sioux Falls, SD, and in the plant there are 1,000 people. The company owners say, "Everybody has to show up at 10 o'clock. We are going to have a movie." And then they have an antiunion movie, and they give an antiunion lecture.

In most countries, the unions would then have equal access to those employees. That is not the case in our country. That just seems to me to make sense.

And then, finally, in the area of labor law reform, we ought to say to law firms and lawyers, and specifically to lawyers who advocate violating the law, that the National Labor Relations Board has the obligation of reporting that to State bar associations for possible disbarment. We should not—and this applies whether it is an advocacy to labor unions or to corporations—we should not be encouraging and tolerating people advocating breaking the law who should be guardians of the law, and that is our lawyers.

Senator WELLSTONE used another word besides "balance;" he used "partnership." That is what we have to create in labor-management relations. That partnership in our country is frayed, and I think this bill moves it back in the right direction.

I understand we may have a hard time getting the 60 votes because of the filibuster. I would just say to my friends who are inclined to vote against cloture, the filibuster is a good weapon if it is used selectively. If we keep on using it over and over and over and over again, we may reach the point where the Members and the American public will say you cannot let a minority stop the will of the majority here endlessly. It ought to be used rarely. We are using it over and over. It is the old story of somebody crying wolf, and if you cry wolf too often, pretty soon people do not believe you. If we use this filibuster too often, the day will come when it will be stopped.

Mr. President, you may be the next majority leader of this body. One of the questions you will have to face if you are elected to that position is the abuse of the filibuster. Let us be careful. Let us not use it unnecessarily. If we keep on using it excessively, it is going to go—no question about it.

Again, I hope we do not use the filibuster to stop the majority of Members of this body voting for legislation that I think is balanced, that is in the national interest.

I yield the floor.

The PRESIDING OFFICER (Mr. HEFLIN). The Senator from Idaho.

Mr. CRAIG. Mr. President, this afternoon, as I express my opposition to Senate bill S. 55, I think there are some very important statistics that deserve to be a part of the record.

For example, all of us have received in our offices a great amount of communications over this issue, an issue that has been a very high profile issue in the debate around the country over the last 1½ or 2 years. For example, in my office I have had 649 contacts from the citizens of my State—472, to date, have expressed their opposition to, 177 have expressed their support for, S. 55. That represents about 73 percent in opposition and about 27 percent in favor.

That is quite close to a CNN/Time poll which found that, when our citizens were asked if they favored Senate bill S. 55 as it related to prohibiting employers from hiring permanent replacements for striking workers, they spoke out by saying 60 percent "no" and 29 percent "yes." That was in 1992.

In 1991, the question was asked by Penn & Schoen, a polling firm which has done work for the AFL/CIO, "Should companies be permitted to operate during a strike using replacement workers?" And 63 percent of the public of our country said "yes," 25 percent said "no."

Then the poll went on to ask, "Once a strike has ended, should the replacements be fired?" And 54 percents said "no", 34 percent said "yes".

Clearly, from all of this polling information, Senate bill S. 55 does not have anywhere near the majority support of the American people. But I think what the polls also speak to is the attitude that our public has that can only be seen as an understanding of the need for a level playing field for both the employee and the employer.

We all know that a strike causes hardship on both sides, giving both sides, in essence, the incentive to negotiate. In many cases, S. 55 would give strikers the power to threaten the employer with a give in or get out of business kind of approach. This amounts to unilateral disarmament of employers at the bargaining table, and that kind of imbalance has never been granted either side in the kind of confrontation that can often go on, and can justly be allowed to go on, between employers and employees. Federal policy should promote negotiations, consultation, and conciliation. It should not emphasize confrontation and/or escalation in the use of an economic weapon against an employer.

That has been the principle of labor law in this country historically. S. 55, in my opinion, would largely upset that balance.

The argument is that employers hire replacements only as a last resort, and I think we believe that to be the case. Others would argue that once hired, replacements would be there permanently. General Accounting Office studies of strikes in 1985 and 1989, found that only 3 to 4 percent of strikers are replaced with workers who may or may not get to keep their jobs at the end of a strike. These studies also clearly demonstrate that two-thirds of the replaced strikers are reinstated within the year.

Current law already protects the basic rights of both parties in employer-employee negotiations. For example, it is illegal to fire a striker for striking. It is illegal for an employer to provoke a strike with the intent to bust a union. Strikers get preferred rehire status when a strike is over. An employer cannot hire a replacement worker for less than the last bona fide offer made to the strikers.

Strikers can be replaced only during an economic strike, a term used and defined in court decisions and the National Labor Relations Act, and it is defined in this way: An economic strike is one over pay, benefits, and the usual, negotiated terms and conditions of employment.

Strikers cannot be replaced except by explicitly temporary workers when a strike is over unfair labor practices.

If an employer is found to have committed an unfair labor practice, strikers must be reinstated with back pay and interest. What these facts say very clearly is that current law already protects the basic rights of both parties in that a balanced playing field that

should be what we strive for in labor negotiations.

During a strike, strikers can take other jobs as long as they are not substantially equivalent to the work being struck. Strikers retain prestrike seniority. Replacement workers must be represented by the same union that continues to represent the strikers. Replacement workers may not vote to decertify a union until at least a year after a strike has started, and such a vote will be delayed longer if unfair labor practice complaints are filed and must be heard.

In many cases, strikers benefit from compensation from union strike funds and State unemployment insurance.

Once again, let me emphasize that the American people, in all instances, in labor negotiations want a balanced, level playing field. Current law offers that. S. 55 radically tips the scales away from the relationship that has historically brought stability and accuracy and responsibility in labor relations. To balance these protections of employers, employers are allowed to stay open and stay in business during a strike by hiring replacement workers. In other words, there has to be a balance so they can hire replacement workers with full-fledged employee rights, including the possibility—I repeat, the possibility—of permanent status.

Under current law, if a strike is over unfair labor practices or if an employer commits such practices, permanent replacements are prohibited. S. 55 does not change that.

S. 55 would take away the right of good employers to stay in business during a strike. Employers who are bargaining in good faith, who are dealing fairly and honestly with their employees and who are being struck over economic issues, those are the good employers. S. 55 would be worse than the old adage of throwing the baby out with the bath water. Only good employers would lose legal rights in this instance.

I assume the best motives on the part of the supporters of S. 55, but the facts tell us something about its real purpose, and that it seems to be misguided in its purpose. This bill is not about stopping bad employers or protecting jobs. As we just said, it is the good employers that would get penalized. It is not about ensuring the level playing field I have spoken of while protecting the basic rights of the bargaining parties. What it is about is determining the outcome in advance of a strike. It is about tilting the playing field in one direction in advance in all cases regardless of the specific circumstances in each individual case.

In essence, it can be responsibly argued that S. 55 would promote strikes. In Canada, some provinces prohibit hiring replacements and some do not. In 1990, the University of Toronto study for the Journal of Labor Economics found that prohibiting replacements produces more strikes and longer strikes. That is clearly not in the best public interest; just look at the recent strike we had with the truckers.

S. 55 could destroy jobs by promoting more strikes. One trucking company estimates that the recent strike will cost it 20 percent of its business permanently. That means it will never have the work it needs to rehire about 20 percent of its drivers. S. 55 would only make things worse in most regards.

There are other circumstances this bill does not take account of, Mr. President. Due to factors of geography, the area labor market, the skills involved, and safety knowledge concerned, temporary replacements are often just not an option. As it is, replacements now are hired only with the prospect of long-term employment. Under current law, negotiated settlements often could result in the firing of permanent replacements and the rehiring of the strikers. And that seems to be what we have always seen. The reason, of course, is because of those very individualized circumstances of each case.

What I am suggesting, because of what I know of current labor law, is that this type of legislation just does not fit in with our sense of what it takes to have a growth economy, does not fit with the fact that it is our responsibility to promote positive policies that create economic growth and development, that actually stimulate and produce jobs for our economy and do not, instead, destroy them or damage them.

So for the next few minutes, I would like to talk about some of the policies of this administration, their promotion and support of S. 55 in the context of jobs: Jobs and job creation. That is what we all really ought to be about. This Senate ought to cautiously screen the public policy that it promotes with the goal of economic growth and development in mind. S. 55 simply does not fit in that matrix. It is not a promoter of that kind of a relationship that promotes economic growth. It is a promoter of confrontation. For example, it is found, as I mentioned, in Canada that the S. 55 approach actually promotes strikes and prolongs strikes because there is little or no will to settle; that the employer is held hostage.

Our President was speaking in Europe to the economic jobs summit that was held in March of this year in Detroit, MI, between the 14th and the 15th. At that time, as he spoke in Europe, he spoke of jobs and job creation, and here is what he said:

> We simply must figure out how to create more jobs and how to reward people who work both harder and smarter in the workplace.

Mr. President, we agree with that statement. All policy ought to be used or, I should say, all policy ought to be formed by screening it through that kind of statement. But I suggest, Mr. President, that if we are to emulate European labor practices and European labor law, the result would be just the reverse; that it could not fit; that it is time we clearly recognize that it is the European policy of which striker replacement is a substantial part, and that it would not serve our country well. All we have to do is look at the economics of Western Europe to make that argument sound.

So, Mr. President—and I mean President Clinton, not the Presiding Officer—while you were talking about job creation and yet promoting the passage of S. 55, you were doing several other things that are not consistent with economic growth, that are not consistent with job creation in the way that we as a government ought to be promoting it. For example, you enacted the biggest tax increase in America's history, which has been and will be discouraging new business investment and job creation by raising corporate and individual tax rates. You signed the family and medical leave mandate. Again, we believe that will cost the working men and women of our country a substantial number of jobs. And you have proposed a massive overhaul of the health care system, and there are an awful lot of statistics out there—and you by your own admission suggested it in your early days of promoting it—that it would cost in its initial phase over 600,000 jobs across this country and that they would not be replaced because jobs that would be created under your proposal would be in a different setting, in a different workplace, and a different skill would be required; you have proposed worker training and unemployment insurance reforms that would cost between $3 billion and $9 billion per year to the employer; you have asked consideration of a hike in the minimum wage from $4.25 to $4.75, again a disincentive to hire teenagers and the poor and the inner-city unemployed. And you have moved ahead in my region of the country very aggressively with new environmental regulation, in the instance of logging in Oregon, to the tune of thousands of jobs. You are now supporting a mining law reform that, if it went through in the form that your Secretary of the Interior Bruce Babbitt has proposed, could cost 35,000 to 40,000 jobs across the public-land West. Your logging policies in my State will cost jobs. You just joined a battle with me in this Chamber on a policy, Mr. President, through the advocacy of your Secretary of Energy in opposing the integral fast reactor. We were successful in defeating you. But that, again, would have been over 1,200 jobs across this country.

So, Mr. President, as we talk about growth and economic development in

this country, why are we putting S. 55 up front? Why are you saying that this is a No. 1 policy or one of the legislative priorities of your administration, along with major tax increases, along with the overhaul of a health care system that would cost thousands of jobs, along with new environmental policy that will shut businesses down and turn people away from the workplace?

Let me suggest that there are basic principles to which we ought to adhere as a policymaking body of this country as it relates to job creation and a favorable climate in the workplace for the men and women who are seeking employment in this country.

Those principles, I believe, were effectively outlined in a position paper put forth some months ago by the Heritage Foundation. And let me for the next few minutes state those principles because they are the kind that we ought to be speaking to instead of arguing about S. 55 and radically changing the balance in the relationship and the negotiations between the employer and the employee.

Principle 1: European-style job training and employment practices have proven incapable of keeping unemployment low or raising the worker's overall standard of living.

And yet it was those types of employment standards and European-style job training programs that you proposed at the job summit in Detroit, MI, March 14 and 15.

Principle 2: High tax rates on employers and capital is the quickest way to insure high unemployment.

And yet we know the tax increase of last year went directly at medium- and small-sized businesses that are now the largest employers in our country in the composite.

Principle 3: Excessive financial and banking regulations, which restrict the amount of capital firms can obtain, greatly limits business and job expansion.

And, once again, the kinds of rules and regulations that are now pouring out of this Government, all in the name of the environment or in the name of better practices or certainly in the name of Federal mandates, that say that business and Government ought to conduct itself in certain ways at the local level, do nothing but restrict the economic climate in our country and make more difficult the creation of jobs.

Principle 4: Increasing the regulatory burden and mandating numerous employee benefits is a recipe for job destruction.

That I just spoke to, like the Family and Medical Leave Act—again, a job destroyer, very destructive in the workplace.

Principle 5: Sustained job growth results from competitive, efficient industries that are free of excessive Government interference.

Those are the industries in 21st century America that offer the working men and women of our country the greater opportunity, the better work climate, and clearly the unique chance for advancement and career fulfillment.

Those are the kinds of issues that this Senate ought to be addressing. Instead, we are stepping backwards into a century-old attitude that somehow labor deserves the upper hand and that, if this one side is granted the upper hand, somehow all of the relationships are improved. History has shown that is simply not the case; that when people come to the table to negotiate, that table must be level. There must be equal balance on either side, equality on both sides. S. 55 would destroy that equality.

HEALTH REFORM AND JOBS: THE CLINTON PLAN

Mr. CRAIG. Mr. President, several studies have been performed examining how the Clinton health security plan would affect jobs in America. Leading economists predict that employer mandates, Government subsidies, and other aspects of the Clinton plan will result in serious wage reduction and job loss.

To avoid these adverse effects, Mr. President, reforms cannot place intolerable burdens on employers, but rather must further expand and improve the current system, allowing the market to develop naturally.

When President Clinton introduced his health reform plan last year, his administration stated that as many as 600,000 people could initially lose their jobs, if everything works as planned. Since then, other studies have predicted job loss anywhere from 624,000 to 3.8 million. In addition, as many as 23 million workers could experience lower wages, lower benefits, or reductions in hours worked. Any President who could stand before the American people and advocate a policy that would put people out of work amazes me.

Mr. President, employer mandates will obviously place burdens on many employers who do not currently offer health insurance to their workers. The President's solution to ease this new burden is to provide subsidies from the Federal Government.

According to the Clinton health plan, employer contributions must equal 80 percent of a "weighted average premium," and the individual employees would pay the difference between the 80-percent employee contribution and the actual premium. However, the proposal also places limits on the percentage of the payroll spent on health insurance premiums.

No employer will be required to pay more than 7.9 percent of the payroll; if health premiums exceed this amount, the Federal Government will make up the difference. This is the essence of the President's Federal subsidies.

But the regulations are more complex than this, and Federal subsidies may only add to the difficulties created by an employer mandate.

Liability is further limited as the number of employees falls and average wage decreases, creating a potentially serious problem. Employee liability as outlined in the Clinton plan provides a great incentive for cutting back employees and disincentive for hiring.

For example, if a company has 49 employees with an average wage of $20,000, hiring the 50th person would cost the employer more than $9,000. Accordingly, a company with 50 employees earning an average wage of $20,000 will save over $9,000 by dismissing 1 worker.

Mr. President, the Federal subsidies are designed to protect jobs by releaving financial pressures placed on employers. However, the combined effect of incentives for fewer workers with lower incomes and increased competition among employers to attract skilled workers will escalate employer-employee tension.

In addition, to avoid expanding entitlements and thus adding to the Federal deficit, the Clinton plan places caps on these Federal subsidies. For example, the Congressional Budget Office predicts that small businesses would require $58 billion in subsidies under the Clinton plan in the year 2000, although the subsidies are capped at $4.1 billion.

To maintain the level of Federal subsidies the President has promised, the Federal Government would be forced into even greater deficit spending to make up the difference in cost; on the other hand, if the Federal Government remains true to its caps and is forced to cut back on subsidies, financial pressure on employers will far exceed that predicted by the President, and job loss will be much greater than forecasted.

Mr. President, a large portion of the job losses will affect small businesses with fewer than 100 workers, and an overwhelming majority of those workers who would lose jobs currently make less than $40,000. In addition, job losses would disproportionately affect minorities. Most of the jobs will be lost in services, manufacturing, and retail businesses; all States will be hit hard, with an average job loss near 1 percent of the total work force throughout the country.

Whether the total number of jobs lost is closer to 600,000 or 4 million, almost all Americans will know someone who will have lost a job as a direct result of the Clinton health security plan.

In response to this projected job loss, the President claims his health security plan will create new jobs. However, this will not offset the initial shock of job loss. Jobs will not be replaced as soon as they are lost. Employers are often quick to recognize savings opportunities by releasing workers, but corporate expansion, on the contrary, is generally gradual. No wise businessperson welcomes possible

liabilities, and additional workers in an unproven system appear to be exactly that.

In addition, the promised new jobs will affect a different group of workers. Job losses will affect a working population in services, manufacturing, and retail; new jobs will appear in health professional, policy, and administrative fields.

Mr. President, we should be protecting rather than jeopardizing jobs. The Consumer Choice Health Security Act (S. 1743), which I cosponsor, will do this. This bill is designed to guarantee high quality, accessible health care services.

I am particularly pleased with how this plan would enable us to move toward achieving universal access and comprehensive coverage. Refundable tax credits, based on the percentage of gross income spent on medical services, and the introduction of medical savings accounts are two features of this plan which will dramatically improve access without taking the choices from the consumer.

Mr. President, we can reform our health care system without the serious side-effects of job loss and decreased wages. In supporting health care reform, my goal has been to empower people, to let them choose their own health plans and doctors. Individuals are certainly better able to determine their needs than is the Federal Government.

We do not need extensive Government intervention to provide universal health care. On the contrary, excessive Government involvement only increases bureaucracy, reduces quality of services, and weakens a vibrant private business sector. The Federal Government functions best when simply developing the framework in which the market can work, and health care reform should focus on building this foundation.

Mr. President, I ask unanimous consent that the following materials be printed in the RECORD:

"Strike Bill Could Destroy Critical Workplace Balance"—an op-ed in today's Christian Science Monitor, by two former members of the National Labor Relations Board with more than 100 years experience, between them, in employer-employee relations;

"Preparing for the 'Jobs Summit': The 5 Principles of Job Creation"—a Backgrounder by the Heritage Foundation;

"Why Employer Mandates Hurt Workers"—a Brief Analysis by the National Center for Policy Analysis;

"F.Y.I.: The Jobs Impact of Health Care Reforms"—a Heritage Foundation Backgrounder;

A white paper prepared by the National Federation of Independent Business on the President's proposed "Health Security Act"; and

"Enraging Species Act"—a Wall Street Journal editorial from April 19, 1994.

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

[From the Christian Science Monitor, July 11, 1994]

STRIKE BILL COULD DESTROY CRITICAL WORKPLACE BALANCE

(By Howard Jenkins and John A. Penello)

For many years we served as representatives of the federal government in various capacities with the National Labor Relations Board (NLRB). We were appointed board members under both Republican and Democratic administrations. Together we represent more than 100 years of experience in labor-management relations.

While we did not always agree on the outcome of cases brought before the NLRB—member Jenkins's decisions were more often pro-union and member Penello's dissents were more often pro-employer—we agree that the Strike Bill would destroy the core principle of balance in collective bargaining.

The Strike Bill, which has passed the House and is expected to be voted on today by the Senate, would prohibit employers from defending their businesses by offering permanent jobs to replacement workers during a strike over economic issues such as pay raises and benefits.

Proponents of the Strike Bill claim that employers' use of permanent replacement workers during an economic strike is a recent phenomenon. This simply is not true. The National Labor Relations Act, enacted in 1935, provided a delicate balance that allows unions to strike over wage demands and allows employers to defend their businesses by hiring permanent replacement workers.

The striker-replacement legislation would destroy this core principle of United States labor law, which has been consistently supported by Democratic and Republican presidents and federal courts for over half a century.

In our experience, the balance of power inherent in these countervailing economic weapons is what has made the system work. Take away either the right to strike or the right to operate with permanent replacements, and the other party will be sure to overreach. We fear the striker replacement legislation will encourage confrontation and "risk-free" strikes, where economic strikers could make unreasonable demands and shut down employers with no risk of their own.

Some contend that the system is not balanced, that permanent replacement of economic strikers is the equivalent of being fired. Again, this isn't true. Even so-called "permanently replaced" strikers have continuing rights to reinstatement to all available future jobs. The NLRB developed adequate safeguards for economic strikes, one of which puts employers under an affirmative continuing obligation to first offer jobs to unreinstated economic strikers on a preferential basis before hiring new employees.

Furthermore, the actual number of workers replaced is minute. A Bureau of National Affairs study found nearly 40,000 economic strikers were replaced in 1991–1992, out of a US labor force of 125 million. That's less than .03 percent. Nearly 70 percent of these 40,000 strikers were later reinstated to their jobs. Also, the number of strikes in the US has been decreasing since 1947, the first year the US Department of Labor's Bureau of Labor Statistics began to maintain strike data.

Current collective bargaining is a fair and reasonable system that has worked for over 50 years. We see no compelling evidence to suggest that any changes to this law are needed or even wanted by the American people. In fact, a recent Gallup poll shows that 57 percent of Americans oppose a ban on permanent replacement workers.

The current debate in Congress reflects these facts. In an effort to save the Strike Bill, proponents of the legislation are searching for an acceptable compromise. However, none of the proposed compromises improve the original legislation. Any Strike Bill compromise would have the same result as the original legislation—risk free strikes.

Under the most discussed compromise proposal—a moratorium on hiring replacements—strikes would be limited to durations of four to 10 weeks. This would avoid few strikes, since most strikes last less than 10 weeks, and would do little to mitigate the devastating economic impact of the original bill.

Economic strikes were never intended by Congress to be risk-free. And the right to strike was never guaranteed to be successful in forcing an employer to accede to a union's bargaining demands. To the contrary, the core principle of our national labor law is a balance of rights and obligations, risks and reward, which, through the dynamics of collective bargaining, drives parties closer together toward labor contracts and peacefully negotiated settlements.

For these reasons and based upon our long experience in administering federal labor policy we must now speak out against the strike-replacement legislation—in any form. We believe the Strike Bill would imperil future decades of improving cooperation between labor and management and return us to the disruptive labor disputes of previous decades.

Strikes in the US are at an all-time low. In 1974 there were 424 strikes involving 1.8 million workers and 32 million lost workdays, compared with 1993, when there were only 35 major work stoppages involving 182,000 employees and 4 million lost workdays.

With the incidence of strikes at a record low, it is difficult to understand why Congress would pass legislation that would actually increase the number of strikes in America.

[From the Heritage Foundation Backgrounder, Mar. 11, 1994]

PREPARING FOR THE "JOBS SUMMIT": THE FIVE PRINCIPLES OF JOB CREATION

INTRODUCTION

Leaders from the major industrialized countries are scheduled to meet in Detroit, Michigan, on March 14–15, at the request of President Clinton, to discuss the causes of the persistently high levels of unemployment in their countries. Announcing the goals of the summit in Europe this January, President Clinton declared that, "We simply must figure out how to create more jobs and how to reward people who work both harder and smarter in the workplace."[1]

The President is right to focus on how to create more jobs in this country. Although he boasted during his State of the Union address that 1.6 million jobs were created in 1993, job growth, in fact, is much weaker than normal this long after a recession. Since World War II, total employment growth has averaged 9.2 percent 33 months after a recession. But since the bottom of the 1990–1991 recession, total employment in the United States has climbed by just 2.5 percent.[2] President Clinton would do well to

[1] Footnotes at end of article.

ponder the anemic job growth in Europe, because European firms are encumbered with costly mandates and taxes on employment that have discouraged hiring and held back employment growth. The President should recognize that his Administration's policies are repeating the mistake of the Europeans, and contributing to slow growth of earnings and employment in the United States. For example, the Administration has:

Enacted the biggest tax increase in American history, which will discourage new business investment and job creation by raising corporate and individual tax rates.

Signed the mandated Family and Medical Leave Act, which will raise labor costs and force employers to be far more selective about whom they hire, since they are required to offer certain employees more time off.

Proposed a massive overhaul of the health care system, which would raise labor costs by mandating that employers cover workers. According to Lewin-VHI, one of the country's leading health care econometrics firms, the Clinton health plan would mean that among firms now providing health insurance, 19.9 percent would see cost per employee rising $500–$1,000 per year, 51.6 percent would face cost increases per employee of $1,000–$2,500, while another 15.2 percent would face costs per employee of more than $2,500.[3]

Proposed worker training and unemployment insurance reform, that would cost between $3 billion and $9 billion per year.[4]

Considered a hike in the minimum wage from $4.25 to $4.75 an hour, which would further increase the disincentive to hire teenage and poor, inner-city unemployed individuals.

Moved ahead with an ambitious environmental regulatory agenda ranging from global warming to new logging policies.[5]

These policies signal an apparent misunderstanding of the employment and job policies that led to the creation of over 20 million new jobs in the 1980s.[6] Each of these new programs or proposed policies add to the three principal governmental barriers that discourage employers from creating new jobs: taxes, credit barriers, and regulatory and mandated benefit burdens. These barriers, which have steadily increased over the past few years in the United States, have discouraged business expansion and increased the cost of hiring new workers. Failure to reduce these barriers or—worse still—the imposition of new barriers, means that America will become a slow-growth economy.

President Clinton should realize that high wages and mandated benefits are ruining the European economies and leading to high unemployment rates. In fact, several European countries and Japan are now trying to lower their labor costs and dismantle their generous "safety nets." Instead of continuing to add more burdens on employers, President Clinton should take the opportunity of the summit to advocate five simple principles of job creation:

Principle #1: European-style job training and employment policies have proven incapable of keeping unemployment low or raising the worker's overall standard of living.

Principle #2: High tax rates on employers and capital is the quickest way to insure high unemployment.

Principle #3: Excessive financial and banking regulations, which restrict the amount of capital firms can obtain, greatly limit business and job expansion.

Principle #4: Increasing the regulatory burden and mandating numerous employee benefits is a recipe for job destruction.

Principle #5: Sustained job growth results from competitive, efficient industries that are free of excessive government interference.

Only by talking bluntly to the European allies and shunning "solutions" to the continuing problems of unemployment that will only slow wage growth, can President Clinton help the industrialized world to correct its economic ills. Adopting European-style employment policies, on the other hand, will lead only to European-style results.

UNDERSTANDING THE FIVE PRINCIPLES OF JOB GROWTH

Principle #1: European-style job training and employment policies have proven incapable of keeping unemployment low or raising the worker's overall standard of living.

During his speech announcing the jobs summit, President Clinton declared, "We Americans have a lot to learn from Europe in matters of job training and apprenticeship, of moving our people from school to work into good-paying jobs."[7] Undoubtedly, Americans have much to learn from the Europeans, but not about their employment policies.

The true effects of the European policies which the President and others glorify are best illustrated by the case of Germany. German workers enjoy roughly six weeks paid vacation each year, the shortest work week of any major industrial nation, high wages (averaging $26 an hour), and extensive health benefits mandated by the government. But as Ferdinand Protzman of The New York Times notes, "Unfortunately, [the German system] no longer works. Instead, the social contract that once made Germany's economy a model of stability has helped erode the nation's competitiveness as it struggles to recover from the worst recession in postwar history."[8]

Like many of its European neighbors, Germany is struggling with what has come to be known as "Eurosclerosis," which signifies a stagnant growth environment. As the chart on the following page shows, adherence to this model has brought the European Union (EU) slow growth and high unemployment. Unemployment has averaged almost 10 percent over the past decade in the major European countries, and is projected to average 12.1 percent in 1994 for the members of the EU. At the end of last year, approximately 32 million Europeans were jobless, which is roughly equivalent to the combined workforces of Spain and Sweden.[9] Overall, the U.S. rate of employment growth has far outstripped Europe. Observes C. Fred Bergsten, director of the Institute of International Economics, "The U.S. has kept labor costs down and created 40 million new jobs over the past 20 years. In Europe, wages have risen about 60 percent during that span but only 2 or 3 million jobs have been created."[10]

Peter Gumbel of The Wall Street Journal maintains this Eurosclerosis is caused by a "tangle of labor regulations and rising costs for employers [which] acts as a major disincentive to job-creation—and a powerful incentive to moving production elsewhere."[11] Not surprisingly, perhaps, some 30 percent of business surveyed recently by the German Chamber of Commerce say they are considering shifting production to a more hospitable business environment.

Beside the European burdens on employers which discourage job expansion, employment is also discouraged through extensive unemployment insurance programs. Explains David R. Henderson of the Hoover Institution, "A single 40-year-old previously employed at the average production worker's wage would get benefits equal to 59% of previous earnings in France, 58% in Germany and 70% in the Netherlands."[12] These benefits can be collected for many years as well. Hence, although the broad safety net available to displaced workers seems compassionate on the surface, it actually creates disincentives to full employment and a productive workforce. Absenteeism, for example, ran at 9 percent in Western Germany in 1992, 8.2 percent in France, and 12.1 percent in Sweden. By way of comparison, the U.S. rate is only 3 percent.[13]

Also overrated is the German job training system, which Clinton and his Labor Secretary, Robert Reich, seek to emulate. While the German educational system focuses on highly technical training for its future workers, the U.S. system focuses on generalized training. Some academics, such as Lester Thurow of MIT argue that the German approach has created a superior workforce which enjoys a better standard of living. But a recent comparison of the two systems by Kenneth A. Couch, of Syracuse University, disputes this belief. Couch concludes that, "an apprenticeship program by itself is unlikely to have widespread positive effects either on economic measures such as employment or indirectly related social problems."[14] For example, comparing German and American 24- to 33-year-old high school graduates without further education, Couch found roughly the same percentage were employed (with actually more Americans than Germans possessing manufacturing jobs), more of the Americans in the sample group were married, and slightly more Americans had children. Likewise, from 1983 to 1988, Couch found American workers outperformed their German counterparts overall. America experienced average annual employment growth during the period of 2.4 percent, versus Germany's meager 0.4 percent. And real GDP growth over the same period averaged 3.9 percent for America and 2.3 percent for Germany. Other European countries have fared no better relative to America.

If American policymakers choose to move toward a more technical-based educational system, the German approach thus is not the obvious model to follow. As Couch notes, "Emulating the German approach may in fact five us an educational system that will not perform better but will cost more than our current one."[15]

Following the Failed Model. European-style job training and employment policies which have been implemented in America have met with failure. Public employment programs have proven to be net job destroyers, since the amount of money required to create a public sector job is typically several times that of private sector job creation.[16] A recent study of public transit investment by John Semmens of the Chandler, Arizona-based Lassez Faire Institute, notes that for the $61.5 billion invested since 1965, only 800,000 jobs were created. If that same amount of money had been invested by private business through a corporate tax cut, 8 million jobs could have been created.[17] Likewise, Semmens found that 13 million to 20 million jobs would have been created if the $61.5 billion had instead been devoted to a capital gains tax cut, or an expansion of Individual Retirement Account investment in Treasury bills or common stocks.[18] Most important, instead of producing the high-wage, well-skilled jobs the current Administration calls for so frequently, public programs only provide low-wage, low-skill, temporary employment, which often costs taxpayers dearly in the process.

Further, it cannot be argued that government sponsored employment training policies provide European citizens with greater purchasing power and a higher standard of living than Americans. Purchasing power parity, which is the most accurate measure of comparative consumer power, shows that the U.S. consumers have a clear advantage over foreign citizens (see table at end of article). Following Europe's poor example, therefore, likely will lead not only to lower growth and fewer jobs, but also to a lower standard of living for American citizens.

The "Europeanization" of American Labor Market. Despite the failure of the European system to sustain employment and a higher standard of living, America's federal labor market policy is being molded to resemble German, French, and other European models. This "Europeanization" of the American labor market policy threatens to undermine industrial competitiveness, increase budgetary strains, and lower the average worker's standard of living.

Principle #2: High tax rates on employers and capital is the quickest way to insure high unemployment.

