SENATE—*Thursday, October 6, 1994*

(Legislative day of Thursday, October 6, 1994)

The Senate met at 8:30 a.m. on the expiration of the recess, and was called to order by the Honorable HERB KOHL, a Senator from the State of Wisconsin.

PRAYER

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

Let us pray:

* * * *For there is no power but of God: the powers that be are ordained of God.*—Romans 13:1.

Almighty God, sovereign Lord of history and the nations, we have no adequate language to express our respect and gratitude for the men and women whom Thou hast ordained for leadership. Thank You for their hard work, long hours, and faithful service, despite continual criticism and cynicism.

Gracious Father in Heaven, we pray for the Senators and their families. Grant them safety in travel, energy for their involvement in the election, relaxed time with spouse and children, rest and recreation, and restoration for themselves. Keep them in Thy love and grace, and may Thy blessing be constantly with them.

We pray in the name of Him who is love incarnate. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 6, 1994.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 9 a.m., with Senators permitted to speak therein for up to 5 minutes each.

The Senator from Iowa [Mr. GRASSLEY] is recognized to speak for up to 15 minutes.

Mr. GRASSLEY. Mr. President, thank you very much.

REGULATION BURDEN REACHES NEW HEIGHTS

Mr. GRASSLEY. Mr. President, we are in an era of regulation. Every business person who is afraid of a bureaucrat coming to his place of business to shut him down knows how serious the regulation problem is. So I want to speak today about the regulation burden reaches new heights.

Mr. President, in 1980, 15 years ago, when I was a Member of the other body, I wanted to highlight the growing regulatory burden that the Federal Government has placed on the taxpayer and on businesses.

To do this, as you can see in the far left chart, I stacked up copies of the Code of Federal Regulations. That is all the regulations put out in 1 year by the Federal Government pursuant, presumably, to the laws that we pass or have passed.

You can see stacked there the regulations for the year 1970. And then you can see stacked beside it the regulations for the year 1980.

So you can see that thousands and thousands of pages were added to the burden of the business people through Federal regulation just in the 10 years between 1970 and 1980.

Recently, I decided to see what the story is now in 1994. So, once again, I stacked up copies of the Code of Federal Regulations from 1980 and compared it to the most recent edition, 1993.

Here is a picture of it. I should say, we have stacked here 1970, which is comparable to the pile there; 1980, comparable to the pile in that picture; and then here is 1993. I have to stand on a chair to be able to put the last volume up on the pile.

That is the picture. And, of course, you can see, Mr. President, that it is not good news.

Since 1980, the administrative branch of Government, aided and abetted by Congress passing so many laws, has added many more volumes of new regulations. These regulations come with a tremendous price tag. They cost the taxpayers, business, and even workers.

Mr. Thomas Hopkins, an economist at the Rochester Institute of Technology—he was also a former Deputy at OMB—estimated in 1992 that the gross cost of implementing these regulations was conservatively estimated by him at $392 billion per year. This translates, by his estimation, into $4,000 per household per year.

But Science magazine cites figures that the direct and indirect costs of regulation may be as high as $1 trillion per year. If that figure were the bottom line, that would be $9,000 per household.

Because of these costs, and because of the negative impact on productivity growth, you would think that we in Congress would closely review the regulatory burden imposed by the Federal Government and try to do more about it than what we are. Unfortunately, I do not think Congress pays much attention to this and I do not think we have done anything about it, as you can see from the growth of regulations over the past 23 years.

Congress and both Republican and Democratic administrations alike have imposed regulations with little or no concern as to the costs to the taxpayer or the impact upon the private sector. Bureaucrats have implemented regulations without consideration of more cost-effective means of achieving goals.

There are certainly regulations that provide benefits to the public, and which we all support. We acknowledge that. For example, every poll shows consumers, the public generally, wanting clean air and clean water. And regulations, to some degree, are required to ensure those public policies.

But care must be taken to achieve these desired results in the most sensible and the most cost-effective manner. And I am not sure all these regulations are a demonstration of our doing that before we write regulations.

The answer, of course, should be simple. We should weigh the benefits against the costs. This is no different than how, say, my constituents in the State of Iowa would approach his or her daily life. I think they would take the view then that Government should use the same common sense.

The administration has recognized that we must be smarter in imposing regulations on the taxpayers. And I want to compliment President Clinton for this statement. He has stated:

> Expanding regulations threaten to overwhelm the Nation's entrepreneurs and divert them from the task of building strong, innovative companies.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

More specifically, Vice President GORE's National Performance Review's report, entitled "Improving Regulatory Systems"—and this is part of the Vice President's reinventing Government program—states:

[T]he Federal regulatory system is not working as well as it should. Many Federal regulations impose too many constraints on individuals and businesses while still failing to accomplish the goals for which they were imposed.

The report of the Vice President goes on to state:

[R]egulators and Congress should employ regulations more selectively and sometimes use other approaches to accomplish their goals.

I think that this picture visualizes for us that we do not use regulations as selectively as the Vice President says we should.

The report makes a key recommendation, the reinventing Government report, on the subject of governmental regulation. It suggests that there should be a ranking of the seriousness of the environmental and the health and the safety risks. Such a task is essential if we are going to make a reasoned analysis of our priorities so we can reduce the amount of regulation.

I have been a strong supporter of the National Performance Review and the Vice President's efforts to reinvent government. But an ongoing report, a status report coming out September 1994 shows that the administration has still not provided a ranking of the seriousness of the environmental health and safety risks, as they implored was necessary a year ago. The administration has far to go in showing that we will see real reform, not just rhetoric, when it comes to improving regulatory systems.

The importance of reducing the regulatory burden is highlighted by the continuous horror stories that we hear about the impact regulations have on taxpayers.

I would like to describe a recent action that affects thousands of farmers in my State—in lots of States. The EPA has recently banned the use of the pesticide carbofuran on corn and sorghum. The concern is that up to 60 birds a year may be killed by this pesticide.

However, according to Grain Sorghum News, the EPA cannot point to one confirmed bird kill related to the use of carbofuran on sorghum. The unfortunate response to the banning of carbofuran is that farmers will have to turn to less effective substitutes, and use those less effective substitutes in increased amounts. Of course, this may cause greater health and environmental problems than the banned carbofuran.

My colleagues are familiar with the points I have made. They are familiar with the burdensome regulations and what they do to reduce productivity, what they do to burden business, and often do not address our Nation's most serious health risks. These are very familiar arguments.

However, in studying this issue of regulations, I am especially persuaded by another argument even more disturbing and even more convincing. Burdensome regulations may actually cost lives.

Let me repeat: The economic costs of implementing regulations may actually cost lives.

When I first read about this, I thought it must be some sort of a fringe argument. As I have explored this matter further, it has become clear that far from being outside the mainstream, the theory that costly regulations can actually lead to more deaths than they save has been widely accepted by academia. It is us in the political arena, including Congress, who are far behind the curve on this issue.

While the reasons are complicated, the simple fact is that regulations result in lower incomes and productivity, and in turn, then, lower incomes are directly related to a higher number of premature deaths.

For example, the Office of Management and Budget has reported that workers with reduced incomes will curtail their purchases of good nutrition, good medical care, and safe products. This fact of increased premature deaths due to regulatory costs is discussed in detail by Dr. Ralph Keeney at UCLA, in an article called "Mortality Risk Induced by Economic Expenditures," in the journal Risk Analysis.

Dr. Keeney's research was supported by the National Science Foundation. His finding is that:

Results suggest that some expensive regulations and programs intended to save lives may actually lead to increased fatalities.

Think of that. We may well be implementing regulations, including maybe many in this stack for 1993, that do more harm than good. This view was echoed by Prof. Lester Lave of Carnegie Mellon University. He says:

Regulations intended to prevent premature deaths may not do so—because they are ineffective or because they cause more deaths than they preserve.

Experts estimate there is one premature death for every $7.5 million to $17 million in regulatory costs because of lower worker wages.

In 1992, OMB respond to this research by seeking to adopt what has been coined as a "risk-risk" analysis. OMB sought to weigh the lives saved by a new regulation in comparison with the lives lost by the increased regulatory costs.

This approach, however, was denounced by our Congress. Congress rejected such cost analysis as cold and as harsh, because, critics said of the action by OMB, you cannot put a price on human life; and they argued compassion. They said we must be compassionate.

But the data are beginning to show that this traditional view may not be compassionate at all. It shows, in fact, that to be truly compassionate, we must have a complete analysis of all of the impacts caused by regulation. True compassion is when you weigh the total harm that will be done by new regulations, including the probability of lost lives due to those regulations.

Let me provide a specific example. According to OMB, regulations today cost $5.7 trillion—yes, that is trillion—for every premature death averted from regulations regarding wood-preserving chemicals, and $4.1 billion for each premature death averted under the hazardous-waste land disposal ban. Let me repeat how many premature deaths result from the economic burden of regulations: One premature death for every $7.5 to $17 million in regulatory costs. In other words, 335 people may prematurely die to save one person from wood-preserving chemicals.

Not only can our Nation's economy not afford to write a blank check, clearly, regulations which reduce the incomes of American working families result in loss of life. This is not just a monetary issue. Even more revealing is the negative impact that overregulation has on people's lives. It is an issue of compassion, as well.

The economic phenomenon here is that with less income, people live less healthy lives. It is because of this common-sense truth and our desire to be compassionate that we must consider the recommendations of groups as diverse as the Center for Risk Analysis at Harvard School of Public Health, and also the Heritage Foundation, on the other hand.

The Federal Government must prioritize our environmental, health, and safety concerns, and begin weighing all the costs before we call for additional regulations beyond what we have here.

Congress and the administration must understand that we should impose regulations only when they are cost effective and a net benefit to society.

We must also recognize that many regulations are so costly and so inefficient that what they seek to correct should be achieved through other means. I would like to see these stacks of regulations begin to get smaller in succeeding years.

In closing, the growing burden of Federal regulation is clearly shown in these pictures, from 1970 to 1980, to where we are now, in 1993.

These volumes represent a profound burden on our society. These volumes hurt businesses, they burden productivity, they hurt wages of our working people, and worst of all, they can be killers.

If we are going to ever see these regulations reduced, we must begin to take steps now.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from California [Mrs. BOXER].

GENERAL AGREEMENT ON TARIFFS AND TRADE

Mrs. BOXER. Mr. President, this morning I am going to announce my position on the General Agreement on Tariffs and Trade, known as GATT. I have been studying this issue and have come to a decision on it and would like to share it with my colleagues and with the people of California.

Mr. President, the California economy is beginning to show signs of life again. Jobs are being created. In fact, the UCLA Business Forecasting Project is projecting that California will have a net gain of 111,000 jobs by the end of this year, and this follows some very, very dismal job loss numbers.

Housing permits are up by 15 percent and sales of existing homes increased by 24 percent. Retail sales rose by 4.5 percent in the first half of the year, and new business incorporations are up 10 percent. Venture capital flows in Silicon Valley have hit record levels this year. The recovery in California has at long last begun, and it has been very, very difficult for us.

But our challenges are far from over. We need to ensure that this economic growth continues and that we keep creating jobs. We must be sure that we are truly building a solid economic base. And we must look to the future.

What will it take to compete and win in the 21st century? How do we provide our workers with not only jobs, but with good jobs?

What can we do to ensure that California's products and know-how are always one generation ahead of the cutting edge, as we have been in the past?

One way, Mr. President, is through expanding trade, breaking down foreign market barriers. California is a trading State; in fact, the largest trading State in the Nation. In 1993, exports totaled more than $100 billion in goods and services. Exports of goods alone are responsible for an estimated 1.4 million California jobs, and the importance of international trade has increased dramatically in recent years. California's exports grew by 107 percent between 1987 and 1993.

More trade will create more jobs. Trade will increase the competitiveness of our companies because a company that sells more abroad can invest more in better equipment, in training and in education of its workers at home. In the new global marketplace, a customer is as likely to be in Tokyo or Taipei as in Torrance or Tustin, CA.

So let me say, after carefully considering the economic challenges facing California and our Nation, I believe that, on balance, GATT will be good for California.

This agreement is not without problems, but I believe GATT will expand California exports, create jobs and strengthen our economic recovery. The GATT agreement will tear down many of the existing foreign barriers to California-made computers, semiconductors, electronics, medical devices, large equipment, toys, and other manufactured goods.

The GATT agreement will provide greater protection for California's world-class software and pharmaceuticals and music recordings and television shows. The strength of the California economy, Mr. President, and the promise of our future are the great ideas of our inventors and our entrepreneurs. Too often these ideas are stolen and sold by pirates in markets abroad. In fact, in 1992 alone, U.S. companies lost between $15 and $17 billion from piracy. With the GATT agreement, we will have more effective tools to attack these pirates. With the GATT agreement, we have promises from our trading partners to provide greater protection to American copyrights and patents.

The GATT agreement will also expand California's farm exports and create jobs in the agricultural sector, especially for growers of rice, grapes, almonds, walnuts, tree fruits, and vegetables. The GATT agreement will provide California companies with greater access to lucrative foreign government procurement contracts worth over $100 billion each year.

The GATT agreement may mean as much as $10.1 billion in new California exports in the first 10 years. According to the California Institute, California stands to gain as many as 200,000 jobs from increased exports of manufactured products alone, and exports of services and agricultural products will generate another 44,000 jobs for Californians.

I know, Mr. President, that this agreement is not perfect. It does not do enough to open markets for our entertainment industry, telecommunications companies and our aircraft makers. I also recognize that many are concerned that our strong Federal and State environmental health and safety laws could be vulnerable under new GATT rules.

I understand these concerns and I have thought about them very carefully. Anyone who knows me knows of my strong commitment to the environment and to the health and safety of consumers. I pride myself on a very long record on those issues. I have dedicated my public life to fighting for those issues. I would not and could not support any measure that would weaken it. I do not believe that the GATT agreement will threaten these laws. GATT rules or GATT panel decisions do not have the force of law. Not one single environmental health or safety law at the Federal or State level could be changed without action by Congress or the State Government in question. Nothing in this GATT implementation legislation, or nothing a GATT panel decides, can change any of our environmental or consumer laws. Yet, our trading partners could challenge these laws. That is true. But, no, our trading partners cannot change these laws, and anyone who says that our trading partners can change United States laws simply has not read the GATT record.

I have received specific assurances from U.S. Trade Representative Mickey Kantor on this very issue. Ambassador Kantor has assured me that "California's strong environmental and consumer protection laws cannot be overturned by WTO rules or dispute settlement panels."

Ambassador Kantor points out that section 102(a)(1) of the GATT implementing legislation states explicitly that no provision of the GATT agreement "that is inconsistent with any law of the United States shall have effect."

Ambassador Kantor has assured me that "any decision on how to respond to an adverse panel report would be a matter for State and Federal officials—not the WTO—to decide."