To hire additional workers, employers need capital. Capital fuels job creation by allowing employers to invest in the various means of production, including land, equipment, factories, new technologies, and labor. Capital can be acquired in one of two ways: saving it from profits or borrowing it. Examining each method of capital accumulation indicates why U.S. employers are finding it increasingly difficult to obtain the fuel for job creation.

The Current Tax Environment. Past recoveries show that the U.S. economy is performing below typical levels. Whereas employment in the previous post-war recoveries averaged 9.2 percent 33 months after the end of the recession, the current recovery has only seen approximately 2.5 percent growth over a similar period of time. One factor that aided recoveries during the early 1960s and early 1980s was a reduction in tax rates.

Unfortunately, the most recent recession, which followed the 1900 tax hikes, has been followed by tax rate increases. The Clinton tax plan adopted by Congress last year increased taxes on business and investment. The corporate tax rate on business, for example, was raised from 34 percent to 36 percent. Likewise, top individual rates moved up from 31 percent to as high as 42.5 percent. This is important since approximately 80 percent of small businesses pay taxes under the personal income tax code. The excessive taxation of capital gains also continues. The capital gains tax on individuals currently stands at 28 percent, up from 20 percent in 1986. As the chart on the following page shows, before this rate jump, new business incorporations had risen steadily throughout the 1980s. After the increase, start-ups fell immediately and sharply. The aggregate effect of these taxes is a huge barrier to job creation, as capital shifts from the hands of investors to the government.

The Effects of the Tax Barrier. High taxes reduce investment in businesses and slow job growth by encouraging individuals and firms to seek alternative investments with a more profitable return on their dollar. It should be no surprise that America's current savings and investment rates are lower than those required for robust, long-run economic growth. This is due directly to the trade-off investors face when contemplating increasing consumption versus saving or investing. Increasing consumption carries little penalty; few taxes or other disincentives exist for immediate purchases. But foregoing current consumption to invest assets represents an increasingly unattractive option if the rewards of profitability springing from investment are penalized with higher tax rates. Moreover, earnings in the U.S. are still penalized twice through taxation, first at the corporate level and then later at the individual level. Therefore, if an investor had $10,000 to spend or invest, spending currently would more than likely represent a more attractive choice than investing.

Taxes raise the cost of capital for industrial equipment and machinery. As the American Council for Capital Formation (ACCF) reports, "Recent research confirm[s] . . . that the volume of investment in equipment is a critical factor in the pace of economic growth and development. [I]nvestment in equipment is perhaps the single most important factor in economic growth and development."[19] Yet, ACCF points out that despite the beneficial effects of the tax-reducing Economic Recovery Act of 1981 on such investment, tax policy in the following years became heavily biased against such investment incentives. The tax acts of 1982 and 1986, which raised taxes, each resulted in an increase in the cost of capital for equipment as investors found such opportunities less attractive. Largely as a result of these high-tax policies, the total cost of capital for manufacturing equipment increased by 22.9 percent from 1981 to 1986. The most recent revisions of the tax code are likely to further discourage investment, and thereby increase barriers to expansion and job creation.

Hence, the potential for long-term job creation in the current tax environment is not encouraging, since entrepreneurs are less able to entice investors to risk their money on new business ventures. Because taxes create disincentives to invest in businesses, capital for future job creation is being produced at a lower rate.

Principle #3: Excessive financial and banking regulations, which restrict the amount of capital firms can obtain, greatly limit business and job expansion.

In recent years, the term "credit crunch" has been coined to refer to how difficult it has been for many businesses to obtain loans. One reason this crunch has occurred has been the sharp rise in banking regulation in recent years. In addition to $10.7 billion in general regulatory compliance costs in 1992, bankers face costs from lost interest payments on reserves they are required hold at the Federal Reserve, and deposit insurance premiums.[20]

The Effects of the Credit Barrier. How do these trends affect job creation? This regulatory burden has had a restrictive effect on credit growth in recent years. The American Bankers Association observes that over this same period, more than 40 major federal regulations affecting bank operations were promulgated.[21] Although estimates of the regulatory burden on banks are not available for previous recessionary periods, there is no doubt that the number of regulatory restrictions and burdens the banking industry faces have increased significantly over the past 20 years. Declares the American Bankers Association: "Hog-tying the banking system with regulatory red tape means two things—more expensive bank credit and less of it."[22]

Just as higher taxes restricted job creation by holding back entrepreneurs, so too has the credit crunch. Without easy access to credit, American firms are forced to postpone plans for job expansion. A 1993 survey of small and mid-size businesses by the Arthur Anderson Enterprise Group revealed that 38 percent of all businesses surveyed were unable to fulfill their capital needs. Perhaps more important, 58 percent of businesses that were in their first three years of operation have been unable to fulfill their capital needs. The same survey noted that, due to the lack of capital, 39 percent of the surveyed businesses were unable to expand operations and almost 20 percent of them reduced employment.[23] Limited access to capital has also made it more difficult for firms to purchase their own equipment, forcing an increasing number of small businesses to lease equipment, often at very high interest rates.[24]

In response to this problem, the Clinton Administration has called for new banking regulations governing how loans are made. The Administration hopes to boost the number of loans made through the Small Business Administration to "make SBA more responsive to those industries with the potential for creating a higher number of jobs, those involved in international trade, and those producing critical technologies."[25] But this is unlikely to be a solution to the underlying problem of restricted credit growth. The SBA loan program accounts for only a small percent of capital for new firms, and in any case tends to funnel dollars to favored businesses rather than the best investments.

Clinton's new plan to reform banking regulation through agency consolidation will not help either. Monopolizing regulatory power in the hands of one agency will make it easier for heavy-handed and manipulative policies to be implemented, thereby raising the regulatory burdens faced by banks. Lawrence Lindsey, a member of the Board of Governors of the Federal Reserve System, says, "Monopoly regulation is a bad idea. [It] will greatly harm both the banking industry and the economy, and lead to an unfortunate politicization of bank regulatory policy."[26]

Principle #4: Increasing the regulatory burden and mandating numerous employee benefits is a recipe for job destruction.

The number of regulations and mandated benefit requirements that employers are forced to comply with has grown steadily in recent years. Estimates of the total cost that regulations impose on the economy range from a low of $615 billion to a high of $1.7 trillion.[27] This burden translates into millions of foregone job opportunities.[28] For example, Michael Hazilla and Raymond Kopp have estimated that environmental regulations reduced aggregate employment by 1.18 percent as of 1990,[29] which means over one million jobs would have existed without the regulations.[30]

Regulation and mandated benefits take their toll indirectly. When the government increases this burden on the private sector by promulgating new rules, firms must adjust their behavior accordingly. This adjustment process may require an increase in worker training, paperwork requirements, or even retooling. Regardless of the adjustment method, costs will be incurred. The costs of adjustment directly affect the firm's profits since a greater than expected amount of earnings will be exhausted in compliance measures. In addition there may be extra costs associated with hiring new workers. As a result, firms will try to pass the costs of adjustment on to their consumers, or, if that is not possible due to competitive market conditions, scale back future production, investment, or new hiring. If the new compliance and adjustment costs are sufficiently high, firms may scale back existing production and lay off workers.

The Effects of the Regulatory and Mandated Benefits Barrier. Several studies point to the job-destroying effect of the regulation and mandated benefits explosion that has taken place in recent years.[31] With the passage of mandates included in the Clean Air Act Amendments of 1990, the Americans With Disabilities Act of 1990, and the Civil Rights Act of 1991, and the increases in the minimum wage in 1990 and 1991, the burdens on employers have ballooned.

The dramatic rise in the minimum wage alone, from $3.35 in 1989 to $3.80 in 1990 and $4.25 in 1991, helped push teenage unemployment to the highest rate in a decade. If the Clinton Administration proceeds with plans for a 50 cent hike in the minimum wage, and the labor market adjusts as it has in the past, there is likely to be an increase in the teenage unemployment rate of between 0.5 percent and 3 percent.

Another burdensome employer mandate will be the "employer trip reduction" requirement of the Clean Air Act. Starting this year, this will require employers in nine metropolitan areas to reduce the number of employees driving to work. Although no employment loss estimates are available, over 12 million employees will be covered by the act, making a difficult to believe that some jobs will not be affected.[32]

Whatever this intentions, civil rights employment mandates also take their toll. Peter Brimelow and Leslie Spencer of *Forbes* recently estimated the total cost of civil rights regulation to be $236 billion, which translates into a loss of 4 percent of GNP.[33]

The Family and Medical Leave Act of 1993, which grants employees as much as 12 weeks unpaid leave each year, discourages job creation. Because many employers will not be able to absorb the high costs and lost output resulting from mandatory worker leave, the policy will have the unintended consequence of encouraging struggling businesses not to hire individuals who might take advantage of the leave policy. The SBA has found the overall costs of this act to total as much as $1.2 billion.[34]

Other employer mandates that currently burden the labor market include the health care requirements found in the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the prevailing wage requirements of the Davis-Bacon Act, and workers and unemployment compensation payments. These factors create added disincentives to job expansion since taking on an additional worker means steadily higher employer payroll burdens.

Employment Thresholds. In recent years, many legislators have come to realize that added regulation and mandates have a destructive effect on job growth, particularly in the small business sector. But, instead of attempting to craft more sensible policies or deregulate where possible, they tend to respond to small business concerns by adopting employment thresholds. Employment thresholds exempt smaller-sized businesses from certain regulations. For example, the Americans With Disabilities Act currently exempts all firms with fewer than 25 employees from the regulation; this will be lowered to cover firms with fewer than 15 employees after July 26, 1994. Other examples include the Family and Medical Leave Act, which exempts business with fewer than 50 employees and the Plant Closing Law, which exempts businesses below 100 employees.

These thresholds have the unfortunate side-effect of discouraging employers near the threshold from hiring new employees. Pointing to the Family and Medical Leave Act, Ruth Stafford, president of the Kiva Container Corporation, says, "Fifty is the magic number."[35] Her firm, like many others, plans to hold employment stable just under the 50 employee barrier using more temporary or part-time workers. This phenomenon is already being seen: according to the Bureau of Labor Statistics, temporary employment grew by 20 percent in 1993, up from 6 percent in 1990.

Principle #5: Sustained job growth results from competitive, efficient industries that are free of excessive government interference.

Steering America onto a path of greater job creation, low unemployment, and a higher standard of living will require a shift of current American economic policy. The three primary governmental barriers to job expansion—high taxes, limited credit through irrational financial regulations, and excessive regulations and added mandated benefits—all must be corrected. Adopting the European system would be a mistake. America should instead learn from history that where goods, services, labor, and wages have been allowed to move or fluctuate freely, prosperity, entrepreneurship, and high employment have been the result.

To put American back on the high-employment, high-wage track, President Clinton should take several specific and immediate steps to ensure American industries remain strong and competitive:

Step #1: Lower tax rates on businesses and capital. The effects of high tax rates on employers and capital are direct and damaging. Lowering both corporate tax rates and the capital gains tax rate (while indexing it for inflation) would provide an immediate and strong job stimulus by reducing the cost of hiring workers and unlocking the capital needed for business expansion.

Step #2: Reject all attempts to establish a European-style employment policy, especially expensive job training programs. High wages, sustained employment, and increased business activity should be guiding goals of public policy. Mandating them should not. Costly and ineffective job training programs should be ruled out as job-creating options. Americans need only look at the failure of European programs to understand why such an approach is a mistake. Such programs require massive amounts of public spending for the small number of jobs which are created.

Step #3: Cap federal spending. This will aid job creation by increasing the amount of private savings available for business investment.

Step #4: Enact comprehensive regulatory reform. The "hidden tax" of regulation and increased mandated benefits directly increase the cost of employing workers. The President and Congress should establish a federal regulatory budget and estimate the employment impact of regulations before they take effect. The regulatory budget would place a limit on the total cost that is imposed on the economy each year by new federal regulations. When the budget had been passed, no new regulations could be imposed—unless other rules were withdrawn.

Step #5: Adopt rational health care reform based upon consumer choice and not new employer mandates. No new policy action threatens to do as much damage to the labor market in the immediate future as does employer-based health care mandates. While reform is needed, it should not simply push the cost of comprehensive health coverage onto employers through expensive new payroll taxes. Accomplishing reform in this manner will result in the loss of millions of jobs.[36]

Step #6: Reform America's archaic financial and banking laws. Financial restrictions such as the McFadden Act of 1927, the Bank Holding Act of 1956, and the Glass-Steagall Act of 1933 retard bank stability and expansion and, therefore, limit the credit opportunities they can offer to businesses. Eliminating these impediments to financial efficiency would allow businesses to take advantage of expansionary opportunities by borrowing needed capital.

Step #7: Overhaul antiquated antitrust laws. America's outdated antitrust laws, such as the Sherman Antitrust Act of 1890 and the Clayton Antitrust Act of 1914, make it difficult for firms to enter into joint production alliances that could raise industrial efficiency and create new job opportunities.

Step #8: Pass product liability reform and other tort reform legislation. Currently, America's tort system saps private sector entrepreneurialism, hinders product innovation, and threatens the continuation of numerous businesses. Without reforms limiting punitive damages and streamlining costly cost procedures, an increasing number of jobs will be placed at risk.

Step #9: Continue to push for trade liberalization globally while eliminating domestic barriers to free trade. While the job gains will result from the wise actions already taken of passing the North American Free Trade Agreement (NAFTA) and General Agreement on Tariffs and Trade (GATT) agreements, further efforts should be made to expand free trade agreements while lowering the domestic barriers to imports.

Step #10: Encourage the use of privatization and contracting out whenever possible. Privatization and contracting out not only insure that services are delivered more efficiently for less money, they also allow private firms to raise capital and re-invest in more productive, long-term private sector jobs. Vice President Gore's National Performance Review failed to tap such methods of real government reform.[37] Undertaking such measures would encourage increased private sector employment while demonstrating that the Administration is serious about changing the way Washington works.

CONCLUSION

The Jobs Summit affords President Clinton the opportunity to outline the fundamental principles of job creation to the industrial nations of the world. Unfortunately, many nations, specifically in Europe and more recently the United States, have forgotten that low taxes, easy access to credit, rational regulations, and vigorous exposure to competition, are the foundation for a healthy, job-creating economy.

The most important lesson that President Clinton can bring back from Detroit is that government policies that increase the cost of hiring people mean that fewer people will be hired.

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FOOTNOTES

[1] David R. Sands, "Clinton Announces Plans for Jobs Summit," *The Washington Times*, January 11, 1994, p. B7.

[2] Daniel J. Mitchell, "The Budget and the Economy: A First Year Assessment of the Clinton Presidency," Heritage Foundation *Backgrounder Update* No. 213, February 7, 1994, p. 2.

[3] Lewin-VHI, *The Financial Impact of the Health Security Act* (Fairfax, VA: Lewin-VHI, 1993).

[4] David R. Sands, "Hill Republicans Criticize Clinton's Jobless Measure," *The Washington Times*, February 23, 1994, p. B8.

[5] *Federal Register* pages, a rough estimate of the overall amount of regulatory activity, ran 60,950 for

1993, the highest level since the Carter Administration left office in 1980.

[6] See Daniel J. Mitchell, "Tax Rates, Fairness, and Economic Growth: Lessons from the 1980's," Heritage Foundation *Backgrounder* No. 860, October 15, 1991, p. 2.

[7] Sands, "Clinton Announces Plans . . .," *op. cit.*

[8] Ferdinand Protzman, "Rewriting the Contract for Germany's Vaunted Workers," *The New York Times*, February 13, 1994, p. F5.

[9] Stella Dawson, "Global Jobs Summit Delayed Amid NAFTA Battle," *The Reuters European Business Report*, November 4, 1993.

[10] Quoted in Protzman, *op. cit.*

[11] Peter Gumbel, "Western Europe Finds That It's Pricing Itself Out of the Job Market," *The Wall Street Journal*, December 9, 1993, p. A1.

[12] David R. Henderson, "Eurosclerosis Spreads to Our Shores," *The Wall Street Journal*, October 14, 1993, p. A16.

[13] Protzman, *op. cit.*

[14] Kenneth A. Couch, "Germans and Job Training, Education and Us," *The American Enterprise*, November/December 1993, p. 18.

[15] *Ibid.*, p. 13.

[16] See Edward L. Hudgins, Ph.D., "Why Infrastructure Spending Won't Jump Start the Economy," Heritage Foundation *Memo to President-Elect Clinton* No. 9, January 15, 1993.

[17] John Semmens, "Government Investments Yield Poor Results," Heartland Institute, *A Heartland Perspective*, October 18, 1993, p. 2.

[18] John Semmens, "Federal Transit Subsidies: How Government Investment Harms the Economy," *The Freeman*, February 1994, p. 71–75.

[19] Mark Bloomfield and Margo Thorning, Ph.D., "The Impact of President Clinton's Tax Proposals on Capital Formation," American Council for Capital Formation, Testimony to the House Ways and Means Committee, March 16, 1993, p. 5.

[20] Not included in the $10.7 billion figure are the potential costs from the FDIC Improvement Act of 1991, which could push regulatory costs even higher.

[21] American Bankers Association, "The Banking Industry: The Key to Jobs and Economic Growth," February 1, 1993, p. 8.

[22] American Bankers Association, "Cutting the Red Tape: Let Banks Get Back to Business," November 1992.

[23] Arthur Anderson Enterprise Group, *Survey of Small and Mid-Sized Businesses: Trends for 1993*, June 1993, p. 11.

[24] Michael Selz, "Many Small Businesses Are Sold on Leasing Equipment," *The Wall Street Journal*, October 27, 1993, p. B2.

[25] The National Performance Review, Creating a Government That Works Better & Costs Less, September 7, 1993, p. 148.

[26] Lawrence Lindsey, "How to Corrupt Banking," *Forbes*, January 31, 1994, p. 100.

[27] See "Manhandled by Mandates," *Forbes*, October 25, 1993, p. 39; William G. Laffer III and Nancy A. Bord, "George Bush's Hidden Tax: The Explosion in Regulation," Heritage Foundation *Backgrounder* No. 905, July 10, 1992.

[28] William G. Laffer III, "How Regulation is Destroying American Jobs," Heritage Foundation *Backgrounder* No. 926, February 16, 1993.

[29] Michael Hazilla and Raymond J. Kopp, "Social Cost of Environmental Quality Regulations: A General Equilibrium Analyis," *Journal of Political Economy*, Vol 98, No. 4, (1990) p. 867.

[30] Laffer and Bord, *op. cit.*, p. 6.

[31] See Laffer, *op. cit.*, p. 7; Gary Anderson and Lowell Gallaway, "Derailing the Small Business Job Express," (Washington, D.C.: Joint Economic Committee, November 7, 1992); Lowell Gallaway and Richard Vedder, "Why Johnny Can't Work: The Causes of Unemployment," *Policy Review*, Fall 1992; Alan Reynolds, "Cruel Costs of the 1991 Minimum Wage," *The Wall Street Journal*, July 7, 1992, p. A14.

[32] See David Andrew Price, "Newest Mandate—Everyone Into the Carpool," *The Wall Street Journal*, November 8, 1993, p. A14.

[33] Peter Brimelow and Leslie Spencer, "When Quotas Replace Merit, Everybody Suffers," *Forbes*, February 15, 1993, p. 82.

[34] Eileen Trzcinski and William T. Alpert, "Leave Policies in Small Business: Findings From the U.S. Small Business Administration Employee Leave Survey," Small Business Administration Office of Advocacy *Research Summary* Number 99, March 1991.

[35] Jeanne Saddler, "Small Firms Try To Curb Impact of Leave Law," *The Wall Street Journal*, August 5, 1993, p. B1.

[36] See Daniel J. Mitchell, "The Economic and Budget Impact of the Clinton Health Plan," Heritage Foundation *Backgrounder* No. 974, January 13, 1994.

[37] See Scott A. Hodge and Adam D. Thierer, "The National Performance Review: Falling Short of Real Government Reform," Heritage Foundation *Backgrounder* No. 962, October 7, 1993.

NOTE.—Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

U.S. Citizens Still Top World in Purchasing Power

[Per capital gross domestic product]

United States	$22,130
Switzerland	21,780
Germany	19,770
Japan	19,390
France	18,430
United Kingdom	16,340

NOTE.—Data are for 1990. Figures represent Purchasing Power Parities, which take into account exchange rates, inflation, and other currency differences.

Source: United Nations World Development Report, 1993.

LEGALLY REQUIRED BURDENS EMPLOYERS FACE

Payroll Taxes:

[X] Social Security (FICA)
[X] Unemployment

Other Taxes:

[X] Corporate Income Tax
[X] Sales Taxes

Mandated Benefits:

[X] Minimum Wage Act of 1938
[X] Worker's Compensation
[X] Davis-Bacon Act of 1931 (Prevailing wage requirements)
[X] Family and Medical Leave Act of 1993
[X] Americans With Disabilities Act of 1990
[X] Consolidated Omnibus Budget Reconciliation Act of 1985 (health benefits)
[X] Equal Pay Act of 1963

Various Regulations:

[X] Various environmental regulations (e.g. Clean Air Act)
[X] Occupational Safety and Health Act of 1970
[X] Equal Employment Opportunity Act of 1972
[X] Age Discrimination Act of 1967
[X] Fair Labor Standards Act of 1935 (overtime regulations)

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WHY EMPLOYER MANDATES HURT WORKERS

Are employer mandates the best way to pay for health care reform? Virtually all studies of mandates conclude that they kill jobs. Even the Clinton administration agrees.

An Employer Mandate is Really an Employee Mandate. Economists generally agree that fringe benefits are earned by workers and that they substitute for wages. Employers cannot afford to pay more in total compensation than the value of a worker's output. So if labor costs go up because of mandates, the employer usually is forced to reduce wages by an offsetting amount.

Thus, requiring employers to provide health insurance is simply a disguised attempt to force workers to take health insurance rather than wages. Nominally, the proposed mandates apply to employers. Actually, they force workers to purchase health insurance, whether they want to or not.

Why Mandates Would Cost Jobs. When the government forces people to earn less and to pay for health insurance they may not want, working becomes less attractive. This is especially true for marginal workers—teenagers, working wives and the elderly—who may already be covered under some other policy. In addition, employers may not be able to substitute lower wages for health insurance for some employees because of the minimum wage law and other legal barriers. In that case, workers would simply lose their jobs.

Moreover, to the extent that the cost of mandated health insurance is not paid for by lower wages, it is a tax on capital. Taxes on capital reduce the amount of capital, which in turn reduces the demand for labor

Mandates Under the Clinton Plan. The Clinton plan's mandates would be especially onerous because:

Workers such as teenagers, part-time workers, two-worker families and elderly workers on Medicare would have to pay again for coverage they already have;

The Clinton plan's requirement of community rating would double the cost of health insurance for younger workers, who tend to place the lowest value on health insurance;

The plan would impose a disguised 7.9 percent tax on labor income;

Although there are subsidies for small businesses with low-income employees, the taxes needed to fund these subsidies also would cost jobs.

ESTIMATED JOB LOSS FROM THE CLINTON HEALTH PLAN

Study	Probable Job Loss	Potential Job Loss
ALEC	1.0 million	
State of California	2.6 million	3.7 million.
DRI/McGraw-Hill	659,000	908,000.
Employment Policies Institute	780,000–890,000	2.3 million.
JEC/GOP	710,000	807,000–1.2 million.
NCPA/Fiscal Associates	738,000*	
NFIB/CONSAD	850,000	3.8 million.
RAND	600,000	
Average	1.0 million	2.1 million.

*The NCPA study also includes an "Optimistic" forecast of 677,000 jobs lost.

The Clinton Administration's Estimates of Lost Jobs. The Clinton administration estimates that its health reform plan would cost 600,000 jobs, but says that most of these losses would be offset by job gains elsewhere in the economy. The administration has modest support among outside analysts. Economist Alan Kruger of Princeton University believes that only about 200,000 jobs would be lost. The Congressional Budget Office claims that the administration's proposal would "probably have only a small effect on low-wage employment." These administration-friendly analysts believe job loss would be minimal because the additional cost of health insurance premiums would be largely absorbed by lower wages and slower wage growth, thereby leaving labor costs essentially unchanged.

More Realistic Estimates of Lost Jobs. Eight major independent studies of the impact of employer mandates estimate job losses ranging from a low of 600,000 (the Rand Corporation) to a high of 3.8 million (CONSAD Research Corporation). The average predicted loss is 1 million jobs. [See the table.]

The range reflects the uncertainty about how an employer mandate would affect employers and workers. An employer insurance mandate would raise labor costs to employers, but they would pass much of those costs on to workers by lowering wages. The more employers are able to shift their increased labor costs to employees, the fewer jobs would be destroyed. For example:

The Rand study, which forecast the smallest job loss, assumes that 85 percent of the increased labor cost would be shifted back to workers in the form of reduced wages;

The Employment Policies Institute study assumes that 70 percent of the increased

labor cost would be shifted back to lower wages;

The American Legislative Exchange Council study assumes wage shifting of both 62 percent and 85 percent.

Estimates of Lost Wages. The wages of highly-paid workers who already receive health benefits would be little affected by employer mandates. Because the wages of the lowest-paid workers cannot be cut very much, jobs then would be at great risk. The large in-between group would face significant wage reductions.

Five of the eight studies examine the wage effects of an employer mandate, using different approaches. The studies forecast these aggregate wage losses in 1998:

Employment Policies Institute: $27 billion;

State of California: $68 billion;

American Legislative Exchange Council: $93 billion;

National Center for Policy Analysis: $69 billion;

CONSAD Research Corporation: $28 billion.

Only the CONSAD study estimates the number of employees affected. It sets the number at 23 million, making the average wage loss $1,200 per worker in the in-between group. The Joint Economic Committee of Congress estimates that as many as 41 million workers would be affected, with the loss per affected worker ranging up to $2,300.

Estimates of the Economic Impact. Four of the major studies also consider the impact of an employer mandate on the economy as a whole. Their predictions:

DRI/McGraw-Hill: gross domestic product (GDP) will be down by $53 million in the year 2000;

The National Center for Policy Analysis: GDP will be down by $90 billion in 1998;

American Legislative Exchange Council: personal income will be down $112 billion by 1998;

State of California: GDP will cumulatively decrease $224 billion from 1995 through 1998.

Other Studies. The Joint Economic Committee of Congress has cataloged 40 studies of employer mandates. Only the eight studies examined here used econometric models to produce specific numbers on job loss. However, all 40 came to the same general conclusion: employer mandates destroy jobs and reduce wages.

[From the Heritage Foundation F.Y.I., July 6, 1993]

THE JOBS IMPACT OF HEALTH CARE REFORMS

(By Peter J. Ferrara, Senior Fellow)

INTRODUCTION

Only one major health care reform proposal guarantees secure and portable health insurance coverage for every American family while not destroying jobs, according to a recent study conducted for the National Federation of Independent Business (NFIB), the nation's largest association of small business owners. That reform proposal is The Heritage Foundation's Consumer Choice Health Plan.[1]

CONSAD Research Corporation, which conducted the study, is a major health care research firm based in Pittsburgh.[2] Its calculations are based on labor impact models developed for the U.S. Department of Health and Human Services. In the NFIB study, CONSAD concludes: "The Heritage Foundation's proposal is estimated to have no effect, severe or moderate, on employment." The other universal health care proposals analyzed by CONSAD were the "managed competition" plan developed by the so-called Jackson Hole Group, the employer mandate plan designed by California Insurance Commissioner John Garamendi, and the "play or pay" bill introduced in 1991 by the Democratic leadership in Congress. Each of these would lead to heavy job losses, because of the extra labor costs they would impose on firms. Another proposal examined by CONSAD, the Conservative Democratic Forum plan, would not cost jobs. But unlike the other plans modelled, including the Heritage proposal, it would not lead to universal coverage.

HOW JOBS WOULD BE AFFECTED BY MAJOR HEALTH REFORM PROPOSALS

Proposal	Jobs lost	Jobs at risk[1]
Heritage	No jobs lost	No jobs at risk.
Jackson Hole	900,000 to 1.5 million	16.3 million.
Garamendi	390,000 to 650,000	6.6 million.
Play or Pay	650,000 to 1.1 million	11.5 million.
CDF[1]	None[2]	None.[2]

[1] "At risk" means workers have a high probability of layoff or job elimination, and stand the greatest chance of substantial losses in wages and benefits.
[2] The CDF Plan, unlike the other proposals, would not achieve universal coverage.

THE HERITAGE PLAN

Under the Heritage Consumer Choice Health Plan, each worker would have the right to use the money currently paid by his or her employer for health coverage to purchase any other health insurance plan of the worker's choice, from any source. Any resulting savings would go directly to the family. In addition, the worker could direct these and other funds into a medical savings account to pay for future health expenses. These workers, as well as workers currently without employer-provided insurance, would receive a substantial tax credit for the payments made for family health insurance premiums, medical savings account contributions, or out-of-pocket health expenses. The credit would be "refundable," meaning that families near or below the tax threshold would receive the equivalent of the tax credit in the form of a voucher.

Through this market-oriented plan, consumers are given broad, powerful market incentives to consider the costs and benefits of different health insurance plans, and the medical services they buy directly. They would tend to avoid unnecessary health care. And since consumers would be far more directly concerned with costs, doctors, hospitals, and insurers would compete far more vigorously to reduce costs. Such market incentives and competition, not government price controls, are the most effective means for reducing cost.[3]

At the same time, the Heritage Plan would require each individual to purchase a basic catastrophic health plan, just as in most states automobile drivers are required to purchase at least a minimum liability insurance policy. This health insurance requirement is to protect other members of society from having to pay for the cost of care for the uninsured. Through the refundable credit, low-income Americans would be given government assistance to pay the premiums.

The Heritage Plan thus provides for universal coverage without imposing extra costs on employers—and so would not reduce employment.

CONSAD Estimate of Job Losses: No jobs lost or put at risk.

THE JACKSON HOLE PLAN

The ability of the Heritage Plan to achieve universal coverage while protecting jobs contrasts sharply with the managed competition proposal advanced by the Jackson Hole group of policy experts, including Professor Alain Enthoven of Stanford University, physician Paul Ellwood, and others.[4] This proposal would require all employers to purchase at least a set of standards federally designed health insurance plans for their employees and their families, through regional insurance cooperatives—or directly from insurers in the case of larger employers. The proposal seeks to steer workers into Health Maintenance Organizations (HMOs) or similar managed care networks in which the consumer's choice of doctors and services is limited. This proposal is typically called "managed competition," or the "Jackson Hole Plan."

The CONSAD study concludes that because of the cost of the mandate to employers, the managed competition proposal would put 16.3 million small business jobs, or almost 25 percent of all small business employment, "at risk." This means that workers would be subjected to prolonged layoffs, reduced compensation, or future job cutbacks and plant closings. The study estimates that between 900,000 and 1.5 million small business jobs would be lost once the proposal was implemented. These negative effects would occur because the mandated employer payments for health insurance would raise the cost of labor and, consequently, encourage many employers to reduce compensation or to cut jobs.

CONSAD Estimate of Job Losses: 900,000 to 1.5 million jobs directly lost; 16.3 million jobs put at risk.

THE GARAMENDI PLAN

Another proposal analyzed in the CONSAD study is advanced most prominently by the Insurance Commissioner of California, John Garamendi. This proposal would be similar to the managed competition proposal, but would finance the health insurance package through a payroll tax. Under the proposal, employers and employees would pay a combined 9 percent payroll tax to regional cooperatives, which would make available to families a range of plans meeting minimum specifications.

This proposal bears the closest similarities to the plan being developed by the Clinton Administration. The CONSAD study estimates that this proposal would put about 6.6 million small business jobs, or about 10 percent of all small business employment, at risk of reduced work or benefits, with from 390,000 to 650,000 jobs eliminated altogether. This loss again occurs because the payroll tax on employers raises the cost of labor. The study notes, incidently, that the proposed 9 percent payroll tax probably would be insufficient to finance the expected benefits, which would include workmen's compensation and health care for auto injuries. If a higher payroll tax were necessary, as is likely, it would cause larger job losses.

CONSAD Estimate of Job Losses: 390,000 to 650,000 jobs directly lost; 6.6 million jobs put a risk.

THE PLAY OR PAY PLAN

Another major proposal examined in the CONSAD study is the "play or pay" plan advanced in recent years by leading congressional Democrats.[5] This is the primary proposal for employer-mandated health insurance being considered in Congress. Under this proposal, employers have a choice: Either they must purchase health insurance providing at least certain specified benefits to their employees and their dependents, or pay a tax for similar coverage to be provided by the government.

The CONSAD study concludes that the additional labor costs imposed on many firms by this requirement would put 11.5 million small business jobs, or about 17 percent of all small business employments, at risk of reduced work or compensation. CONSAD estimates that from 650,000 to 1.1 million Americans would lose their jobs.

CONSAD Estimate of Job Losses: 650,000 to 1.1 million jobs directly lost; 11.5 million jobs put at risk

THE CDF PLAN

The final major proposal studied is a version of managed competition included in a bill (H.R. 5836) introduced by Representative Jim Cooper, the Tennessee Democrat, and other members of the Conservative Democratic Forum, a caucus of conservative Democrats in the House of Representatives. While similar to the Jackson Hole Group's proposal, this bill differs in a crucial respect: It would not require employers to pay for employees health insurance. It would require employers only to make such insurance available through regional cooperatives for purchase by workers if the employer did not choose to pay for it.

Since the CDF bill would not require any increase in labor costs, the CONSAD study found it would have no significant negative effect on employment or jobs. The bill, however, does not achieve universal coverage, unlike any of the others plans analyzed, since the uninsured likely would remain without insurance. The reason: Neither employee nor employer would have any new requirement or assistance to purchase coverage.

CONCLUSION

Most of the leading health care reform proposals, including the emerging Clinton plan, seek to finance expanded health insurance at least in part by imposing new financial obligations on employers. This method of finance has a political advantage. It hides must of the cost of coverage from those who will ultimately pay the cost—American workers. This cost is not just financial. By increasing the cost of labor in many firms, it would mean fewer jobs and reduced wages paid to those with jobs.

This effect is well understood by economists and business owners, if not, unfortunately, by the workers not affected. The CONSAD study actually quantifies these effects. The study indicates that three of the five major proposals examined—and by implication the emerging Clinton plan—would mean heavy job losses and put millions more jobs at risk.

There are only two plans that would not cost jobs. One is the proposal advanced by the Conservative Democratic Forum. But while it avoids jobs losses by not imposing a mandate on employers, it does not achieve universal coverage. There is only one plan that leads to universal coverage with no job losses. That is the Heritage Foundation Consumer Choice Health Plan.

FOOTNOTES

[1] See Stuart M. Butler, "A Policy Maker's Guide to the Health Care Crisis, Part II: The Heritage Consumer Choice Health Plan," Heritage Foundation "Talking Points," February 28, 1992; Stuart M. Butler, "Using Tax Credits to Create an Affordable Health System," Heritage Foundation "Backgrounder," No. 777, July 26, 1990; Stuart Butler and Edmund F. Haislmaier, eds., "A National Health System for America" (Washington, D.C.: The Heritage Foundation, 1989).

[2] CONSAD Research Corporation, "The Employment Impact of Proposed Health Care Reform on Small Business," May 6, 1993. Available from the NFIB Foundation, Suite 700, 600 Maryland Avenue, S.W., Washington, D.C. 20024.

[3] Edmund F. Haislmaier, "Why Global Budgets and Price Controls Will Not Curb Health Costs, Heritage Foundation Backgrounder No. 929, March 8, 1993.

[4] Peter J. Ferrara, "Managed Competition: Less Choice and Competition, More Costs and Government in Health Care," Heritage Foundation "Backgrounder" No. 948, June 29, 1993; Robert E. Moffit, "Overdosing on Management: Reforming the Health Care System through Managed Competition," Heritage Lecture No. 441, April 15, 1993.

[5] Stuart M. Butler, "Why 'Play or Pay' National Health Care Is Doomed to Fail," Heritage Lecture No. 329, August 14, 1991; Edmund F. Haislmaier, "The Mitchell Health AmericaAct: A Bait and Switch for American Workers," Heritage Foundation Issue Bulletin No. 170, January 17, 1992.

THE HEALTH SECURITY ACT—AN NFIB WHITE PAPER

EXECUTIVE SUMMARY

NFIB and its small business owners have been crying out for health care reform louder and longer than most. In 1986, NFIB members declared health care reform their number one priority. Since that time, we have been polling small business owners on various elements of reform schemes and we now have a fairly solid conception of what the small business community wants—and doesn't want—from health care reform.

Small business does not want the system envisioned by the Health Security Act.

Small business owners are in a unique position within the health care reform debate. On one hand, they are a primary "victim" of the current cost crisis and, on the other hand, they are being asked to fund the lion's share of the reform bill. According to HHS Secretary Shalala, the business community will fund approximately 60 percent of the new plan. Small firms will have to fund insurance coverage for their employees and dependents, a new cost for 55–60 percent of the American business community. According to Lewin/VHI, the proposed plan will cost American small business nearly $29 billion in new expenditures for the 80 percent mandate alone. NFIB estimates that at least two of every three employers would have increased health insurance costs if the Health Security Act were enacted, almost all of which would be small employers.

NFIB's contacts with small business owners—the people who create the jobs, meet payroll and make their business run every day—show significant fear of a huge new program affecting millions of businesses and hundreds of millions of Americans, supported by an unprecedented bureaucracy. The more details of the plan they see, the more concerned small business owners become.

In the beginning of the debate, President Clinton laid out two main goals with which nearly everyone agreed: providing coverage to the nation's uninsured and mitigating the cost crisis in health care. NFIB strongly supports these two critical goals, along with the President's six essential principles against which any reform plan should be measured. However, we believe the plan falls far short on the goal of reducing costs, and is untrue to the six principles:

Security: We believe the plan trades job security for health security.

Simplicity: The plan is extraordinary complex for the business owner and in overall structure.

Responsibility: Small business owners will bear a disproportionate share of the responsibility.

Choice: For the business owner, choice and flexibility are eliminated.

Quality: Caps on spending and excessive government control could reduce quality and innovation.

Savings: With a huge new bureaucracy in place, realization of savings is dubious.

In the beginning a requirement for employers to provide coverage for their employees and dependents seemed to some to be the simplest solution. However, the real life implications are fast becoming known. The attached sheet on public opinion about the employer mandate shows that the American public is not in favor of these types of restrictive requirements on businesses.

While nearly all provisions of the plan affect small business, the most critical can be broken down into five general categories:

Financing: NFIB does not believe that the funding for this plan is sound, nor do we find the estimates on target. The country cannot afford for the small business community to be the primary financing mechanism for a vast new entitlement program. In the event of a funding shortfall, every financial safety valve is connected to the business community and therefore to jobs. Given the choice of cutting the benefit package, raising taxes or passing on the cost to employers, the government's predictable choice will be the latter.

Subsidies: Small business owners, even those who believe they may be better off in the short term as a result of the proposed subsidies, do not find these promises credible. First, the subsidy levels have shifted several times since first announced and an overall cap has been imposed. Second, Administration officials have declared them temporary. Third, they may be practically meaningless. In the case of a shortfall by the state or an alliance, employers may be "assessed" again to make up the difference.

Mandate: While economists may not agree on everything, one thing they do agree on is the impact of payroll taxes on job creation. Payroll taxes are without a doubt the small business owner's biggest financial burden. In fact, most small firms now pay more in payroll taxes than they do in income taxes. Payroll taxes must be paid whether the firm is profitable or not, and they raise the cost of hiring and keeping employees. The 80 percent employer mandate is by definition a new broad-based payroll tax. The result: higher price reduction in benefits, fewer jobs created, potentially widespread layoffs and fewer business start ups.

Simplicity: Small business owners believe they will need an entire new employer benefits department to comply with the Health Security Act. Obviously, for most of the nation's small firms that is impossible. Contrary to what many lawmakers believe, the administrative burden for small firms under the President's proposal will expand markedly. Rather than spending productive time building and improving the business, business owners will be transformed into the government's administrative enforcer under the reform plan.

Expansion of Government: The Health Security Act proposes an unprecedented expansion of government bureaucracy to support

the new system. While small business owners believe government has a role to play in health care reform, they see the proposed structure as far too expensive because it leaves virtually nothing in the health care sector outside of government control. Expanding government involvement in a program has never improved a program, nor brought down its overall costs.

NFIB believes the plan to be overpromised, underfunded, and a tremendous burden for business owners.

NFIB and its over 600,000 members across the country have been advocating comprehensive health care reform since 1986. Our positions on various aspects of reform plans have been established by our members through seven years of polling on the subject of health reform. In the 103rd Congress, reform plans supported by NFIB include the Managed Competition Act of 1993 (Senators Breaux and Durenberger), the Health Equity Access Reform Today Act of 1993 (Sen. Chafee, et. al) and plans introduced by Rep. Michel, Sen. Nickles and others.

THE CLINTON HEALTH REFORM PLAN

PROVISIONS CONCERNING SMALL BUSINESS

Employers are required to pay for 80 percent of coverage for employees and dependents.

The requirement that employers pay 80 percent of the health insurance costs for all employees and their dependents is no different than a new payroll tax. This is especially true for the 55-60 percent of the business community that does not provide health insurance. In fact, is the single largest payroll tax increase in history.

Employers must cover part time and seasonal workers, in addition to picking up Medicare costs for employees over age 65.

Payments made for two worker families are calculated so that both employers must pay, based on a complicated and bureaucratic formula (payment—80 percent of average weighted premium divided by the average number of workers per family type for that region).

Employers may be required to send payments to multiple alliances.

Alliances may require employers to pay by electronic transfer.

Recordkeeping and calculations to determine eligibility for the subsidy are complicated and cumbersome. For most small firms, fluctuating wages will make this a nightmare to determine.

Employers must provide alliance with all relevant identification and employment information for each employee, forward all relevant health plan and alliance information to their employees, report any and all changes in personnel to the purchasing alliance and track workers' family status.

Extensive records must be kept and made available to the alliance. At year end, businesses must reconcile their payments with the alliance to ensure compliance and must report information on wages and number of employees to ensure eligibility for subsidies.

Alliances can audit employers to ensure compliance.

The Clinton plan changes the tax treatment of certain earnings of an S corporation, significantly increasing the Medicare tax on many S corporation shareholders. Also, shareholder earnings will now be included in the calculation of payroll, reducing the small business subsidy for many.

The plan is likely to significantly narrow the definition of "independent contractor." The plan grants the Treasury Department the authority to issue new rules defining who is an employee for purposes of FICA, FUTA and the health plan premium. This substantial new power allows the IRS to override anything in current law except for the new safe harbor created by the plan.

Since the regional alliances will be responsible for collecting premiums from employers, they will have to make a determination as to which workers are independent contractors and which are employees. Problems may develop in cases where the regional alliance classifies a worker as an employee, but the IRS considers that worker to be an independent contractor.

States are permitted to opt out of the system and choose single payer for all or part of the state.

Employers may be required to pay additional amounts if a state or alliance fails to meet its budget target or collect the premiums it is owed.

The Administration's proposal establishes a standard benefits package that has been compared to those provided by "Fortune 500" companies. In addition, the National Board that will administer the system can add benefits to the package, as can individual states.

Alliances have the potential to become huge, government-run entities with significant regulatory powers.

The alliances will have strictly set boundaries, may not cross state lines and may not split MSAs. Since so many businesses operate across state lines or across MSAs, the employer may have to pay multiple alliances compounding the administrative complexity.

Employers would lose all control over their health insurance costs. Self insurance for forms under 5000 employees will not be allowed, and all ability to control benefits and premium costs will be low.

The national board is given extraordinary power, including determining per capita premium targets and alliance budgets, approving state systems, interpretation and upgrade of standard benefit package, and general oversight and enforcement.

The Administration's proposal is a massive top-down reorganization of the nation's health care system with an unprecedented level of government involvement and control over health care. With such a powerful National Health Board, potentially hundreds of Health Alliances, and dozens of new agencies proposed to run the system, the Administration's plan is government-intensive.

The plan sets up an infrastructure that could easily be used as a launching pad for a Canadian style, single payer health care system.

A 7.9 percent cap for large corporations with fewer than 5000 employees is a huge windfall for many big corporations that have allowed their health care costs to skyrocket. General Motors and Ford, for example, currently pay close to 20 percent of payroll in health costs. For the majority of larger firms with over 100 employees, overall costs will go down by about $14.5 billion. In addition, the Administration has recommended that the government pick up 80 percent of the health insurance costs of early retirees, another boon for large corporations.

The bill's malpractice language is weak, providing only for some alternative dispute resolution, a collateral source rule and a nominal limit on attorney's fees.

THE HEALTH SECURITY ACT

WHERE'S THE SIMPLICITY?

One of President Clinton's principles for health care reform is "simplicity." However, as we've seen it laid out, the plan seems anything but simple for the small business owner. In addition to the requirement to fund coverage for all employees and dependents, business owners must comply with far reaching and complex information reporting. Although the plan removes the responsibility for "shopping" for coverage, it has multiplied the employer's administrative burden.

Following is a list of employer administrative requirements:

Reporting: Prior to enrollment, the business owner must provide to the alliance identification and employment information for each employee.

Once a year the employer must furnish the following data to the alliance: number of months of full time equivalent employment for each employee and each class of enrollment, amount deducted from wages for the family share of premiums, total employer premium payment for the year for all employees in each alliance area, the number of full time equivalent employees for each class of enrollment (i.e. the number of single employees or employees with dependents) broken down by month, the amount of wages covered for each employee, any employer collection shortfall payments and any additional information specified by the Department of Labor.

Each month, the employer must apprise the alliance of any information on a change in an employee's employment status (such as a firing or hiring, wage increase, change for part time to full time, etc.), and any change in employee's family status (such as a divorce, marriage, new dependent).

For a new employee, the employer must provide identification information, home address, alliance area of residence, class of family enrollment (divorced, single, dependents), health plan employee is currently enrolled in, whether employee has moved from one area to another and any additional information the Board or the Department of Labor may specify.

Employers must provide to each employee information on the number of months of full time equivalent employment for each class of enrollment, the amount of wages attributable to qualified employment, the amount of covered wages, the total family share deducted from wages and any other information that the Department of Labor may specify. [If the employer paid premiums for employees to more than one alliance, information must be reported separately for each alliance.]

Payment Calculation: In order to calculate his or her contribution, the business owner must determine which "family status" category each employee fits into, track that throughout the year and pay 80 percent of the alliance's average weighted premium.

Payments made for two worker families are calculated so that both employers must pay, based on a complicated and bureaucratic formula (payment=80 percent of average weighted premium divided by the average number of workers per family type for that region).

Payments for part time workers are calculated pro-rata based on a 30 hour baseline. For example, for an employee working 10 hours a week, the employer must pay one-third of 80 percent of the average weighted premium for the employee's chosen plan.

In order to determine whether they qualify for a subsidy, an employer must calculate the company's average wages (total wages of qualified employees divided by the number of full time equivalent employees). This figure must be calculated each month, then payments must be reconciled at year end. Monthly fluctuations, common in small firms, make this an administrative nightmare.

Recordkeeping: Employers must keep extensive records of all these transactions and calculations and make them available to the alliance. At year end, all payments and wages must be reconciled and reported to the alliance.

Employers may be audited by the alliance.

A true understanding of the small business community would reveal that many of the smallest firms, subsidy or no, could crumble under the combined weight of the new administrative requirements and the 80 percent mandate. The administrative burdens of the proposal are just as much a tax as the requirement to pay 80 percent. The average small firm does not have a "green eyeshades" benefit administrator in its backroom and did not get into business to serve as a partner, or administrator, for the federal government. Where's the simplicity?

THE EMPLOYER MANDATE IS A TAX ON JOBS

"A majority of House members and the House parliamentarian view the employer mandate in the Clinton health reform plan as a form of tax revenue."—BNA Daily Report for Executives, November 1993.

The Health Security Act requires all employers to pay 80 percent of the health insurance costs for all current and future employees and their dependents and a pro-rated portion of this 80 percent requirement for part-time employees and their families. After reviewing the Health Security Act, NFIB reasserts what it has argued all along; the mandate-to-pay is a payroll tax increase that will result in job loss in the smallest weakest, newest businesses in the U.S. economy. We also assert the following: to maintain its reputation for honesty in federal budgeting, the Congressional Budget Office must determine that the 80 percent premium requirement is a tax.

How can the mandate be anything else? Title I of the bill places into the law the idea that the federal government will guarantee that all Americans have a certain set of health benefits. Title VI finances this legal guarantee by telling employers how much they must pay for health insurance, where they are to send the money and subjects them to audit and federal penalties if they do not comply. All of this makes the mandate no different than a tax. It must be called what it is and treated as such by Congress.

A payroll tax is the most onerous tax for a small business. It must be paid regardless of a firm's financial health. It raises the cost of hiring and/or keeping each employee. In the case of the health care employer mandate, it is not difficult to see which firms will be hit hardest. Three million firms employ four or fewer employees. These Main Street firms make up 60 percent of all American employers. Of these three million, 76 percent do NOT currently offer health insurance to their employees (HIAA data). Most of these firms do not provide insurance simply because they cannot afford it. They will be hit the hardest by the mandate, as will new businesses. Of all American employers, 55 percent to 60 percent do not provide health insurance. The 80 percent mandate will force the owners of the smallest businesses in the economy to pay for an untested system with no certainty of future costs.

NFIB estimates that at least two of every three employers would have increased health insurance costs if the Health Security Act were enacted, almost all of which would be small employers.

In a September Gallup Poll of NFIB members, 84 percent of small business owners opposed the employer mandate-to-pay. When asked how they would be affected by a 3.5 percent increase in payroll costs (the best deal many firms could get under the Clinton plan), one third of respondents said they would let employees go and nearly one half said they would be forced to raise prices. Every public study and survey of economists done on the employer mandate forecasts job loss (up to 3.1 million). Even the Clinton Administration has acknowledged that approximately 600,000 jobs could be lost. Europe is suffering chronic unemployment in part as a result of mandated benefits. Many advocates of universal coverage in both political parties have rejected the employer mandate to pay as an inefficient, risky way to achieve that goal. In short, health security need not come at the expense of job security.

SUBSIDIES AND PAYROLL CAPS: UNRELIABLE AND UNDESIRABLE

Ira Magaziner, the President's health care advisor, once declared that concerns about the job loss impact of the employer mandate to pay were "crazy." But on page 1051 of the Health Security Act comes the clearest admission to date that job loss concerns are not only not crazy, they are well founded.

On that page, Section 6123 of the bill outlines the small business subsidy scheme through which the required health premium costs for small firms (under 75 employees) would be limited to 3.5 percent to 7.9 percent of payroll. The federal government would pick up the rest. While NFIB appreciates this recognition that some small firms simply cannot afford to pay 80 percent of a government mandated "Fortune 500" health plan, these subsidies and payroll caps have so many weaknesses that small business owners view them as unreliable, undesirable and under-financed:

(1) The percentages of payroll at which mandated health care costs are capped would always be subject to change. In fact, just since the first unveiling of the President's plan, they already have.

Example: Mr. Smith owns a landscaping company and employs 26 people who on average make $15,000 a year. When the first draft of the President's plan was released on September 7th, his health care costs were capped at 3.8 percent of payroll. But what happened when concerns were raised that the health bill was not paid for? On October 4th, a new subsidy table came out which would have raised Mr. Smith's cap to 4.4 percent of payroll (BNA's Daily Health Care Report). When the Health Security Act was finally submitted to Congress in November, Mr. Smith's payroll cap rose again to 5.3 percent of payroll. In these two changes, Mr. Smith's already considerable mandated health care costs rose $5,850 per year. This process would only be magnified if the employer mandate were law and political and fiscal pressures mounted. Because of financing problems, the payroll caps are made of swiss cheese.

(2) While the bill "entitles" certain firms to payroll caps based on their size and average wage, it places a cap on the amount of funds that would be available for this entitlement. This means that if estimates for the cost of this entitlement are off, the "caps" of 3.5 percent to 7.9 percent are meaningless.

There is every reason to believe that the Administration estimates will be off. Neither the Bureau of Labor Statistics nor the Small Business Administration have current statistics of average wages by firm size, making it very difficult to know how many firms will be eligible for the subsidies. Lewin/VHI's recent financial analysis of the plan found the Administration's cost estimate for the subsidy to be off by $36 billion. Then there is history. In 1965, Medicare was estimated to cost $9 billion by 1990. It actually cost $116 billion. When cost estimates of the subsidy prove to be low, the payroll caps will prove meaningless.

(3) The Health Security Act allows the state and the National Health Board or Congress to adjust the already generous standard benefits package. Recent experience has clearly shown that a federal government fiscally restrained by huge deficits is inclined to pass and take credit for benefits for which it does not have to pay. If this should happen with the standard benefits package, the small business subsidy would cover less and the employer mandate would cost more.

(4) Fifty-five percent to 60 percent of U.S. employers do not currently offer health insurance to their employees. To them even a subsidized employer mandate will raise the cost of each employee by 3.5 percent to 7.9 percent.

(5) Small businesses do not want and have never asked for a government subsidy. They want a reformed, competitive health care market that reduces costs and offers them and their employees affordable insurance.

VOODOO ECONOMICS: FINANCING THE HEALTH SECURITY ACT

HHS Secretary Donna Shalala recently testified that business will fund about 60 percent of the Health Security Act, with the federal government and individuals picking up the rest. This makes the business community, more than 95 percent of which are small employers, the biggest stakeholder in the fiscal soundness of the proposal. Small business owners cannot afford to be the major financer for a litany of new open-ended entitlements. If the numbers do not add up, small business will be asked to pay more. Given the choice of cutting benefits, raising taxes or passing the cost on the employers, the latter is likely to be the choice.

Is the plan small business owners will be asked the pay for fiscally responsible? The answer is no.

Entitlements and obligations. The Health Security Act provides: (1) A "Fortune 500" health plan to 37 million uninsured Americans; (2) more generous health care benefits for the millions of Americans who have insurance but do not have a Fortune 500 plan; (3) new long term benefits for the elderly; (4) prescription drug benefits for the elderly; (5) subsidies to low income families and small firms to reduce the cost of mandates; (6) early retiree benefits; (7) deficit reduction; (8) 100 percent tax deduction for the self employed; and more.

Financing. These obligations are financed by: the employer mandate; a corporate alliance payroll tax; Medicare and Medicaid cuts; new tax revenues that result from post health care reform profits and a tobacco tax increase. NFIB believes that each of these financing mechanisms as well as the estimates of the costs of what they pay for are alarmingly off target.

For example, the plan forecasts with attempted precision a $71 billion windfall for business that would result from lower health care costs. But the employer mandate makes this impossible. As previously mentioned, 55 percent to 60 percent of employers do not currently offer health insurance to their employees. For this majority of American employers, health care costs will automatically rise, not go down. It is simply not credible to say that the health care program will produce a $71 billion revenue windfall when it imposes an economically damaging tax on a majority of employers.

A recent study by Lewin/VHI, considered the most definitive financial analysis of the

President's plan to date, finds that the costs will be significantly higher than the Administration projected. Lewin estimates the plan will cost the government $364 billion; the Administration estimated $286 billion. Similarly, Lewin finds the Administration's net deficit reduction figure to be overblown by 300 percent.

There are other problems. The plan depends on cuts in Medicare and Medicaid that experts both conservative and liberal, Republican and Democrat, believe are not achievable. The 1 percent corporate alliance payroll tax will produce less revenue than expected when big corporations find it more advantageous to simply join regional alliances.

But let us make the dubious assumption that all of the revenue and savings proposals produce exactly the amount of money they are supposed to generate. There is no reason to believe it will pay for all of the spending items listed above. Remember, in 1965, government actuaries who were projecting the 1900 cost of Medicare were off by more than 1,000 percent. The projection for Medicaid in that same year was off by nearly 8,000 percent.

What if the government's ability to predict cost has radically improved? What if the cost projections of all the listed entitlements and commitments for which the federal government must pay are off by only 50 percent? There would be at least a $190 billion shortfall. Small business owners cannot afford to be the major financing mechanism for this risky fiscal gambit. Small business employees won't be able to afford it either.

THE HEALTH SECURITY ACT AND THE EXPANSION OF GOVERNMENT

A majority of NFIB members have said in surveys that government has a role to play in the health care sector of our economy. And NFIB members have also stated that health care reform is their most important priority. But in terms of government involvement, the Health Security Act goes way too far. The Health Security Act, if enacted, would be the largest single expansion of government authority in the country's history.

The nearly $2 billion new bureaucracy that is included in the plan is alarming to small business owners but is only a small portion of the shadow that the Administration plan will cast over the private sector. A close look at the bill shows that there is no aspect of the nearly $1 trillion health care industry that is outside of government control.

Among other things, the National Health Board will set a health care budget for both the public and private sector, a budget equaling one seventh of the economy. It will set similar health care budgets for individual states and regional alliances. It can order reductions in payments by health alliances to health plans and, as a result, to doctors and hospitals. It can tell the Department of Health and Human Services to take over a noncomplying health alliance. It will determine how much insurance premiums can go up. It will interpret and adjust the standard benefits package. It will have a role in the pricing of breakthrough drugs. It will establish advisory commissions. And it will have broad rulemaking authority to carry out any aspect of the bill.

What about the regional alliances? They will not only negotiate health care prices on behalf of small business owners and individuals, as was the original purchasing cooperative concept. They will require alliance participation by every employer with fewer than 5,000 employs along with individuals. They will have the right to refuse health plans whose premiums are more than 20 percent higher than the average premium in the area. They will have the authority to reduce payments to health plans and providers when the alliance is over budget. They will have the responsibility of including failed corporate alliances, which would create an influx of thousands of employees at a time. The alliance will monitor (through audits) employer compliance with the employer mandate, average wage formulation and payroll caps. The alliance will preside over the individual and small business subsidy program. The alliance will have the authority to increase employer and individual payments when it anticipates a premium shortfall.

There are numerous other examples of the vast expansion of government's reach in the Health Security Act. Suffice it to say that small business owners do not accept the idea that health care reform can only come with government control of a health care budget that would be more than three times the size of the annual defense budget.

PUBLIC OPINION ON EMPLOYER MANDATES AND JOB LOSS

USA Today/CNN Gallup poll—11/1/93. 64 percent believe employers should be encouraged by tax breaks not required to pay health costs for their workers.

USA Today/CNBC survey of 55 economists—10/1/93. 78 percent say that enactment of President Clinton's health care plan would slow employment growth.

CBS/New York Times poll of 1136 adults—9/19/93. 41 percent believe the decision to provide health insurance to employees should be left up to the individual company.

47 percent believe that a proposal requiring all employers to provide coverage to all employees would kill jobs.

Wall Street Journal/NBC poll—9/21/93. 55 percent agree that the President's health care reform plan will force many small businesses to close.

Marttila & Kiley poll of 800 adults—10/18/93. 59 percent are concerned that President Clinton's plan will cause small business to eliminate jobs or hire fewer workers.

Mason-Dixon Political/Media Research poll of 818 registered voters—9/93. 49 percent oppose employer mandates for health insurance.

Washington Post poll of 1015 adults—10/12/93. 64 percent are concerned that the Clinton plan will cause employers to eliminate existing jobs.

73 percent believe the plan will hurt small business.

American Viewpoint survey of 1000 adults—11/12/93. 58 percent agree that employer mandates will cause job loss, fewer jobs created and lower pay.

National Association of Self-Employed survey of 500 members—11/19/93. 24 percent said an employer mandate would have a significant effect on wages and profits.

29 percent said an employer mandate would cause them to sharply cut wages and jobs.

25 percent said an employer mandate would cause them to close their doors.

SMALL BUSINESS OWNERS SPEAK OUT ON EMPLOYER MANDATED HEALTH INSURANCE

"I am a small-business owner (25 employees) working very hard along side my husband to build a future for ourselves.

"We do not have a profit margin to support the President's proposed 80 percent burden of health insurance costs. Even with the proposed subsidies, a 3.5 percent rise in payroll costs will seriously challenge our ability to stay in business. This is not an exaggeration. What options does a small business owner like myself have? We've considered cutting our staff, freezing all wage increases indefinitely and raising our prices. Also, we could not invest in new equipment, store upgrades and the hope of ever expanding our business—there would be no money left for these things. I haven't even mentioned the desire to eventually begin receiving an income from all of our hard work."—Diane M. Weidrick, Tipndi, Inc., DBA Tallmadge Dairy Queen, Cuyahoga Falls, OH.

"We employ approximately 100 people. Should this health care program be approved we have two alternatives. One, raise prices. Two, reduce our staff. Because we can't raise prices enough to make up $135,000 a year, we will be forced to install automatic dishwashers and lay off about 12 people who now wash dishes. Based on the Clinton's plan, we estimate our insurance increase would be $135,000.

"I wish the 'experts' in Washington could get their figures first hand. Come run our restaurant. Tell me where to get $135,000 extra to pay for health care."—Lynn McGarvey, Charco Broiler, Bellvue, CO.

"Our existing insurance costs are now 9.87 percent of our gross sales. If you take our present insurance costs and add the proposed new cost of a mandated health plan, it will increase our insurance costs to approximately 30.63 percent of our existing gross sales. There is no way this business can produce enough revenue to cover all insurance costs, pay all state, federal and local taxes and remain in business. If required to close, it will add nine more people to the unemployed group, having a small direct effect on our local economy."—Troy Elliott, Troy's Welding Inc., Albuquerque, NM.

"As a small business owner, I am greatly opposed to the mandatory insurance program. If this is enacted, I will have to cut my employee hourly wages to compensate for the higher insurance premiums I will be forced to pay.

"I will have to eliminate all part-time employees and to severely cut back on the full-time employees that I have in my employ. In our business at the present time, we are at a point that we need to add additional employees to our payroll. But so far we have refrained because of the threat of mandatory increases in employer contributions to insurance and also the threat of increased taxes. If these become enacted they will increase expenses for business which will further decrease the business base. And my business may be one of those that will have to be sacrificed for these mandates."—James K. Grieser, Grieser & Son, Inc., Wauseon, OH.

"Everyone of you [politicians] run for reelection on the premises of keeping Montanans employed. We do keep 70 Montana people employed year in and year out. If [honorable sirs] vote in a mandate on a health care system you are automatically adding a minimum of 10 people to the unemployment rolls."—Howard B. Hanger, Thriftway Family Market, Missoula, MT.

"Our business, employing 23 people, is a service business which provides meals to the elderly in North Louisiana parishes. Mandated health insurance, or an employer mandated tax plan to pay for health reform, will simply LOCK THE DOOR to this business. This cost cannot be passed on."—Gail Elkin, Bountiful Foods, Monroe, LA.

"I am close to having to close my doors now because of taxes. That means it could be the end of employment for 6 people if I am forced to pay out any more."—Violet K. Hinton, Attorney at Law, Battle Creek, MI.

"According to the premium amounts published under Clinton's proposals (assuming we pay 80 percent of $4200 family premiums for all 43 of our married employees), our medical premiums would increase $77,360/year. This represents an 84 percent increase! If our premium requirement is capped at 7.9 percent of payroll, our annual premium would increase $44,300. This would be a 48 percent increase!"—Jack Miner, Timber By-Products, Inc., Albany, OR.

"I am afraid for myself, my 240 employees, and the viability of my business. We have quite a few employees, but the average wage is under $20,000 a year. We are a small business, and our expansion and jobs will die from lack of profit. If we are put at a competitive disadvantage because we are over 75 employees, the business itself could be in peril."—David Evans, CRIC Ltd., Cedar Rapids, IA.