Ambassador Kantor also has assured me that the GATT agreement "protects the ability of governments to use more stringent standards" with respect to food safety. He says that, "Each country—and in the case of the United States—each State is free to establish the level of protection it deems appropriate."

With respect to environmental and health rules, Ambassador Kantor has assured me that the agreement "recognizes that countries may set standards for products in order to protect human life, health and safety or the environment." And that—and this is my last quote—"the agreement makes clear that the level of protection the Federal Government or a State seeks to achieve through standards of this kind is not subject to challenge."

Mr. President, I ask unanimous consent that the entire text of Ambassador Kantor's letter be printed in the RECORD.

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

U.S. TRADE REPRESENTATIVE,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, DC.

Hon. BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: I want to address immediately some of the concerns you have voiced with respect to the implications of the Uruguay Round agreements for California and this nation.

1. SUPREMACY OF U.S. LAW

At the outset, let me assure you that California's strong environmental and consumer

protection laws cannot be overturned by WTO rules or dispute settlement panels. Neither the WTO itself, nor any panels it establishes, can change U.S. law. Only the Congress and State legislatures can change U.S. laws.

To make the relationship between the new agreements and U.S. law crystal clear, section 102(a)(1) of the Uruguay Round implementing bill (S. 2467) states explicitly that:

"No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect."

The bill also makes clear that foreign governments and private parties cannot use the new agreements or WTO panel reports as a basis for suit against the States in U.S. courts. In fact, even the Federal Government is precluded under the bill from bringing a court challenge against a State law on the basis of a WTO panel report.

In the event that a California law were to be challenged in a dispute settlement proceeding in Geneva, S. 2467 commits the Federal Government to work together with California State officials in developing the U.S. response. The Administration is fully committed to working collaboratively with the State of California both during and after any WTO panel proceeding concerning California law. But I want to reiterate that any decision on how to respond to an adverse report would be a matter for State and Federal Officials—not the WTO—to decide.

2. FOOD SAFETY RULES

Our negotiators had strong environmental and food safety laws fully in mind in concluding the Uruguay Round agreements with our trading partners. As a result, the agreements recognize the right of each government to protect human, animal, and plant life and health, the environment, and consumers and to set the level of protection for health, the environment, consumers—as well as the level of safety—that the government considers appropriate.

Under the WTO, most food safety laws will be covered by the "Agreement on the Application of Sanitary and Phytosanitary Measures" (S&P Agreement). The Agreement will permit us to continue to reject food imports that are not safe. The S&P Agreement will not require the Federal Government or California to adopt lower food safety standards.

The S&P Agreement calls for food safety rules to be based on "scientific principles." That is important for California, our leading agricultural exporting State, because many countries reject our agricultural exports on non-scientific grounds.

As a general matter, the FDA and EPA (which participated directly in the negotiation of the S&P Agreement), as well as the State of California, base their food safety regulations on science. Thus, meeting the basic requirement of the S&P Agreement should pose no problem for U.S. food safety rules.

It is worth noting that the rule in the Agreement requiring a scientific basis applies to S&P measures. It does not apply to the level of food safety that those measures are designed to achieve. Each country and—in the case of the United States each State—is free to establish the level of protection it deems appropriate. That means, for example, that the "zero tolerance" level for carcinogens mandated by the Federal "Delaney clauses" are entirely consistent with the Uruguay Round agreements.

While the S&P Agreement contains a general obligation to use international standards, it protects the ability of governments to use more stringent standards if they have a "scientific justification." The S&P Agreement makes explicit that there is a scientific justification if California, for example, determines that the relevant international standard does not provide the level of food safety that California determines to be appropriate. Far from undermining California laws, this language serves to make clear that no "downward harmonization" is required for California's laws.

Under the S&P Agreement, food safety rules imposed by the States will be subject to the same rules as those for Federal restrictions. But the Agreement does not require that States use the same food safety standards as the Federal Government.

3. ENVIRONMENTAL AND HEALTH RULES

Most environmental and health based product standards for industial and consumer goods will be covered by the Agreement on Technical Barriers to Trade (TBT Agreement). The new TBT Agreement carries forward, with some clarifying and strengthening modifications, the provisions of the existing GATT TBT Code, which entered into force for the United States in 1980.

The TBT Agreement recognizes that countries may set standards for products in order to protect human life, health, or safety or the environment. U.S. regulations prescribing safety standards for infant clothing, or banning the presence of PCBs in consumer products, are the types of product oriented measures covered by the TBT agreement. The Agreement makes clear that the level of protection the Federal Government or a State seeks to achieve through standards of this kind is not subject to challenge.

In general, our State and Federal clean air and clean water laws and regulations are directed at controlling pollution generated in industrial operations. Not only do these laws generally not raise trade-related questions, they are generally not even covered by the new TBT Agreement since they do not set product standards. Where those laws do set product standards, as for automobile emission controls, they will be treated like the other product standards described above. Both the S&P and TBT provisions of the Uruguay Round agreements will allow each State to maintain stricter safety standards than the Federal Government in order to achieve the level of protection that the State considers appropriate.

On the question of environmental standards, let me point out that the GATT panel report released last Friday lays to rest fears that WTO panels will interpret the GATT in a way that challenges our ability to safeguard our environment. The panel report on our Corporate Average Fuel Efficiency (CAFE) rules explicitly upheld the sovereign power of governments to regulate their markets and their environments. The panel report confirms the broad discretion of governments to distinguish among products in order to achieve legitimate domestic policy objectives, such as progressive taxation, fuel conservation, clean air and water, and responsible energy use.

4. SECTION 301

As a result of the Uruguay Round agreements in general, and the WTO Dispute Settlement Understanding in particular, section 301 will be even more effective than it has been in the past in addressing foreign unfair trade barriers. We will continue to use section 301 to pursue vigorously unfair trade barriers that violate U.S. rights or deny this country the benefits to which it is entitled under international trade agreements. We will also use section 301 to combat unfair trade barriers that are not covered by these agreements.

Under the GATT as it has existed for the past 47 years, other countries have been able to violate their GATT obligations to us and then block the adoption of panel reports that found such practices illegal. Moreover, the GATT Council has typically been unwilling to authorize us to retaliate against such countries, even if they continue to violate their commitments long after the panel has issued its report. In 1988, Congress asked us to make changes in GATT dispute settlement procedures to ensure that they would be effective.

That is what we did in the Uruguay Round. Once the new agreements are in place, countries will no longer be able to block panel reports. If the violation persists and we are not able to settle the matter in another way, we will be able to take action under section 301 without risk of counter-retaliation. That could be particularly important when we are taking action against a large trading partner.

Furthermore, with the new agreements in effect we will be able to use section 301 more effectively to pursue unfair foreign practices in the areas of trade in services and the protection of intellectual property rights. As you know well, both of those sectors are vital components of California's economy. In addition, the implementing bill for the Uruguay Round agreements revises section 301 so that we will be better able to go after governments that tolerate systematic anticompetitive activities by private and state-owned companies that deprive our firms of access to their markets.

5. ECONOMIC BENEFITS FOR CALIFORNIA

The Uruguay Round agreements will provide tremendous economic benefits for California. Among California's industries most likely to benefit are those in the electrical, semiconductor, banking, aerospace, chemicals, and agriculture sectors. The new agreements will generate an enormous expansion of export opportunities by limiting the ability of foreign governments to impose tariffs, quotas, subsidies, and a variety of other domestic policies that have been used to block California's exports in the past.

Other industries, such as computers and software, will benefit from the enhanced protection of intellectual property rights required under the new agreements. The agreements also provide critical new safeguards against rampant piracy of films and sound recordings around the world.

Overall, the GATT agreement should add $100 billion to $200 billion annually to the U.S. Gross Domestic Product. California will receive a large share of that revenue, as California is a leader in rapidly expanding export sectors, such as services, and also enjoys a special trade relationship with the Pacific Rim nations. Many of these countries, as well as developing nations in Latin America and East Asia, will become full members of the world trading system under the new agreement. Developing nations buy nearly a third of U.S. exported goods and services—about $235 billion a year—and are our fastest growing export markets.

Californians will greatly benefit from the increased job opportunities and incomes that will flow from the new export opportunities created by the Uruguay Round agreements. California has experienced tremendous growth in exports over recent years (up over 100 percent from 1987 to 1992). That growth

will only increase as a result of the agreements now pending before the Congress.

Sincerely,

MICHAEL KANTOR.

Mrs. BOXER. Mr. President, I note that it is important that I did not get verbal assurances from our Trade Representative, Ambassador Kantor. I asked he put it in writing. He did so in an unequivocal way.

I have looked closely at the concerns about our environmental, health and safety laws. I understand these concerns. But I am confident that our laws can and will be protected.

I believe that the GATT agreement is about California's economic future and about this country's economic future. We cannot turn back from the fact that it is now a global marketplace, Mr. President.

Times have changed, and I think that if America is going to lead in the world, we must recognize this change. It is about opening foreign markets to our competitive, export-oriented companies. It is about protecting the ideas of our inventors and entrepreneurs. California has always been ready to look forward and face new challenges, and so has America. Competition in the global marketplace is among the biggest of these challenges. We are ready with the best workers and bold new ideas. I say the time is right for this new and exciting chapter in the economic story of California and the entire Nation.

Mr. President, thank you very much, and I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

LOBBYING DISCLOSURE ACT OF 1993—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of the conference report accompanying S. 349, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 349) to provide for the exposure of lobbying activities to influence the Federal Government, and for other purposes.

The Senate resumed consideration of the conference report.

The ACTING PRESIDENT pro tempore. The hour prior to the cloture vote will be equally divided and controlled by the majority and minority leaders, or their designees.

Mr. WELLSTONE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President. We are going to have a historically significant vote—and I think that is said without exaggeration—at 10 o'clock today. It is going to be the crucial vote which determines whether or not we are going to pass the last major reform bill that is still left standing after all the efforts by reform opponents to kill campaign reform and other legislation designed to overhaul the way we do business here in Washington.

Mr. President, this conference agreement on lobby and gift reform will make this process more accountable and more believable to people in the country. It has to do with whether or not we are going to end, really, the unacceptable practice of accepting gifts, free trips, and other perks from lobbyists and other special interests. It is just inappropriate. We do not need to do it. It gives people ample reason for the perception that there is too much access to influence by certain people who have lobbyists, and it is just wrong. I think for all of us who care about public service and do not want to see a denigration of public service, we should just decide once and for all to clean up this system.

I want to start out my remarks by dealing with two arguments that have been made. I do not know whether I even want to call them arguments, because I think that dignifies them, but two really untruthful statements that have been made.

I see Senator LEVIN, who is coming onto the floor, and I will be relatively brief since he is manager of the bill. I am sure he will want to address them at greater length by himself.

The first of those untruths is that ordinary citizens in Minnesota or Michigan, when they contact Senators and Representatives, will have to register as lobbyists. That is simply not true. But as one wag put it, a lie gets halfway around the world before the truth has time to put on its shoes.

The second untruthful statement that has been made over and over again, on talk radio and by lobbyists across the country, originating in wilful misinterpretations and distortions by House Republican Whip Mr. GINGRICH and his allies, is that if you belong to a grassroots organization, this reform bill will require you and all the contributors to your organization to register and publicly disclose contributor lists and other information.

Mr. President, that is simply not true. That is not true at all. In fact, an effort to require disclosure of contributor lists was defeated on the floor months ago, and with good constitutional reason. What is going on here is that smokescreen arguments, if you want to call them arguments, are being made so that people can duck for political cover. It is as simple as that. No one should be misled by what is happening here.

I say to my colleagues, you can duck for cover temporarily, but you cannot hide because what is really at issue is that there is an all-out effort to filibuster and to block and to obstruct, to make sure that we do not pass a gift ban, to make sure that Members of Congress do not end this egregious practice of accepting vacation trips and other special favors from lobbyists and others.

That is really what many people who will vote against this cloture motion are opposed to—those who are trying to block this and filibuster it. That is really what is at issue.

Mr. President, I ask unanimous consent to include in the RECORD right before the cloture vote the vote on this bipartisan lobby bill passed May 6, 1993. It was passed 95 to 2. I would like to have each Senator's vote included, and the vote on May 11, 1994, with a 95 to 4 vote in favor of this piece of legislation. I ask unanimous consent to have each Senator's vote included in the RECORD right before the cloture vote takes place.

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

[Rollcall Vote No. 107 Leg.]

YEAS—95

Akaka	Faircloth	Mathews
Baucus	Feingold	McCain
Biden	Feinstein	McConnell
Bingaman	Ford	Metzenbaum
Bond	Glenn	Mikulski
Boren	Gorton	Mitchell
Boxer	Graham	Moseley-Braun
Bradley	Gramm	Moynihan
Breaux	Grassley	Murray
Brown	Gregg	Nickles
Bryan	Harkin	Nunn
Bumpers	Hatch	Packwood
Burns	Hatfield	Pell
Byrd	Heflin	Pressler
Campbell	Helms	Pryor
Chafee	Hutchison	Reid
Coats	Inouye	Riegle
Cochran	Jeffords	Robb
Cohen	Johnston	Rockefeller
Conrad	Kassebaum	Roth
Coverdell	Kempthorne	Sarbanes
Craig	Kennedy	Sasser
D'Amato	Kerrey	Simon
Danforth	Kerry	Simpson
Daschle	Kohl	Smith
DeConcini	Lautenberg	Specter
Dodd	Leahy	Stevens
Dole	Levin	Thurmond
Domenici	Lieberman	Warner
Dorgan	Lott	Wellstone
Durenberger	Lugar	Wofford
Exon	Mack	

NAYS—4

Bennett	Murkowski
Hollings	Wallop

NOT VOTING—1

Shelby

LOBBYING DISCLOSURE ACT OF 1993

The PRESIDING OFFICER. The hour of 4:15 having arrived, the question is on the passage of the bill, S. 349, as amended.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Alabama [Mr. HEFLIN], the

Senator from Texas [Mr. KRUEGER], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

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

The result was announced—yeas 95, nays 2, as follows:

[Rollcall Vote No. 116 Leg.]