"Bridge Builders, Inc. is struggling to continue furnishing health care insurance for employees and families—with employees sharing one-half of the cost. Today, if we were required to do much more than we're already doing, then we may as well close the doors and let the government take care of us."—Dean I. Gillespie, Bridge Builders, Inc., McMinnville, TN.

A SMALL BUSINESS HEALTH REFORM AGENDA

Following is a list of guiding principles which NFIB believes any comprehensive reform plan should follow. Taken together, we believe these measures will increase access to affordable health coverage and help to contain cost increases. While the list is not all-inclusive, it does represent the result of numerous surveys of small business owners over the last several years.

Health insurance purchasing groups should be formed. By joining together to purchase health insurance, small businesses and individuals can reduce costs through administrative savings and risk-sharing.

Self-employed business owners should be allowed a permanent 100 percent tax deduction for health insurance premiums. Self-employed business owners such as sole proprietors, partnerships and S-corporations are allowed only a 25 percent deduction; that deduction is temporary. Expanding and making permanent the tax deductibility of premiums would enable many of the nearly five million uninsured self-employed to buy coverage for themselves and the millions they employ.

Insurance company practices should be reformed to make health insurance coverage easier and less expensive to buy. Being able to count on obtaining insurance with fairly stable premiums would enable more small business owners to purchase coverage for themselves and their employees. Specifically, any reforms in this arena should include elimination of the preexisting condition limitation, guaranteed access to policies regardless of medical condition, guaranteed renewable and portability.

Costly state benefits mandates and anti-managed care laws should be preempted. Enactment of certain state laws have significantly limited the availability of affordable health plans and discourage the growth of managed care systems. State mandates alone can raise the cost of insurance 30 percent. Pre-empting these mandates and repealing many restrictive state anti-managed care laws would allow small business owners easier access to affordable plans and greater access to cost-saving managed care arrangements.

A uniform, affordable standard benefits package should be developed in consultation with business, consumers, and state and local governments. However, regardless of who determines what is in a "basic standard benefits package," care must be taken to ensure that the plan is at a level necessary to assure adequate coverage and care, but remains affordable. As such, we should consider the packages developed by the most efficient and cost-effective health maintenance organizations. Developing "Fortune 500" type packages that are too generous will price them out of the reach of individuals and small business owners.

Attempts to control costs by imposing spending restraints or "global budgets" fail to address the root causes of the problem and should be avoided. Many have suggested the imposition of "global budgets"—caps on overall health care spending—in order to bring health expenditures under control. However, NFIB believes that global budgets are fundamentally unworkable and will lead to increased rationing of health care. Currently, most experts agree that we do not possess the relevant data on which to base such allocations. Further, global budgets do not address the root causes of health care inflation, nor do they provide any incentives to increase efficiency in delivery of care.

Changing our medical malpractice laws. The current malpractice crisis only adds to the already astronomical cost of treatments, services, medical devices and pharmaceuticals, and inhibits research and development of new products. We believe that serious reform of the medical liability system can reduce the overuse of excessive and costly defensive medicine and save about $30 billion a year.

Implementing administrative and paperwork reforms. As much as one quarter of every health care dollar in U.S. goes to paperwork and administrative costs. Economies of scale for small firms mean that more of their health care dollar—usually more than twice as much as large businesses—goes to cover paperwork and administrative costs. As such, simplifying paperwork requirements and reducing administrative costs must be a part of any health care reform.

Consumer information and education is essential. NFIB strongly believes that informed consumers make more cost-conscious decisions relating to their health care. Currently, part of the reason that health care costs are going up so rapidly is due to the fact that consumers have lost their buying power in the health care market. Most Americans are shielded from the true cost of their insurance coverage and the cost of medical care, largely because the premiums are borne by employers. As a result, there is little or no incentive to search out the highest quality health product at the lowest cost, a theory fundamental in the purchasing of most other goods.

While no health reform bill will be a perfect one, NFIB strongly believes that we need to enact a reform package that achieves three main objectives: (1), bring down the cost of health insurance; (2), stabilize the often unpredictable/fluctuating health insurance system for small firms and individuals; and (3), expand insurance coverage to more Americans.

NFIB members support the President's reform goals. They believe, however, that the plan proposes too much, too soon, through questionable and untested economic means. The Health Security Act will affect each and every business differently. A broad brush approach on an issue this critical to individuals and employers is unwise. Instead, Congress should consider the several comprehensive, viable alternatives that accomplish our three main objectives without placing an undue burden on small business, creating a huge new bureaucracy or damaging our economy.

[From the Wall Street Journal, Apr. 19, 1994]

ENRAGING SPECIES ACT

The Third Amendment to the Bill of Rights states that no soldier can "be quartered in any home, without the consent of the owner." Somehow, though, it apparently never occurred to the Founding Fathers that we might someday need an amendment against the arbitrary "quartering" of endangered species on private land. Good thing the Founders didn't live to see the day, ours, when property owners all over America would be told to idle their land and effectively use it only as a wildlife refuge.

Ambitious government "ecosystem management" plans are locking up millions of acres of private land—without compensation. Take the spotted owl, which has effectively halted most timber production in the Pacific Northwest. The Anderson & Middleton Logging Co. has been enjoined from harvesting any timber on 72 acres of its land in Washington state. No spotted owls live on its land, but two have been seen nesting on government land 1.6 miles away.

Residential owners are also affected: Marj and Roger Krueger spent $53,000 on a lot for their dream house in the Texas Hill Country. But they and other owners have been barred from building because the golden-cheeked warbler has been found in "the canyons adjacent" to their land.

The government justifies these restrictions by noting that the Endangered Species Act bars actions that "harm" critters protected under it. The U.S. Fish and Wildlife Service interprets that to include any action that results in "significant habitat modification" that could affect the "breeding, feeding or sheltering" patterns of a species. It has issued countless edicts barring even such ordinary uses of property as clearing brush or harvesting trees because they might "modify" nearby habitat.

Even some environmentalists have questioned if Congress intended such restrictions. Michael Bean, chairman of the Environmental Defense Fund's Wildlife Program, has noted "there are forceful arguments that such a broad interpretation" is "improper."

Last month, the U.S. Court of Appeals for the District of Columbia agreed. It invalidated the U.S. Fish and Wildlife regulation that prevented habitat modification on private land. The court ruled that the regulation "was neither clearly authorized by Congress nor a 'reasonable interpretation' of the statute."

The court's decision enraged radical environmentalists. They support a provision to the Marine Mammal Protection Act now before Congress that would explicitly allow the regulation of private land use and would bolster the Clinton Administration in its attempt, which it announced yesterday, to overturn the D.C. Court of Appeals decision.

The Senate refused to include such language in its version of the bill, but it may wind up adding it in conference if the House insists. Today, Rep. Gerry Studds will demand a House vote to insist the regulatory language be retained. Environmental groups, agitated by recent property rights victories in Congress, are determined to prevail this time.

The dispute over endangered species isn't over whether or not society should protect them. It's between a policy that refuses to set priorities and insists on preservation no

matter what the costs to the human species or, alternatively, a more balanced approach.

We are hard put to see how the species act can itself survive politically operating as an environmentalist land grab of other people's property. The seriousness of the claims for these various species might be better tested if the government had to compensate landowners for their losses. That approach isn't just our idea; it is the "takings" clause of the Fifth Amendment to the Bill of Rights.

Mr. CRAIG. Mr. President, once again let me close by saying today we have proven law in this country, law that has maintained the kind of balance that has historically brought the employee and the employer to the bargaining table with a sense that there was equality in the negotiating environment. That is what we ought to be promoting in policies for economic growth and development in this country, and this is why I stand strongly in opposition to S. 55.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I know my colleague from Iowa is here, and I inquire of him how long he is planning on speaking.

Mr. HARKIN. I am glad the Senator was recognized. I have quite a speech. It will be a long time.

Mr. NICKLES. I thank my friend and colleague. I will not be quite that long.

Mr. President, I wish to congratulate and compliment Senator KASSEBAUM and Senator COHEN as well as Senator CRAIG for their speeches. I think they made some excellent points in defining and outlining this debate on S. 55, the so-called striker replacement bill.

Mr. President, first let me just make a couple comments concerning some of the arguments made in favor of this legislation. I have heard my friend and colleague, Senator METZENBAUM, say that we needed to pass this legislation in order to restore the right to strike. This legislation does not do that. The right to strike already exists in current law. I have heard Senator WELLSTONE say we need to pass this legislation in order to have the right to organize and to bargain collectively. You do not need to pass this legislation to do that. Employees have the right to organize; they have the right to bargain collectively, and they also have the right to strike.

Passage of this legislation would undo over 50 years of labor management law, and would basically tell employers that they could not keep the doors open. They could not hire permanent replacement workers.

I might mention that some people have implied during the course of this debate that this is so imperative, so important because of the PATCO strike—because Ronald Reagan proved that workers were striking against the law and he fired those workers because they broke the law—that this has opened the door, and now employers are routinely referring to the practice of hiring permanent replacement workers.

That is not the case. Studies by GAO, both in 1985 and in 1989, said that only 3 to 4 percent of striking workers were permanently replaced.

I think it is important that we stick to facts. And the facts are that workers have the right to organize. They have the right to bargain. They also have the right to strike. Currently, employers have the right to hire permanent replacement workers during an economic strike. We should keep that right. If we do not, we are basically telling organized labor this is no longer a level playing field; they have not only the right to strike, but are guaranteed the right to win the strike. For over 50 years, that has not been the law, and it should not be the law.

Unions should have the right to go on strike and withhold their services. But likewise the employer has to have the right to hire permanent replacement workers and keep their doors open.

I heard my friend and colleague, Senator METZENBAUM from Ohio, state that Republicans are antiworker, that they opposed increases in the minimum wage, that they opposed the family and medical leave bill, and some were opposing the health care bill. I would disagree. I would disagree very strongly. But I look at some of the agenda that the Senator from Ohio was referring to, and I see some of that agenda with good titles being very antiworker, including the legislation that we have before us.

I think if we pass this bill that says you cannot hire permanent replacement workers during a strike, it is very antiworker because the net result of it would be we are going to have more strikes. A lot of people are going to lose jobs. Strikes costs jobs. Some people cannot survive during a strike.

I worked for a company during a strike. I can tell you that strikes are not pleasant. They are not fun. They are not fun for the employers, and they are not fun for the employees. We should be doing what we can to discourage strikes.

I hate to tell my friends, particularly the sponsors of this legislation, that this is a bill to encourage strikes. We have very few strikes percentagewise in the United States today. I think that is good. I hope we have less. But I can almost guarantee you that if this legislation passes, we are going to have more. We are going to have more labor unrest. We are going to have greater tensions. We are going to have greater battles between labor and management. There is going to be greater strife and less cooperation in the workplace.

I hate to see that happen. I hate to see that kind of conflict evolve between labor and management. That is going to be the result of this legislation. Basically we are going to be telling the employer you cannot hire a replacement worker during a strike. So organized leaders of organized labor are going to be saying, "Wait a minute. You can join our union, you can strike, and they cannot replace you. So we have tremendous clout. We have tremendous clout, if necessary, to bring this company to their knees in order to achieve our objectives through this labor battle or through this confrontation." So there will be more strikes. More people will lose their jobs.

What about the people that are depending on that company for parts for supplies? A lot of companies need that supplier to be able to provide jobs. And so, not only would there be a loss of jobs in the company that has a strike, there would be a loss of jobs in other companies which depend on the striking company for its business. I think that is the most devastating aspect of this bill.

So this bill, as I see it, is not a bill to protect strikers. This is a bill, if we are not careful, that will encourage strikes, cost jobs, put people out of work, and make us less competitive.

I might say, Mr. President, I read Labor Secretary Reich's letter to the Senate encouraging people to vote for this bill. I could not help but almost laugh to myself. In his letter he says:

To compete effectively in the international economy, America needs a framework for labor relations that stimulates productivity and enables management to tap the maximum of employees' skills, talents and efforts.

I agree with that statement. But this bill does not do it. The Labor Secretary's letter continues. He says:

We can turn our attention towards a more cooperative labor management future.

This bill does not do it. It does just the opposite. This bill should be entitled "A Bill to Encourage Labor Strife and Strikes." This legislation is going to tell one side, "Hey, you cannot lose. You can go on strike and you cannot lose your job, so you can withhold your services without risk. You have the right to bargain. You have the right to organize. You have the right to strike. So you can withhold services but they cannot replace you."

So the net result is a lot of companies will lose. Maybe they will give in to organized labor, if they can afford it. But if they cannot, they may cut jobs. They may lose competitiveness, they may lose future contracts, or they may close the doors. A recent Teamsters' strike—I remember reading that a truck firm closed down and thousands of jobs were lost. Why? Because they were involved in a strike, and they were not survivors in that strike.

Strikes, in my opinion, Mr. President, are a lose-lose situation. I do not see them as healthy. I want to discourage strikes, and I am afraid that this

legislation before us will encourage strikes. It will encourage labor strife. Mr. President, I think it would be a serious mistake.

I also heard some of our colleagues say that, well, we are trying to restore balance between labor and management. Frankly, labor and management have been working off the National Labor Relations Board going all the way back to 1935, and have been under a ruling under a Supreme Court case going all the way back to 1938 that allows employers to hire replacement workers for an economic strike. So things have not changed.

It is the proponents of this legislation that are trying to change the balance. This balance in the United States has worked fairly well for over 50 years. We have strikes less often than most other countries. Why should we want to have more? There is an equilibrium between labor and management. This bill would greatly distort that.

Again, I think it would be a serious mistake, and ultimately will hurt workers. I do not see this legislation as being worker friendly. I think it is just the opposite. This bill is strike friendly. It is not worker friendly, and strikes are not friendly to workers.

So I urge my colleagues to vote against the motion to proceed to S. 55.

Mr. President, I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I am going to have quite a bit to say about this legislation, S. 55. I will take a little bit of time today and I hope to take some more time tomorrow, because I believe that the whole story on this bill and what it seeks to correct is really not being told. I hope to take, as I said, some time today and some time tomorrow to lay out the case both historically and in terms of what is happening economically and productivity-wise in this country as to why this legislation is sorely needed at this time.

Just sitting here listening to the last two speakers—both of them good friends of mine, both of them well-meaning individuals—talk about this legislation and the need for a level playing field, everything it seems has to be level between management and labor. Well, we all agree with that. That is what it ought to be. But I must ask how can you have a level playing field, or how can you form an equal partnership, so to speak, when you hold the gun at the head of one of the so-called partners? That can never lead to a level playing field nor any kind of equal type of footing or relationship. In fact, with the ability that the management has today, in order to fire or to get rid of their striking workers and have them permanently replaced, really takes away the right to strike. Not only does it take away that right, but it takes away the right to collectively bargain.

Again, I think if you ask any American—and we have heard some polls, data, proffered by the Senator from Idaho earlier—I think if you ask any American whether or not individual workers ought to have the right to bargain collectively for wages, hours, and conditions of employment, the vast majority of Americans would say yes. They probably never heard of the Wagner Act or the National Labor Relations Act. They have never heard of these. But I think inherently they would feel that free people working together ought to be able to join together in an association or union and to bargain with their employer for wages, hours, and conditions of employment.

I think the vast majority of Americans would support that, and I think the polls show that. But that right to bargain collectively becomes a hollow right when there is no right to strike, or when a laboring person comes to the bargaining table to bargain with management. There is only one thing that worker has to bring to that table, and that is the sweat of his or her brow, their expertise, their knowledge, their experience, but basically their labor. They have no money to bring, no economic clout. They only bring what they can do, and that is their labor.

So, therefore, the only chip they have to put on that table is their labor and the threat to withhold that labor if in fact management does not bargain in good faith and negotiate a binding contract.

Well, that right to withhold that labor is what is called the right to strike. The right to strike has been upheld many times by our courts. It is a thing I think most people would recognize that working people have.

I must ask, Mr. President, what kind of a right is it when, if you exercise that legal right, your employer can say goodbye; you are gone; we have replaced you with permanent replacement workers?

So, by definition, today in the United States of America, there is no legal right to strike. And because there is really no legal right to strike, there is no legal right to bargain collectively. And since there is no legal right to bargain collectively, there is no level playing field. In fact, there is really no playing field, let alone a level or uneven one. There is no playing field. Management says you bargain on our terms; you agree with what we want; or you can just go strike. And, by the way, if you strike, we will permanently replace you. If you are permanently replaced, that means you are out of work forever; you lose all your pension rights; you lose your seniority; you lose your job forever.

In fact, Mr. President, the right to strike today is, by any measure, a hollow right. It is a hollow right. In the past, we had people in the United States—African-Americans, for example, in many parts of the South—and, oh, sure, the Constitution guaranteed them the right to vote. They had the right to vote. But because of poll taxes and tests they had to take, to pass, in order to vote, they really did not have the right to vote. So it became a hollow right. We recognized that, and that is why we had to pass the Voting Rights Act, to make sure that the right to vote was not indeed just a hollow right.

So today in America the right to bargain collectively is really a hollow right. Sure, you can go through the motions, and unions do it. They can sit down and bargain. Take the recent experience with UAW and Caterpillar. They were going through a negotiation process on a new contract. Well, I am not going to interfere and say who was right or wrong, that type of thing. But all I know is that it broke down. The union went out on strike. The first thing the Caterpillar management said was that they were going to hire permanent replacement workers—holding that as a threat over the union employees. So, again, there really is no right to strike.

I guess there is a right to strike; I should correct that. There is a right for you to quit your job, because that is really what it amounts to. Labor only really has one right today in the bargaining field—the right to quit their jobs and walk away. So what has happened is that we have had a breakdown in this structure in America.

Mr. President, I was intrigued by an article that came out in the May 23, 1994, issue of Business Week. Business Week is not known for being a real advocate of unions and union labor. It is, as it says, a business magazine which caters to the business community. But it had a very interesting article in there. When I get through reading it, I will ask that it be printed in the RECORD. But first let me read some excerpts from it. It is entitled "Why America Needs Unions But Not The Kind It Has Now."

I see my good friend from Utah here, and there is a quote in the beginning of the article that says:

> There are always going to be people who take advantage of workers. Unions even that out, to their credit. We need them to level the field between labor and management. If you didn't have unions, it would be very difficult for even enlightened employers to not take advantage of workers on wages and working conditions, because of [competition from] rivals. I'm among the first to say I believe in unions.

It went on to say this quote is not from Senator KENNEDY or Labor Secretary Reich; it is Senator ORRIN HATCH of Utah. I do not know if it is an accurate quote or not. I am just quoting from the Business Week magazine.

But what the article goes on to say is that:

* * * when pressed, even he concedes a point that's of growing concern to economists, administration officials, and some executives: Free-market economies need healthy unions. They offer "a system of checks and balances," as former Labor Secretary George P. Shultz has put it, by making managers focus on employees as well as on profits and shareholders.

Now, we have heard all this talk about leveling the playing field, have we not? Listen again to this, regarding George Shultz, a well-known Republican:

The concern of Shultz and others is that the balance has shifted significantly. Since 1983, union membership has fallen 6 percent, to 16.6 million, or 15.8 percent of the workforce—the lowest since the Great Depression. Subtract Government employees, and unions represent a mere 11 percent of private-industry workers, a figure that by 2000 could plunge to 4 or 5 percent, some experts say.

Labor's fabled bargaining and political clout largely has vanished, too.

The article says, if Senator HATCH is right: "* * * the drawbacks of deunionization should be appearing."

New research from respected economists at such schools as Harvard and Princeton shows that blue-collar wages trailed inflation in the 1980's partly because unions represented fewer workers. The resulting drag on pay for millions of people accounts for at least 20 percent of the widening gap between rich and poor, which has reached Depression-era dimensions.

The article goes on:

The President's annual economic report, released earlier this year, cited these findings and called the new income disparities "a threat to the social fabric that has long bound Americans together."

Experts cite weakening unions as a key reason for the 6-percentage-point slide in the 1980's in the share of employees with company pension plans, for the 7-point decline in those with employer health plans, and for a 125-fold explosion in unlawful-discharge suits now that fewer employees have a union to stick up for them.

The Business Week article goes on to say:

The surprising implication, in fact, is that the U.S. might be better off, socially and perhaps even economically, with a healthier union movement.

Mr. President, that is pretty interesting coming from Business Week magazine.

What does that have to do with the bill in front of us? It has everything to do with this bill. I argue, as economists are arguing now, and some of them very conservative economists, that we must halt this slide into unionization in America; that we really need unions for higher productivity and wages and better skills.

And in order to stop that slide, we have to stop the practice of permanent replacing those workers who have gone out on strike.

This bill is a proworker, proproductivity, procompetitiveness bill that we have before us and we should have passed it long ago.

This Workplace Fairness Act, S. 55, restores a fundamental principle of labor-management relations, the right of workers to strike without having to fear the loss of their jobs.

Too often in today's workplace, workers are forced to choose between their jobs and their legal right to strike for better wages, benefits, and working conditions. That has not always been the case.

Again, in response to widespread abuses, union busting, in 1935 we passed the National Labor Relations Act, as I mentioned earlier the Wagner Act, signed into law by President Roosevelt. The Wagner Act guarantees workers the right to organize and bargain collectively and strike if necessary. It makes it illegal for companies to interfere with these rights. In fact, it specifically specifies the right to strike and states: "Nothing in this act—except as specifically provided herein—shall be construed so as to interfere with or impede or diminish in any way the right to strike."

Or affect limits or qualifications on that right.

If that is part of the law, what has happened? Well, historically what happened is that in 1938 the Supreme Court dealt the Wagner Act a mortal blow. We all know the case, the famous case of NLRB versus Mackay Radio and Telegraph Co. In that case the Supreme Court—and basically this was not even the ruling of the Supreme Court; the ruling had to do with something else—but in dicta, in sort of its discussion of the case, the Supreme Court said that Mackay Radio and Telegraph Co. could hire permanent replacement workers for those engaged in an economic strike.

And this has been taken sort of as law ever since then. But as speakers before me have pointed out, enlightened management at that time saw that it was in their best interests to not use that dicta, that reasoning of the Supreme Court in that case, which, by the way, the ruling in that case in fact found for the workers in terms of their rights to be reinstituted and the fact that the company itself had acted illegally in not permitting certain union activists to come back to work. But, as I said, this was in the discussion of it, and the Court went on a little bit further to give them the right to hire permanent replacements. But ever since then, companies have not done that because they recognized that it would upset this level playing field. For almost 40 years, nothing was done by management in any case to hire permanent replacements. But then it started happening in the 1980's.

Permanent replacement became a regular tool to break unions and shift the balance between workers and management.

More than 3,500 Continental Airline pilots replaced by Frank Lorenzo; 1,100 UAW members replaced at Colt Firearms; 6,000 TWA flight attendants lost their job to permanent replacements; 2,500 paper workers disposed of at International Paper mills; 35,000 pilots and machinists fired from their jobs. Thousands more working men and women who dared to try and exercise their legal rights have lost their jobs to permanent replacements.

Mr. President, where is the incentive for employers to bargain in good faith if they can displace those who disagree with them? Some employers go so far to advertise permanent replacements before they begin negotiations. In other words, it had always been a practice by companies in the past to perhaps stockpile raw materials, and things like that, in anticipation of a strike, and this has been a well-accepted practice. Unions recognize that. But now what they do is they stockpile scabs, just like they stockpile raw materials, and go out and advertise for permanent replacements, build up the rosters and dare the union to go out on strike.

These management actions over the past decade have undermined the legal right to strike. When you deny the right to strike, you deny the right to bargain for better wages, and when you destroy that, you destroy the very fundamental basis for organized labor in America. And in doing so, you destroy motivation, incentive, productivity, and competitiveness.

You destroy our best opportunity to move forward as a Nation into an era of high wage, high skilled, highly productive jobs that serve us well in the global marketplace.

Mr. President, I have more to say about this bill. But suffice it to say, this bill, more than anything else, is a bill that will once again get America started on the path of being competitive in the world market.

I recommend to my colleagues to read the Business Week article of May 23, 1994, to read it and to see what it says in there about the need for unions and what unions can do to help get us on the path toward higher productivity.

But with what we have in front of us now, with the permanent replacement to strikers, with the destruction of organized labor, I fear that we are on the path toward less competitiveness and less productivity, less motivation, and less incentives for workers in this country.

So that is a sad day. When we hear all this talk about level playing field, let us remember there is not even a playing field out there now. That field is gone. If we really want to truly have a level playing field, then we should pass this legislation and, Mr. President, it is clear that the votes are here in the Senate to pass this bill. We have a majority to pass it. But those who

are so opposed to this bill are filibustering it and, therefore, we will probably not get to whether we vote on this bill or even amend it. There may be some amendments offered to this bill that might improve it. I do not know. But we probably will never get to that point because of the filibuster. It takes 60 votes to break the filibuster, and obviously it does not appear right now that we have those 60 votes. But I am hopeful that we do. I hope that those who are opposed to the bill will at least give us the right to bring it up, to debate it, to vote on it to amend it if necessary, and pass it. The House has passed the bill. It is clear that a clear majority in the House voted for it and passed it.

I think it is clear that a majority of the Senate would vote for it, too, if we only had the ability to get past the filibuster.

Mr. President, I ask unanimous consent to print, at the end of my remarks, the article from Business Week magazine of May 23, 1994.

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

WHY AMERICA NEEDS UNIONS

(By Aaron Bernstein)

"There are always going to be people who take advantage of workers. Unions even that out, to their credit. We need them to level the field between labor and management. If you didn't have unions, it would be very difficult for even enlightened employers to not take advantage of workers on wages and working conditions, because of [competition from] rivals. I'm among the first to say I believe in unions."

Ted Kennedy spouting tired liberal dogma? Labor Secretary Robert B. Reich pandering to President Clinton's union backers? Nope. The speaker is Senator Orrin G. Hatch (R-Utah), labor's archrival on Capitol Hill for nearly two decades. Don't misunderstand: Hatch still opposes organized labor at nearly every turn. But when pressed, even he concedes a point that's of growing concern to economists, Administration officials, and some executives: Free-market economies need healthy unions. They offer "a system of checks and balances," as former Labor Secretary George P. Shultz has put it, by making managers focus on employees as well as on profits and shareholders.

The concern of Shultz and others is that the balance has shifted significantly. Since 1983, union membership has fallen 6%, to 16.6 million, or 15.8% of the workforce—the lowest since the Great Depression. Subtract government employees, and unions represent a mere 11% of private-industry workers, a figure that by 2000 could plunge to 4% or 5%, some experts say.

Labor's fabled bargaining and political clout largely has vanished, too. Pay increases for union members lagged those for nonunion ones from 1983 until the recession pummeled everyone in 1990. And as labor's 1993 defeat on the North American Free Trade Agreement shows, it delivers a lightweight's political punch compared with the days when "Clear it with Sidney" referred to the veto Franklin Delano Roosevelt supposedly gave clothing-union leader Sidney Hillman over FDR's 1944 running mate. In short, if Hatch is right, the drawbacks of deunionization should be appearing.

SCARY GAP

They are. New research from respected economists at such schools as Harvard and Princeton shows that blue-collar wages trailed inflation in the 1980s partly because unions represented fewer workers (charts). The resulting drag on pay for millions of people accounts for at least 20% of the widening gap between rich and poor, which has reached Depression-era dimensions. The President's annual economic report, released earlier this year, cited these findings and called the new income disparities "a threat to the social fabric that has long bound Americans together." The full scope of that threat remains to be seen, but the early signs are disturbing: Experts cite weakening unions as a key reason for the six-percentage-point slide in the 1980s in the share of employees with company pension plans, for the seven-point decline in those with employer health plans, and for a 125-fold explosion in unlawful-discharge suits now that fewer employees have a union to stick up for them.

The surprising implication, in fact, is that the U.S. might be better off, socially and perhaps even economically, with a healthier union movement. That could be true especially if the 86 unions of the AFL-CIO follow through on a February report that urges labor to become partners with management in boosting efficiency. This is an unprecedented endorsement of alternative systems—including self-managed workplace teams—that already have fed big efficiency gains at such companies as Ford, Xerox, and Scott Paper. "If unions help improve productivity with ideas like teams, they can justify higher wages and their existence," say Paul A. Samuelson, the father of neoclassical economics and professor emeritus at Massachusetts Institute of Technology.

The AFL-CIO's action, in fact, may help legitimize the most important development in U.S. labor relations in generations. Here and there, traditional adversarial bargaining, which evolved 60 years ago in response to Frederick W. Taylor's "scientific management" methods of dividing work into its simplest tasks, is being replaced by a more flexible, participative approach as companies flatten hierarchies. "Unions helped make Taylorism work in the '30s and '40s by institutionalizing its principles" in labor contracts, says MIT management professor Thomas A. Kochan. "We need to [do] that today through cooperative labor mechanisms."

PARTNERS

Xerox Corp. and its 6,200 U.S. copier assemblers, who belong to the Amalgamated Clothing & Textile Workers Union (ACTWU), are proving that this works. Three tries at teamwork since 1982 have fared so well that Xerox is bringing 300 jobs from abroad to a new plant in Utica, N.Y., where it expects higher quality and savings of $2 million a year. Xerox gives union officials internal financial documents and teaches them statistics in the same classes managers take. "I don't want to say we need unions if that means the old, adversarial kind," says Xerox CEO Paul A. Allaire. "But if we have a cooperative model, the union movement will be sustained and the industries it's in will be more competitive."

This view is spreading among the few dozen major companies developing partnerships with labor. "There's definitely a place in American society for unions," says David H. Hoag, chief executive of LTV Corp. In 1993, he signed a labor pact with the United Steelworkers (USW) that lets the union nominate a board member in return for backing teams and other efficiency measures. Declares Ernest J. Savoie, who heads Ford Motor Co.'s cooperative labor programs: "If unions were to disappear, the country would be in serious trouble."

Most employers couldn't agree less. Few American managers have ever accepted the right of unions to exist, even though that's guaranteed by the 1935 Wagner Act. Over the past dozen years, in fact, U.S. industry has conducted one of the most successful antiunion wars ever, illegally firing thousands of workers for exercising their rights to organize. The chilling effect: Elections to form a union are running at half the 7,000-a-year pace of the 1970's. And major strikes—involving 1,000 or more workers—have fallen from 200-plus a year to 35 in 1993. To ease up now, many executives feel, would be to snatch defeat from the jaws of victory.

Most managements detest unions out of a belief that they impede productivity and raise wage costs. That's partly true. Numerous studies have confirmed that unions reduce profits, especially in such industries as steel and autos, where workers got a healthy share of outsized, oligopolistic earnings in the '50s and '60s. Now that the oligopolies are being undercut by global competition and deregulation, "large employers no longer have oligopoly profits to share with unions," says Samuelson.

Still, unions are often blamed for more trouble than they've caused. In the 1970s, for instance, many executives believed that unions inflated prices by lifting wages above some presumed market level. Since then, however, more than 50 quantitative studies have concluded that the higher productivity of unionized companies offsets most of their higher costs. "It's a misreading of economic analysis to conclude that unions inherently cause inflation or unemployment," says Nobel laureate Gary S. Becker, a conservative economist at the University of Chicago. "Some kind of union behavior is bad, but unions that help workers bargain collectively instead of individually perform a legitimate role that's not counter to social efficiency."

George Shultz, now a fellow at Stanford University's Hoover Institution, goes further. "As a management person, if I don't have a union, I don't want one," he said in a 1991 speech to the National Planning Assn., a labor management group. "But . . . look at this more broadly. Free societies and free trade unions go together. Societies are missing something important if they do not have an organization in the private sector, such as a trade union movement" that gives workers the clout labor has exerted to help pass safety and pension laws.

Shultz's notion is taken for granted in most of the industrialized world. True, Europe's recession has set off nasty clashes between unions and companies bent on cost-cutting. Still, say European labor experts, most companies there continue to see unions as social partners, not enemies. What's more, every Western European country except Britain and Ireland has a legally mandated second channel, such as works councils, for advancing worker interests. These groups, usually elected by employees, provide input into many managerial decisions.

The Clinton Administration would make this the model for U.S. labor-management cooperation. A year ago, the Labor and Commerce Depts. appointed a 10-member commission composed primarily of academics. Headed by former Labor Secretary John T. Dunlop, it may ultimately suggest revising

the Wagner Act to ease roadblocks to organizing. In return, some commission members want to amend the act to legalize teams in nonunion companies, which risk violating a prohibition against sham unions—groups that workers seem to run but actually are controlled by management.

AFL-CIO President Lane Kirkland will take this trade-off, leaving a divided business community to decide if teams are worth the risk of more union organizing. It isn't clear if it will take the chance. But even the National Association of Manufacturers—founder of the Council on a Union-Free Environment—may consider the idea. "Can you fix the management abuses without tilting the field too much back to labor?" asks NAM Industrial Relations Vice-President Randolph M. Hale. "I'm not sure, but I'm open to listening to the arguments."

"THREAT EFFECT"

While those issues are thrashed out, the effects of labor's decline pile up. Take inflation-adjusted pay. Historically, it has tracked productivity. But in the 1980s, output per worker jumped 12%, while real wages and benefits for all workers rose only 4%, according to the Bureau of Labor Statistics. Falling union'sm was a major factor, several studies have found. Private-sector unicn workers on average earn 39% more in pay and benefits than nonunionized ones, according to the BLS. And as unions shrank, a rising share of workers had to settle for lower-paying nonunion jobs.

That particularly hurt the least educated. For instance, deunionization accounts for one-third of the 15% decline in real earnings of white male high school dropouts between 1979 and 1988, according to a 1991 study led by McKinley L. Blackburn of the University of South Carolina. Weaker unions account for half the 10% pay slump of black male high school grads in that period and two-thirds of the 3% decline for white female dropouts. And the study didn't measure smaller pay hikes nonunion workers got as the threat of unions subsided. "We ignored the threat effect, which would make the impact bigger," says Blackburn.

These figures portray the partial dismantling of the middle class. By pushing up blue-collar pay, unions helped narrow the gap between rich and poor after World War II. But now the trend has reversed. In 1988, white-collar men aged 25 to 64 earned 48% more than blue-collar men of the same age, up from 35% more in 1979, according to a 1991 study by Harvard University economist Richard B. Freeman. Nearly half the increase reflected falling unionization, Freeman found. And for all men aged 25 to 64, including service workers, deunionization caused at least 20% of the spike in male wage inequality in the '80s. Freeman's findings have been confirmed by recent studies by Princeton University economist David Card and George J. Borjas of the University of California at San Diego. "It's clear that deunionizing had an important impact," says Borjas, a political conservative who's no fan of unions.

Labor's decline has even hurt professionals. Traditionally, companies have pegged white-collar pay hikes to those won by their unionized workers. Nonunion employers did so indirectly, with salary surveys that cover unionized companies. In the '80s, professionals got fatter raises than union members. But they got a bigger share of a smaller pie.

If unions had represented one-third of the workforce in 1990, as they did in 1950, the bottom 80% of families—those earning up to $83,400 a year—would have received 61% of the nation's income, according to a 1993 study by economist Rudy Fichtenbaum at Wright State University in Dayton, Ohio. Instead, they got 56%. "White-collar workers think unions don't matter, but they're not on a separate boat from blue-collar ones," says Research Director Lawrence Mishel of the Economic Policy Institute (EPI), a Washington think tank partly funded by unions.

There's no way to tell whether the combined income of all U.S. workers would have been higher had unions not lost ground: No one has yet proved whether unions push up overall income or merely redistribute it. But it's clear who prospered in the '80s. The rent, dividends, and interest that owners of capital earned jumped 65%, according to an EPI analysis of Commerce Dept. figures. Wages and salaries, including white-collar ones, grew only 23%.

FRAYED FRINGES

As wages have gone, so have fringe benefits: Most workers have them largely because of unions, and they're disappearing partly because unions are weaker. Company-paid retirement plans, for instance, caught on after World War II, when federal wage and price controls prompted unions to demand pensions in lieu of pay. To keep unions at bay, nonunion employers followed suit, and pension plans multiplied. The trend reversed as the union threat shrank. The share of workers aged 25 to 64 with an employer-paid pension plan slid 6 points, to 57%, from 1979 to 1988, according to a 1992 study by Freeman and David E. Bloom, a Columbia University economist. "The single biggest reason for the decline," says Freeman—roughly 25%—"is deunionization."

The same goes for health insurance, which also became a standard benefit after unions pushed it during the war. Since 1980, the share of workers under 65 with employer-paid health care has plunged from 63% to 56%, according to the Employee Benefit Research Institute (EBRI), a Washington research group. Rising costs are a factor, but "coverage would not have dropped as much if unions had stayed strong," says EBRI research director William S. Custer.

Similarly, fewer workers now have grievance systems to protect against mistreatment. Forced to fend for themselves, they're filing unjust-dismissal suits, which have exploded from about 200 a year in the late 1970s to more than 25,000 a year now, experts estimate. "There's no question that protections for workers have gone down with the decline of unions," says Theodore J. St. Antoine, a University of Michigan professor who's an authority on such cases.

Of course, employers don't respond just to unions. They react as well to social trends and market forces, such as the women's movement or competition for skilled workers. For instance, the share of workers in midsize and large companies with unpaid maternity leave—for which unions haven't pushed hard—rose from 33% to 37% between 1988 and 1991, says the BLS. And some benefits, such as pensions and Social Security, have developed their own constituencies.

Unions are the guardians of others, however. Take safety regulations. The Occupational Safety & Health Administration under Reagan and Bush was hands-off agency—and workdays lost to injuries jumped from 58 to 100 workers in 1983 to 86 in 1991. Now, President Clinton is beefing up the agency, partly because of the support unions gave him. That's typical of interest-group politics, which experts say works best if all major interests in society are represented. Even Senator Hatch agrees: "We need unions to make sure that working people have a legitimate and consistent voice."

If unions are so important, why are they going the way of T. Rex? Certainly, labor itself hasn't helped. When global competition hit, most unions dismissed employers' demands for change as the same old handwringing by fat-cat bosses. And as their ranks thinned, unions were slow to tackle the costly and iffy job of aggressively organizing new industries.

In fact, the 1980s spotlighted the lackluster leadership that has plagued unions for years. They never developed an antidote to union-fighting tactics. And they found no rejoinder when President Reagan labeled labor's millions of middle-class constituents a special-interest group. The dour, cerebral Kirkland instead found soulmates among Reaganites who shared his hatred of communism. His failure to devise a domestic strategy left labor rudderless at its most crucial moment in half a century.

Still, even a brilliant leader would have struggled. The shift from factories to services spurred new jobs in industries that traditionally have been hard to unionize. The effects were compounded by industry's antiunion fervor in the face of global competition. Other industrialized countries have shifted to services, yet their unions haven't collapsed, Harvard's Freeman says. The difference, he adds, is the extraordinary opposition of U.S. managers.

For instance, employers illegally fired 1 of every 36 union supporters during organizing drives in the late 1980s, vs. 1 in 110 in the late '70s and 1 in 209 in the late '60s, according to an analysis of National Labor Relations Board figures by University of Chicago professors Robert J. LaLonde and Bernard D. Meltzer. Unlawful firings occurred in one-third of all representation elections in the late '80s, vs. 8% in the late '60s, they found. "Even more significant than the numbers is the perception of risk among workers, who think they'll be fired in an organizing campaign," says Harvard law professor Paul C. Weiler. Indeed, when managements obey the law, they don't defeat unions nearly as often. Union membership in the public sector, where federal, state, and local officials don't try so desperately to break or avoid unions, has risen by 23% since 1983, to 7 million last year.

The excuse on which industry based its assault—that U.S. labor costs were out of line internationally—was largely a bogus issue: Such comparisons sprang mostly from the ultrastrong dollar. Now that it's lower again, U.S. wages are below Europe's and Japan's.

BLUNDERBUSSES

Companies had a point, though, on productivity. Across the economy, it rose only 1% a year in the '70s and '80s, down from 3% in the '50s and '60s, meaning that it failed to offset wage growth. Bad management was a major culprit. But labor blundered, too: Its contracts made it hard for unionized employers to cut costs as quickly as nonunion companies when global competition undercut the pricing power of U.S. industry. As a result, the premium union members earn over nonunion workers rose from 10% to 15% in the 1960s, economists have found, to about 21% today. That's partly why corporate animosity toward unions continued even as annual factory productivity growth returned to 3% in the '80s and union pay lagged behind inflation.

This attitude may change only if labor embraces cooperation with unprecedented enthusiasm. Doing so will require unions to reinvent themselves as extensively as executives are reinventing the corporation. The

unions of tomorrow will need to balance better wages with efforts to help employers win competitive battles. And in place of adversarial skills, labor leaders will need expertise in everything from management techniques to technology.

More fundamentally, unions will need to adopt a "we're-in-this-together" mentality instead of the "us-vs.-them" one that has characterized both sides of the industrial divide for decades. "We want a whole new approach to how labor and industry can work together," says Lynn Williams, a leading advocate of labor cooperation who retired in March as USW president. Such views received an important boost from the AFL-CIO's remarkably self-critical February report, titled. *The New American Workplace: A Labor Perspective*. It declares that new cooperative work methods "increase worker opportunities . . . bring greater democracy to the workplace . . . and improve the quality, and reduce the cost, of the goods and services."

This attitude already has begun to filter into industries as diverse as farm equipment, autos, electrical equipment, garments, mining, paper, steel, and telecommunications. Companies such as Deere, AT&T, and National Steel are creating completely new roles for both managers and union officials, who collaborate daily on everything from work assignments to marketing strategies. One early example of this new unionism is General Motors Corp.'s Saturn Corp., where teams of workers largely govern themselves and union officials are involved at every level of management.

PAPER COPIES

Another is Scott Paper Co., which four years ago took a startlingly different tack than the frontal assault International Paper Co. had mounted on the United Paperworkers Union in an effort to cut costs. Scott and the union formed a committee of 10 top officials from each side who pledged to "work together to meet the needs of employees, customers, shareholders, the union, and the community." They set up teams that give workers more decision-making power, a move so successful in reducing costs and boosting quality that other paper companies, such as Champion International Corp., are copying it. "The union can play a key role in our business," says Philip E. Lippincott, who retired as Scott's chief executive officer on Apr. 1.

It isn't easy for unions to make the transition. The days of sitdown strikes and company goons stamped generations of labor leaders with a profound suspicion of management. And recent antiunion battles exacerbated this. For instance, the United Auto Workers (UAW) advocated cooperation in 1973 at GM. But a dissident group sprang up to resist in the '80s, when GM shut some plants that didn't accept teams. And some unions fear that managers use teams to abolish hard-won work rules or dupe employees into working harder for no extra pay. Beyond that, some experiments in cooperation have left a bitter taste: An early-1980s effort between AT&T Co. and the Communications Workers of America (CWA) failed when lower-level officials weren't included and AT&T cut jobs.

Perhaps the hardest question for unions to deal with is why they're necessary for a high-performance workplace. What really makes empowerment succeed, after all, isn't unions per se, but employee trust and commitment. Teams lift productivity most in companies with four features, according to a 1990 review of two dozen studies by University of California at Berkeley economist David I. Levine and Laura D'Andrea Tyson, who now heads the Council of Economic Advisers. These include productivity bonuses, job security, steps to build group cohesiveness (such as limiting pay differences between workers and managers), and employee rights (such as protection from arbitrary firings). "A union is one way to do [all] that," says Levine, "although it's [not] the only way."

FUTURISTS

Still, employers that pull all this off, such as Motorola Inc. and Procter & Gamble Co., have formal mechanisms that protect employees much as unions do. These include no-layoff practices, grievance procedures, and profit sharing. Moreover, unions can be very helpful when they're willing. In fact, surveys by the General Accounting Office show that alternative work schemes are spreading at least as rapidly in unionized companies as in nonunion ones.

National Steel Corp., for example, began cooperation two years after Japan's NKK Corp. bought 70% of the No. 4 U.S. steelmaker in 1986. To build trust, the company adopted a no-layoff policy for all 9,500 union members with a year's seniority. Hourly workers act as foremen. And USW officers get data on everything from earnings to market conditions—to help them see what it takes to compete. The payoff: Despite recent operational problems that have hurt profits, the number of hours needed to make a ton of steel at National's main plant in Ecorse, Mich., has fallen by 33% since 1988, to 295—among the industry's best numbers. National has run ads proclaiming: "We're partners with labor because we can't imagine a future without them."

Even AT&T and the CWA are starting over. In December, 1992, they set up elaborate joint structures, such as councils of company and union officials at the local, regional, and national level. Now those are paying off. For instance, AT&T's long-distance unit wanted to evaluate technicians in Virginia for traits that make employees good at customer relations. Technicians feared that those who did poorly might be moved or fired. But instead of fighting the effort, the CWA won a guarantee of no forced layoffs or relocations. The profiling has helped to speed up AT&T's maintenance times, officials say, and now is being expanded to 1,600 technicians nationwide. "If we had tried to do that absent the union's involvement, we wouldn't have gotten as much cooperation from our technicians," says Stan Kabala, the unit's head.

The lesson: If organized labor can offer itself as a partner, it may win at least grudging acceptance and carve out a place in the global economy. If not, its slow fade will continue. And many employees, union and nonunion alike, will suffer, whether they know it or not.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I listened to a number of these remarks here, and I have a few things to say. This is a very, very important issue.

Mr. President, S. 55 is mistitled the Workplace Fairness Act. It is the latest attempt by some of my colleagues who have dedicated their life to overturning Supreme Court decisions they find objectionable.

When I first heard of this particular bill, which would overturn what has become known as the Mackay doctrine, I wondered which Supreme Court Justice had written the offending decision. Naturally, given the sense and level of outrage expressed by some in this body one would assume that the misguided jurist was an appointee of President Reagan or President Bush, perhaps Justice Scalia or even Chief Justice Rehnquist. But in fact the judicial offender in this instance was Justice Owen Roberts. That is correct. Justice Owen Roberts. The Supreme Court decision we are being asked to overturn was written in 1938. Today we are asked to overturn a decision that was issued more than 56 years ago, a decision that has stood without a challenge for more than a half century, a decision that has been endorsed by successive Congresses since that time.

It is interesting to note—in fact it is remarkable—that with all the problems facing our Nation today, the economic challenges, the budgetary crisis, health care, crime, despite all of these problems, some of my colleagues believe that it is more important for the Senate to correct what they perceive to be the mistakes of the pre-World War II era. The proponents of this bill have summarized the thrust of their legislation in the following manner: Employees cannot be disciplined or discharged for engaging in a strike but they can be permanently replaced. The proponents assert that because employers can hire permanent replacements for striking workers, employees are discouraged from going on strike. It is harder for unions to win strikes. It is more difficult for organized labor to shut down employers, and it causes greater economic destabilization.

Alarmed by these facts, the proponents have introduced S. 55. Its purpose is rather straightforward: Change the rules that have governed Federal labor law for the last 55 years so that unions will be able to win almost every time they go out on strike; change the rules so that unions can shut down any employer whenever they want, for how long they want, and as often as they want.

Union leaders understand that current law places risks on both management and labor during labor disputes. If employers act unreasonably, their employees can go on strike. And, unions understand that if their demands are unreasonable and they still go on strike, employers may hire permanent replacements.

Current law is based on the tried and true concept that, by making a strike risky for both sides in a collective bargaining dispute, both sides have a vested interest in finding reasonable solutions to their labor disputes.

Consequently, it is not difficult to understand the purpose of the legislation. Eliminate the risk for unions when they go on strike.

Eliminate the need for economic responsibility. You will inevitably make

it easier for unions to go on strike and to win their strikes. By legislative fiat, S. 55 will provide unions with what they do not enjoy today—unrivaled economic power and control of the labor market. That is what they want.

Many of us in this Chamber recognize that the role of unions in the workplace has greatly diminished. Part of this has been due to economic realities. Part has been due to misguided leadership in the union movement. Part has been due to the passage of legislation that enhances employee benefits and protections. And, part of this diminution is due to a growing sophistication among employers and employees.

The relationships between labor and management have improved dramatically during this century, as employers have begun to understand the importance of maintaining positive relationships with their workers.

For all of these reasons, the AFL-CIO is no longer the economic power it was 50 years ago, 20 years ago, or even 10 years ago. But it is still a most formidable political power, if not the most formidable political power in this area.

No observer of Congress can deny that the AFL-CIO still wields much power in the Halls of the House and Senate.

In the past, the AFL-CIO liked to boast that they controlled the agenda of the U.S. Congress. While that may be a bit of an overstatement today, it is true that they still have the ability to demand that the bills they want Congress to vote on, will be voted on. This is a perfect illustration.

Consequently, the unions have decided that they will force Congress to change the rules that have governed Federal labor law for the last 55 years.

If they cannot win at the bargaining table like they did in the past, then they will just demand that Congress change the rules until they can win again.

The AFL-CIO is demanding that we tilt the balance so far in their favor that they can once again force employers to accept their demands, reasonable or unreasonable, without any need for economic responsibility on their part.

Does anyone in this body really believe that by making strikes risk-free for unions that there will not be more strikes? Does anyone really believe that the solution to our current economic problems—problems compounded by the internationalization of markets and skill shortages in the labor force—is to encourage the small percentage of American workers represented by unions to go on strike?

Do we as a body really want to tell the American people that we have finally found the answer to our economic woes, and it is to go on strike?

The proponents of S. 55 have also been a little loose with their explanation of current law.

Today, employees have the right to strike—the ultimate collective bargaining weapon that unions can bring to bear on an employer's business.

But, how an employer responds to that strike depends on what kind of strike it is.

If a strike is caused or prolonged by an employer's unfair labor practice, such as a failure to bargain in good faith, striking employees cannot be permanently replaced. Let me repeat myself. If a strike is caused or prolonged by an employer's unfair labor practice, such as a failure to bargain in good faith, striking employees cannot be permanently replaced.

In these instances, under the National Labor Relations Act, the employer is required to reinstate the strikers to their former positions and may be liable for substantial amounts of backpay.

If, on the other hand, the strike has nothing to do with any wrongdoing by the employer and is purely over economic terms, such as an increase in wages, an employer may take a variety of steps to withstand the strike, including hiring permanent replacements.

In these cases, strikers who have been replaced and seek to return to work retain their status as employees and must be reinstated as positions become available.

If the employer has done nothing more than resist a union's economic demands at the bargaining table, the law has always permitted employers to keep operating by hiring permanent replacements. In fact, as the Supreme Court has stated in Belknap versus Hale, the "very purpose of enabling an employer to offer permanent employment to strike replacements is to permit the employer to keep his business running during the strike."

S. 55, however, would say that an employer has no such right. No matter how outrageous or irresponsible the demands of the union, if the union goes out on strike, the employer has no right to hire permanent replacements. The employer's only right under S. 55 is to capitulate to the union's demands or hope the union returns to work before the business closes down for good.

Recognizing the absurdity of this scenario, for more than half a century, American labor law has provided both labor and management with a balanced set of rights.

Economic weapons and risk are critical elements of our national labor policy. As the Supreme Court has explained: "The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized." *NLRB* v. *Insurance Agents*, 361 U.S. 477, 489 (1960). And, as a leading labor law expert has noted, "[c]ollective bargaining evidently functions as a method of fixing terms and conditions of employment only because the risk of loss to both parties is so great that compromise is cheaper than economic strife." Charles J. Morris, "The Development Labor Law," second ed., at 996.

Under current law, employers' demands at the bargaining table are checked by the knowledge that their employees have a most powerful weapon—the strike—a weapon that could cause loss of profits and market share and could ultimately put them out of business.

Employee's demands, at the same time, are likewise checked by the knowledge that a call for a strike may be met by the hiring of so-called Mackay replacements.

The inherent uncertainty about what will happen when both sides resort to their ultimate weapons is an essential element in the dynamics of collective bargaining. Most importantly, it provides the strongest possible inducement for both groups to negotiate in good faith and to resolve their differences without resorting to such measures at all.

S. 55 proposes to change this level playing field on which labor and management have long operated.

A level playing field does not guarantee that parties bring either equivalent strength or wisdom to any particular labor dispute.

Nor does it guarantee that the results of any labor dispute, or the specific terms of any particular labor contract, are what any of us individually would think were either the most fair, most reasonable, or most prudent for either side.

Congress has never established itself, or the courts, as an arbitrator to determine the terms of collective bargaining agreements. Rather, the true level playing field that is part of our national labor policy was designed to foster a balance in the legal rights of the parties. Since the protection of the right to strike gave unions an extremely potent offensive weapon, the law also gives employers the defensive weapon of continuing to operate during a strike.

As described by former Solicitor of Labor and NLRB general counsel the late Peter Nash,

> The hiring of permanent replacements has long been recognized as constituting part of the legitimate self-help available to employers in a strike situation and allows the dispute between the employer and its employees "to be controlled by the free play of economic forces." *Machinists* v. *Wisconsin Employment Relations Comm.*, 427 U.S. 132, 140 (1976) (quoting *NLRB* v. *Nash-Finch*, 404 U.S. 138, 144 (1971).

If S. 55 became law, it would insulate striking employees from the risks that traditionally have acted as a check on the voluntary decision to strike over economic issues, and would free organized workers to command a price for

their labor without regard to the market forces of supply and demand.

The Mackay doctrine, in contrast, serves as an important market check on opportunistic high demands of unions as well as on opportunistic low offers by employers who are prohibited under this existing doctrine from offering replacements a better deal than the one rejected by strikers.

As one expert has noted in this regard, "the willingness of workers to cross picket lines and offer their services on the basis of the employer's final offer tells something about the economic reasonableness of the union's demands." Estreicher, "Strikers and Replacements," 3 Labor Law 897, 902 (1987).

The result of overturning the longstanding Mackay doctrine would be an increase in the number of strikes, and an increase in the risk of anticompetitive collective-bargaining agreements.

Moreover, S. 55 would injure many nonstriking workers and their families, whose livelihoods depend on a functioning, economically viable employer. Customers, suppliers, and consumers would all suffer the burdens of the increased strike activity and the harmful economic impact that would be generated by this bill.

Let me talk a little bit about myths and realities.

The proponents of this legislation have attempted to justify their attack on the Mackay doctrine by promoting several myths about Federal labor law and strikes.

The first myth is a whopper. The proponents claim that the Mackay doctrine—a Supreme Court precedent of more than half a century—should be ignored, because it is only dicta.

As my colleagues know, dicta refers to opinions of a judge which do not embody the resolution or determination of the Court. In other words, something that is dicta is an opinion offered by the Court which is unnecessary or extraneous to the decision itself. Its elimination from a judicial decision would not alter the holding of the court.

In other words, the proponents are arguing that by overturning the Mackay doctrine they are not really overturning a Supreme Court decision but rather only taking issue with one justice's extraneous comment.

The Mackay doctrine, which has some of my colleagues in such high dudgeon, stems from a Supreme Court decision issued on May 16, 1938.

The case, *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333 (1938), grew out of a labor dispute between Mackay Radio and Telegraph and local No. 3, of the American Radio Telegraphists Association. Negotiations between the company and the union broke down, and the employees went out on strike. The company brought employees from its offices in other cities to take the places of the strikers. Subsequently, all but five of the strikers were taken back by the company.

The union filed charges with the National Labor Relations Board, charging that by failing to reinstate the five remaining strikers, the company was discriminating against them on account of their union activities. The Board, among other things, ordered the company to reinstate the five with back pay.

The Supreme Court was asked to review the Board's decision, which it upheld. One of the issues before the court was whether the Board lacked jurisdiction because the company was at no time guilty of any unfair labor practice. The Court noted that there was no evidence that the company was guilty of any unfair labor practice.

To explain its conclusion, the Court noted that the company was negotiating with the authorized representatives of the union. Then the Court addressed the issue of whether its use of replacements was an unfair labor practice. In responding to this issue, the Court outlined what thereafter became known as the Mackay doctrine:

> Nor was it an unfair practice to replace the striking employees with others in an effort to carry on the business. Although Section 13 provides, "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike," it does not follow that an employer, guilty of no act denounced by the statute, has lost the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the place of strikers, upon the election of the latter to resume their employment, in order to create places for them. *NLRB* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345-346 (1938).

Now I realize that one person's dicta is another's doctrine, but the Supreme Court was rather clear in its holding. Nothing in the Wagner Act, the National Labor Relations Act, prohibited an employer from hiring replacements for employees who have gone out on strike, and the employer is not required to fire those replacements once the strikers decide they wish to return to work.

What was Congress' reaction to the decision? The following year, Senator Wagner appeared before the Senate Education and Labor Committee and made the following statement:

> Every step that the Supreme Court has taken toward clarifying the meaning and defining the scope of the act has made it easier for workers and employers to deal successfully under its provisions.

This is hardly a statement one would expect from Senator Wagner if the Supreme Court's opinion in the Mackay decision had been viewed from its inception as incompatible with the basic rights and values of Federal labor law.

This mistaken assertion was made by the committee majority in the report accompanying S. 55. I can only surmise that the authors of the majority report have concluded that a statement by Senator Wagner, the author of the Federal statute, made a year after the Supreme Court's decision, has no merit. Perhaps they feel that the statement by Senator Wagner is also dicta.

In fact, Senator Wagner's assessment is relevant, because it underscores the fact that instead of being an aberration, the Mackay doctrine was consistent with the legislative history of the Wagner Act.

A memorandum prepared by the Senate Education and Labor Committee on S. 1958, Senator Wagner's bill, clarified the ability of employers to hire replacements. It states:

> S. 1958 provides that the labor dispute shall be current, and the employer is free to hasten its end by hiring a new, permanent crew of workers and running the plant on a normal basis.

And, there is more. During the floor debate on the House version of the Wagner Act, Representative Fletcher asked whether anything in this legislation would prevent employers from bringing in strikebreakers. The bill's floor manager, Representative Connery of Massachusetts replied,

> I do not think there is. The employers' rights under the law will be just as strong and secure after passage of this act as they were before.

Consequently, instead of being dicta, representing some unnecessary, extraneous viewpoint that was repudiated from the moment it was offered, the Mackay doctrine was an accurate articulation of congressional understanding of employer rights under the Wagner Act. The Supreme Court's opinion was not at odds with congressional intent. The two were consistent.

But, let us assume for a moment that the proponents' revisionist version of history is accurate.

If the Mackay doctrine was an aberration, something far removed from the intent of Congress and the body of judicial thought, then it is logical to assume that Congress would take immediate steps to correct this flawed doctrine at the appropriate time.

In 1959, Congress passed the Landrum-Griffin Act, which dealt directly with the issue of picketing, strikes, and voting rights for economic strikers.

Obviously, it would be hard to imagine a time more appropriate to correct something as abhorent as the Mackay doctrine, if the proponents are correct in their assertion that the doctrine was incompatible with basic rights and values of Federal labor law. But, it was not changed, and everybody knows that.

Instead, the Landrum-Griffin Act included a provision giving economic strikers the right to vote in an election held within 1 year after commencement of an economic strike if they have been replaced.

Congress gave those strikers the right to vote to prevent employers from getting rid of the union by hiring permanent replacements, and then holding an election immediately thereafter in which the permanent replacements but not the strikers could vote.

Even the most rabid proponent of this legislation would have to agree that there would have been no need for this provision in the Landrum-Griffin Act if Congress believed that an employer could not hire permanent replacements for economic strikers.

In sum, Mr. President, the Mackay doctrine was not "dicta." It did not thwart the will of Congress. On the contrary, it is obvious that Congress clearly believed that the Mackay doctrine was the correct expression of the law—that employers could hire permanent replacements for economic strikers.

In fact, contrary to the assertion that the Mackay rule is an aberration, the Supreme Court has affirmed it on numerous occasions over the past 50 years, at times by Justices not known for harboring an antiunion bias.

In 1963, in *NLRB* v. *Erie Resistor Corp.*, 373 U.S. 221, 232 (1963), against a challenge to Mackay, the Court stated, "We have no intention of questioning the vitality of the Mackay rule * * *"

In 1967, in *NLRB* v. *Fleetwood Trailer Co.*, 389 U.S. 375, 379 (1967), the Court stated that employers have,

> "legitimate and substantial business justifications" for refusing to reinstate employees who engaged in an economic strike * * * when the jobs claimed by the strikers are occupied by workers hired as permanent replacements during the strike in order to continue operations.

In 1983, the Court reaffirmed Mackay in *Belknap, Inc.* v. *Hale*, 463 U.S. 491, 504, n. 8 (1983), when it held,

> The refusal to fire permanent replacements because of commitments made to them in the course of an economic strike satisfies the requirement that the employer have a "legitimate and substantial justification" for its refusal to reinstate strikers.

As recently as 1989, Justice O'Connor, writing for the Court, applied Mackay to affirm the validity of TWA's permanent replacement of striking flight attendants. She wrote, "On various occasions [over the years] we have reaffirmed the holding of Mackay Radio."

The fundamental principles behind Mackay rest in the proposition that unions and employers are entitled to a level negotiating field in which each party is free to use the economic weapons available to it. There is a delicate balance in labor law that must be maintained, and Mackay Radio is part of the maintenance of that delicate balance.

On occasions, these principles are reaffirmed by the most unlikely members of the Court.

In a case involving a union challenging an employers' association's use of "freeze-outs," Justice William Brennan wrote for the Court:

> Although the [National Labor Relations] Act protects the right of employees to strike in support of their demands, this protection is not so absolute as to deny self-help by employers when legitimate interests of employees and employers collide. *Labor Board* v. *Truck Drivers Union*, 353 U.S. 87, 96 (1957).

Likewise, it was Justice Brennan, who in a subsequent case involving union strike tactics, again reaffirmed the Court's affirmation of the principles behind Mackay. In *Labor Board* v. *Insurance Agents*, 361 U.S. 477, 489–490 (1960), he wrote:

> The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system * * * two factors—necessity for good-faith bargaining between parties, and the availability of economic pressure devices to each to make the other party incline to agree on one's terms—exist side by side * * * and, at the same time, negotiation positions are apt to be weak or strong in accordance with the degree of economic power the parties possess * * *. And if [the government] could regulate the choice of economic weapons that may be used as part of collective bargaining, it would be in a position to exercise considerable influence upon the substantive terms upon which the parties contract.

As one can readily see, it is clear that S. 55 demands that we overturn a well-established precedent of labor law.

Far from being dicta, the Mackay doctrine is a clear expression of the law. It has been left unchanged by Congress for more than half a century. It has been upheld by the Supreme Court on a number of occasions.

In sum, the attempted minimization of the Mackay doctrine by the proponents of S. 55 will not stand the light of review.

Myth No. 2:

Well, the proponents of this bill are nothing if not advocates, and they are nothing if not resourceful. Faced with the rather obvious probability that they could not discredit the Mackay doctrine through a tortured legal analysis, they propagated yet another myth, a myth that brings this issue up to the present.

I suppose this myth was inevitable—namely, the idea that it is all President Reagan's fault.

The proponents argue that the hiring of permanent replacements was just not done before 1980. In other words, the Mackay doctrine was not a problem for more than 40 years because employers never exercised this legal right.

There was no reason for the unions and their friends in Congress to complain about the hiring of permanent replacements, because no permanent replacements were ever hired. It just was not done.

For those listening closely, they will not miss the significance of the date used by the bill's supporters. The proponents claim that it was not until the 1980's that the use of permanent replacements became so commonplace.

It was not until the Reagan administration that employers began racing out and hiring permanent replacements the first moment an employee went out on strike.

President Reagan, according to proponents, made it fashionable to use replacements when the members of PATCo, the air traffic controllers, broke the law that prohibits Federal employees from striking against the Federal Government.