YEAS—95

Akaka	Exon	Mathews
Baucus	Faircloth	McCain
Bennett	Feingold	McConnell
Biden	Feinstein	Metzenbaum
Bingaman	Ford	Mikulski
Bond	Glenn	Mitchell
Boren	Gorton	Moseley-Braun
Boxer	Graham	Moynihan
Bradley	Gramm	Murkowski
Breaux	Grassley	Murray
Brown	Gregg	Nickles
Bryan	Harkin	Nunn
Bumpers	Hatch	Packwood
Burns	Hatfield	Pell
Byrd	Helms	Pressler
Campbell	Hollings	Reid
Chafee	Inouye	Riegle
Coats	Jeffords	Robb
Cochran	Johnston	Rockefeller
Cohen	Kassebaum	Roth
Conrad	Kempthorne	Sarbanes
Coverdell	Kennedy	Sasser
Craig	Kerrey	Shelby
D'Amato	Kerry	Simon
Danforth	Kohl	Simpson
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stevens
Dodd	Levin	Thurmond
Dole	Lieberman	Warner
Domenici	Lott	Wellstone
Dorgan	Lugar	Wofford
Durenberger	Mack	

NAYS—2

Smith	Wallop

NOT VOTING—3

Heflin	Krueger	Pryor

So the bill, S. 349, as amended, was passed as follows:

Mr. WELLSTONE. Finally, Mr. President, let me just simply say to my colleagues one more time, I do not believe that some Senators —I think relatively few—can hide behind these smokescreen arguments. They can seek the cover, the political cover, but they will not be able to hide forever. The reason they will not is it will become very clear to people what has happened here. This is an effort to block the reform bill, to block an egregious practice that should be ended, which is the acceptance of gifts and trips, which is just simply wrong. I say to my colleagues, let these perks go. Vote for the institution. We are here because we believe in public service. We do not want to see an across-the-board denigration and bashing of public service.

One of the ways we can begin to end that and one of the ways we can begin to restore confidence on the part of people in Minnesota and around the country in this process is to vote for this reform bill. Do not obstruct this. Do not block it. Do not filibuster it. Do not hide behind arguments that are simply not truthful. That is a huge mistake. I hope we will get a 95 to 4 vote again. I urge my colleagues to support the motion. I urge my colleagues to vote again for real reform.

I yield the floor.

Mr. LEVIN addressed the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan [Mr. LEVIN].

Mr. LEVIN. Mr. President, my understanding of the time situation is the following: That the time is equally divided between now and 10 o'clock under the control of the majority leader and the Republican leader or their designees. I assume that Senator COHEN will be designated, but I do not know that for sure. He is not in the Chamber so I am not able to confirm that. So I am not sure exactly how this time will be divided since Senator COHEN is a supporter of the conference report, and the opponents would want time under this hour as well. So with those uncertainties, I yield 5 minutes to the Senator from Wisconsin.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wisconsin [Mr. FEINGOLD].

Mr. FEINGOLD. I thank the Chair.

Mr. President, I would like to begin by commending my friend from Michigan, Senator LEVIN, for his tremendous effort in putting this conference report together. Senator LEVIN stood by the tough provisions that we passed here in the Senate, and the result is a conference report that I am convinced will begin to address public concerns about lobbying and the power of special interests in Washington.

It has now been over 4 months since the Senate passed gift reform legislation and over 16 months since the Senate passed S. 349, the Lobbying Disclosure Act. During consideration of S. 349, my friend from New Jersey, Senator LAUTENBERG, offered a resolution that expressed the sense of the Senate that the full Senate would consider during this congressional session changes in the way Members and staff are allowed to accept gifts, meals, and travel offered by certain individuals and organizations. This resolution passed by an overwhelming margin of 98 to 1. Yet here we are just days before this congressional session is to end and the original problem that we set out to address is still very much alive. The time has come to act on legislation that will finally reform the way Congress deals with the thousands and thousands of gifts and other perks that are offered to Members each year from individuals, lobbyists, and associations that seek special access and influence on Capitol Hill.

Before I discuss this particular bill, I think it is important to first examine why this legislation was originally proposed. As was stated numerous times during initial consideration of S. 1935, the original gift ban bill introduced by myself and Senators LAUTENBERG and WELLSTONE, we did not initiate this legislation because we believed that lobbyists and other interests were buying off Members of Congress, or conversely, that Members were somehow selling their votes for the price of a few nice meals or a weekend trip to some resort site. These were hardly the reasons why this legislation was pursued.

The fundamental problem that this legislation seeks to address is the problem of public perception. It seems that some Members of Congress are ignoring the fact that public approval of the performance of Congress as an institution is embarrassingly low. According to a recent Time/CNN poll, 84 percent—84 percent—of the American people believe that officials in Washington are heavily influenced by special interests and out of touch with the average person. The public is speaking with a very clear voice on this very fundamental issue, and it is time that we as an institution seek out the causes of the disenchantment and skepticism expressed by our constituents.

Also, during the debate on this issue last May, we heard the argument that the mere consideration of this legislation only fueled the dismal perceptions people back home have of this body. By banning these gifts, it was argued, we are sending a message to our constituents that our integrity and character is so vulnerable that we can be compromised by a nice dinner or a pair of theater tickets. It was apparent that some Members took our effort to ban these gifts personally and I regret this. I regret this, because if you look at these public opinion polls closely, you will see that—although respondents consistently give Congress as an institution low marks for qualities such as competence, integrity, and character—these same respondents consistently give their particular representatives much higher marks for the same attributes.

One interpretation of these differences is that our constituents are sending us a message—a message that says, "We may like our own representatives, but we don't like the system and the loose rules that Congress as an institution lives under."

Mr. President, when I decided to first run for political office, I recalled a term that Robert Kennedy had often cited when he referred to elected office as an "honorable profession." In recent years, elected office has taken on an everincreasing negative connotation, to the point where a sitting Member of Congress is often referred to disdainfully as a professional politician. The image that has permeated our society is the image of a Congress obsessed with power and an ignorance or lack of understanding of the problems that ordinary Americans face each and every day.

It may not be a fair perception but we have to recognize that the perception is out there and has perpetuated harmful images and beliefs. We have all seen the TV news programs with their hidden cameras showing pictures

of legislators relaxing at a beach resort, all paid for by lobbyists or special interest groups. This sort of activity does have a damaging effect on this body—an effect that we can only hope is not irreparable.

Let me illustrate this point by once again referring to the Time/CNN poll taken just a few weeks ago. Perhaps the most striking result of this survey was the responses to a question that asked, "Which one of these groups do you think have too much influence in Government?" Respondents were given a list of choices, and which groups did the American people believe have too much influence in public policy decisions? The wealthy, large corporations, foreign governments, and special interest groups.

Now, we have all seen the large number of gifts that are delivered to our offices nearly every day. We receive—and I personally decline—fruit baskets, artwork, fine wine—you name it. And who do these gifts come from? The answer is, usually, the wealthy, large corporations, foreign governments, and special interest groups.

How often do we receive gifts from consumer advocates, middle-class individuals, and ordinary working Americans? Hardly ever, and it is no coincidence that respondents listed themselves as the group least likely to have a voice in their Government. I fined this something by which we should all be immensely troubled.

I was a member of the Wisconsin State Legislature for 10 years. During that period, I lived under a set of rules that have been in place for over 20 years in Wisconsin. Simply put, legislators and staff do not accept anything of value. That's it—the rule is that simple. And it should be noted that the Wisconsin Legislature is considered one of the most ethical government bodies in the country. The Wall Street Journal, in fact, described it as "squeaky clean." It is time to recognize and address the fact that this is an image that few people hold for the U.S. Congress. When I came to the U.S. Senate, I adopted those same Wisconsin rules for my U.S. Senate office. For the past 2 years, since I took office, my staff and I have lived under the Wisconsin ethics rules, and I believe we have been effective in carrying out our work, without taking free meals and gifts from lobbyists.

The conference report that is before us today takes a forceful step toward reversing the pessimistic and skeptical feelings the American public bears for this institution. First, new lobbying disclosure provisions will require lobbyists who spend at least 10 percent of their time lobbying Members of Congress or their staff to register with a new Office of Lobbying Registration and Public Disclosure. The current statute only requires registration of lobbyists who spend at least 50 percent of their time lobbying Congress, and this has resulted in nearly 70 percent, by some estimates, of the lobbying community failing to register with the Federal Government.

In addition, these disclosure requirements will be bolstered by what I see as the crown of this legislation: a stiff prohibition against the providing of free meals, travel, and entertainment to Members of Congress. Most of these stringent rules will apply to nonlobbyists as well. Like the Wisconsin law, there are exceptions to these tight restrictions that will allow legislators and staff to carry out the day-to-day official responsibilities of a Member of Congress. For example, these exceptions do allow Members to be reimbursed for certain expenses incurred in the attendance of programs, seminars, and conferences related to official business. Those exceptions aside, the gift ban provisions contained in this legislation will take a hard line against those offered items that are completely unrelated to official business and serve only to fuel the negative perceptions of Congress that have permeated our society.

In short, this is a well-balanced approach that is targeted enough to affect those who seek special access or influence with the U.S. Congress, but not excessively inclusive as to affect a Member's legislative duties.

In closing, I would like to say that the skepticism and pessimism that the public holds for this body is unfortunate. It would not seem too difficult to ask as part of an effort to restore the lost trust and confidence the public holds for Congress that we live by a set of rules that our constituents live by. In other words, you pay for your own meals, travel, and entertainment. This seems to me to be a small price for the immense benefits that such a simple action could produce—benefits that include a more optimistic and idealistic public and a system that doesn't suggest that certain individuals or groups retain special access or influence with the U.S. Congress.

I would like to thank those Senators that have worked tirelessly to see this legislation brought to the floor for final passage. Senators WELLSTONE and LAUTENBERG, whom I joined in introducing the original legislation that initiated this effort, and again, Senator LEVIN, who was able to craft an alternative measure that was able to incorporate our original principles, and then skillfully steered the measure through the sometimes torturous legislative process.

This legislation is long overdue and in many of our constituents' eyes is a significant piece of legislation.

I thank the Chair. I yield the floor.

Mr. LEVIN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, first let me thank the Senator from Wisconsin. He and the Senators from Minnesota and New Jersey have been absolutely stalwart in this effort to try to reform the gift rules which so clearly need to be reformed if we are going to increase public confidence in this institution. I want to thank him and commend him for his strong and constant leadership in this battle.

Mr. President, I want to yield myself 10 minutes.

Mr. President, we are here today after 3 years of effort, after bills have passed both Houses of the Congress and a conference has resolved the differences between those bills. We have before us a conference report which is the product of lengthy committee consideration and hearings in both the House and the Senate. We are here after all that to do what the Congress has been unable to do for the last 50 years.

This bill would totally overhaul the patchwork of loopholes and exceptions that currently masquerade as lobbying registration laws. Efforts to reform these laws, to close these loopholes, and to end the charade that we have effective lobbying registration laws for paid lobbyists—have been made in the forties, in the fifties, in the sixties, in the seventies. They have failed for various reasons. Now, today, despite overwhelming votes for lobbying reform and for gift reform in both the House and the Senate, there is a tremendous last-minute effort to kill this reform the way it was stymied in the sixties and stymied in the seventies.

Our existing lobbying registration laws have been characterized by the Department of Justice as ineffective and unenforceable. These laws breed disrespect for law itself because they are so widely ignored. They have been a sham and a shambles for decades. At a time when the American public no longer believes that their Government really belongs to them or is responsive to them, our lobbying registration laws have become a joke leaving more paid professional lobbyists unregistered than registered.

The GAO estimates that fewer than 4,000 of the 13,000-plus individuals and organizations listed in the book "Washington Representatives" are actually registered as lobbyists even though at least three-quarters regularly lobby. This bill would change all of that and ensure that we will finally know, after decades of pretending, who is being paid, how much, by whom, to lobby what Federal agencies in Congress and on what issues.

This bill would close the loopholes in existing lobbying registration laws. It would cover lobbyists of foreign and foreign-owned companies. It would cover all professional lobbyists whether they are lawyers, nonlawyers, inhouse or independent, whether they lobby the Congress or the executive branch, and whether their clients are

profit or nonprofit. It would provide for the first time effective administration and enforcement.

Senator COHEN and I introduced this bill. We had bipartisan support and still do have bipartisan support. Six Democrats and four Republicans were the original cosponsors of this lobby registration bill. The Senate approved the bill a year ago by a near unanimous vote of 95 to 2. The conference report before us was signed by all Senate conferees of both parties and passed the House last Thursday by a bipartisan vote of 306 to 112.

So why are we faced with a filibuster? One reason is because real reform, Mr. President, does not come easy. As long as special-interest lobbying organizations thought this bill was not really going to make it, they held their fire. But now in the final hours the lobbying organizations have unleashed their forces. We are being barraged by lobbying campaigns because we are trying to get them out in the sunshine.

This bill, Mr. President, is the work product of 3 years of committee consideration and deliberation. Many provisions which are now being attacked were in the original Senate bill that passed 95 to 2. Scare tactics are used, fictionalized versions are being promulgated to make the average citizen believe that this bill would require them to register when they express their opinion.

The only way this bill will affect the average citizen is by arming that average citizen with information on the amount and the purpose of the paid professional special interest lobbying in Washington so the public can know what is going on. The opponents say the average citizen will have to register and be regulated by a bureaucratic agency. That is not so. Only paid professional lobbyists would have to register. As a matter of fact, that is what the current laws on the books are supposed to require.

Because of the loopholes in them—for instance, one law excluding lawyers who are lobbyists—we do not have paid professional lobbyists who are registering now. At least most of them do not. Opponents say lobbying organizations will have to disclose their membership list. That is not so. Senator COHEN and I have consistently taken the position that disclosure of membership lists would be violative of the Constitution. We have successfully opposed efforts on this floor to require organizations to disclose their membership lists. Why is so much disinformation employed at this last minute to kill this bill? One of the reasons is because it is real reform. It bites. It bites the special interests and it bites us.

Let us take a quick look at each of the claims that have been made against this conference report and see just how erroneous each one is. Contrary to what opponents are representing, the bill would not require citizens who call Congress or come to Washington to express their own views to register as lobbyists. It would not require grassroots organizations to disclose their membership lists or their contributors. It would not require churches to register as lobbyists. No one who lobbies on his or her own behalf or on behalf of someone else as a volunteer would be required to register. You would not have to register if you call your Member of Congress. You would not have to register if you write your Member of Congress. You will not have to register if you meet with your Member of Congress. You would not have to register if you join an organization that lobbies Congress. You would not have to register if you contribute to an organization that lobbies Congress. You would not have to register if you sign a petition, join a picket line or march in a parade. You only have to register if you are paid by a client to lobby on behalf of that client. Again, that is what the existing laws that have been ignored and loopholed to death are supposed to require.

Second, this bill would not place any limitation on grassroots lobbying by citizens who organize to present their own views to the Congress. What this bill would do is require the disclosure if a registered lobbyist pays someone to organize grassroots lobbying and then the registered lobbyist would have to disclose who was hired and how much was spent.

The suggestion has been made, Mr. President, that section 105(b)(5) would require organizations employing lobbyists to disclose their membership lists or their contributors list. That is not true. No membership or contributors list would be required to be disclosed. The provision which is being used to make that argument does not refer to the contributors or members of an organization. It simply requires the disclosure of "any person or entity other than the client who paid the registrant to lobby on behalf of the client."

The question is, who paid for the lobbying? Was it the client, or was it someone other than the client? If the client paid for its own lobbying activities, the question ends there and the provision does not apply. The provision only comes into play if someone other than the client pays the lobbyist. In other words, the provision applies if the organization does not pay for its own lobbying activities and someone else pays the lobbyist instead. Then the organization would have to disclose who sent the check to the lobbyist. A member of an organization is not paying a lobbyist to lobby simply because the member contributes to the organization, by any commonsense meaning of these words.

Again, the subject of a membership and contributors list was discussed extensively in the Governmental Affairs Committee hearings on the bill, and a decision was made that no such disclosure should be required.

Mr. President, if that 10 minutes is up, I would at this point yield the floor.

Mr. NICKLES addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma [Mr. NICKLES] is recognized.

Mr. NICKLES. Mr. President, I will make a statement, and I would like to discuss some of the statements made by my friend from Michigan as well as my friend from Minnesota. I believe we have some real disagreement on what the language says. First, let me say I do not doubt the intent of the sponsors of the legislation. I compliment them for much of what they have tried to do in this bill.

I totally disagree with some of the thrust of what they are saying and what its impact would be on grassroots lobbying. I am reading from the legislation here, and I hear their intent, and they are saying this legislation would not require disclosure of a contributor list.

Frankly, that is not what the legislation says. The legislation before us was changed between the Senate bill and the conference report—and I noticed that the comments that were made by the Senator from Michigan and others referred to Senate language and Senate debate, but not to the conference report. The conference report, very specifically, is going to require individuals who contribute to organizations which employ a lobbyist to have their names publicly disclosed to the Federal Government. Let me site some of the language, and I will put in some substantiating facts that deal with my points.

Mr. President, as you know, many concerns regarding coalitions and associations and grassroots efforts were raised on the House floor regarding this legislation. The rule on the bill narrowly passed the House by 216 to 205. A close reading of the legislation and its definitions and requirements validate these concerns. I might mention that just because the House had a close vote, it did not convince me they were right. It made me think we should look at the legislation. This was not raised as an issue when we debated this on the Senate floor. The Senate bill did not have the language we now have in the conference report.

Some of this is technical but I am going to read directly from the bill. Section 104(A)(2) requires organizations which employ one or more lobbyists to register with the Office of Lobbying Registration and Public Disclosure. Under section 104(B)(2), each registration must contain the name, address, and the principal place of business of the registrant's client along with other information. Similarly, under section 105(B)(1), the name of the client must

be disclosed in semiannual reports by the registrants.

Who is defined as a client, whose name, address, and place of business are to be disclosed? The term "client" is defined in 103(2). It states that in the case of a coalition or an association of employees lobbyists, the organization itself is the client, providing the lobbying is paid for through regular dues and assessments.

However, in 103(2)(b), the client is defined as individual members of the organization if lobbying activities are financed by members outside of regular dues and assessments. Specifically, it states:

> In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is, (B), an individual member or members, when the lobbying activities are conducted on behalf of, financed separately by, one or more individual members and not by the coalition's or association's dues and assessments.

Think of all the organizations which, in addition to regular dues, call upon their members to help finance the organization's efforts. Under this bill, those individual Americans would have to be publicly disclosed by the Federal Government, basically because they stood up and spoke out for something they believed in.

Mr. President, that is the language in the bill. For proponents of this conference report to say this legislation does not require disclosure of names of people who contribute to these groups is just wrong. The bill states that a client is somebody outside the organization that contributes to a cause.

Let me give a couple of examples. I have a lot of organizations that I will read into the RECORD that are opposed to this bill for this very reason. Let us say an organization is opposed to or supportive of particular legislation—and I notice we have family groups, prolife groups, and proabortion groups, that are against this legislation.

Let us take an issue like the Freedom of Choice Act; it is a bill that deals with abortion. The Right to Life Committee is adamantly opposed to it, and Planned Parenthood of America is in favor of it. If these organizations write letters to their members and say, "This is a special effort and we have to defeat this bill or we have to pass this bill, please send in $20," then those individuals who send in money in addition to their dues are covered by this bill. If somebody contributes, and let us say they are not a member—or maybe they are a member—they are defined as a client on the second page of the bill. I will read it again:

> A client is an individual member or members, when the lobbying activities are conducted on behalf of, or financed separately by, one or more individual members and not by the coalition's or association's dues and assessments.

We are not talking about dues. Not everybody at Right to Life or Planned Parenthood will be disclosed because they are a member, I agree. But if they contribute over and above what their dues and assessments are, because they want to have special input and a special lobbying effort to defeat or pass legislation, then they are defined as a client under this bill. No question. That is not really even debatable. They are defined as a client, and a client under this bill has to be disclosed.

I have heard a couple of our colleagues say there is no disclosure. "We are not going to disclose people who contribute to causes if they want to affect legislation." That is not factual. It may not be the intent. That is not the way it passed the Senate, but it is the way it came back from conference. I regret that.

I might mention, Mr. President, again, my interest in this did not really even come up until I heard it on a radio program. A lot of people tend to blast those rightwing radio programs. Well, I was listening to "Focus on the Family", and Gary Bowers said that this would require his listeners, if they responded to our radio messages that they should be involved and contribute money, but not if they call. I will grant the authors of the legislation that if an individual simply calls their Congressman, they would not have to be disclosed. Or if they drop by the office, they would not have to be disclosed. But if they write a check over and above dues and assessments to an organization which employs a lobbyist, they are defined as a client under this legislation. Therefore, their names will have to be disclosed.

I do not think that is disputable. I do not think that is contested. I do not think there is any other interpretation of this language, despite the fact that the proponents may say, "That is not our intent." We are not talking about intent. We are talking about legislative language. And so if those names are disclosed, you are going to have a very chilling impact on grassroots organizations and their communication with their Representatives.

Mr. President, this is not just DON NICKLES' opinion. I asked my staff to look at the language in the conference report and the legal counsel that works with me over at the Republican Policy Committee. They came to the same conclusion. We have reviewed it. I have asked other people, and we have found organization after organization that concurs with this.

Let me read a very short letter that came to my attention, and again, made me say we have to look at this legislation a lot closer. This was addressed to all Senators and Representatives of the conference committee on this legislation:

> The undersigned nonprofit groups have very different memberships, represent a variety of viewpoints, and are often in opposite corners when debates on public policy get underway. Despite these differences, we find ourselves united in our concern over the Lobbying Disclosure Act of 1994 and the adverse impact it will have on our ability to convey our members' views to the Congress and the Executive Branch.
>
> As currently drafted, the lobbying reform legislation, S. 349 and H.R. 823, will place an undue and unnecessary burden on the exercise of our First Amendment freedoms. The legislation's registration and reporting requirements will jeopardize the fundamental right of all citizens to communicate with and lobby their government through associations by imposing time-consuming and costly recordkeeping and paperwork demands on all groups that inform their members or urge them to give the government their views on the issues. As organizations struggle to comply with the legislation's directives, the diversion of both manpower and financial resources to meet the recordkeeping and paperwork demands will undermine the ability of all groups to communicate with Congress and the Executive Branch on the important issues facing this country.
>
> The impact of this legislation will reach well beyond Washington, D.C. and will adversely affect organizations across the country. There is not an issue under discussion in Congress or the Administration today that does not elicit the views of organizations from all 50 States. The proposed lobbying disclosure reforms will make it extremely difficult for many of these organizations to continue to make their opinions known to their elected representatives. The problem is exacerbated for those nonprofit organizations impacted by the recently enacted tax law changes regarding nondeductibility of lobbying expenses, since that legislation also contained extensive recordkeeping requirements. The overall result is that fewer associations and, hence, fewer Americans, will get their voices heard in Washington, D.C.

Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

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

SEPTEMBER 21, 1994.

Members of the House-Senate Conference Committee on the Lobbying Disclosure Act of 1993,

Members of the House and Senate Leadership,

U.S. Congress,

Washington, DC.

DEAR SENATORS AND REPRESENTATIVES: The undersigned nonprofit groups have very different memberships, represent a variety of viewpoints, and are often in opposite corners when debates on public policy get underway. Despite these differences, we find ourselves united in our concern over the Lobbying Disclosure Act of 1994 and the adverse impact it will have on our ability to convey our members' views to the Congress and the Executive Branch.

As currently drafted, the lobbying reform legislation, S. 349 and H.R. 823, will place an undue and unnecessary burden on the exercise of our First Amendment freedoms. The legislation's registration and reporting requirements will jeopardize the fundamental right of all citizens to communicate with and lobby their government through associations by imposing time-consuming and costly recordkeeping and paperwork demands on all groups that inform their members or urge them to give the government their views on

the issues. As organizations struggle to comply with the legislation's directives, the diversion of both manpower and financial resources to meet the recordkeeping and paperwork demands will undermine the ability of all groups to communicate with Congress and the Executive Branch on the important issues facing this country.

The impact of this legislation will reach well beyond Washington, D.C. and will adversely affect organizations across the country. There is not an issue under discussion in Congress or the Administration today that does not elicit the views of organizations from all 50 states. The proposed lobbying disclosure reforms will make it extremely difficult for many of these organizations to continue to make their opinions known to their elected representatives. The problem is exacerbated for those nonprofit organizations impacted by the recently enacted tax law changes regarding nondeductibility of lobbying expenses, since that legislation also contained extensive recordkeeping requirements. The overall result is that fewer associations and, hence, fewer Americans, will get their voices heard in Washington, D.C.

We are concerned that much of the momentum for lobbying reform springs from the misconception that nonprofit organizations harm, rather than help, the policymaking process. Nonprofit groups provide information and resources that are both useful to and needed by Congress and the Executive Branch—information and resources which help to keep government officials in touch with the citizens of this country. An interactive democracy, such as ours, requires citizen participation, and nonprofit groups are essential in allowing Americans from every part of our nation to register their views with their government.

It is unprecedented for such a diverse array of groups to stand together in opposition to a single legislative proposal. Our doing so is evidence that we believe this legislation will seriously impair our ability to exercise our rights guaranteed under the First Amendment. We, therefore, respectfully urge that you oppose S. 349 and H.R. 823 as currently drafted, and consider revising the legislation by making the changes that are outlined on the attached page.

A similar letter has been sent to the other members of the House and Senate leadership and to the members of the conference committee on the lobbying disclosure bills.

Sincerely,

Alliance for Educational and Cultural Exchange, American Family Association, Americans United for Life, Center for Science in the Public Interest, Child Protection Lobby, Christian Legal Society's Center for Law and Religious Freedom, Citizens Committee for the Right to Keep and Bear Arms, CNP Action, Inc., Coalition Against Gun Violence, Doris Day Animal League, English First, Family Research Council, Federation of American Scientists, The Feminist Majority, Free Congress Foundation, Fund for an Open Society, Gun Owners of America, Humane Society of the United States, International Freedom Foundation, National Right to Life Committee, National Rifle Association, National Legal And Policy Center, National Association of Housing Cooperatives, Ohio Citizen Action, Safe Streets Coalition, Planned Parenthood of America, Population-Environment Balance, United Seniors Association, Inc., U.S. Chamber of Commerce.

[NOTE: The following was sent to the members of the conference committee on the Lobbying Disclosure bills and Members of the House and Senate Leadership.]

Mr. NICKLES. Mr. President, I might mention this letter is signed by a bunch of different groups with totally opposite philosophical bases: Alliance for Educational and Cultural Exchange, American Family Association, Americans United for Life, Center for Science in the Public Interest, Child Protection Lobby—and I will skip several of these—Coalition Against Gun Violence, Doris Day Animal League, English First, Family Research Council, which I alluded to, The Feminist Majority, Federation of American Scientists, Gun Owners of America, Humane Society of the United States, National Right to Life Committee, National Rifle Association, National Association of Housing Cooperatives, Ohio Citizen Action, Safe Streets Coalition, Planned Parenthood of America, Population-Environment Balance, United Seniors Association, U.S. Chamber of Commerce.

Mr. President, I have another list of organizations even more extensive which I ask unanimous consent to have printed in the RECORD.

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

ORGANIZATIONS OPPOSED TO S. 349

Alliance For Educational and Cultural Exchange.
Alliance For America.
American Civil Liberties Union.
American Farm Bureau.
American Family Association.
Americans For Tax Reform.
American Land Rights Association.
Americans United For Life.
American Veterinary Medical Association.
Association of Concerned Taxpayers.
Center for Science in the Public Interest.
Child Protection Lobby.
Christian Coalition.
Christian Legal Society's Center for Law and Religious Freedom.
Citizens Committee for the Right to Keep and Bear Arms.
CNP Action, Inc.
Coalition Against Gun Violence.
Coalitions For America.
Concerned Women For America.
Defenders of Property Rights.
Doris Day Animal League.
English First.
The Environmental Policy Task Force.
Family Research Council.
Federation of American Scientists.
The Feminist Majority.
Free Congress Foundation.
Fund for an Open Society.
Gun Owners of America.
Humane Society of the United States.
Independent Insurance Agents/California.
International Freedom Foundation.
The National Center for Public Policy Research.
National Association of Realtors.
National Cotton Council of America.
National Federal Lands Conference.
National Restaurant Association.
National Right to Life Committee.
National Right to Work Committee.
National Rifle Association.
National Legal and Policy Center.
National Association of Housing Cooperatives.
Ohio Citizen Action.
Planned Parenthood of America (NY office).
Population-Environment Balance.
Project 21.
Safe Streets Coalition.
Small Business Survival Committee.
Traditional Values Coalition.
United Seniors Association, Inc.
U.S. Chamber of Commerce.

Mr. NICKLES. Mr. President, this list includes the American Farm Bureau, the National Association of Realtors, the Feminist Majority, the Environmental Policy Task Force, and on and on, because these groups have realized that if they send out a letter and they ask for money to defeat legislation or to pass legislation, those contributors are going to be listed as clients and those clients are going to have to be disclosed. Those are the facts.

That was not in the Senate bill. That is a new addition that came in the conference report. You can look on page 353 of the conference report for that explanation.

So, Mr. President, I just make the comment that this legislation will have a very chilling, negative impact on lots of individuals who want to participate and contribute to causes, to legislation, and I think it is a serious mistake.

I will just mention to the supporters of the legislation I heard most of the rhetoric that was directed against the legislation saying we need to ban gifts and Congress is on the take, and so on. Let us ban it. Let us pass legislation or let us pass the Senate rule—I think we can pass that overnight—and say, hey, let us not take gifts; let us ban gifts from lobbyists. Let us do it.