When these employees went out on strike, they were permanently replaced by the President. According to the proponents, President Reagan's actions gave employers around the Nation the green light, and employers ever since have been replacing thousands upon thousands of employees.

I suppose it was only a matter of time until we got around to blaming Ronald Reagan.

I find it ironic that some of my colleagues routinely criticize President Reagan for doing so little, and then immediately turn around and blame him for everything they believe is wrong with the United States today. And they certainly find a lot that is wrong. For someone who is constantly criticized for being so inactive, President Reagan certainly seems to have accomplished a lot.

The only problem with the argument that the use of permanent replacements is a recent phenomenon is that it is wrong.

According to a study released by the Employment Policy Foundation, there are 251 National Labor Relations Board cases since 1938 where the Supreme Court's decision in Mackay was cited and permanent replacements were hired. All but 22 of these cases involved strikes that occurred before 1981.

Over the next several days, this body is likely to hear about a General Accounting Office report commissioned by the proponents of the legislation entitled, "Report to Congressional Requesters: Strikes and the Use of Permanent Strike Replacements in the 1970's and 1980's." GAO/HRD-91-2 (1991).

This report is purported to be the definitive proof of how widespread the problem of permanent replacements has become. According to the report, the GAO found that, in 1985, 4 percent of striking employees were replaced by Mackay replacements—4 percent. The report went on to conclude that this figure fell to 3 percent in 1989. And, these figures count as permanently replaced those strikers who returned or will return to their jobs as a result of vacancies, a strike settlement, or a National Labor Relations Board order in case of an unfair labor practice strike.

According to the report requested by proponents, 96 percent of all employees who went on strike in 1985 were not replaced by permanent replacements. In 1989, 97 percent of workers who went on strike were not permanently replaced.

This is the proponents' evidence of an employer community run amok. The fact is that the problem they are complaining about has decreased.

I might note that the number of affected strikers is less than one one-thousandth of 1 percent of all Americans in the civilian labor force.

So much for that myth.

Myth No. 3:

Another myth associated with S. 55 is the implication that the legislation would restore balance and fairness to our labor laws.

While the legislation clearly limits the actions an employer can take during a strike, it should be remembered that there is nothing in S. 55 which would impose a similar limitation on the rights of unions.

There is nothing in the bill that increases the economic risk of union members, nor are they forced under the bill to relinquish an equivalent right.

Economic strikers in some States have the right to collect unemployment compensation. They are not prevented from finding other employment during the strike. They are entitled to receive union strike benefits which might not be insignificant in some instances. Further, in some States strikers may be eligible for welfare benefits. Nothing in the legislation would change these rights.

Moreover, nothing in the bill would prohibit unions from engaging in destructive corporate campaigns or from running a company out of business. S. 55 would make no changes in the rights afforded to strikers, only in the rights afforded to employers.

So much for myth No. 3.

Let me go to myth No. 4.

Another myth disseminated by the proponents is that the Mackay doctrine corrupts the collective bargaining process.

In fact, S. 55 would itself corrupt the bargaining process because it would provide that the right to strike may be asserted free of any economic disadvantage.

The right to strike was never intended to make strikers the owners of their jobs.

As Justice Stewart explained in writing for the majority in the Supreme Court's opinion in 1965 in *American Ship Building Company* v. *NLRB*, 380 U.S. 300:

> [T]he right to bargain collectively does not entail any "right" to insist on one's position free from the sort of economic disadvantage which frequently attends bargaining disputes * * *. The right to strike as commonly understood is the right to cease work—nothing more.

Myth 5—other countries do it, they say.

Another argument trotted out by the proponents is that other industrialized countries like Japan, Germany, and Canada do not permit the hiring of permanent replacements. What the proponents like to skip over is the fact that most other countries do not simply reject the Mackay doctrine—they reject our entire industrial relations system.

In fact, a quick trip around the world reveals that American unions already enjoy several advantages over their international counterparts.

Would the proponents like to buy into the entire German labor relations system?

In Germany, more than one union can represent employees performing the same work. A strike in Germany becomes illegal whenever picketers use intimidation as a tactic. Strikes are forbidden in Germany if they would grievously wound a company, and all strikers are ineligible for unemployment benefits.

How would you like to have the German laws? So ours are far more fair to workers than the German labor laws.

In France, the law permits individual bargaining or unilateral employer action to supersede collective-bargaining agreement provisions. Moreover, French labor law eliminates any requirement that unions and management try to reach an agreement. In the Netherlands, courts are given broad judicial authority to enjoin strikes.

As to Canada, it is noteworthy that according to a recent study in the Journal of Labor Economics, after a ban on hiring striker replacements was passed in three Canadian provinces, more and longer strikes resulted.

Interestingly, the one policy that has a significant effect on reducing the incidence of strikes and the duration of strikes was a mandatory strike vote, a requirement which is not contained in our Federal labor laws.

So myth No. 5—"Other countries do it"—really does not apply here.

Let me go to myth No. 6—"employers don't need this right," they say.

The final justification for S. 55 is that employers have other options they can use to continue to operate a facility during a strike.

According to the proponents, these options include the hiring of temporary replacements, using supervisory or management personnel to run the plant, transferring or subcontracting work, or stockpiling in advance of the strike.

In 1991, the majority of the Senate Labor Committee observed that:

> * * * in light of * * * our recent chronically high unemployment rates, it is undoubtedly easier today to find temporary replacement workers for even skilled jobs than it was even 10 years ago, let alone 50 years ago.

What the proponents apparently do not believe is their own rhetoric—that many union workers are highly skilled employees, who provide the companies for which they work with a valuable service.

You cannot replace a skilled workforce overnight, nor can you expect a handful of supervisory and management personnel to maintain operations adequately during a strike for an indefinite period of time. There is an inevitable loss of organizational efficiency and control.

Apparently we have to state the obvious. If companies could operate without the striking employees, they would employ fewer people in the first place.

What the proponents apparently do not know is that many plants cannot just be shut down. You don't just turn off the lights in a chemical plant and lock the door behind you. In such instances, the shutdown must be performed in a very careful, orderly manner, using highly trained workers over a 2- to 3-week period. This is true even when the shutdown occurs not because of a strike but because of routine maintenance.

What the proponents apparently do not know is that the pool of unemployed workers who might temporarily assist employers during a strike do not possess the same skills as the striking union members. As the Society for Human Resource Management explained during the hearings on S. 55,

> An employer's challenge of recruiting temporary workers would be difficult enough if the pool of available workers was literate and possessed general skills. However that is not the case. Employers are confronted with a less educated and less skilled workforce and must frequently educate employees before they can even begin to train them for specific jobs.

What the proponents of the legislation apparently do not know is that there is not a pool of available skilled workers waiting to run the gauntlet of a picket line in order to work for what could be only a handful of days.

This is especially true for industries such as the airline industry. As the Air Transport Association of America emphasized in its hearing statement:

> Ready pools of skilled pilots and FAA certified mechanics simply do not exist for the airline industry. The training and skills needed to serve the public safety constitute such high standards that there is actually a labor scarcity. In this context, the long-standing Mackay rule is a fundamental protection that the employer needs in order to balance the unlimited power of the strike.

What the proponents of the legislation apparently do not know is that many small businesses cannot operate simply by using management and supervisory personnel.

Small businesses tend to be tightly run companies that are extremely efficient. If their employees go on strike, they shut down. There is no alternative.

Perhaps the most honest assessment of the fallacy of the proponents' assertion that there is a ready pool of qualified skilled labor ready and willing to be hired for an indefinite period of time and to run a gauntlet of harassment every day is the AFL–CIO. Listen to the statement of Walter Kamiat, associate general counsel of the AFL–CIO:

Nothing we have said thus far is to deny that some particular employers may "need" to hire permanent replacements in order to prevail in a particular strike. This may be the case, for example, where striking workers are particularly skilled and the labor market is particularly tight.

Mr. Kamiat apparently is willing to admit a simple fact that has escaped the proponents of the legislation. Namely, some employers have to be able to hire permanent replacements or they will always lose. The unions will always win when they go out on strike. There will be no economic restraint on these unions to modify their demands. Their limit will only be their imagination.

The fact is, it is virtually impossible to replace a highly skilled workforce with competent people for an indefinite period of time, unless the employer can make an offer of permanent employment.

But, of course, that is why this bill makes every union decision to strike a no-lose decision.

Consequently, without any real check on the demands that can be made by organized labor, employers will have no viable alternative but to cave in and agree to every demand made by striking employees.

S. 55 is perhaps most condemnable for what it does not address. The proponents claim that they want to restore fairness to strikes. They want to correct the perceived flaws in our current labor laws.

What they have concocted is perhaps the most lopsided, special-interest oriented pieces of legislation that has been rammed through Congress in recent memory.

There is nothing in S. 55 about public safety, about the impact of prolonged strikes that place the public welfare and safety at risk.

What happens when employees at a nursing home go out on strike? What happens when workers at acute care hospitals go out on strike? Do the proponents really believe that by giving unions in the health care industry the ability to call strikes without economic risk that there will not be an increase in the disruption of health care services?

Do the proponents, who have expressed such great concern over the skyrocketing cost of health care in this Nation, believe that this legislation will have no impact on health care costs?

The committee report accompanying S. 55 actually had a section entitled, "Cost Estimate." It contains the following statement:

The Committee is unable to determine the precise economic impact the legislation would have on affected individuals, consumers, and businesses, but the Committee believes that any such impact will be minimal.

The authors of the committee report must be the only people in the United States that cannot figure out the answer to that question.

The economic impact on affected individuals will be devastating. The economic impact on consumers will be devastating. The economic impact on businesses will be devastating.

And, some in this body still wonder why the American people feel that Congress has lost touch with reality. How can one honestly argue that by making strikes risk free for hospital unions, or for unions in any industry, costs will not go up?

Perusal of S. 55 will also find another issue not covered. For most Americans, mention the word "strike" and the word "violence" comes to mind.

Since it is inevitable that S. 55 will result in more strikes, what does the bill have to say about violence? Absolutely nothing.

What does S. 55 do to prevent random shootings like those that occurred during the Greyhound strike? Absolutely nothing.

What does S. 55 do to prevent the bombings and knifings that were such an integral part of the New York Daily News strike? Absolutely nothing.

What does S. 55 do about the pattern of unrestrained violence that breaks out every time the United Mine Workers goes on strike?

What does it do about the killing of Eddie York, an employee of an independent contractor, shot as he tried to leave a mine in West Virginia in July, 1993?

So, Mr. President, this is the so-called Workplace Fairness Act of 1994—a bill that would overturn more than 55 years of Federal labor law, a bill that encourages employees to go on strike, a bill that ignores union violence, a bill that pretends that it will have no economic impact, and a bill that in the name of fairness would benefit only one special interest group. It would benefit this group at the expenses of the rest of America's working men and women, at the expense of the free enterprise system, and at the expense of public health and safety.

We all know that our Nation faces serious social and economic problems. We all know that the Federal budget is a nightmare, and that the deficit is slowly choking the lifeblood from our Nation. We all know that there is a crisis of confidence in our Government, particularly with this Congress. And the proponents of S. 55 have unveiled their solution—go on strike.

Mr. President, I can think of no other bill before this body that is a better test of who is interested in preserving our free enterprise system and generating jobs and economic growth.

I can think of no other, single bill that is a better test of who is interested in preserving a balance in our Federal labor laws to ensure that the rights of employers and employees are equivalent.

I can think of no other single bill that is a better test of who is interested in preserving, fostering, and nurturing small business in this country.

I can think of no other single bill that is a better test of who is interested in preventing one special interest group from dictating the laws of our Nation.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. FORD). The Senator from New Mexico.

Mr. DOMENICI. Parliamentary inquiry. Is there any limits on speaking at this point?

The PRESIDING OFFICER. There is none. The Chair might have some feeling about it.

Mr. DOMENICI. I understand the Chair might not want to stay here all evening, and I do not intend to burden him with that either. I think I will speak about 10 minutes. I ask to be notified when I have used 10 minutes.

The PRESIDING OFFICER. We will be glad to do that.

Mr. DOMENICI. Mr. President, I have not indicated that will be the extent, but I would like to be reminded. I thank the Chair.

EMPLOYMENT GROWTH

Mr. DOMENICI. Mr. President, first I wish to talk about this employment growth comparison chart that I have here displayed. I know for many this will seem incredible, but it happens to be true. It is a comparison of North America and the European Community of countries—from 1974 through 1991, and from what I understand things have not changed much since then. Since 1991 employment trends have been moving in exactly the same direction. In fact, we know they are in 1992. We are not quite sure exactly where these lines would be for 1993 and 1994, but we think the trend is pretty obvious.

So let us look at what is happening to the jobs in North America in terms of the public and private sector.

Along the bottom of the graph we have the years 1974 up through 1991. On the side we have the number of new jobs created, measured in millions of jobs. Looking at that solid green line from 1974 to 1991, the level of new jobs in North America rises straight up. In all, a total of 30 million new jobs were created in the private sector: little companies, big companies, unionized companies, nonunionized companies, all private sector employment.

Public sector employment is the hash marked green line on the graph. During that entire period of time, jobs in the public sector rise by less than 5 million jobs—a very, very slow rate of rise compared to the private sector. So that the ratio of new private jobs to public jobs is enormous.

Thirty million new private sector jobs from 1974 to 1991—versus 5 million in the public sector, is a 6-to-1 ratio for North America. And the overwhelming proportion of these are in the U.S.A.

Let us look at the European Community, same period, 1974 to 1991. The solid green line shows about 2 million new private sector jobs. And in a number of years there are less jobs than the year before.

In fact, there are less private sector jobs in the European communities in 1984 than there were in 1974. There were even less private sector jobs in Europe in 1988 than in 1974. After that net jobs showed a slight increase. While American private sector jobs experience were going up dramatically, European jobs went up slightly.

Now let us look at the whole spectrum in 1974 to 1991. As I indicated, the net result of it is in millions of jobs. In total, there are few if any new private jobs in 1991 in the European Community over nearly a 2-decade period. Think what America would be like if we had no new private sector jobs for that length of time.

Mr. President, there may be some that would say, "So what? The jobs that we have would all be worth $38 an hour." That might be the case. There would be a lot of people unemployed though, and there would be no growth in the economy.

Now let us look at what happened to the public sector jobs in Europe. From 1974 until 1991, while there is really no increase in private sector jobs—in fact the sum private sector total is almost a wash, the public sector went up about 5 million.

So, we see about 5 million new jobs in the public sector, no new jobs in the private sector. In the United States—in Canada and the United States, essentially 30 million new private sector jobs versus about 5 or less in terms of the public sector; 6-to-1 ratio. Importantly, these ratios are about real numbers, real jobs, and real people.

Mr. President, the European Community—if anybody has been reading economic literature about what is going on in Germany, Italy, and France, I think it is fair to say that a bright economist here in the United States came up with a good name for what is going on. He says that the European economy has "Euro-sclerosis". That is a very nice descriptive word for a very, very sick economy—"Euro-sclerosis." The principal ingredient of "Euro-sclerosis" is no new private-sector jobs. Costs of their products are skyrocketing, unemployment is very, very high, and their products, except for some very exceptional ones, are getting less competitive, not more.

America used to look at West Germany and shiver. With their economy's competitiveness, they were going to beat us in every market. Interesting, now they are moving their automobile plants to America to make cars here because "Euro-sclerosis" has set in. The balance between management and labor has been such that government asks business to do more and more things for the social benefit of their workers and their country. Consequently, there is less and less flexibility on the part of the people who operate a business, large or small, to do what they must in order to be competitive and sell their products in the world market.

We have on the floor of the Senate an issue that is not about today or tomorrow, but about the long term. Does the United States want to engage in a long-term commitment that labor unions ought to be able to strike, and if wages cannot be agreed to, then if the plant ever opens again, strikers are entitled to get all of their jobs back. Business cannot employ anybody to take their place?

Frankly, it is not the kind of issue that some think of. But clearly this legislation takes great economic flexibility out of the American private sector, and in the long run moves us one step closer to the ailment that engulfs Europe. Soon we will have "sclerosis-Americana" or "U.S.A.-sclerosis," and we will say, "How come business cannot make it?" It will be because we tied their hands. When we do that, we end up hurting all workers.

In the United States, only 12 percent of the work force is unionized. But if you put this into existence and it begins to deny flexibility in terms of trying to succeed as a business, then obviously you hurt all who hope to prosper in the future. Ultimately the result is plain and simple: This legislation is antijobs, and antigrowth. In a very real sense, it moves us in the direction where, if we do this and a few more things recommended today—such as more OSHA regulations—we will establish the pattern that every time we find a social problem, we put the burden on the business community.

Another example is the business mandates associated with some health care plans. If we do that, it represents another giant step in the direction of imposing the same kinds of economic sclerosis on America that is bringing the relationship between private sector and public sector jobs to the European community. They are stuck with high unemployment, much higher than in the United States. They do not know what to do about it and their companies cannot grow.

Let me describe this bill as I see it. Currently, there are limitations on employers in unfair labor practice disputes with unions. We are not talking about taking away any of the union powers there. Employers cannot hire permanent replacements in disputes over workers' job rights and contract conditions. That remains unchanged. This legislation has nothing to do with that. This legislation will limit employers' options in disputes over economic issues, issues such as what wage rates a company ultimately can afford to pay, or about expanded benefit packages, and many other items that cost money.

The PRESIDING OFFICER. The Senator wished to be advised when 10 minutes had expired.

Mr. DOMENICI. I thank the Chair. I yield myself 5 more minutes, if the Chair will advise me when 5 minutes are up, please.

This legislation says the balance is changed. Under no circumstances will an employer be in a position where he could not settle because of economic terms. Otherwise, to get his business going, he has to hire everybody back that was there before. I think that this swing in the balance goes a little bit too far.

Proponents claim this is about employee and union rights. This would be true if the disagreement were indeed about unfair labor practices. But it is not. It is about economic interests in bargaining situations. This bill would change the bargaining balance in favor of unions and against employers, and, as I see it, against workers in general, and against consumers.

A recent study shows that the length and number of strikes would increase, hurting nonstriking workers and their families, and those in other firms and industries that depend on businesses remaining economically viable. If employment costs end up becoming higher than can be competitively justified, obviously we will be moving in the direction that I have just described as being festered with "Euro-sclerosis."

Many do not realize it, but, if we pass this legislation, we will be moving more businesses offshore rather than less. We will be making ourselves less competitive rather than more. Ultimately, there will be less jobs rather than more for American workers.

Clearly, the chart I have described is a clear indication of a less flexible labor market and what will happen. The OECD [the Organization of Economic Cooperation and Development] which encompasses the major free-market nations of the world, has documented the European problem. Net new jobs in the private sector from 1980 to 1988: None, zero. A decade-long rising trend of unemployment culminated in a current 10.5 percent unemployment right within the European Community. Unemployment is chronic with nearly 50 percent of the unemployed in the European Community out of work 12 months or more in 1991 compared to roughly 6 percent in the United States. OECD cites as a cause poorly functioning labor markets. Wages that are set higher than is consistent with the productivity of workers has led to rising unemployment. It hurts more than it helps.

OECD says more jobs could be created if there were fewer barriers to hiring, to layoffs, to arranging for terminations. Quoting from them, "What is needed is to mitigate the unintended

side effects of policies that were designed to achieve equity objectives. In some cases, this may mean a more fundamental radical design of policies, together with considerable changes in attitudes and practices, especially in the fields of taxation, social policy, and collective bargaining."

I think we can all heed what is going on in other countries and is not working well. We can try at least in our positions of leadership not to repeat the mistakes that are so well known in other countries. In the name of doing something good we do not want to do something that will make things worse over the long run and for more people.

The Secretary General of the OECD summarizes the situation this way:

> The only way to achieve long-term success is to embrace change. Trying to slow the pace of change and artificially to protect uncompetitive activities would only make delayed adjustment more painful. All policies should be harnessed to promote adjustments to change while taking care to reinforce social cohesion.

I could not agree more. This legislation does not do that. It is not a job gainer. Ultimately, it is a job loser. While we have had this legislation before us on previous occasions, it has failed. Obviously, we are going to vote again, perhaps once, perhaps twice. I am hopeful that we will defeat it again.

Mr. President, I thank the Chair and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator is recognized.

Mr. KENNEDY. Mr. President, for the third time in 2 years Senate will vote tomorrow on whether to end the filibuster by which a minority of the Members of this body are blocking action on the Workplace Fairness Act. I urge my colleagues to invoke cloture and allow us to vote on this important measure.

The basic principle behind the bill has strong public support. In the latest poll from Fingerhut Associates, 64 percent of respondents said that once a majority of workers have voted to strike, companies should not be allowed to hire permanent replacements to take their jobs.

The American people understand that this is a question of simple justice for workers.

If it's illegal for an employer to fire a worker for exercising the right to strike, it should be equally unlawful for an employer to be able to deprive a striking worker of his job by permanently replacing that worker. It's as simple as that.

The House has twice passed this bill by substantial margins. President Clinton campaigned in support of this bill.

It is time to get on with the public's business and bring this bill to a vote.

Repeatedly, when we are debating economic legislation and U.S. competitiveness in the world economy, Senators from both sides of the aisle praise the high productivity of American workers, their excellent skills, and their pride in their work.

Yet, much of the legislation we pass ignores the importance of treating American workers fairly.

This legislation is for the American worker. It will restore the balance of power intended between management and labor intended under the National Labor Relations Act.

That far-sighted act, signed into law by President Franklin D. Roosevelt in 1935 as a cornerstone of the New Deal, recognized the inherent inquality between the bargaining power of a lone worker seeking to improve wages and working conditions, and the bargaining power of the employer.

As part of comprehensive legislation enacting the fundamental goals of national labor policy, the act guaranteed the rights of workers to form and join labor organizations and to engage in collective bargaining with their employers.

As the Supreme Court stated in 1935, in a landmark opinion upholding the constitutionality of the National Labor Relations Act:

> Long ago we stated the reason for labor organizations. We said they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and his family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employer's employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equal basis with the employer.

Today, as much as ever, employees need the right to organize collectively to improve their wages and working conditions, and to enter into negotiations with their employers about how work should be arranged, so that the firm can achieve its productivity and profitability goals, while at the same time ensuring fair treatment for workers. But the right to organize and bargain collectively is only a hollow promise if management is allowed to use the tactic of permanently replacing workers who go on strike.

No one likes strikes—least of all the strikers, who lose their wages during any strike and risk the loss of health coverage and other benefits.

Because both workers and employers have a mutual interest in avoiding economic losses, the overwhelming majority of collective bargaining disputes are settled without a strike. But the right to strike provides a balance which ensures that a fair economic bargain is reached between employers and workers.

The labor laws give workers the right to join together to combine their strength, and the union movement has been responsible for many of the gains that workers have achieved in the past half century. The process of collective bargaining works. It prevents workers from being exploited, and it has created a productive balance of power between management and labor.

The cornerstone of collective bargaining is the right to strike. If that right is nullified by the practice of permanently replacing workers who go on strike, the entire process of collective bargaining is undermined.

Both the National Labor Relations Act and the Railway Labor Act explicitly prohibit employers from firing employees who exercise their right to strike.

But as a result of a loophole created by the Supreme Court half a century ago—but seldom used until recent years—the practice of permanently replacing striking workers allow employers to achieve the same result.

The ability to hire permanent replacement tilts the balance unfairly in favor of business in labor-management relations.

It is no surprise that business is lobbying hard to block this legislation. Hiring permanent replacements encourages intransigence by management in negotiations with labor. It encourages employers to replace current workers with new workers willing to settle for less—and to accept smaller paychecks and other benefits.

S. 55 will restore the balance that has been distorted in recent years. It amends the National Labor Relations Act and the Railway Labor Act to prohibit employers from permanently replacing employees who exercise their statutory right to strike.

By enacting this legislation, Congress can restore the original promise of these statutes that give workers the right to bargain collectively and participate in peaceful activity in furtherance of their goals, without fear of being fired.

The Supreme Court's decision in the Mackay Radio case in 1938 is the source of the current problem, even though the issue was not squarely raised in the case itself.

In Mackay, the Court ruled that it was unlawful for an employer to refuse to reinstate striking union leaders, when the employer had reinstated other striking union members. The Court refused to allow the employer to discriminate between strike leaders and other strikers. It ordered the employer to put the permanently replaced striking union leaders back to work.

In fact, the Supreme Court did not even have before it the issue of the legality of permanently replacing striking workers. But language in the decision condoning the employer's hiring of

permanent replacements has been interpreted as permitting the practice, as long as the employer does not use it in a discriminatory way.

This aspect of the Mackay decision had no significant impact on labor relations for nearly half a century. Few employers resorted to permanent replacements, or even threatened to use the tactic.

In Mackay Radio, the Supreme Court Justices performed gymnastic feats. The Court set common sense and rational judgment right on its head.

The issue before the Court was the discrimination between two different types of striking workers. The Court said that strike leaders should not be discriminated against. But the Court mused in dicta that the law permitted the permanent replacement of striking workers. Rational or sensible interpretation of the National Labor Relations Act would not have come to that conclusion. But certainly, the Supreme Court has, in other instances, provided erroneous interpretations of laws the Congress has passed.

Much later in the mid-1980's after Congress thought it well established that we were not going to permit taxpayer funds to be used to discriminate against women and minorities in the area of higher education.

That principle was well understood throughout the country. Congress had determined that, as a country, we will not permit taxpayers' money to be utilized to support and to expand discrimination in education. And then the Supreme Court ruled in its Grove City decision. The Supreme Court said, well, as long as there was not discrimination in financial aid for university students, it did not make any difference if there was discrimination in other areas of the university. This was a most bizarre interpretation of what the Congress had intended.

And from that particular holding, we found that there was a whole series of conduct that was developing in our society which was moving completely contrary to what the American people and the Congress, had said. And that is, we were not going to permit taxpayers' money to be used to further discrimination in our society.

We have the aberration in the Grove City case, which Congress eventually overturned. Likewise we have this kind of aberration in the Court's treatment of the practice of permanently replacing striking workers. We are attempting to overturn that decision. Our desire to overturn Mackay Radio has the support of the majority of the Members of this body, Republican and Democrat, as well as the support of the majority in the other body.

Employers and workers had a mutual understanding that strikes are only temporary disruptions in ongoing satisfactory relationships. Businesses responded to strikes in various ways—by having supervisors perform the work, by hiring temporary replacements, or by shutting operations down.

Employers acted on the basis that their work force was valuable and not easily replaced, and that once the temporary labor dispute was over, the two sides would resume the collective bargaining relationship that brought benefits and stability to each.

What we have seen, Mr. President, over the recent times, as has been pointed out during the debate earlier this afternoon, is that the playing field has been changed. Those that want to continue the filibuster effectively say, "Well, it has really not been changed." But, of course, it has been changed in a very dramatic way.

One cannot just examine theories of labor-management relationships. We must listen to those real people who have testified before our committees. They are proud American individuals, hard-working Americans who were willing to go out and provide for their families, work 40 hours a week, and work overtime for 52 weeks of the year. Nonetheless, these workers felt compelled to go out on strike because there was either an economic right or advantage that was being taken away or a health care benefit that was being cut back that would have affected their children and their own lives. In some instances, these workers went out on strike because they recognized that they were entitled to share in some of the extraordinary profits that their employers were making.

Having exercised their right to strike, these workers were then effectively thrown out of a job and frequently blackballed from the opportunity to work in their own communities after having worked in those communities for their lifetimes. Many of the workers who have been permanently replaced had worked at their jobs for years, from their teens on into their twenties and thirties. Those jobs permitted them to have and support their families and they remained loyal workers to their companies—only to find that doors of the company nailed shut when they exercised their legal right to strike and tried to achieve economic justice for themselves and their families.

Mr. President, a phenomenon that we have recently seen has been a decline in unemployment over the last year. Yet, if you were to take a reading about the future from working families in my State of Massachusetts, they still have rather an ominous sense and feeling about the future.

Usually, if you had unemployment going down one point, people would say, "Things had begun to turn around. There was some hope for the future. Maybe my child, who has just graduated from high school, was going to be able to get a good job."

Then, if it goes down two points, people would say, "Well, my children who have graduated from high school or from a community college or have gone to a vocational school are going to be able to find a good job. And I know my neighbor down the road, who has worked a long time, had been displaced because of downsizing, but, look, we know that the total number of jobs available out there is going to be larger, there will be a new opportunity and a new era; things are going to get better."

And when the unemployment rate has gone down three points, as it recently has, in the past, people have generally been euphoric.

But not now, not in my State of Massachusetts, and not in most places in our country. And why? Why? I well tell you why.

It is because the American people understand that the jobs that are not there now are not the kind of jobs that were there 20, 30, 40, years ago. They are not the jobs that mean good opportunities for families to work and to provide for their children and their parents, to pay the mortgage, put the bread on the table and send their children on to higher education if those young people want that opportunity. People understand that the good jobs of a generation ago are frequently not available. They have been replaced by part-time jobs. And these jobs do not provide the decent kinds of incomes so that Americans can work and still stay out of poverty.

We had a social compact in the period of the 1930's, 1940's, 1950's, 1960's, 1970's, and into the 1980's, supported by Republicans and Democrats alike, that people who are willing to work are going to get paid and not have to be in poverty. That is going. It is going. It is going. It is going and gone.

People are receiving minimum wages today and in too many instances, despite working, they are also eligible to receive welfare benefits. That is wrong.

We are seeing that workers are at risk of losing their health benefits. They are frequently unable to upgrade their skills. And they know they will have to probably change their employment down the road and leave what they thought was a long-term job. They do not ask for a handout, but a helping hand up.

And it is those individuals who have the courage in the workplace to be able to stand up and say that this kind of treatment of workers is wrong who are responsible for bringing these issues to the public debate. It is workers who stand up for their rights who force us to confront these changes in our society.

Well, by not taking this action, it is only a period of time before those who are in the board rooms are able to isolate and target those individuals who are the leaders for advancing economic and social justice, progress, and stability in our society.

We do not have the great unrest that has existed in many other parts of the world. And I dare say a principal—not the only, but a principal reason is because of the existence of economic justice in our society. And this I must say, Mr. President, the prohibition of permanent replacements for striking workers is a fundamental tenet in terms of society's commitment to economic justice.

Finally, Mr. President, I am always interested in seeing what is happening in other parts of the world. Certainly we hear a great deal on this floor about how we have to have a level playing field with other countries; that otherwise, we will not be competitive internationally.

If you just go down the various lists down the various lists of our principal competitors—France, Germany and Italy, Belgium, Japan, the Netherlands, Sweden, and our closest neighbor, Canada—all these countries have variations in the kinds of protection they provide for workers' rights. But virtually none of them, none of them, give the kind of advantage to the employer to effectively discharge and dismiss those workers who are trying to advance their economic futures.

And the basic reason is because, in this particular instance, those societies understand the importance of a real balance, not an alleged balance—but a real balance, between the management and workers. Those societies understand how important collective bargaining and a real right to strike is in order to advance the economic status of those countries.

And so, Mr. President, I will look forward to further debate on this issue tomorrow.

I think this is one of the very important issues of fairness and equity. I can remember going back to 1988, when we had the plant closing legislation.

We heard the voices out here on the floor say, "Well, we cannot have that kind of plant closing legislation bill. That is going to interfere with the prerogative of the employer." There was the belief that it was all right for someone to work for 30 years in a plant and then come down to that plant on a Friday afternoon and find out that they could not come back on Monday because the plant is going to close down. For 30 years that individual and that family may have been dependent on that plant. In other countries, workers were provided notification. But in America, employers did not have to provide notification to workers of a plant closing.

Well—we had a great debate here.

I remember when we tried to get cloture on it. We failed the first time, 58, I think, to 35 or 36. Interesting enough, after people cast that vote, 6 days later it was 88 to 5 in favor of it.