That is not my objective. My objective is to stop very intrusive governmental expansion that will really stifle the peoples' participation in the legislative process by telling them, if you contribute to these organizations, if you contribute to a cause outside of your dues to defeat or pass legislation, your name is going to be filed, your name is going to be registered, your name is going to be disclosed and probably abused by the fact that it is going to be out in the public record.

I think that is a serious mistake, and that is the reason why this legislation at this point needs to be defeated.

I hope that the sponsors of the legislation will work with me and other people and say, hey, let us get rid of this grassroots lobbying extension that was made in conference. Let us eliminate that. Let us pass the gift ban, or let us pass a rule change that would prohibit gifts to Members of Congress and do that and be done and not do harm to countless individuals who want to participate in this political process.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Oklahoma yields the floor.

Who yields time?

The Senator from Michigan.

Mr. LEVIN. I yield 3 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio [Mr. GLENN] is recognized for 3 minutes.

Mr. GLENN. Mr. President, let me just start out by saying that I find lobbying in the Congress valuable and useful. In the context of what we are discussing here today, that may be an unusual statement, but many times I have called some lobbyists to get detailed information about their industry or what they are doing. I find that a valuable resource. Lobbyists do not have to take me to free lunches or ball games or the opera, or anything else, to get access to my office. I welcome their views and by all means consider them.

But this legislation had already passed the Senate with a 95-to-2 vote, I believe it was, then went to conference with the House, and now we find ourselves with a proliferation of disinformation that Senator LEVIN already addressed in detail this morning along with the opinions being expressed by people all over this country about the problems with lobbying and what their perception of it is. I think Senators LEVIN and COHEN, who have been so diligent in the process, deserve a tremendous amount of credit for what they have been doing.

I say to Members who voted before, those who voted 95 to 2, to send this legislation through, I ask them now, if they are going to vote the other direction, why they have changed their minds. Do they just follow the winds out there? Do they follow what the talk show hosts are saying with their disinformation? Are they saying the lobbying in itself by the talk shows and the disinformation campaign that has been put forward is to prevail over their vote before? If they are going to vote against this today, why did they change their minds? If anything, it has been made better after it went through here and went to conference.

I was not in every conference meeting. I am a member of the conference committee though and I say Senators LEVIN and COHEN did an exceptionally good job.

Are Members of Congress up for sale? No. I think that is so far overdone I cannot believe it. Should we correct some perceptions that are common across the country about how the lobbyists work? Absolutely, we should. It does not hurt the lobbyists in doing their jobs to say there will be some limitations on lunches, and so on. These are the registered lobbyists we are talking about here now, people who have to register.

If we really wanted to attack the notion of special interest access and how it is tilting the Congress one way or the other on a particular issue, we would have passed campaign finance reform. I think we would have gone to Federal financing of campaign, obnoxious as that seems to be to many Members here. They do not want to vote for it. That would do more to clean up politics around Washington, DC, than anything else we can do with this legislation. While I think it is important, we are sort of nibbling around the edges. I find it a bit hypocritical to say that a Member could be bought for a $20 lunch and you turn around and ask that same person who took you to the $20 lunch for a $5,000 PAC contribution—$5,000. We are going to be bought for 20 bucks and turn around and ask the person for a $5,000 PAC contribution.

But, it goes without saying that the American people have lost their faith and confidence in government. If banning gifts and other lobbyists amenities is what it takes to begin restoring public trust and integrity, then act we must.

Do I think the gift ban will actually make a difference in how things are done around here? Most certainly. It puts everything above-board. In fact, we can do business the true old-fashioned way—by meeting concerned citizens, as well as special interest lobbyists—in the pleasant ambience of our own offices. We don't need the strolling violinists.

I recognize that in the world of politics we must deal with perceptions. It is high-time we owned up to those realities. This institution, which ought to be revered and respected by all Americans, is subject to daily scorn and ridicule. We're depicted as out-of-touch Members, being wined and dined by special interests, and caring not for the Nation or our State, but only for our own reelection. And we certainly deserve much of the blame for letting this happen. So it is a big step we take today, one which will hopefully show we are serious about improving this body's reputation and standing with the public.

Let me also just say that the main guts of this bill, in my book, is the Lobbying Disclosure Act, which Senator LEVIN has worked on so hard for so long. This—more than the gift ban—will probably have a greater impact in rebuilding the peoples' trust in their Government. Finally, everyone will be able to know who's paying what to lobby whom on which issue. Sunshine is always the best disinfectant. Or in some cases, repellant.

I am disturbed however, at the recent attack on this legislation based on a complete falsehood regarding its application to grassroots lobbying. Never would I be privy to anything that would inhibit the free exercise of religion or hinder the right of the citizenry to petition their Government.

This whole bill is about giving people the power of knowing who is really footing the bill for someone lobbying on behalf of a technical tax break or special pork-barrel project. In fact, I believe most of us would much rather listen to our own constituents rather than some smooth-talking Washington lobbyist. I was elected to represent the people of Ohio and it is them that I want to hear from and give top priority to.

I believe Senator LEVIN specifically addressed these concerns in a speech on the Senate floor the other day. But the following points should be made. First, only paid, professional lobbyists are required to register under this bill. No one who lobbies on their own behalf, or on behalf of someone else in a volunteer capacity, is required to register. Second, if a paid, professional lobbyist spends money on grassroots lobbying—that is, an effort to get individuals to contact Members of Congress or the executive branch—the lobbyist must estimate the money so spent and disclose the name of any person or group hired by them to conduct such a campaign. The names of unpaid individuals or volunteers involved in or contacted pursuant to such a grassroots effort are not required to be disclosed. Similarly, there are absolutely no requirements placed on any person who calls, writes, or just stops in to express his or her own views to Members of Congress or the executive branch. I wouldn't stand for such a patently unconstitutional measure.

In addition, there is a requirement for paid professional lobbyists to disclose the name of any person or entity who is paying for such services, if other than the client himself. It does not require organizations employing lobbyists to disclose their membership lists, which would raise serious first amendment concerns. Finally, the bill explicitly exempts religious organizations, such as churches or associations of churches, from having to register in the first place, even if they have paid professional lobbyists on their staff.

I would note that these issues were given the primary consideration they were due by the committee in developing its version of this legislation. No one, not in the committee's markup, nor on the Senate floor, suggested our constitutional safeguards infringed on either free speech or the exercise of religion. I recognize and appreciate the nature of these concerns, and it is my hope that they have been voiced—and addressed—in all sincerity and good faith. I would hate to see them misused by those who deep down do not really want this piece of legislation and hold out hopes of continuing business as usual. In that case, it would be a shame and a loss for the American people and those of us who have worked so hard to get here in the first place.

In closing, I want to thank again my colleagues, especially Senators LEVIN

and COHEN for their leadership and indefatigable efforts. As an original cosponsor and chairman of the committee which originally passed these bills, I was both proud and pleased to lend my full support and help. And more importantly, to stand behind them and finally see the fruition of all our hard work.

The scorched earth policies or politics having to do with this I find deplorable. I think this is good legislation. I am glad to support it. It came through the committee. I thank Senators LEVIN and COHEN for the job they have done on this all the way through.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, I thank very much Senator GLENN for his leadership.

I yield 5 minutes to my friend from Maine.

The PRESIDING OFFICER. The Senator from Maine [Mr. COHEN] is recognized.

Mr. COHEN. Mr. President, I think we should begin this debate with the proposition that the current lobbyist registration laws which are on the books today are a joke. We have thousands of lobbyists in this town. Only a small percentage actually register according to the existing law, and of those few that do, the information they provide is meaningless.

If we are trying to find out why the American public is cynical about the political process, take a look at what happens outside, for example, when the Finance Committee takes up a tax bill. The streets of downtown Washington spring into action. It has been described as Gucci gulch. That corridor in downtown Washington is lined with paid professional lobbyists who are paid huge sums of money to lobby on behalf of their clients. The public, we feel, would like to know who is being paid how much to lobby whom on what issues. The public has a right to know.

That was exactly the intent for which Senator LEVIN and I, and others, set out some time ago to try to write legislation which offered, we hoped, simplicity and clarity in mind, as well as comprehensiveness.

A number of inaccurate statements have been made about this proposed law. For example, one statement brought to my attention indicated that this bill would require individual Members of Congress to be listed among the contacts of registered lobbyists. That statement is not true. This bill does not require lobbyists to disclose the names of the individual Members contacted by the lobbyist. We debated that issue earlier and discovered a number of legitimate concerns. Specifically, there was a concern that, if lobbyists were to file a public disclosure form that says "I contacted Senator X on this bill," it may raise more questions than it answers and could be misused for political purposes. For example, during an election the information in the disclosure could be distorted by suggesting that a brief meeting with a Member had an effect on a Member's vote or position on a particular issue. In fact, the disclosure would also have been entirely in the hands of the lobbyist. What if a disclosure was made in error, or a false disclosure was made specifically to embarrass a Member? These issues were debated and we came to the conclusion that adequate protections against errors and misuse could not be provided. Consequently, we did not require lobbyists to list their individual contacts with specific Members. Instead, lobbyists are only required to disclose the committee or House of Congress they contacted.

Mr. President, first let me state that I do not want to question nor do I question the motivations of any of the Members who oppose this legislation. In addition, there are some legitimate organizations who are also sincerely opposed to this legislation. I do, however, think that some groups are opposed because they are under a misapprehension about the terms of this legislation. I want to be clear that I do not question the motives of the opposition to this bill.

What I do suggest, however, is that a failure to invoke cloture on this bill is effectively going to kill lobbying reform in this Congress.

I do not think it is necessary to do that. I believe that by invoking cloture, we can take whatever time is necessary under that 30-hour period and debate whatever ambiguities, perceived or real, exist in the law and see if we cannot correct them through compromise.

I find it somewhat ironic or unfortunate that the Senate rules in this particular case call for a two-thirds majority to invoke cloture as opposed to the a three-fifths majority, especially in light of the fact, as my colleague from Oklahoma just mentioned, that no one is taking issue with the rule change. And yet here we are having to invoke cloture with a two-thirds vote, when, in fact, no one is challenging the rule change. Some are arguing that we should just take up the rule change and pass it in order to satisfy the public that we are not being unduly influenced by the personal largess of these lobbyists.

Let me say, on behalf of the proponents of the bill, which I consider myself, that there is at least one statement made by some opponents to the bill which I believe to be completely inaccurate. Specifically, the suggestion that the bill would require religious organizations to register as lobbyists is simply wrong. We wrote in a specific exemption for religious organizations. In fact, the Baptist Joint Committee, the U.S. Catholic Conference, and the Religious Action Center of Reform Judaism have all provided letters endorsing the language.

So we tried to accommodate the religious groups to make sure there was no question about their being covered by this law. But, nonetheless, we have a number of groups that now maintain our language is inconsistent with our intent.

Let me say, on behalf of the opponents of this legislation, that the grassroots lobbying provision was not in the Senate version of the bill. It was added because of the House insistence on its addition. And there may be some question, as raised by my friend from Oklahoma, in terms of what the words actually mean and what the intent is. I think it is clear what our intent is, and the intent is not to require the listing of all the clients who may be contributing to organizations outside of dues and assessments. I think that could be corrected. If it is indeed a problem, it could be corrected easily. All we have to do is add two words to section 103(2)(A) of this bill—"or contributions." That would clarify the language to ensure that it is consistent with our intent and, I believe, remove the objections the Senator from Oklahoma is raising.

So we can deal with this issue.

May I have 1 more minute?

Mr. LEVIN. I am happy to yield an additional minute to my friend.

The PRESIDING OFFICER. The Senator is recognized for an additional minute.

Mr. COHEN. Mr. President, we can remove, I believe, the challenge to the law based upon the question as to grassroots lobbying. What we need to do is invoke cloture in order to do that.

I believe if we take just a few hours of debate to raise the questions and provide the answers to our colleagues, we can address these concerns and, in fact, pass this legislation which is badly needed. It is long in the making. I think our failure to do so is only going go solidify the cynicism that is out there today that Congress really, when it comes down to measuring up to our responsibilities, is not willing to do so. I think we can clear this issue up and if necessary make minor modifications to the language to ensure that it is consistent with our intent.

I know the courts are somewhat insistent on ensuring that the intent is stated in the language of the law itself. Justice Scalia, for example, will hold us to the language of the bill and not to our intent. Others will do the same. So we can clarify any inconsistencies if we need to and do so in a very short period of time. It may also require asking the other body to adopt the same changes, but it can be done. First, we need to invoke cloture to begin this debate and address these concerns. I urge my colleagues to do that.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. Mr. President, I yield 4 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky [Mr. MCCONNELL] is recognized for 4 minutes.

Mr. MCCONNELL. I thank my friend from Oklahoma.

Mr. President, what we have this morning is the marrying up of two separate measures: One, the Lobbying Disclosure Act, which would be a law passed by the House, passed by the Senate, and signed by the President; the other, rather awkwardly attached, is the Senate rule regulating gifts to Members of the Senate.

We had a very spirited debate last May about the appropriateness of the rules change with regard to gifts. I think the Senate fully understood what we were about to do, because I was engaged in that debate as vice chairman of the Ethics Committee, just pointing out some of the regulatory problems here in the Senate with the proposal. But we had a good debate. Everybody understood the issue. We voted on it and it is over. It would be my hope, Mr. President, that we would pass the Senate rule related to gifts to Senators.

The second portion that we are discussing today, the Lobby Disclosure Act, was studied in great detail, obviously, by the sponsors of the amendment, Senator LEVIN, Senator COHEN, and others. They understood it fully. But I think a lot of the rest of us did not focus on that portion of these two issues that were moving in tandem last May through the Senate. Now we have had a chance to focus on it.

I was particularly offended—somebody may have already mentioned this—by the Washington Post treatment this morning of the opposition to this bill. This is not just from conservatives, Mr. President. The American Civil Liberties Union, the Child Protection Lobby, the Doris Day Animal League, the Feminist Majority, the Humane Society of the United States, and Planned Parenthood are all opposed to this bill.

So the opposition to this bill is not being spurred by some kind of right-wing cabal here. There are a lot of groups out in America who feel that they ought to be able to influence us, ought to be able to petition the Congress, as the Constitution puts it, who do not find this is a very good bill.

Now I am not quite sure about all the dispute between what is in the plain meaning of the statute and what the sponsors of the bill want it to mean. We know the Supreme Court is increasingly not of a mind to deal with legislative intent. They read the thing. Their inclination is to read the plain meaning of the statute and interpret it in that way, rather than getting into what we might have meant, even though we did not say it specifically.

So the American Civil Liberties Union, which is certainly not an arm of the Republican Party, has taken a look at this, Mr. President, and their view is that the plain meaning of the lobby disclosure bill as written leads to some catastrophic consequences in terms of the rights of citizens to influence us, which is a perfectly legitimate process.