Why? Because finally as an institution we understood what was out there among the American people and that was the issue of fairness: fairness to working men and women in this country.

Fairness is part of our whole value system. We hear a lot of about our value system and we listen to many speeches made on that system. We have made clear that part of the value system of fairness for workers is to require notice if the employers are going to leave. Another part of our value system is that we believe that employers should not expose their workers to dangers in the workplace.

Where I come from, in Massachusetts, we used to go through those plants and factories. You try to shake hands with someone who had worked on a shoe machine. More often than not, three or four of their fingers were gone but they are still back there working. Or they had slogged around in the toxic substance on the floor of those plants. The acid would eat the sole off your shoe that night. That would make us think of what was happening to these workers breathing those poisonous gases.

We say we ought to be able to compete and still have a safe workplace free, to the extent we can, from industrial accidents and toxic substances. We say that people ought to work at a decent wage if they are prepared to work, to work hard. They ought to be free from the toxins of subsistence wages. That is economic justice. We say people ought to be notified if their employer is going to shut down so at least they are able to look for some other work opportunities. They should be notified of a plant closing becuase they have loyally worked for that particular plant over those many years.

This issue is a fundamental issue of economic justice, as important as many of those matters—in many instances even more so. It is because the workers have the right to engage in collective bargaining and in strikes that they are able to bring the issues of economic justice to the fore.

Mr. President, I look forward to the cloture vote tomorrow. I am convinced that if the American people truly understood the importance of this question with regards to economic justice, this would be an overwhelming vote. A majority of the American people do support this legislation as does a majority of this body.

This issue, as others, has been distorted and misrepresented. But I still am very hopeful that when the final toll is taken, this institution will follow that path when it has been at its best, and it will vote for economic justice for the American worker.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum can be rescinded.

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

Mr. COATS. Mr. President, S. 55 proposes sweeping changes in our Nation's labor law, overturning more than 50 years of experience and case law, and upsetting the fundamental economic balance Congress struck between labor and management when it passed the National Labor Relations Act—Wagner Act—in 1935.

Since the Mackay decision in 1938, the threat of business shutdowns has been tempered by the fact that strikers may be replaced. The National Labor Relations Act puts the players on equal playing field, guaranteeing employees that right to strike to enforce their bargaining demands while ensuring employers the ability to operate their businesses as best they can during a strike. Current law exposes both sides to risk.

The shared risk helps to drive the collective bargaining process which should be a shared goal in labor negotiations.

Proponents of this legislation argue that permanent replacements inhibit strikes and the effectiveness of strikes, and thus interfere fundamentally with the right to strike. It therefore seems to reason that if permanent replacements are banned we will be eliminating the only disincentive to strike, and may actually cause labor to look to strikes as the weapon of first choice rather than of last resort. Clearly this does not serve to foster meaningful negotiations or mutual compromise. If the outcome of a strike is guaranteed—Meaningful bargaining is virtually eliminated.

The problem facing labor and management today is not the level playing field in the collective bargaining process. It is the level playing field that will permit U.S. businesses to survive and to meet the challengers of global competition. If an employer cannot meet those challenges, then the question of where the balance of power is in an economic labor dispute is a moot point. If a business cannot compete, it does not pay wages or provide benefits or offer any semblance of employment security.

Employment security should be at the heart of this debate. What the bill's proponents fail to recognize is that most companies are far beyond the objectives of this bill in looking at the same issue. Talk to the most successful businesses in your State, and you will find that the hierarchical, authoritarian systems of the past are being abandoned and are being replaced by team concepts and total quality management.

There is a growing recognition that being a world class organization in today's economy requires every employee

of a company to take responsibility for the quality of the product which ultimately reaches the customer. It requires that every employee understand that high productivity and high quality at the lowest possible cost is essential to competitive success.

To accomplish this overriding goal, businesses—managers and workers—are coming to grips with the fact that the job security of any individual worker is not tied to the right to strike, but to the ability of his or her employer to adapt to an environment characterized by constant change. And the ability of an employer to adapt is, in turn, dependent in large measure on how well trained and skilled its work force is.

S. 55 is not a job security bill, although its sponsors may want to characterize it as such. Its passage would destroy, rather than enhance, job security. It would enable labor to shutdown permanently many small companies. Such companies are financially unable to cease production for a long period of time and are rendered especially vulnerable by S. 55. Most press accounts portray this situation as involving a large, impersonal, powerful company and a small, weak union. However, the reverse is often reality. The company is small and struggling for economic survival, and the union is large and powerful with many resources at their command. The loss of small companies would severely damage our national economy and add to our unemployment. The pain created would touch numerous individuals, families, and whole communities and would undercut companies' ability to compete in the international marketplace.

But even if we focus on the larger industries in the United States, I fail to see how passage of this legislation is in the interest of labor or management. If we look at two industries—steel and automotive—what we see are major restructuring efforts that seek to create cost controls that are vital for their long term viability.

We need legislation to keep Americans working. However, this bill would result in making American products far too expensive to compete against Europe and Japan—countries that reject our entire collective bargaining system—or anywhere else in the world. S. 55 would literally destroy this new spirit of efficiency in American business and put us at a competitive disadvantage that would be impossible to overcome.

Current law maintains the parity necessary to provide incentives for both labor and management to negotiate a settlement helpful to both parties and to the national economy. S. 55 disrupts this needed balance. Labor's incentive to negotiate is lessened by the awareness that they can remain on strike indefinitely and at some time in the future return to a job that by law must be held open for them. Management would have no choice but to give in to employee demands.

Mr. Chairman, not only does this bill threaten American competitiveness, the legislation would effectively punish those who fail to join a union or honor a picket line. Workers in this Nation are guaranteed the right to strike and the right not to strike. If those who choose to honor the right not to strike or the right to refrain from union membership are penalized by being displaced by those who choose to strike, the right not to strike is invalidated.

This bill is a solution in search of a problem. There is no evidence that the use of permanent replacements has become widespread in the 1980's. Between 1985 and 1990 only 3 out of 20 strikes involved the use of permanent replacements, and in these cases only a small number of workers were actually replaced. The hiring of permanent replacements is not widespread and thus does not need to be addressed by any bill.

Rather than create greater rifts between labor and management, ways must be developed to increase the partnership between the two. Each needs the other. The well-being of our Nation depends on their working as a team.

In 1965, the Warren Court stated:

> The right to bargain collectively does not entail any right to insist on one's position free from economic disadvantage. * * * The right to strike as commonly understood is the right to cease work—nothing more.

S. 55 works against the development of the needed cooperation and team work by destroying the incentives to create an environment where bargaining to meet both sets of needs is conducted.

S. 55 depends the divisions between these two groups who must learn to work in tandem in order to meet the new set of demands created by the global economy.

CLOTURE MOTION

Mr. FORD. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 the motion to proceed to Calendar No. 162, S. 55, a bill to amend the National Labor Relations Act to prevent discrimination based on participation in labor disputes.

Edward Kennedy, John Glenn, Barbara Boxer, Carl Levin, Russell D. Feingold, Ben Nighthorse Campbell, Carol Moseley-Braun, Jay Rockefeller, Pat Leahy, Don Riegle, Paul Simon, Daniel K. Akaka, Bob Graham, Howard Metzenbaum, Paul Wellstone, C. Pell.

MEASURES PLACED ON THE CALENDAR

The following measure was read the second time by unanimous consent and placed on the calendar:

S. 2205. A bill to amend the Social Security Act and the Internal Revenue Code of 1986 to provide improved access to quality long-term care services, to obtain cost savings through provider incentives and removal of regulatory and legislative barriers, to encourage greater private sector participation and personal responsibility in financing such services, and for other purposes.

MEASURES HELD AT THE DESK

The following resolution was read and ordered held at the desk:

S. Res. 240. Resolution honoring the United States 1994 World Cup soccer team.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of June 27, 1994, the following reports of committees were submitted on July 7, 1994:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 1170: A bill to amend the Mineral Leasing Act to provide for leasing of certain lands for oil and gas purposes (Rept. No. 103-303).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1897: A bill to expand the boundary of the Santa Fe National Forest, and for other purposes (Rept. No. 103-304).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

H.R. 1348: A bill to establish the Quinebaug and Shetucket Rivers Valley National Heritage Corridor in the State of Connecticut, and for other purposes (Rept. No. 103-305).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 1919: A bill to improve water quality within the Rio Puerco watershed and to help restore the ecological health of the Rio Grande through the cooperative identification and implementation of best management practices which are consistent with the ecological, geological, cultural, sociological, and economic conditions in the region (Rept. No. 103-306).

The following reports of committees were submitted on today, July 11, 1994:

By Mr. PELL, from the Committee on Foreign Relations, without amendment:

S. Res. 239. An original resolution expressing the sense of the Senate regarding conditions for continued United States participation under the Convention on Biological Diversity.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

By Mr. PELL, from the Foreign Relations:

Treaty Doc. 103-20 Convention on Biological Diversity (Exec. Rept. 103-30).

TEXT OF COMMITTEE-RECOMMENDED RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention on Biological Diversity, with Annexes, Done at Rio de Janeiro June 5, 1992, and Signed by the United States in New York on June 4, 1993, subject to the following understandings:

(1) The Government of the United States of America understands that Article 3 references a principle to be taken into account in the implementation of the Convention.

(2) It is the understanding of the Government of the United States of America with respect to provisions addressing access to and transfer of technology that:

(a) "fair and most favorable terms" in Article 16(2) means terms that are voluntarily agreed to by all parties to the transaction;

(b) with respect to technology subject to patents and other intellectual property rights, Parties must ensure that any access to or transfer of technology that occurs recognizes and is consistent with the adequate and effective protection of intellectual property rights, and that Article 16(5) does not alter this obligation.

(3) It is the understanding of the Government of the United States of America with respect to provisions addressing the conduct and location of research based on genetic resources that:

(a) Article 15(6) applies only to scientific research conducted by a Party, while Article 19(1) addresses measures taken by Parties regarding scientific research conducted by either public or private entities;

(b) Article 19(1) cannot serve as a basis for any Party to unilaterally change the terms of existing agreements involving public or private U.S. entities.

(4) It is the understanding of the Government of the United States of America that, with respect to Article 20(2), the financial resources provided by developed country Parties are to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures that fulfill the obligations of the Convention and to benefit from its provisions and that are agreed between a developing country Party and the institutional structure referred to in Article 21.

(5) It is the understanding of the Government of the United States of America that, with respect to Article 21(1), the "authority" of the Conference of the Parties with respect to the financial mechanism relates to determining, for the purposes of the Convention, the policy, strategy, program priorities and eligibility criteria relating to the access to and utilization of such resources.

(6) The Government of the United States of America understands that the decision to be taken by the Conference of the Parties under Article 21, Paragraph 1, concerns "the amount of resources needed" by the financial mechanism, and that nothing in Article 20 or 21 authorizes the Conference of the Parties to take decisions concerning the amount, nature, frequency or size of the contributions of the Parties to the institutional structure.

(7) The Government of the United States of America understands that although the provisions of this Convention do not apply to any warship, naval auxiliary, or other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service, each State shall ensure, by the adoption of appropriate measures not impairing operations or operation capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. PELL:

S. Res. 239. An original resolution expressing the sense of the Senate regarding conditions for continued United States participation under the Convention on Biological Diversity; from the Committee on Foreign Relations; placed on the calendar.

By Mr. THURMOND (for himself, Mr. GRASSLEY, Mr. HELMS, Mr. LAUTENBERG, Mr. DECONCINI, Mr. JOHNSTON, Mr. MATHEWS, Mr. BAUCUS, Mr. COVERDELL, and Mr. WOFFORD):

S. Res. 240. A resolution honoring the United States 1994 World Cup soccer team; ordered held at the desk.

ADDITIONAL COSPONSORS

S. 277

At the request of Mr. SIMON, the name of the Senator from Maryland [Ms. MIKULSKI] 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. 1208

At the request of Mr. WOFFORD, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 1208, a bill to authorize the minting of coins to commemorate the historic buildings in which the Constitution of the United States was written.

S. 1408

At the request of Mr. LOTT, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1408, a bill to repeal the increase in tax on Social Security benefits.

S. 2007

At the request of Mr. WOFFORD, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 2007, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the end of World War II and General George C. Marshall's service therein.

S. 2012

At the request of Mr. FEINGOLD, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 2012, a bill to amend the Civil Rights Act of 1964 and other civil rights laws to prohibit employers from requiring employees to submit claims relating to employment discrimination to mandatory arbitration.

S. 2120

At the request of Mr. INOUYE, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 2120, a bill to amend and extend the authorization of appropriations for public broadcasting, and for other purposes.

S. 2183

At the request of Mrs. HUTCHISON, the names of the Senator from Mississippi [Mr. LOTT], the Senator from South Carolina [Mr. THURMOND], the Senator from Florida [Mr. MACK], the Senator from Alabama [Mr. SHELBY], the Senator from Michigan [Mr. LEVIN], the Senator from South Dakota [Mr. DASCHLE], the Senator from Alabama [Mr. HEFLIN], and the Senator from Illinois [Mr. SIMON] 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. 2265

At the request of Mr. JOHNSTON, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 2265, a bill for the relief of Nguyen Quy An and his daughter, Nguyen Ngoc Kim Quy.

SENATE JOINT RESOLUTION 182

At the request of Mr. JOHNSTON, the names of the Senator from Virginia [Mr. WARNER] and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 182, a joint resolution to designate the year 1995 as "Jazz Centennial Year."

SENATE JOINT RESOLUTION 206

At the request of Mr. WOFFORD, the name of the Senator from Tennessee [Mr. MATHEWS] was added as a cosponsor of Senate Joint Resolution 206, a joint resolution designating September 17, 1994, as "Constitution Day."

SENATE RESOLUTION 239—ORIGINAL RESOLUTION REPORTED EXPRESSING THE SENSE OF THE SENATE REGARDING CONDITIONS FOR CONTINUED U.S. PARTICIPATION UNDER THE CONVENTION ON BIOLOGICAL DIVERSITY

Mr. PELL, from the Committee on Foreign Relations, Reported the following original resolution; which was placed on the calendar:

S. RES. 239

Resolved,

SECTION. 1. UNITED STATES PARTICIPATION UNDER THE CONVENTION.

It is the sense of the Senate that, in formulating United States participation under the Convention on Biological Diversity, the President should ensure that—

(1) any proposal for funding of United States participation under the Convention includes specific offsets within the United States budget to ensure the United States budgetary deficit is not increased;

(2) a restructured Global Environmental Facility is the financing mechanism referred to in the Convention;

(3) further decisions under the Convention provide adequate and effective protections for intellectual property and are not weaker than those provided under the General Agreement on Tariffs and Trade, under United States laws, or under the laws of other developed countries;

(4) the United States has received a vote in all institutions, organizations, and mechanisms created under the Convention that is commensurate with the level of United States assessed contributions under the Convention;

(5) the biological safety protocol is submitted to the Senate for its advice and consent to ratification; and

(6) United States contributions under the Convention are solely dependent upon appropriations by the United States Congress and is not bound by assessments of organizations created under the Convention.

SEC. 2. PRESIDENTIAL REPORT.

It is the sense of the Senate that the President should provide a report one year after the date of entry into force of the Convention, and every year thereafter, to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate outlining the status of United States participation under the Convention and specifically explaining the status of the following:

(1) The costs of United States participation under the Convention during the preceding one year period, and the total amount of projected expenditures under the Convention for the subsequent five year period.

(2) The financing mechanism and whether it includes a restructured Global Environment Facility.

(3) Whether decisions under the Convention provide adequate and effective protections for intellectual property and, specifically, whether those protections provided under the Convention are weaker than those protections—

(A) provided under United States laws,

(B) provided in other developed countries, or

(C) provided under the Uruguay Round of the General Agreement on Tariffs and Trade.

(4) Whether the United States has received a vote in all aspects of the furtherance of goals under the Convention that is commensurate with the level of United States assessed contributions under the Convention.

(5) The biological safety protocol and whether it was adopted in consultation with the United States Senate and the United States biotechnology industry.

SEC. 3. DEFINITION.

As used in this resolution, the term "Convention" means the Convention on Biological Diversity, signed in New York on June 4, 1993.

SENATE RESOLUTION 240—HONORING THE U.S. 1994 WORLD CUP SOCCER TEAM

Mr. THURMOND (for himself, Mr. GRASSLEY, Mr. HELMS, Mr. WOFFORD, Mr. LAUTENBERG, Mr. DECONCINI, Mr. JOHNSTON, Mr. MATHEWS, Mr. BAUCUS, and Mr. COVERDELL) submitted a resolution, which was read and ordered held at the desk:

S. RES. 240

Whereas soccer is the faster growing team sport in the United States;

Whereas approximately 15,000,000 Americans participate in organized soccer;

Whereas both men and women play soccer;

Whereas soccer promotes sportsmanship and mutual admiration based on the talents, skills and determination of the players, regardless of a person's race, gender, sex, national origin, or socioeconomic background;

Whereas the United States is the host country of the 1994 World Cup soccer tournament;

Whereas approximately 31,000,000 people in the world will view the 1994 52-game World Cup soccer tournament;

Whereas the United States qualified for the Fédération International de Football Association (FIFA) World Cup in 1930, 1934, 1950, 1990, and 1994;

Whereas in 1991, the United States women's soccer team made history by winning the Inaugural Fédération Internationale de Football Association Women's World Championship in China;

Whereas, Tony Meola, Mike Lapper, Mike Burns, Cle Kooiman, Thomas Dooley, John Harkes, Hugo Perez, Ernie Stewart, Tab Ramos, Roy Wegerle, Eric Wynalda, Juergen Sommer, Cobi Jones, Frank Klopas, Joe-Max Moore, Mike Sorber, Marcelo Balboa, Brad Friedel, Claudio Reyna, Paul Caligiuri, Fernando Clavijo, and Alexi Lalas are members of the United States 1994 World Cup soccer team;

Whereas Bora Milutinovic is the head coach of the United States 1994 World Cup soccer team;

Whereas the United States 1994 World Cup soccer team staff consists of general manager Bill Nuttall, assistant coach Timo Liekoski, assistant coach Steve Sampson, assistant coach Sigi Schmid, goalkeeping coach Milutin Soskic, team administrator Renato Capobianco, press officer Dean Linke, trainer Ander Rudawsky, assistant trainer Hughie O'Malley, equipment manager Brian Fleming, assistant press officer Aaron Heifetz, press liaison Lisa Higgins, and team doctor Bert Mandelbaum, M.D.; and

Whereas the United States 1994 World Cup soccer team has represented America honorably and in the best spirit of America: Now, therefore, be it

Resolved, That the United States Senate commends the United States 1994 World Cup soccer team for its participation and outstanding efforts in the 1994 World Cup soccer tournament.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for my colleagues and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on S. 2151, a bill to direct the Secretary of the Interior to convey certain lands to the State of California, and for other purposes.

The hearing will take place on Tuesday, July 19, 1994, at 9:30 a.m. in room SD-366 of the Dirksen Senate Office Building, First and C Streets, NE., Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: Mr. Sam Fowler.

For further information, please contact Sam Fowler of the committee staff at 202/224-7569.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON WATER AND POWER

Mr. BRADLEY. Mr. President, I would like to announce for my colleagues and the public that a hearing has been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on the following bills pending before the subcommittee:

S. 2253, to modify the Mountain Park Project in Oklahoma, and for other purposes;

S. 2262, to amend the Elwha River Ecosystem and Fisheries Restoration Act; and

S. 2266, to amend the Recreation Management Act of 1992.

The hearing will take place on Wednesday, July 27, 1994, at 2 p.m. in room SD-366 of the Dirksen Senate Office Building, First and C Streets, NE., Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit a written statement for the printed hearing record is welcome to do so. Please send your comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC, 20510, Attention: Leslie Palmer.

For further information, please contact Dana Sebren Cooper, counsel for the subcommittee at (202) 224-4531 or Leslie Palmer at (202) 224-6836.

ORDER TO RECESS

Mr. FORD. Mr. President, I ask unanimous consent that at the conclusion of the remarks of Senators THURMOND and SPECTER, the Senate stand in recess as ordered.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL LABOR RELATIONS ACT AND RAILWAY LABOR ACT AMENDMENTS

MOTION TO PROCEED

Mr. THURMOND. Mr. President, I rise today to strongly oppose S. 55, the Striker Replacement Act.

This legislation could paralyze one of the very fundamental cornerstones of our country—the free market. S. 55 fundamentally alters over 50 years of labor law by shifting the existing labor-management balance of power to favor big labor and unions. It would guarantee workers that they cannot lose their jobs during a strike, and would prohibit employers from hiring permanent replacement workers in certain circumstances. In short, it takes the risk out of striking.

S. 55 runs directly counter to the underpinnings of current law, which encourages negotiations and conciliation. Employers come to the bargaining table with the knowledge that their employees have the right to strike which could cause them losses in profits and market share and could ultimately put them out of business. At the same time, employees come to the bargaining table knowing that if they do strike they may be replaced. These weapons available to both sides provide a strong incentive for both parties to negotiate in good faith and resolve their differences without resorting to strikes or replacements.

Unfortunately, the proponents of this bill want to change this level playing field. They would have us believe that the mere threat of replacement completely nullifies the power of a strike. They would also have us believe that union employees are helpless victims of oppressive management with no power to negotiate wages or benefits. Mr. President, I seriously doubt the AFL-CIO, the United Auto Workers' Union, or the National Education Association feel powerless when they are at the bargaining table.

Mr. President, I have heard from numerous constituents in my home State on the striker bill, and they are very concerned about its detrimental impact. I want to take a few minutes to read from portions of some of these letters. This letter is from Nils W. Lindbloom III, President of The Tool Shed, Inc. of Greenville, SC. He says:

DEAR MR. THURMOND. I own a tool store in Greenville, SC and though I've lived here since 1977, I grew up in the steel mill towns of the Midwest (Gary, Cleveland, Pittsburgh). I know personally how unions can negatively affect business as I was threatened by fellow union workers to slow down my rate of work, because I was exceeding the expected production.

Unions were originally established to protect employees from employer abuses such as child labor, sweat shops, etc., but now the unions run industry and in the long run will continue to hurt the U.S. in the global economy. Let's face it, millions of unemployed people in this land who want to work would love to drive a truck from point A to point B and do so safely for far less than $20 per hour. If I can find someone who can do it for less, I should be allowed to hire whom I choose (isn't that free enterprise)?

Let the strikers start their own businesses, risk capital, work 70 hour weeks and educate themselves in their spare time if they want to a make a greater income.

Now you have before you The Strike Bill (S. 55) which will promote more labor/management conflicts and give you unions unfair bargaining leverage. This legislation will give unions unfair advantages in organizing and collective bargaining. There will be increased strike activity if this legislation is enacted and this will lead to disruption of all chains of distribution dependent on the other.

I urge you to vote NO on cloture, NO on the Strike Bill and vote NO on any amendment or compromise.

Now, this next letter is from Jim McDonald, Director of Human Resources, BI-LO. He said:

S. 55 would * * * force employers to accept unreasonable union contract demands because they have no other way to continue operations.

That is just an excerpt from his letter.

Another letter from the American Furniture Manufacturers Association from Joseph G. Gerard. An excerpt is:

It is also important to note that the legislation is counterproductive to economic stability and job creation. It is ironic that at a time when Congress and the Administration are exploring ways to cut the budget deficit and create more jobs, a bill is being considered that would breed strikes, destroy business operations and create economic uncertainty.

An excerpt from another letter. And this is from Lockheed Aeronautical Systems Co.:

As you know, S. 55 would destroy the employer/employee balance, which has well served the collective bargaining process for decades, by removing all risk for unions in a strike situation. Current labor law prohibits the hiring of permanent replacement workers in strikes over unfair labor practices—but S. 55 would extend that prohibition to strikes arising out of economic issues. Such an extension would remove the major incentive for unions to negotiate and settle economic disputes, increasing the likelihood of more frequent and/or lengthy strikes with the attendant costs to business, Government and society in terms of competitiveness, lost jobs, and business failures/relocations.

In over 50 years of collective bargaining with the International Association of Machinists and Aerospace Workers Lockheed has never used replacement workers. However, passage of this measure could severely jeopardize future negotiations both by Lockheed and other employees, threatening the overall stability, competitiveness, strength, and productivity of business in the United States.

Another letter from the National Council of Agricultural Employers:

Although many agricultural employees are not covered by the National Labor Relations Act, the bill would have a serious impact on our ability to bring our products to market. A strike against a grain handling and milling company, a trucking company, a food processing or packaging company, a grocery concern or restaurant ultimately injures those who provide the food itself. If we can't get that food or agriculture commodity to the consumer, we may as well not produce it.

Another except from the same letter.

Without the right to hire permanent replacement workers, a harvest time strike leaves no option but to accept economically unreasonable union demands or face financial ruin.

Another letter from International Paper:

At our paper mill in Georgetown—

That is Georgetown, SC—

we are the largest private employer in the county and we have a strong, positive working relationship with our employees.

The passage of this bill would lead to more strikes and a decline in U.S. productivity. By forcing an employer to shut down during a strike, it creates greater potential for a company never to go back into business. The paper industry is a global market and this bill will give the advantage to our foreign competitors.

That is signed by George E. Payton, the manager of human resources, International Paper.

I also wish to point out that over 100 associations and organizations—representing a wide variety of interests—oppose this bill. Some of these include: the U.S. Chamber of Commerce, the Business Roundtable, the National Federation of Independent Businesses, the American Small Businesses Association, the Associated Builders & Contractors, the American Feed Industry Association, the National Association of Home Builders, Citizens for a Sound Economy, and many, many more.

Mr. President, in the Mackay Radio case in 1938, the Supreme Court ruled that when faced with an economic strike, an employer may carry on its business with replacement workers. The Court made clear that at the end of the strike, the employer is not required to displace any working employee that had attained permanent status.

The Supreme Court reaffirmed this decision in 1990 in the Curtis Matheson case. Once again, the Court stated that an employer is not required to discharge permanent replacement workers, to make room for returning strikers. Rather, the employer must only reinstate strikers as vacancies arise. Furthermore, the employer may not discriminate on the basis of union activity in determining which returning strikers to reinstate. The employer must base all reinstatement decisions upon nondiscriminatory factors such as skill or ability. As is evident, there are reasonable protections for strikers under existing law, and there are provisions for reinstatement as vacancies occur.

I will not repeat the entire history of the Mackay doctrine, except to point out that since that decision in 1938, neither the Supreme Court nor Congress has attempted to upset the balance of powers established—until now.

Mr. President, this legislation has been renamed the "Workplace Fairness Act." Fairness for whom? Obviously it is not fair for American business and those who support it. It is not fair to those workers who continue to operate during a strike. It is not fair to the American consumer.

This selected title is not only misleading it is downright deceptive. It implies that the employer is engaged in some form of unfair labor practice. If that is the case, then there is no reason to proceed further with this legislation. It is already unlawful for an employer to permanently replace a worker who is striking due to unfair labor practices.

Under present law, the employer who chooses to use permanent replacements during an economic strike operates under a heavy obligation to insure full compliance with the provisions of the National Labor Relations Act or else an economic strike will be declared an unfair labor strike. Therefore, the employer must insure that it takes no steps or engages in no activity which could convert the economic strike into an unfair labor practice strike.

We must keep in mind that employing replacements is simply not an attractive tool for anything other than to keep the business in operation while the parties put their proposals to the test of a strike. In making judgments on how or whether to continue operations during a strike, management factors into the equation the very real economic costs of replacements in recruiting, hiring, and training. It factors in morale costs such as the possible damage to the collective bargaining relationship that will result from the determination to use replacement workers. Current law puts very significant restrictions on the recruitment of replacements and on what management can offer to replacements. Current law also imposes significant penalties, such as back pay liability, on employers who violate these restrictions.

I would like to address a few arguments that the proponents of this legislation have raised surrounding this issue.

First, the proponents maintain that "a strike is evidence that everything has gone awry, that management has failed." They place the entire responsibility of a strike on the back of management. I wonder if the proponents of S. 55 ever think unions make unreasonable bargaining demands. I wonder if they have ever seen a strike they did not like.

Second, proponents gleefully argue that no other industrialized Nation engaging in rapid productivity growth allows permanent replacements. This simply is not true. Many industrialized countries permit employers to hire permanent replacements, including Australia, Austria, Hong Kong, Ireland, Norway, and the United Kingdom.

These proponents also frequently cite Germany and Canada as exemplary countries that do not permit permanent replacements. In fact, a majority of Canadian provinces, including Alberta, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, and Saskatchewan, permit employers to hire permanent replacements. In Germany, unions may not make unreasonable bargaining demands that would grievously wound an employer. I doubt the proponents of this bill would support such a provision in American labor law. The merits of our system far exceed that of other foreign countries.

I wish those who cite other nations as such great states would stop bashing our workers. That is exactly what they are doing. It has been proven time and again that our employees produce more than any other in the world.

The proponents say they are only doing it to help our workers. However, I fail to see our workers leaving in droves to go to these utopian work places. Instead, I see our immigration services having to go to a lottery to allow others willing to work in our great Nation.

Are those who support this bill so shortsighted that they fail to see that an increase in strikes actually harms the business that cannot continue to efficiently produce and it harms the overall economy?

Finally, proponents of this bill would have us believe that the use of permanent replacements became a standard practice during the 1980's, and that Ronald Reagan was the first to ever contemplate the use of permanent striker replacements. This simply is not supported by the data. In a recent report by the General Accounting Office [GAO] requested by the bill's sponsors, the GAO found that, in 1985, only 4 percent of striking employees were replaced by Mackay case replacements. This decreased to 3 percent in 1989. The GAO data even includes as permanent replacements those strikers who returned or will return to their jobs either as a result of vacancies, a strike settlement, or a National Labor Relation Board order in the case of an unfair labor practice strike. The GAO study clearly demonstrates that this practice is not widespread.

Proponents of this bill would also have us condemn President Reagan for using permanent replacements in 1981 during the air traffic controllers strike. I would remind my colleagues that the PATCO strike which we have heard so much about in this debate was an illegal strike. Those PATCO employees decided to strike. Thereby putting American lives at risk. This was in direct violation of the law, and those who would make their actions heroic are simply condoning criminal activity.

Mr. President, the whole point of this legislation is to prop up the unions. The proponents see the decline in organized labor—their political supporters—and they want to keep it alive.

The chairman of the Subcommittee on Labor admits this fact when he stated that "the future of the American labor movement depends on restoring the right to strike as an effective economic weapon." Again, it is already unlawful for an employer to permanently replace a worker who is striking due to unfair labor practices. The effective economic weapon the chairman refers to is the ability of organized labor to drive our entrepreneurs to their knees during a strike which has no consequences to the employee.

The existing collective bargaining climate represents an appropriate and acceptable balance between labor and management. It has generally resulted in equitable contracts and relative labor peace. Any change in this current structure, in the absence of compelling need, is unwarranted. The proposed legislation would guarantee workers that they cannot lose their jobs during a strike, and would prohibit employers from hiring permanent replacement workers. This bill will have very negative effects on the general public and on all of the parties engaged in collective bargaining—not only on the picket line, but also at the bargaining table. I strongly urge my colleagues to oppose S. 55.

Mr. President, I ask unanimous consent that copies of the letters I previously referenced appear in the RECORD immediately following my remarks.

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

THE TOOL SHED, INC.,
Greenville, SC, April 26, 1994.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR MR. THURMOND: I own a tool store in Greenville, SC and though I've lived here since 1977 I grew up in the steel mill towns of the Midwest (Gary, Cleveland, Pittsburgh).

I know personally how unions can negatively affect business as I was threatened by fellow union workers to slow down my rate of work, because I was exceeding the expected production.