The American Civil Liberties Union has said:

> The extensive paperwork and reporting requirements may cause some groups not to participate in lobbying merely because they are likely to reach the reporting threshold sooner by virtue of their geographic location.

They have said further: "We are gravely concerned"—this is the American Civil Liberties Union.

> We are gravely concerned about requirements that lobbyists and their organizations disclose contributor information including name, address and principal place of business. Although Senator LEVIN said that contributor and membership lists would not be subject to disclosure, we believe that Section 105 will lead to such disclosure in violation of the constitutional protections against it recognized in the Supreme Court's landmark decision in NAACP v. Alabama.

Well, that is a rather lengthy opinion by the American Civil Liberties Union about the lobby disclosure measure. In short, I think I am not misrepresenting their views to say they find it fatally flawed in a lot of respects; not just a little bit bad, but fatally flawed throughout.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MCCONNELL. Will the Senator yield me 30 more seconds?

Mr. NICKLES. I yield the Senator an additional minute.

The PRESIDING OFFICER. The Senator is recognized for 1 additional minute.

Mr. MCCONNELL. Mr. President, I wish we could get away from the notion that every time some so-called reform measure is proposed it is being opposed by conservatives in America.

This bill is hotly contested, deeply resented, and vigorously opposed by a variety of different organizations in this country across the political spectrum. The American Civil Liberties Union, it seems to me, a group with outstanding constitutional lawyers, speaks best on this issue.

I ask unanimous consent that their letter of October 5 that each of us received in opposition to the lobby disclosure portion of this package before us be printed in the RECORD.

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

ACLU,
Washington, DC, October 5, 1994.

DEAR SENATOR: The American Civil Liberties Union urges you to reject the conference report on S. 349, the Lobbying Disclosure Act of 1994. In our view, this bill raises serious constitutional concern. While the goal of eliminating real and perceived corruption in dealing with Congress and the Executive Branch is laudable, this bill threatens important First Amendment rights and raises other constitutional concerns. We are very concerned that this legislation will impose far-reaching and substantial burdens on public policy advocacy that will make participation by grassroots organizations costly and thus unlikely. This will be especially true for small grassroots organizations whose voices are those heard least often in our national debates.

The authors of S. 349 implicitly recognize the burdens imposed by its reporting requirements by including an exemption for religious organizations as a class from some of these requirements. But the burdens imposed by this legislation will likely inhibit a wide range of groups, especially those that are under-resourced from exercising their right to lobby. In exempting only religious organizations, S. 349 unfairly favors religious groups and thereby violates the Establishment Clause.

This Establishment Clause problem is only one of our concerns. We believe this legislation merits further deliberation and analysis. Some of the ACLU's objections include, but are not limited to the following:

This legislation unfairly and unreasonably burdens those who engage in grassroots lobbying. The extensive paperwork and reporting requirements may cause some groups not to participate in lobbying merely because they are likely to reach the reporting threshold sooner by virtue of their geographic location. For example, a California based grassroots organization will have much higher travel-related expenses for direct lobbying contacts than a similarly situated organization in Northern Virginia. This unfairly discriminates in favor of locally based groups and against those that may have to travel to meet with a Member of Congress or an Executive Branch official. Likewise, non-profit organizations that can provide expertise on complicated legislation, may not choose to do so because their time and expenses will be greater than if they were to only make known their position on final passage. Congress risks losing valuable input during its deliberations prior to the adoption of legislation in committee or by the full House and Senate. Should complicated legislation such as health care reform or welfare reform receive a reduced level of public input because the paperwork requirements (and civil penalties for failing to report) inhibit such input? Whatever large scale corruption this bill seeks to address, surely there is a much reduced threat of that from small non-profit groups.

Churches, associations of churches and related organizations are exempted on the basis of their tax-exempt status, even though other tax-exempt organizations are not. If it violates the "free exercise of religion" to require lobbying reports by church lobbyists, then it violates the right "to petition the government," also contained in the First Amendment, to require it of others. If, on the other hand, the government has a compelling interest sufficient to overcome the petition right, the same interest is sufficient to overcome any free exercise claim. Thus, no special exemption is required. Moreover, the bill states that its purpose is to provide the public with information on "the efforts of paid lobbyists to influence the public decision making process" and to disclose "the identity and extent of the efforts of paid lobbyists to influence" federal policy. To exempt some organizations, which may in fact outspend those required to report, is to provide a distorted picture to the public of who is involved in lobbying, thereby undermining the very purpose of the legislation.

Finally, by providing special favorable treatment of religious lobbyists, the legislation impermissibly advances religion, thereby violating the Establishment Clause. In *Walz v. Tax Commission*, 397 U.S. 664 (1970), the Supreme Court upheld the property tax exemptions for church property *only* because the same tax exemptions were available as part of a general taxation scheme exempting all nonprofit or socially beneficial organizations. This legislation may not constituionally treat churches specially.

We are gravely concerned about requirements that lobbyists and their organizations disclose contributor information including name, address and principal place of business. (See Section 105(b) 1–5.) Although Senator Levin said that contributor and membership lists would not be subject to disclosure, we believe that Section 105 will lead to such disclosure in violation of the constitutional protections against it recognized in the Supreme Court's landmark decision in *NAACP* v. *Alabama* 357 U.S. 449, (1958). In this case, a unanimous Court ruled in 1958 that members of the NAACP had a right of association that would be jeopardized by such a governmental intrusion and that their list was protected from the state.

Given that the Lobbying Disclosure Act will not eliminate a number of current federal laws affecting advocacy by non-profits, unclear and conflicting definitions of lobbying will result. Moreover, confusing jurisdictional issues are created between the Office of Lobbying Registration and Public Disclosure, the Select Committee on Ethics and the Internal Revenue Service (IRS). We believe the lack of clarity as to agency jurisdiction combined with the threat of civil penalties up to $200,000 for ordinary citizens creates an environment that will have a chilling impact on the rights of citizens to lobby. In particular, charities that now have to comply with complex IRS rules issued in 1990 will still be forced to comply with additional and conflicting federal rules required by this Act outlining the conditions of their contact with Congress and the Executive Branch.

We believe that information collected by the Office of Lobbying Registration and Public Disclosure is not subject to adequate privacy protections. It is a long standing principle of the Privacy Act of 1974 that information collected by the government for one purpose should not be available to other government agencies for use for other purposes. The Privacy Act was based on a congressional finding that the right to privacy, a personal and fundamental right protected by the United States Constitution, was "directly affected by the collection, maintenance, use and dissemination of personal information by federal agencies." S. 349 contains no such safeguards consistent with Privacy Act principles. Thus, information could be used by the Internal Revenue Service or the Federal Bureau of Investigation, for example.

Congress is correct to be concerned about actual and perceived corruption, for public mistrust of government can seriously undermine a democracy. But, overregulating individuals or organizations, especially small organizations, who engage in core political speech is not the answer. Lobbyists enrich and invigorate the legislative process, providing a wealth of information and technical expertise to Congress.

While we appreciate the efforts by Senator Levin and others to develop a workable disclosure scheme, and to address the concerns of the ACLU and others, for the reasons stated above we urge your opposition to S. 349. These issues require more deliberation than is possible under current circumstances.

Thank you for your consideration of our views.

Sincerely,

LAURA MURPHY LEE,
Director.

Mr. McCONNELL. I yield the floor and I thank my friend from Oklahoma.

The PRESIDING OFFICER. Who yields time?

Mr. McCONNELL. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Oklahoma has 11 minutes 3 seconds.

Mr. NICKLES. Mr. President, how much time remains for the other side?

The PRESIDING OFFICER. Forty seconds.

Mr. NICKLES. Mr. President, I yield the Senator from Wyoming 5 minutes.

The PRESIDING OFFICER. The Senator from Wyoming [Mr. WALLOP], is recognized.

Mr. WALLOP. Mr. President, I thank the Senator from Oklahoma. I would say to my friend from Kentucky that I, too, was offended by the Washington Post article because I know we supplied them the list of organizations opposing this legislation, and they chose to editorialize in their report. I do not know why that comes as a surprise. I guess in truth it does not.

Mr. President, I already spoke pretty significantly yesterday on this legislation, so let me only take a moment to respond to the "Dear Colleague" from the sponsor of this legislation, the Senator from Michigan.

I discussed this yesterday. The main concern of grassroots organizations is section 105(B)(5). The "Dear Colleague" of the Senator from Michigan says that the suggestion that these groups would have to expose their membership lists is untrue. The letter goes on to reference language from a CONGRESSIONAL RECORD statement of May 5, 1993, to support this assertion.

The language that is quoted in the "Dear Colleague" from May 5, 1993, may reflect the Senate bill, but this language was changed. That is the point of the debate we engage in today. The Senator from Michigan is quoting from the Senate report which had applied to lobbying firms. But page 53 of the conference agreement, the relevant bill before this body, states:

> The conference amendment would adopt the Senate language with a clarifying amendment. Under the conference amendment, all registrants, (regardless whether they are lobbying firms or use in-house lobbyists) would be required to identify any person other than the client who paid the registrant to lobby on behalf of the client.

Let me repeat the operative words: "Regardless whether they are lobbying firms or use inhouse lobbyists."

It is clear the language was changed in conference and has a much broader meaning than that contained in the approved Senate bill. I find it ironic that the Senator from Michigan attempts to justify new language in a conference agreement by referencing the obviously very different Senate language.

Mr. President, I ask unanimous consent that page 53 of the conference report be printed in the RECORD.

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

In the case of in-house lobbying, a good faith estimate, by category of dollar value, of all expenses incurred by the registrant and its employees in connection with lobbying activities.

Section 5(b) of the House amendment contains similar reporting requirements, which differ from the Senate bill, in that the House amendment would: (1) require a list of all specific issues upon which the registrant engaged in lobbying activities; (2) require the identification of the specific issues on which an outside firm retained by the registrant engaged in grass roots lobbying communications on behalf of the client; (3) require a separate good faith estimate, by category of dollar value, of the total expenses that the registrant and its employees incurred in connection with grass roots lobbying communications (including any amounts paid to an outside firm retained to make such communications); and (4) delete the requirement in the Senate bill to identify any person other than the client who paid for the lobbying activities (while adding such persons to the definition of "client").

On the first issue, the conference amendment would strike a compromise between the Senate bill and the House amendment. The conference amendment, like the House amendment, would require a listing of all specific issues that were the subject of lobbying activities; unlike the House amendment, however, the conference amendment would limit this list to issues on which lobbyists employed by the registrant engaged in lobbying activities. Under this compromise approach, lobbyists would be required to identify all of the issues on which they lobbied, but registrants would not be required to list the issues on which employees other than lobbyists may have engaged in incidental lobbying activities.

On the second and third issues, the conference amendment would adopt the House language, requiring the disclosure of grass roots lobbying issues and expenses.

On the fourth issue, the conference amendment would adopt the Senate language with a clarifying amendment. Under the conference amendment, all registrants (regardless whether they are lobbying firms or use in-house lobbyists) would be required to identify any person other than the client who paid the registrant to lobby on behalf of the client.

Section 105(c): Estimate of Income or Expenses.—Section 5(d) of the Senate bill would establish the categories of dollar value for estimates of income or expenses; authorize registrants that are required to report lobbying expenses to the Internal Revenue Service under section 6033 of the Internal Revenue Code to report the same amounts to the Office of Lobbying Registration and Public Disclosure; and provide that estimates of lobbying income or expenses need not include the value of volunteer services or expenses provided by independent contractors who are separately registered and separately report such income. Section 5(c) of the House bill contains similar provisions, with minor

clarifying changes. The conference amendment would adopt the language of the House amendment, with a further amendment to clarify the treatment of * * *

Mr. WALLOP. Even if the Senator from Michigan believes that the intent is not to require disclosure of membership lists, the language of the conference report can be interpreted very differently. The ACLU has indicated its grave concerns with the disclosure of membership lists. In fact, "They believe that section 105 will lead to such disclosure in violation of the constitutional protections against it recognized in the Supreme Court's landmark decision in NAACP versus Alabama." Obviously grassroots organizations believe their rights are being violated or why else would such a diverse group of these organizations be opposed?

Today's New York Times has a interesting article talking about what took place in a recent Supreme Court argument. The question before the court was, should the Court save the Congress from itself by reading the law in the way that Congress almost certainly intended, but did not quite say. The Court generally was unmoved by the argument. Justice Scalia said, "Don't you think it might be useful in causing Congress to be more careful" in the future, he said, if the Court showed lawmakers it would "read the law the way it's written."

"What the legislative history proves to me is that Congress made a mistake." No matter Congress' intent, he said, what the law actually says is that "all a person has to know is that he is shipping a visual deception ."

I ask unanimous consent this article be printed in the RECORD.

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

[From the New York Times, Oct. 6, 1994]

WHICH COUNTS, CONGRESS' INTENT OR ITS WORDS?

(By Linda Greenhouse)

WASHINGTON.—A Supreme Court argument today in a child pornography case provoked a spirited debate among the Justices over how the Court should respond when faced with a carelessly written law that if taken literally may well be unconstitutional.

Should the Court save Congress from itself by reading the law in the way that congress almost certainly intended but did not quite say? Or should the Court teach Congress a lesson by holding the legislators to their poor choice of words?

At issue was a 1977 Federal law, the Protection of Children Against Sexual Exploitation Act. Under the law, "any person who knowingly transports or ships" a "visual depiction" of a minor engaged in sexually explicit conduct faces up to 10 years in prison and a fine of up to $100,000.

The United States Court of Appeals for the Ninth Circuit, in San Francisco, overturned the conviction of the owner of a Los Angeles adult video store for mailing pornographic films starring a 15-year-old actress. In its 1992 ruling, the appeals court held that the law violated the First Amendment because it did not require the Government to prove that a defendant knew that the explicit films showed performers under the age of 18.

The appeals court found that from its placement in the statute, the word "knowingly" applies only to transporting or shipping a "visual depiction," and not to the succeeding clauses about the nature of the films and the age of the performers. The court then based its conclusion that the law was unconstitutional on the Supreme Court's obscenity precedents, which require proof that defendants are aware of the obscene nature of the material they are accused of possessing.

Trying to salvage the law, Solicitor General Drew S. Days 3d argued today in the Government's appeal that the word "knowingly" should be understood as applying also to the age of the performers, not just to the act of shipping the films. But several Justices were skeptical. "We're not in the business of rewriting statutes," Justice Antonin Scalia said.

When Mr. Days said that the legislative history showed that Congress meant "knowingly" to apply to the age of the performers, Justice Scalia replied: "What the legislative history proves to me is that Congress made a mistake." No matter what Congress's intent, he said, what the law actually says is that "all a person has to know is that he is shipping a visual depiction."

Mr. Days said the Court should "help Congress avoid moving into an unconstitutional realm" by interpreting the law according to what Congress meant to say. "Congress wanted to move within the boundaries of the Constitution," the Solicitor General said. "It was not trying to test the boundaries."

Justice Scalia was unmoved. "Don't you think it might be useful in causing Congress to be more careful" in the future, he said, if the Court showed lawmakers that it would "read the law the way it's written." Solicitor General Days replied that while the Court could take that view if it wished, it would be abandoning its historic approach of interpreting statutes in light of Congressional intent.

Justice Sandra Day O'Connor, calling the statute "peculiar," also appeared inclined to take it literally. "The most natural reading of the statute may be the one the Ninth Circuit adopted, isn't that so?" she asked.

Taking the other side of the argument, Justice David H. Souter said that if all Congress had meant to criminalize was "knowingly shipping," the law would be a "waste of ink" as well as incomprehensible, because most "visual depicitions" are entirely innocent. "Surely Congress had a serious purpose in mind," Justice Souter said, as well as a desire to follow the Constitution.

Stanley Fleishman, the lawyer for the defendant in the case, Rubin Gottesman, argued that the appeals court had given the correct interpretation to a "badly drawn statute." Justice Souter replied that this "grammatical point doesn't answer the problem of meaning."

Mr. Fleishman, who argued several landmark obscenity cases in an earlier era when the Court dealt regularly with obscenity, addressed the Justices in a breezy manner that they appeared to enjoy. When Chief Justice William H. Rehnquist asked him, "What if we didn't agree with you that the law is unconstitutional?" Mr. Fleishman answered, "Well, then, you wouldn't say that."

He told the Court that the law was so broadly written that "it's a statute that endangers all of us." Referring to a section of the law that also criminalizes receipt of child pornography, Mr. Fleishman said to the Justices: "You're all child pornographers. I don't mean to say it quite that way, but you've all received this material." Earlier, Justice O'Connor had observed that the clerk of the Supreme Court might be convicted under a literal reading of this section for opening pornographic material sent to the Court in connection with a case.

Among the Justices, Stephen G. Breyer is perhaps the Government's most obvious ally in the case, U.S. v. X-Citement Video, No. 93-723. Last February, as a judge on the Federal appeals court in Boston, he wrote an opinion in an unrelated case interpreting the same law to require knowledge of the age of the performer.

"Without such a requirement, the statute would severely punish purely innocent conduct," Judge Breyer wrote in that case, U.S. v. Gendron. "Congress could not have intended these results." As an appeals court judge, he took part in several lively debates with Justice Scalia before audiences of lawyers over how judges should interpret statutes, and came down on the side of considering intent.

Mr. Gottesman, the defendant in today's case, in 1987 sold an undercover agent more than 100 videotapes featuring Traci Lords, a well-known pornographic movie actress whose career began when she was a minor. He can pursue several other challenges to his conviction even if the Government wins this round at the Court.

Mr. WALLOP. Mr. President, what the ACLU said in its letter to the Senate is that there is nothing so good in this legislation that it justifies trampling on the rights of Americans. And it also listed the number of concerns it has with the bill, aside from section 105, that raised significant constitutional questions. They believe it has a chilling effect on the first amendment rights of Americans. Let me quote again.

The PRESIDING OFFICER. The Senator has spoken for 5 minutes.

Mr. NICKLES. I yield the Senator an additional 1 minute.

Mr. WALLOP. The ACLU said:

Congress is correct to be concerned about actual and perceived corruption, for public mistrust of Government can seriously undermine a democracy. But, overregulating individuals or organizations, especially small organizations, who engage in core political speech, is not the answer.

It is the opinion of the Senator from Wyoming that this Congress, knowing that this bill raises constitutional questions, should not pass the obligation to prove them wrong to the people of the United States and to the pocketbooks of individual Americans. When we know a constitutional question has been raised and has not been answered, we have an obligation not to say to Americans, "Dig it out of your own hip pocket. You go do it and prove us wrong." We have an obligation to try to do right and to try to do what we know to be constitutionally correct.

The public's mistrust and fear of Government generated by this legislation could itself undermine our democracy more than perceived fears about corruption in the Senate. And I know of no Senator here who believes—or

will name any colleague that he believes or she believes to have been corrupted.

I urge my colleagues to vote against cloture and to protect the constitutional rights of Americans.

The PRESIDING OFFICER. Who yields time? The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Oklahoma has 4 minutes 20 seconds.

Mr. NICKLES. Mr. President, I wish to compliment my colleagues from Kentucky and Wyoming for their statements. I hope, again, people would look just a little bit beyond some of the rhetoric and say: What is at stake? We are talking about passing a bill that does infringe upon the rights of thousands if not millions of Americans who want to participate in the political process by becoming a part of that process. If they contribute, under this bill they are going to be listed as a client. If they contribute, if they are a member of an association and they contribute in addition to their dues outside of their dues, they are going to be listed as a client. They are going to be registered. Their name is going to have to be disclosed.

That is not what the Washington Post reported this morning. That is not what some of our colleagues stated on the floor. But it is a fact. It is what the bill says.

The Senator from Wyoming talked about the New York Times article, "Which Counts, Congress's Intent or Its Words?" Clearly, the Supreme Court, as mentioned by Senator WALLOP, is ruling by what the law says, by legislative language not intent or legislative history. And the legislative language states if a person contributes outside of their dues they are a client and therefore their names have to be disclosed. So these groups, which cover the entire spectrum philosophically from conservative to liberal, say: We do not want that to happen. That suffocates free speech. That inhibits free speech.

Then I have to touch on section 105, where people said: No, this would not be required because of contributions. If you read section 105 it says that any person or entity who makes a contribution, their names will have to be disclosed twice a year, any person. So if they contribute, not because they happen to be a member of a group, but if they contribute to a cause to defeat legislation or to pass legislation, then their names are going to be listed. That is not really in dispute. It says "shall." Their names will be listed. It is not really, in my opinion, there are no ifs, ands, or buts about it. Their names shall be disclosed.

So I urge my colleagues, let us take out this prohibition. Let us pass rule changes. If we want to prohibit gifts, let us pass some rule changes. Those of us who are objecting to this will support that. I have just cosponsored a resolution by Senator DOLE that says let us pass a rule change and ban gifts. We can pass that. We do not even have to pass an act of Congress. We can do that in the Senate. We do not have to wait on the House. We can do that today and I think we will have bipartisan support in the Senate to make that happen. But to go so far as to say we are going to go in and hit grassroots lobbying, which was not in the Senate bill—that came in extraneously, in the conference report—I think is a serious mistake.

When we see this entire list of organizations that are opposed to this, from the American Civil Liberties Union to the Right To Work Committee to the Right To Life Committee to the Planned Parenthood of America, these groups are opposed to it because they see this as stifling free speech of their members. They see this as inhibiting their ability to be able to write letters and say, "Please contribute $20 to pass legislation or defeat legislation." Because they know under this legislation their members' names will be reported.

That is a serious mistake. We should not pass this legislation as it is. Let us defeat this, let us vote against cloture, and then let us pass a Senate rule to prohibit gifts to Members. And let us go home.

Mr. President, I yield the floor.

Mr. HEFLIN. Mr. President, I rise today with a mind troubled by the difficulties of the Lobbying Disclosure Act. I commend the sponsors of this bill, particularly the Senator from Michigan, for making an effort to restore the public's confidence in the political process and in our governing structures. However I am troubled by many of the provisions included in this bill.

I served as chairman of the Ethics Committee for several years and on the committee for several more. During my tenure, I had the unfortunate duty of prosecuting one of our colleagues in connection with ABSCAM. My duties on this committee strained personal relationships and working alliances, but I served in such a capacity because I felt it was part of our constitutional responsibility regardless of how unpleasant it might be in the short term.

So I have some background in working to rid our body of unethical and inappropriate behavior. In fact I dare say that, as much as any Senator here today, I have had the unfortunate responsibility of sitting in judgment of my peers. Because of this, I refuse to accept the suggestion that the only reason to oppose this legislation is because one is trying to take inappropriate and influence-buying gifts and trinkets.

With all this in mind, I rise today to present some of the concerns I have about the conference report's provisions.

I have listened to the arguments made in regard to the impact of the bill on grassroots lobbying activities. The rhetoric has been exaggerated; however, I do worry that individuals who are only slightly involved in lobbying will be forced to engage in costly and tedious recordkeeping if it is to contact the Federal Government and exercise their right to free speech. They will do this, if for no other reason, than to prove that they are not required to report their activities.

Some may not agree with me, but we cannot forget that the size of the penalties for violating this law can be $200,000. That is $200,000 for not being precise enough in accounting for one's speech activities. I will admit that at first I was not sure if this concern was well founded, but I know that the Director of this new Federal agency will be the one laying out the fine print for the implementation of this law. Having worked against some of the misguided proposals of the EEOC earlier this year, I do not feel safe in saying to my constituents that they will never be forced to pay an enormous penalty because of some ludicrous lobbying law lapse.

I recall that during the Base Closure Commission's decisionmaking process many communities in my State worked very hard to keep the bases in their communities open. Americans should not have to worry that if they exercise their right to participate in the Commission's deliberations that they will be responsible for exhaustive recordkeeping or the possibility of an enormous penalty. I acknowledge that by some interpretations of the law they may not be effected, but many will see the size of the penalties and decide that the threat of being fined $200,000 is just too much to take.

I am also concerned about provisions, well intentioned though they may be, that could adversely impact organizations in attempting to maintain the privacy of their membership lists. Here again, there has been some exaggerated rhetoric, but I do see some sincere concerns with regards to provision 105(b)(5). Given the methods used by some groups for fundraising, I think many organizations could be effectively required to disclose large numbers of their participating members, issue by issue. This may not happen, but the law is vague and needs to be corrected.

I am also concerned about the impact this law will have on nonprofit organizations. Groups such as the March of Dimes Birth Defects Foundation, the Lupus Foundation, and the Leukemia Society of America, have through their representative associations, voiced concern that this bill does not address concerns that they made known with regard to the paperwork burdens that

such organizations face. Organizations as divergent as the ACLU and the Christian Coalition and the Family Research Council oppose this bill; groups as divided as Planned Parenthood and the National Right to Life Committee oppose this bill.

Our Nation is founded on institutions ranging from the local to the national level. Part of the activity of these institutions in a participatory democracy is the dialogue and communication that groups do on behalf of their membership. While this bill certainly does not prohibit such communications, it could have what some, including the ACLU, have called a chilling effect on activities that have long been protected in our society.

Relative to charitable organizations, I have for many years, long before I came to the Senate, worked to raise money for groups that assist in worthy causes. I regret that charitable work is seen in some way as tainted by the suggestion that undue influence is being bought when an organization gives to a university scholarship fund or a homeless shelter. I wonder what the impact of this bill will be on many groups. I have to think that this bill may end up being the "Grinch Who Stole Christmas." I just hope we all realize that before voting.

Mr. President for these reasons I will oppose this legislation and support the reworking of this bill at the earliest possible time. I regret this because I have a good idea of how the failure of this bill will be portrayed in the media and how that could worsen the public's already grim view of Congress.

The public's anger over the way business is done in Washington could be lessened with a lobbying reform bill. However, in trying to achieve this goal, we cannot unfairly restrict free speech even indirectly, nor should we require organizations that petition the government to disclose their membership in whole or part.

Mr. SIMPSON. Mr. President, I rise briefly to express my opposition to the conference report in its current form.

This legislation started out with the best of good-faith intentions. Its purpose was to combat the perception that Congress is too influenced by big time lobbyists. Therefore, the authors reasoned, we should draft legislation which requires greater public disclosure of lobbying activities. We should eliminate the perception that Congressmen can be influenced by lobbyist lunches by cutting them out entirely.

I am a bit offended with the premise of the so-called gift-ban legislation. Eating lunches or dinners with lobbyists is really not a part of my life. These provisions will not affect me. The votes I cast here are based on what I believe is the best policy for the country, determined with particular consideration to the views of the people of my State. I form my opinions based on Wyoming town meetings, letters, and phone calls from constituents, testimony presented in committees, and floor debate. There is not a sandwich made in this world which some lobbyist might offer me that would affect my vote. Nevertheless, perception is often reality, and I have no objections to the gift-ban portion of this legislation. At least that section of the conference report was true to the purpose of this legislation because it addressed a concern of the average American.

I also believe in greater disclosure of certain lobbying activities. Let's face it. The real reason for this portion of the legislation is to provide some greater level of disclosure to the American public of what exactly the high-rolling, Gucci-wearing, French restaurant-eating, best country club-schmoozing lobbyists in this town are really up to. Once again, that's fine with me.

But just like so many pieces of legislation which passed the Senate overwhelmingly and were true to their purpose when they left this body—a completely different brew was concocted in the cauldron of the conference committee.

It was never the purpose of this bill to limit or chill the political activities of average Americans. The target here was the so-called fat cat lobbyist, not the local political activist who is more visible in our neighborhoods than in Washington. The reason I believe that this administration and the Democrats who control both Houses of Congress have been enduring bad polling numbers lately is that the average American doesn't believe they are really listening to their concerns. They want a health care bill, but not one that would be controlled by a huge new Federal bureaucracy. They want Federal funds to support local school board initiatives, not with huge Federal strings attached to the money which limits local control. And they don't want the Federal Government to maintain a registry of their political activities. And that's what will happen here. They want less Federal intrusion into their lives, not more.

When groups as diverse as Planned Parenthood, the National Right to Life Committee, the National Rifle Association, the ACLU, and the feminist majority tell me that this legislation will seriously impair our ability to exercise our rights guaranteed under the first amendment, I intend to listen. Like everyone else, I have also been inundated by letters, faxes, and phone calls from my constituents. Not one person has expressed support for this conference report as long as it contains the provisions which would increase the regulation of lobbying at the grassroots level.

Last night, Senator DOLE sent to the desk a portion of this conference report which I am willing to vote for today. It would change Senate rules in exactly the way this conference report provides. Gifts from lobbyists to Members and staff would be eliminated. The Senate could pass that internal rule without obtaining the approval of the House. Let's do that one today.

The lobbying disclosure title of the conference report would not have gone into effect until January, 1996 anyway. We will have proper time to craft a better product next year, and make it effective at the same time that this law would have taken effect.

Unless changes are made to the limitation of grassroots lobbying provisions in this conference report, I will vote against cloture. That is the only way we shall be able to achieve the laudable goal of getting rid of these provisions.

Mr. GORTON. Mr. President, after listening to the views expressed by many people in my home State of Washington, investigating the issue and carefully considering this legislation, I have decided to vote against cloture on the conference report to S. 349, the Lobbying Disclosure Act of 1994. I came to this decision after the majority party made clear that it will not let us pass the type of bill that the Senate passed earlier with my full support.