Unions were originally established to protect employees from employer abuses such as child labor, sweat shops, etc., but now the unions run industry and in the long run will continue to hurt the U.S. in the global economy. Let's face it, millions of unemployed people in this land who want to work would love to drive a truck from point A to point B and would do so safely for far less than $20 per hour. If I can find someone who can do it for less I should be allowed to hire whom I choose (isn't that free enterprise)?

Let the strikers start their own businesses, risk capital, work 70 hour weeks and educate themselves in their spare time if they want to make a greater income.

Now you have before you The Strike Bill (S. 55) which will promote more labor/management conflicts and give unions unfair bargaining leverage. This legislation will give unions unfair advantages in organizing and collective bargaining. There *will* be increased strike activity if this legislation is enacted and this will lead to disruption of all chains of distribution dependent on the other.

I urge you to vote *NO* on cloture. NO on the Strike Bill and vote *NO* on any amendment or compromise.

Sincerely,

NILS W. LINDBLOOM III,
President.

DIXIE-NARCO,
Williston, SC, April 26, 1994.

Hon. STROM THURMOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR THURMOND: I understand that a vote on S. 55, the "Workplace Fairness Act," may come up soon in the Senate. We at Dixie-Narco again urge you to oppose this bill in any form.

By prohibiting employers from granting permanent replacement status to individuals who work during a strike, this bill upsets the delicate balance in labor law that has prevailed for five decades. It does this by removing the main risk strikers—the possibility that their employer could operate with permanent replacements. If this bill becomes law, it would greatly encourage strikes and would fundamentally alter labor-management relations. If these long-established principles of fairness are overturned, Dixie-Narco will be faced with higher costs and a diminished ability to compete in international markets.

You should be aware that this bill would allow unions to call risk-free strikes over almost any issue. In addition, companies like Dixie-Narco and our 850 union-free South Carolina employees will be affected by this bill in two ways: first, the resulting strikes against our unionized suppliers will eventually affect our ability to run our business; and second, this bill can only support the illusion fabricated by union organizers that unionization equals job security—raising the odds of a successful union organizing campaign in our Williston facility.

The favorable labor climate in South Carolina was a big factor in Dixie-Narco's 1989 decision to relocate to Williston, and we have been proud to be among the Governor's Award winners as a top job creator ever since. S. 55 represents a direct threat to the position from a Federal level. Labor organizers already operate on bushels of false promises—always promising to get more—even though they know they can't deliver anything that a company won't agree to give. Why give them yet another means of creating false hopes? Why tip the balance to such an absurd degree?

BI-LO, INC.,
Mauldin, SC, April 29, 1994.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: I am the Director of Human Resources at BI-LO, Inc., which employs over 17,000. I am writing you to urge you to vote against S. 55 anti-striker replacement legislation.

Over the past fifty years, federal labor law has crafted a delicate balance between employers and employees in labor negotiations which encourages both parties to settle their disputes at the bargaining table, not through disruptive tactics. S. 55 would effectively eliminate this balance and force employers to accept unreasonable union contract demands because they have no other way to continue operations.

Because S. 55 eliminates risk for both sides to find an accord in labor disputes the bill would substantially increase the number of strikes, adversely affecting the overall economic performance of the nation. Current labor law places a risk on both employers and employees for failing to reach an accord in a labor dispute. Employers risk the cost of losing valuable, skilled workers and incurring excessive costs during a strike to hire replacements. Unions risk the loss of jobs for their members. This bill, S. 55, would remove the risk to Unions for their failure to reach an agreement.

S. 55 would also harm innocent employees within the affected companies who have no dispute with the employer. They may permanently lose their jobs when employers are forced to shut down in the face of unreasonable demands for increased wages and benefits.

The true impact of S. 55 is contrary to the goal of the President's economic plan to restore and strengthen the nation's economy. I urge you to VOTE AGAINST S. 55, to support a filibuster of the bill and to accept no compromise. No compromise would be acceptable on this issue, because any changes made in the Senate version would no doubt be lost when House and Senate representatives meet to finalize the legislation.

Sincerely,

JIM MCDONALD,
Director of Human Resources.

AMERICAN FURNITURE
MANUFACTURERS ASSOCIATION,
Washington, DC, May 2, 1994.

MEMORANDUM

To: All Members of the U.S. Senate.
From: Joseph G. Gerard.
Subject: AFMA Key Vote—S. 55, Striker replacement legislation.

The American Furniture Manufacturers Association (AFMA) is the largest furniture industry trade association in the United States. Over eighteen billion dollars in sales are produced annually by domestic furniture manufacturers, and sales by AFMA member companies make up the vast majority of that figure. Also, the AFMA members have home offices or facilities in almost every state and employ approximately 500,000 workers.

I am writing to express my strong opposition to any supposed "compromise" on S. 55, the striker replacement legislation. The vote on S. 55 will be an AFMA key vote for this election cycle.

The AFL-CIO is pushing for provision that would ban the use of replacement workers for four to 10 weeks following the start of a strike. Calling such a moratorium a "cooling off period" is preposterous—the only side doing the "cooling" is the business forced to shut down! The "compromise" would avoid a few strikes since most strikes last less than 10 weeks. And short strikes for highly competitive businesses like the American furniture manufacturing industry are devastating because most of the industry is comprised of small companies with very narrow profit margins.

Even with the supposed "compromise" S. 55 would play havoc with industry by overturning 50 years of labor law precedent that permits employers to replace economic strikers. By removing the risk that they may be replaced, even for shorter strikes, workers would have little incentive to bargain in good faith.

It is also important to note that the legislation is counterproductive to economic stability and job creation. It is ironic that at a time when Congress and the Administration are exploring ways to cut the budget deficit and create more jobs, that a bill is being considered that would breed strikes, destroy business operations and create economic uncertainty.

I strongly urge you to oppose striker replacement legislation and any sham compromise!!

LOCKHEED AERONAUTICAL SYSTEMS CO.,
Charleston, SC, May 2, 1994.

Hon. STROM THURMOND,
U.S. Senate, Russell Senate Office Bldg, Washington, DC.

DEAR SENATOR THURMOND: I am writing on behalf of Lockheed to express our strong opposition to S. 55, the Striker Replacement bill. Your past opposition is appreciated, and I urge you to maintain this position as the issue comes before the Senate again in the next few weeks, where it faces a likely filibuster.

As you know, S. 55 would destroy the employer/employee balance, which has well served the collective bargaining process for decades, by removing all risks for unions in a strike situation. Current labor law prohibits the hiring of permanent replacement workers in strikes over unfair labor practices - but S. 55 would extend that prohibition to strikes arising out of economic issues. Such an extension would remove the major incentive for unions to negotiate and settle economic disputes, increasing the likelihood of more frequent and/or lengthy strikes with the attendant costs to business, government, and society in terms of competitiveness, lost jobs, and business failures/relocations.

In over 50 years of collective bargaining with the International Association of Machinists and Aerospace Workers, Lockheed has never used replacement workers. However, passage of this measure could severely jeopardize future negotiations both by Lockheed and other employers, threatening the overall stability, competitiveness, strength, and productivity of businesses in the United States.

I respectfully urge you to vote "NO" on any compromise, "NO" on cloture, and "NO" on S. 55. Thank you for your consideration.

Sincerely,

BLAIR MADDOCK,
Charleston Plant Manager.

NATIONAL COUNCIL
OF AGRICULTURAL EMPLOYERS,
Washington, DC, May 3, 1994.

Hon. STROM THURMOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR THURMOND: We the undersigned agricultural organizations are writing in strong opposition to S. 55, the Cesar Chavez Workplace Fairness Act, which would prevent employers from operating during a strike by hiring permanent strike replacements. We would also oppose any so-called "compromise" that may be offered to this bill, since any change in current law would alter the necessary balance between labor and management.

Although many agricultural employees are not covered by the National Labor Relations Act, the bill would have a serious impact on our ability to bring our products to market. A strike against a grain handling and milling company, a trucking company, a food processing or packaging company, a grocery concern or a restaurant ultimately injures those who provide the food itself. If we can't get that food or agricultural commodity to the consumer, we may as well not produce it.

Those of us involved in the production and processing of food are especially susceptible to strikes. History has shown that a well placed strike at a food processor/canner during the peak of harvest places both the grower and processor in a disastrous position. Because of the perishability of many agricultural commodities, a strike at a packing or processing facility places the entire crop and

livelihood of the grower and packer/processor at risk. Without the right to hire permanent replacement workers, a harvest-time strike leaves no option but to accept economically unreasonable union demands or face financial ruin.

We urge the Senate to forego any further consideration of this damaging legislation.

National Council of Agricultural Employers.
American Farm Bureau Federation.
Agricultural Affiliates.
Agricultural Producers.
Agricultural Retailers Association.

INTERNATIONAL PAPER,
Georgetown, SC, June 14, 1994.

Hon. STROM THURMOND,
217 Russell Building, Washington, DC.

DEAR SENATOR THURMOND, the striker replacement bill, to be discussed on Thursday, is an important issue to International Paper. I request that you continue to oppose this bill and do what is possible to keep this bill from passing.

At our paper mill in Georgetown, we are the largest private employer in the county and we have a strong, positive working relationship with our employees.

The passage of this bill would lead to more strikes and a decline in U.S. productivity. By forcing an employer to shut down during a strike, it creates greater potential for a company never to go back into business. The paper industry is a global market and this bill would give the advantage to our foreign competitors.

Vote against the striker replacement bill.

GEORGE E. PAYTON,
Manager Human Resources.

COOPER INDUSTRIES,
Greenwood, SC, April 25, 1994.

Senator STROM THURMOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR THURMOND: As an employer of 200 employees of Cooper Power Systems' Greenwood Capacitor Products plant, I am writing to express strong opposition of S. 55, the striker replacement bill. In our view, this measure is unwarranted and will fundamentally change core principles of U.S. labor law. It will overturn more than 55 years of well-settled legal precedent and, in the end, lead to more strikes.

National labor policy, beginning with the Wagner Act of 1935, balances the rights of employers and employees. Unlike many of our international competitors, American workers have the unconditional right to strike. The Wagner Act also contemplated that employers could continue operations during economic strikers using permanent replacements, which was affirmed by the Supreme Court in 1938. This balance has encouraged successful negotiations and served the interests of employers, employees and the nation for more than half a century.

As written, S. 55 removes all risks to unions in a strike situation. Employers, on the other hand, would no longer have any effective recourse to strikes other than to accede to a union's demands or cease operations. Looking to the experience of Canada, where some provinces ban the use of permanent replacement workers, we believe S. 55 would lead to longer, more frequent strikes in the United States. A University of Toronto study in 1989 found that in provinces that prohibited striker replacement, the strikes were of greater frequency and duration than in other provinces.

The use of replacement workers has been relatively rare. The General Accounting Office and International Labor Organization concede there is no data to support the conclusion that replacement workers are frequently being used to resolve labor disputes.

We believe in fairness but feel that S. 55 would only benefit the less than 12 percent of workers represented by unions at the expense of the majority of employees and employers. A Congressional mandate that unions win every strike will unfairly advantage union organizing efforts. Accordingly, we respectfully urge you to vote "NO" on cloture, "NO" on any compromise, and "NO" on S. 55.

Sincerely,

R. G. ROCAMORA,
General Manager, Capacitor Products.

WINN DIXIE,
Greenville, SC, April 28, 1994.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: As you are aware, Senate Bill 55 has been introduced in the Senate which will lead to more strikes, resulting in increased unemployment and community disruption. This legislation is designed to make the strike a lethal weapon, tilting the balance at the bargaining table. At a time when job creation and economic growth are our nation's top priorities, it makes no sense to adopt a policy that will cost jobs and stifle growth.

As an employer in South Carolina, I urge you to work toward the defeat of Senate Bill 55.

(1) Vote no on the Striker Replacement Bill—This is a crucial issue that will affect the business environment and economy for years to come.

(2) Vote No on Cloture—The cloture votes will be the key votes on this bill. If you oppose the bill, you must vote No on Cloture.

(3) Vote No on any political compromises—Phony Compromises suffer from the same faults as the bill itself. The House has already passed the bill, and it is doubtful any compromise would survive the House-Senate Conference.

We appreciate your help in defeating Senate Bill 55.

Sincerely,

D.L. WHITFORD.

PEPPERIDGE FARM INC.,
Aiken, SC, April 7, 1994.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: Once again, Pepperidge Farm, Inc. urges that you vote NO on cloture and NO on final passage of S. 55, the Striker Replacement Bill. Pepperidge Farm is well aware the Senate is preparing to vote on this legislation, whether as a stand-alone measure or as an amendment to other legislation awaiting Senate approval. Pepperidge Farm, which manufactures Premium Baked Goods, has strongly opposed this legislation in the past and will continue to do so in any form!

For the wholesale baking industry, the issue is abundantly clear—if union employees have the right to leave their jobs over unresolved economic issues, then the employer has every right to protect the economic interests of the company and its shareholders by hiring permanent replacement employees. The option of using permanent replacements is every bit as essential to the nation's labor policy as the right of employees to strike. This change in the current "balance of power" between labor and management would render employers virtually helpless in the face of unreasonable union demands. The basic structure of labor-management relate as has worked well for more than 50 years. The baking industry's reasons for vehemently opposing a dramatic shift in that structure are clear, employer rights, like employee rights MUST be protected. As the Supreme Court said in 1938, "The right to strike is not unconditional. It must be balanced with the employer's right to stay in business."

Pepperidge Farm urges you to think carefully about the long-term ramifications of this legislation by opposing S. 55 in any form and voting NO on cloture.

Sincerely,

ERNEST R. ALLEN,
Plant Manager.

PYA/MONARCH, INC.,
April 21, 1994.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: I am writing on behalf of PYA/Monarch, Inc. to express our strongest opposition to the Striker Replacement Bill, S.55. If enacted this legislation will have a devastating effect no only on my company, but on the food distribution industry as a whole.

Our labor laws recognize two equal rights: my workers' unconditional right to strike and my company's right to stay open during a strike by hiring permanent replacement workers. The Striker Replacement Bill would destroy that balance by removing all risks for workers in a strike situation. My company, on the other hand, would no longer have any effective recourse to strikes other than to give in to workers' demands or shut down operations.

A "risk-free" strike bill would encourage employees to strike first and negotiate later, resulting in more strikes and more businesses closing their doors. The bill is a serious threat to my company. It would make us less competitive and would have a ripple effect on my non-striking customers, suppliers, workers, and also consumers.

I strongly urge you to oppose the Striker Replacement Bill. Please contact me if you have any questions.

Sincerely,

JAMES R. CARLSON,
President and CEO.

BURLINGTON MENSWEAR,
Bishopville, SC, April 26, 1994.

Re Opposition to S.55, striker replacement legislation.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: It is my understanding that the so-called Striker Replacement Bill (S.55) could be considered by the Senate at any time. I am very much opposed to this legislation because it removes the current balance that exists in collective bargaining and provides unions with virtual immunity to job loss should they strike. Employers would be left with the choice of giving in to a union's demands or going out of business.

Further, there is ample evidence from studies of countries where such laws exists that they contribute to more and longer strikes. How can a law which would cause this to happen be good for our country's economy? Clearly, it wouldn't.

Please do not support the above bill or allow any "compromise" bill to reach a conference committee where it can then be revitalized. This is bad law in any form.

Very truly yours,

WILLIAM R. HILL.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER], is recognized.

THE NOMINATION OF JUDGE STEPHEN BREYER TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on the nomination of Judge Stephen Breyer for the Supreme Court of the United States. I am advised that we will not have opening statements tomorrow, so I thought it worthwhile to make a few comments this evening on that subject.

I have awaited a quorum call most of the afternoon, and the Senate was virtually in continuous business. I understand the hour is late and I shall be relatively brief, but I think these are important remarks.

In my view, the Senate has no duty which is more important than the confirmation of Supreme Court justices, and that is true because with so many 5 to 4 decisions, that fifth vote has enormous impact on every man, woman, and child in the United States and, very frequently, it has great impact on people around the world.

That fifth swing, deciding justice, for that case has much greater power than the President of the United States, where there are many checks and balances on what the President does. The President serves for 4 years, or perhaps 8, but the Supreme Court justices serve much longer—several decades, in many, many instances. So their confirmation is of great importance.

When the Constitution was drafted, the first article was devoted to the Congress; the second article was devoted to the executive branch, the President; and the third article was devoted to the judiciary. Since Marbury versus Madison was decided by the Supreme Court of the United States in 1803, the judiciary has been supreme. The judiciary has the final word, on a constitutional issue, that is it, in the absence of a constitutional amendment, which is very hard to enact. Even on nonconstitutional issues, the word of the Supreme Court is virtually the last word, although Congress may, but frequently does not, act.

The power of the Supreme Court has become even more important in an era of much judicial legislation, far beyond the traditional concept of the judicial role of interpreting the law. In many ways, the Supreme Court of the United States has become a super legislature. This is of enormous importance in an era in which many cases come before the court where new concepts of constitutional law are engrafted that have not been provided for either by the Founding Fathers in intent or on the face of the document. This really constitutes public policymaking by the Supreme Court.

In the United States today, the crime problem is of overwhelming importance. That proposition needs no amplification or embellishment. The death penalty is a very important deterrent to crime. More than 70 percent of the American people favor the death penalty. When the issue comes before this body, characteristically, 70-plus Senators vote in favor of it. But in case after case, there is engrafted by the Supreme Court new constitutional rules which are not found on the face of the document, and are not derived from the Founding Fathers' intentions, but are really matters of public policy.

We have vital interests, vital concerns on war powers. The Constitution vests the sole authority in the Congress of the United States to declare war. Yet, we see where there are conflicts which amount to wars, and it is very hard to get answers from the nominees when their confirmation is virtually assured on the appropriate meaning of the constitutional power to declare war or on any other question put to nominees.

It has been apparent in the 14 years that I have been present—and tomorrow will mark the ninth Supreme Court confirmation since my election in 1980, that nominees for the Supreme Court of the United States answer as many questions as they really feel compelled to in order to be confirmed. When the nomination or confirmation of a nominee is virtually assured, it is very hard to get answers from the nominees. When Judge Scalia, now Justice Scalia, appeared before the Judiciary Committee, he would not answer even basic questions as to whether the decision in Marbury versus Madison was established constitutional law and not subject to challenge. When Justice Rehnquist, now Chief Justice Rehnquist, appeared before the Judiciary Committee, he would not respond to questions as to whether the Congress could take away jurisdiction of the Supreme Court on constitutional issues.

A staff member on the Judiciary Committee acquainted me with an article written by William Rehnquist in the Harvard Law Record in 1958, long before William Rehnquist became a Supreme Court justice, in which he wrote that nominees should answer questions put to them by the Senate. When confronted with that article, he answered a few questions. He finally would answer a question saying that the Congress could not take away the jurisdiction of the Supreme Court on first amendment issues. And then he was asked about the fourth amendment and declined to answer; the fifth amendment, declined to answer; the sixth amendment, declined to answer. Then he was asked why he had answers to the first amendment and none on the fourth, fifth, and sixth. Again, he declined to answer.

Judge Souter, now Justice Souter, appeared before the Judiciary Committee and was asked questions relating to the critical constitutional questions of the authority of Congress to declare war contrasted with the President's authority as Commander in Chief, and I asked whether the Korean conflict was a war within the meaning of the Constitution, and Judge Souter declined to answer. The general rule is that a Senator can ask any question he or she chooses, and the nominee has the standing to decline to answer any question, but the one line which is out of bounds, perhaps, is to ask a question on a case which may come before the Court.

The Korean conflict case could not possibly come before the Court. In order to get some idea as to the thinking of Judge Souter on a very critical question that the Supreme Court of the United States may have to arbitrate between the Congress' authority to declare war versus the President's authority as Commander in Chief, that is a question which this Senator thought ought to be answered. But Judge Souter did not think so.

Last year, when Judge Ginsburg, now Justice Ginsburg, appeared before the Judiciary Committee, a number of Senators commented on how few questions she answered. When I asked her about the death penalty and whether she had any conscientious scruples against it, she in effect told me it was none of my business and none of the Senate's business. The issue of whether a juror has conscientious scruples against the death penalty is traditionally recognized as a very relevant question. In a death penalty case, if the prospective juror answers in the affirmative that he or she has conscientious scruples against the imposition of the death penalty, that is grounds for disqualifying the juror for cause, not a peremptory challenge where the prosecutor and the defendant have substantial latitude on striking jurors without any specific cause.

I make these references because they are illustrative of the difficulties of getting answers from nominees in a context where so many Senators comment in advance that the nominee is fine and the media reports, and accurately reports I think, that the confirmation of Judge Breyer is a foregone conclusion, which very dramatically limits the scope of the meaningfulness of the Judiciary Committee in the first instance and the Senate in the final instance performing this constitutional duty of confirmation, advice and consent, and this is the consent function in the face of a virtual coronation in advance.

We have seen instances, Mr. President, and I shall mention only two instances briefly, of the super-legislature in action.

The Civil Rights Act was enacted in 1964. Seven years later in the Griggs case the issue of business necessity on employment practices was decided by a unanimous Court with the opinion written by Chief Justice Burger. That decision stood for 18 years, ratified by congressional acquiescence without any action made to amend the Civil Rights Act of 1964. Then in 1989 the Wards Cove decision came down, and the Supreme Court of the United States in what really constituted super-legislative action changed the definition of business necessity requiring congressional action with the Civil Rights Act of 1991 to reinstate the law to what Congress had intended.

The Court interpreted that on public policy grounds. The Supreme Court in a matter of superlegislation changed the law.

The family planning provisions were enacted in the 1970 legislation, and a regulation interpreting that law was issued in 1971 by the Federal agency that had helped draft the law the previous year making it clear that doctors could counsel women on planned parenthood on the abortion option. Then in 1988 the regulation was changed and the Supreme Court of the United States in the Rust decision decided that that change was appropriate because there had been a change in public opinion notwithstanding the fact that by 17 years of acquiescence the Congress had in effect given its imprimatur that the earlier regulation was the appropriate interpretation of the law.

There is one other matter I want to comment on very briefly, Mr. President, and that is the trend on the Supreme Court to consist virtually exclusively of ex-judges. Eight of the current nine Supreme Court Justices came from appellate courts, seven from U.S. courts of appeal and one from a State appellate court, and Judge Breyer comes right in the same mold from a U.S. court of appeals.

Many of us were disappointed and said so publicly, and I publicly expressed my disappointment, in not having Secretary of the Interior Babbitt nominated to provide some diversity to the court—someone who had been a Governor, a Secretary of the Interior, and a Presidential candidate, to give some broader diversity of experience.

The need for diversity in experience was brought to the fore again recently when the Judiciary Committee held a confirmation hearing for Mr. Alexander Williams, who was nominated for the U.S. district court for the District of Maryland. He was opposed by the American Bar Association, which found him not qualified. This opposition raises the issue as to whether you have to be from a prominent law school and from a prominent law firm, a silk stocking lawyer, in effect, in order to become a Federal judge. And Charity Wilson, my staffer who wrote me a memo contrasting the pedigree of the Supreme Court justices, including the current nominee, Judge Breyer, made I thought a very telling analogy to the silk-stocking nominees who were characteristically approved by the American Bar Association and sit on the Federal courts with Mr. Alexander Williams who may have woolen socks, as Charity Wilson, my staffer, put it, "woolen socks with a hole in them."

I think there ought to be emphasis by this body, Mr. President, and that is why I take a moment or two now and will take a few moments during the confirmation hearings to comment about the context of the Court where we do not have Justices who have had experience as trial lawyers, as assistant district attorneys, or as public defenders, people who have litigated extensively or have extensive pro bono work with a real feel for what goes on in America.

It is true that the President has sole discretion in his nominating function, but it was equally true that the Senate has sole discretion in deciding what the confirmation standards should be. There are learned scholars, among them Justice Ginsburg, who commented about the equal standing of the Senate in making evaluations of the qualifications of judicial nominees.

I raise these questions, Mr. President, not thinking that they are likely to have any telling effect on the proceedings as to Judge Breyer tomorrow but to try to at least have one Senator express a view as to the importance of the position of the Supreme Court of the United States where that fifth vote has more power than the President and the practice of coronating in advance so that the nomination proceedings themselves do not have the impact or the meaning they ought to have by virtue of ruling out so many of the questions which nominees ought to answer. When I say ought to answer it is their decision and it is a balance, and the eight nomination proceedings from 1981 through 1993 show I think a pattern that the nominees answered as many questions that they feel they have to answer.

I would hope in the future that we would have some greater diversity on the Court. I would hope in the future that there will be greater diversity on nominations. I would hope in the future that Senators refrain from giving approval in advance or coronating nominees in advance so that we can do our duty, that we can really find out about these nominees and improve the caliber of the Supreme Court of the United States, as our fuunction is a very, very important one because the justices of that court do have the last word on the meaning of the Constitution.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

MEASURE HELD AT THE DESK-SENATE RESOLUTION 240

Mr. THURMOND. Mr. President, I send a resolution to the desk and ask unanimous consent that the resolution be held at the desk until the close of business tomorrow.

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

COMMENDING PARTICIPATION OF U.S. SOCCER TEAM IN 1994 WORLD CUP SOCCER TOURNAMENT

Mr. THURMOND. Mr. President, I rise today to submit a Senate resolution commending the participation of the U.S. soccer team in the 1994 World Cup soccer tournament.

I ask unanimous consent that Senator GRASSLEY, Senator HELMS, Senator WOFFORD, Senator LAUTENBERG, Senator DECONCINI, Senator JOHNSTON, and Senator MATHEWS be added as cosponsors.

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

The Chair in his capacity as a Senator from Montana asks unanimous consent that he also be added as cosponsor.

Without objection, it is so ordered.

Mr. THURMOND. Mr. President, currently, the United States is hosting the world's most celebrated sports event, the 1994 World Cup. This honor was awarded on July 4, 1988, by the Federation Internationale de Football Association, otherwise known as FIFA, which is headquartered in Zurich, Switzerland. This is the first time in the 64-year history of the World Cup that America has been the host of this prestigious event.

I believe this tournament will stimulate interest in organized soccer in the United States. It is estimated that soccer ranks third in team sport popularity for youngsters under the age of 18, preceded only by basketball and volleyball.

My home State of South Carolina has benefited from the popularity of this sport. According to Fortune magazine, Umbro, a soccer apparel manufacturer, is owned by Stone Manufacturing Co. of Greenville, SC. Umbro's global sales exceed $300 million and are growing at an estimated rate of 70 percent per year. Also, according to Fortune magazine, the 1994 World Cup final series is expected to create approximately $4 billion in revenues from all sources.

Twenty-four teams from around the world have gathered in Boston, Chicago, Washington, Los Angeles, Detroit, Dallas, New York, San Francisco, and Orlando to participate in this 52-game tournament. The final game will be played on July 17 at the Rose Bowl in Pasadena, CA. Thousands of foreign visitors have come to America to support their teams and experience the

1994 World Cup. The number of spectators at each game is shattering all previous attendance records.

In 1990, approximately 1.3 billion people watched the 1990 World Cup final on television. This is three times the number of people that watched the 1969 landing on the Moon. It is projected that approximately 31 billion people will watch this distinguished tournament, with an estimated 2 billion people watching the championship game.

This year marks only the second time in tournament history that the United States has advanced to the second round of play. The last time the United States accomplished this feat was at the inaugural tournament in 1930. The current team, led by goal scorers Eric Wynalda and Ernie Stewart, has tied Switzerland 1 to 1, defeated a heavily favored Colombian team 2 to 1, and narrowly lost to Romania 1 to 0. By accumulating four tournament points, the team qualified for the second round. I would also like to add that 260,488 spectators attended these 3 games, and millions more followed the games by radio and television.

Mr. President, on July 4, Team America played Brazil. Some experts think Brazil is the best soccer team in the world. The United States soccer team fought valiantly until the 79th minute of play when Brazil's Bebeto scored the game's only goal. At the end of the hard fought game, the Brazilian team paid a high honor and tribute to the American players, fans, tournament sponsors, and support staff. The Brazilian players gathered in the center of the field to celebrate victory and carried with them the flag of the United States. Although the United States lost the game, I believe the team and the tournament is a success.

At this time, I ask unanimous consent that a list of the United States 1994 World Cup soccer team be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, soccer is played by men and women of all ages. It is the first truly integrated sport in America where boys and girls play on the same team through their elementary years and often in coed adult leagues.

Team sports promote understanding, tolerance, and appreciation of others. A person's appearance, size, skin color, personal beliefs, socio-economic status, and nationality are not indicative of his or her on-the-field talents. You often see people of very different backgrounds working together on the same team to accomplish a common goal. Soccer promotes sportsmanship and mutual admiration based on the talents, skills, and determination of the players.

The U.S. soccer team represents more than just a soccer team, it represents America. The players come from California, Florida, Illinois, New Jersey, Missouri, Massachusetts, Michigan, and Ohio. They include such colorful players as goalkeeper/captain Tony Meola, defender Alexi Lalas, and midfielder Cobi Jones. They are a diverse group of young men who have banded together and produced a winning team. I would like to commend them for representing the best in America.

We should applaud their efforts—both in striving to be the best and in capturing the hearts of Americans. They have exhibited the utmost in sportsmanship and have carried the American spirit forward with honor and dignity.

I urge my colleagues to join me in commending these fine young athletes, and to support this worthy measure.

EXHIBIT 1

U.S. WORLD CUP TEAM ROSTER

Number, name, and position	Hometown
1. Tony Meola, Goalkeeper	Kearny, NJ.
2. Mike Lapper, Defender	Huntington Beach, CA.
3. Mike Burns, Defender	Marlboro, MA.
4. Cle Kooiman, Defender	Ontario, CA.
5. Thomas Dooley, Defender	Mission Viejo, CA.
6. John Harkes, Midfielder	Kearny, NJ.
7. Hugo Perez, Midfielder	Mission Viejo, CA.
8. Ernie Stewart, Foward	Point Arena, CA.
9. Tab Ramos, Midfielder	Kearny, NJ.
10. Roy Wegerle, Midfielder	Tampa, FL.
11. Eric Wynalda, Midfielder	Westlake Vill., CA.
12. Juergen Sommer, Goalkeeper	Naples, FL.
13. Cobi Jones, Midfielder	Westlake Vill., CA.
14. Frank Klopas, Midfielder	Chicago, IL.
15. Joe-Max Moore, Midfielder	Irvine, CA.
16. Mike Sorber, Midfielder	St. Louis, MO.
17. Marcelo Balboa, Defender	Cerritos, CA.
18. Brad Friedel, Goalkeeper	Bay Village, OH.
19. Claudio Reyna, Midfielder	Springfield, NJ.
20. Paul Carligiuri, Defender	Diamond Bar, CA.
21. Fernando Clavijo, Defender	San Diego, CA.

U.S. WORLD CUP TEAM ROSTER—Continued

Number, name, and position	Hometown
22. Alexi Lalas, Defender	Detroit, Mi.

Mr. THURMOND. Mr. President, I also ask unanimous consent that Senator COVERDELL be added as a cosponsor.

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

Mr. THURMOND. I yield the floor.

BILL DEEMED READ THE SECOND TIME—S. 2205

The PRESIDING OFFICER. If there is no objection, S. 2205 is deemed read a second time and objection is made to further proceedings on the bill.

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m., Tuesday, July 12; 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 debate on the motion to proceed to S. 55; that on Tuesday, the Senate stand in recess from 12:30 p.m. to 2:15 p.m. for the respective party conferences; and that the time from 2:15 p.m. to 2:30 p.m. be equally divided and controlled between the opponents and proponents of the motion to proceed to S. 55; that as previously ordered, at 2:30 p.m., without intervening action, the Senate vote on the motion to invoke cloture on the motion to proceed to S. 55.

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

RECESS UNTIL TOMORROW AT 10 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess.

Thereupon, the Senate, at 6:54 p.m., recessed until Tuesday, July 12, 1994, at 10 a.m.