My vote against this conference report has absolutely nothing to do with the gift ban contained in it. When the Senate considered S. 1935, the Gift Ban bill, earlier this year, I joined with an overwhelming majority of my colleagues and voted for final passage. I support a strong gift ban and do not object to the gift ban language in the conference report. My support of S. 1935 proves that point.

I also support tightening up the disclosure and reporting requirements for paid lobbyists. Under current law, many lobbyists who should be reporting are not. The laws need to be changed. And again on this issue, I joined an overwhelming majority of Members in voting for final passage of the Senate version of S. 349.

But what does concern me greatly is the product of the conference committee, and specifically the provisions relating to grassroots lobbying. My constituents are understandably in an uproar over what has been termed the "grassroots gag rule."

The clearest indication that the conference committee failed in its endeavor to craft an acceptable bill is the strong opposition coming from all sides of the political spectrum. Groups like the American Civil Liberties Union, the Family Research Council, the Feminist Majority, the National Right to Life Committee, Planned Parenthood, the Christian Coalition and the U.S. Chamber of Commerce have all expressed opposition to this bill.

To that list I add, from my home state of Washington, the Washington State Grange, the Okanogan County Commissioners, the American Land

Rights Association, the Washington Society of Association Executives, the Washington State Medical Association and countless constituents who have flooded my office with calls and faxes. All of these groups and people stand united in their opposition.

They are concerned with the overbroad definition of the term "grassroots lobbying." This term, which comes from the House bill and not the Senate, is defined to include almost anything, including communications that try to influence a government-related matter by attempting to influence general public opinion.

They are concerned with the requirement that organizations employing a grassroots operation would have to reveal the names, addresses and principal places of business of those retained in conducting grassroots lobbying. This could include even volunteers. Here again, this provision was not in the Senate bill.

They are concerned that the bill could require any organization that sponsors a legislative weekend in Washington, DC, to register and report to the Government if the legislative weekend involved what could be interpreted as a lobbying contact. They are concerned that the bill includes a great deal of vague and unclear language that can be interpreted in a manner damaging to grassroots lobbying.

And in one of the most compelling reasons to oppose this bill, many groups are concerned that it will require them to turn over their entire membership or donor list to a political appointee every time they file a report. While proponents of this bill argue that this exact provision was included in the Senate-passed bill, this is not true. The original Senate language pertained only to lobbying firms. The conference committee significantly broadened this language to include "any person other than the client who paid the registrant to lobby on behalf of the client." This has my constituents rightly worried.

The conference report we are debating today is very different from the bill I voted in favor of earlier this year. Provisions were added to the Senate-passed bill that I believe are real problems for my constituents. When you add all these provisions together, the result is a chilling effect on grassroots communication and on the exercise of first amendment rights. By imposing onerous disclosure and reporting requirements, this conference report jeopardizes our constituents' rights to petition their government through associations.

Mr. President, I want to go back and pass the bills that earlier cleared this Chamber, the bills for which I voted. That is why I supported the call to open up this conference report to amendments—amendments limited to grassroots lobbying only. In that way, we could pass legislation to provide for strong lobbying disclosure and a strict gift ban. I had hoped the majority party would let us do that, but it did not.

It did not let us pass legislation that enjoys broad bipartisan support, and has forced us to vote on a bill that my constituents find unacceptable. I therefore must vote against cloture. But let me say that I have always stood ready to work with Senators on both sides of the aisle to craft an acceptable lobbying disclosure bill, including a gift ban. I had hoped that we could accomplish that goal today. It is my regret that we did not.

Mr. ROTH. Mr. President, I intend to vote for cloture on S. 349 in order to move forward on what may be our last and best chance at congressional reform in this Congress. I am concerned, however, that certain provisions relating to grassroots lobbying, some of which were written very recently in conference, are not as clear as they should be.

However, one must understand that this reform legislation covers a broad range of issues. It creates for the first time a rational scheme for informing the American people about how much paid, professional lobbyists are spending to influence policy in both the legislative and the executive branches. It also promulgates a tough and comprehensive ban on gifts to Members of Congress and their staffs from lobbyists and other persons. These reforms taken as a whole are a step forward, a step that I support.

Are the concerns with grassroots lobbying that have been discussed this morning valid? Are opponents pretending there are problems to bring down this reform legislation? Are proponents pretending not to see problems that exist in order to save this product of a 2-year effort? We have all received letters of concern from grassroots organizations from all shades of the political spectrum. I find it difficult to believe that such diverse organizations contrived phony problems at the last minute in order to kill this broad reform.

If the problem is real, how do we address it? What is the responsible thing to do?

The Lobbying Disclosure Act does not take effect until January 1996. Rather than vote against cloture and bring down this entire reform, I believe the better course to be to pass the bill and then amend it to take care of the grassroots problem. This could be done in either of two ways. A joint resolution could be passed in both Houses changing the language of the bill to be sent to the President for signature. Or if there is not sufficient time in this Congress, legislation could be passed in 1995 to eliminate this problem before the Lobbying Disclosure Act takes effect in January 1996.

Mr. BYRD. Mr. President, recently, I have heard from a number of West Virginians who are sincerely concerned about certain provisions contained in the conference report on S. 349, the Lobbying Disclosure Act of 1994—provisions specifically dealing with grassroots lobbying.

These West Virginians who have contacted me—most certainly members of grassroots organizations of one kind or another—believe that the reporting provisions of the bill unduly burden their fundamental right to "petition the government for redress of grievances."

Let me make clear that my concerns about this measure do not center on the gift-ban provisions of S. 349—provisions that were approved by the Senate by an overwhelming majority last spring. I do not play golf. I do not play tennis. And I certainly enjoy my wife's cooking more than the cuisine of any elegant restaurant in Washington. While I do not believe any Member of this body can be "bought with a cup of coffee," I would certainly support efforts that might eliminate the misperception that our votes are on sale for a good filet mignon. However, the conference report accompanying S. 349 goes far beyond the laudable goal of eliminating gustatory lobbying.

The West Virginians from whom I have heard have heartfelt concerns regarding the disclosure requirements for those people who contribute to grassroots organizations. The West Virginians from whom I have heard fear that once information on contributions to grassroots organizations is obtained by the newly created Office of Lobbying Registration and Public Disclosure, the privacy of the contributors—who are American citizens—will not be adequately protected. I do not believe that these concerns are warranted. Further, I believe that they are based on a deliberate campaign of misinformation. However, my constituents sincerely are concerned and for that reason, I voted against the motion to invoke cloture on the conference report on S. 349, the Lobbying Disclosure Act.

The right to "petition the Government for a redress of grievances"—or lobby our government—is a right specifically enumerated in article I of our Bill of Rights. The input that the legislative process receives from lobbyists can be invaluable. Many lobbyists are experts in their fields, some provide information that we in the Senate would not have the resources to gather. However, the most important "lobbying" input that we receive is from our constituents. No matter how much proponents of the disclosure requirements in S. 349 may defend the provisions in S. 349, perception is sometimes overpowering. Marie Antoinette may have never actually said, "Let them eat cake," but the people of Paris in 1793 *believed* that Marie Antoinette did say, "Let them eat cake." Perception matters. To dampen substantially the enthusiasm that grassroots organizations

from across the political spectrum engender would be a loss to this institution and a loss to our Nation.

Next year when this legislation is again before the Congress in some altered form, which I believe it will be, I may well be able to give it my support.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask unanimous consent I be permitted to use 5 minutes of my leader time.

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

Mr. MITCHELL. Mr. President and Members of the Senate, lobbying disclosure legislation passed the Senate by a vote of 95 to 2.

The gift reform legislation passed the Senate by a vote of 95 to 4. Now a conference report returns to the Senate in a form nearly identical to that which passed originally by overwhelming margins. And all of a sudden, a fictional objection has been raised over changes that were made in the conference which now are used to construct an argument that will enable Senators to reverse their positions previously taken and claim there is some rational basis for doing so.

There is, of course, no such rational basis. The arguments made this morning and over the past few days against this bill are really fictional: Exaggerated claims, exaggerated fears, trying to whip up a segment of the public with suggestions of hostility to religious organizations, embarking on the recent technique of urging one's supporters to call and then citing the calls as the reason for reversing one's position, a most transparent political technique with which anyone involved in politics is familiar.

Mr. President, this is a good bill. The votes in the Senate earlier to which I alluded makes that clear. No bill passes the Senate by 95 to 2 or 95 to 4 unless there is overwhelming support for it.

I strongly urge my colleagues to support this motion to end this filibuster. We ought to be permitted to vote on this bill. We ought not to be deterred by the fictional arguments being presented today about the extreme hypothetical consequences that might occur under certain circumstances.

This bill involves real reform—disclosure of lobbying activities, gift reform. It ought to pass. It has passed the Senate already by an overwhelming margin, and there is no rational or logical basis for any Senator to now reverse his vote. Those who voted for this bill when it was before the Senate ought to vote for this bill now. If not, they are simply reversing their positions based upon some fictional concern that is without merit or substantiation.

Mr. NICKLES. Will the Senator yield?

Mr. MITCHELL. No; I will not. I am going to complete my remarks. I did not interrupt the Senator when he was speaking.

So, Mr. President, I strongly urge my colleagues to reject the appeals of those who simply want to prevent reform from being enacted and have put out this huge smokescreen of religious organizations and activities as a way to cover their objection to the genuine reforms that are included in this bill.

This passed the Senate by a large margin before. It ought to pass the Senate by a large margin now. And I hope the American people will keep that in mind.

I urge my colleagues to vote for the motion to end the filibuster and let the Senate pass this bill.

Mr. NICKLES. Will the Senator yield?

Mr. MITCHELL. I ask unanimous consent that the Senator may have 1 minute to respond.

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

Mr. NICKLES. Mr. President, just to comment, the majority leader used the word "fictional" about half a dozen times, and "smokescreen." I ask him, when this passed the Senate it did not apply to grassroots lobbying. It does now. That is not fictional. That is not a facade. That is a significant change that was made in conference, was not in the Senate bill and is now in the conference report.

I do not see that as fictional. I see the definition of client as being anybody who contributes to an organization outside their membership to affect legislation as a massive expansion and prohibition on grassroots lobbying. And my question to the majority leader is, is that not an expansion? That was not in the Senate bill, it is now in the conference report; is that not correct?

Mr. LEVIN. I have 40 seconds left.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I yield myself that 40 seconds. There are always provisions which are changed in conference. That is what conferences are for. These are principally the same bills that passed the Senate before. I ask unanimous consent that the answer to the points of my friend from Oklahoma which is contained in a letter from Senator COHEN and myself to Senator DOLE of yesterday be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, October 6, 1994.

DEAR BOB: We welcome the opportunity to answer your questions about the application of the conference report on S. 349, the Lobbying Disclosure Act of 1994. As you know, there has been much speculation regarding the effects and applicability of the bill which may have been based on inaccurate information. We share your desire to answer these questions. Hopefully, our responses will shed some light on these important issues.

Your first question involves Section 103(2)(b). We believe that this Section does not require the disclosure of individual members of an organization unless the lobbying activities were specifically conducted on behalf of those individual members, (rather than on behalf of the organization as a whole) and the lobbyist was paid by those individual members. We wrote the provision to require disclosure of individual members only if the lobbying activities are "conducted on behalf of, and separately financed by" an individual member or members (emphasis added). It is our intent that this provision would only apply if both criteria are met.

Your second question concerns the definition of the word "retained" as it is used in Section 104(b)(5). Throughout the debate on this legislation we stressed that "retained" would mean that compensation for services would be involved. Our intent is that no disclosure of any kind is intended in the absence of compensation. Specifically, we stated in the Senate Report that "it is the element of pay that justifies the disclosure requirements" (S. Rep. 103-37, page 25). This point is also reiterated by the provision in Section 103(6), which specifically excludes from consideration "volunteers who receive no financial or other compensation" for their services.

We understand your concern, and the concern of a number of grassroots groups, about any requirement to disclose membership or contributors' lists. Although a number of groups have questioned whether Section 105(b)(5) would require such disclosure, we do not believe that it would. This provision does not refer to, and therefore in our view, require the disclosure or identification of contributors or members of an organization. The provision requires the disclosure of "any person or entity other than the client who has paid the registrant on behalf of the client." In other words, if the client did not pay the lobbyist, the lobbyist will be required to disclose who did send the check to the lobbyist. We believe that it is a misinterpretation to suggest that disclosure is required if a member simply contributes to the lobbying organization.

With regard to your fourth question, we do not believe that designating a contribution to offset a particular expenditure would constitute significant participation in the planning, supervision, or control of a lobbying effort for the purpose of Section 104(b)(3). In fact, the Joint Explanatory Statement of the Conference states that even an organization that is represented on the governing board would not be considered to exercise "significant participation or control" over the lobbying activities unless it has a "disproportionate vote in the decisions of the board." An organization that limits its control by requesting that a contribution be used for a specific purpose exercises far less participation or control than an organization that is represented on the governing board.

We also share your desire to provide protection for religious groups. That is why during the formulation of the language of this bill we solicited comments form a variety of religious groups. In fact, the United States Catholic Conference, the Center for Reform Judaism, and the Baptist Joint Committee requested the specific language of Section 103 (10)(B)(xviii) to ensure that lobbying such as the you describe in your question would be exempt. These three groups believe that lobbying on the issues of religious belief constitute the "free exercise of religion." We

share this belief and for this reason incorporated their suggested language in the Conference Report.

You may recall that it was the view of the Senate, as expressed in the Committee Report, that no express exemption was needed because such lobbying constituted free exercise of religion and would enjoy Constitutional protection. (S. Rept. 103-37, page 45). The provision that was added in conference formalizes that position and was requested by the religious organizations themselves.

Regarding your question as to who makes the determination if the Director of the Office of Lobbying Registration and Public Disclosure were ever to question the applicability of the religious exemption, the constitutionality and statutory issues would ultimately be decided in the courts. As the Senate Report states, the position of the Senate is that the issue would be decided in favor of the churches.

As you know, we have worked for over three years on this legislation, inviting comments and input from all affected and interested parties. One of our primary goals has always been to close the loopholes in the current lobbying disclosure laws while leaving the constitutional rights of our citizens to petition the government. We hope this response answers your questions and we hope to work together to ensure passage of this legislation in the next few days.

Sincerely,

WILLIAM S. COHEN.
CARL LEVIN.

Mr. LEVIN. Mr. President, the fiction that the Senator is using is that somehow or another, if somebody makes a contribution to an organization that a lobbyist represents that, therefore, that person's name is going to have to be disclosed. That is not the language in this conference report.

The lobbyist is not conducting lobbying on behalf of members of the organization. The lobbyist is hired by the organization and is lobbying on behalf of the organization, not on behalf of each individual member of the organization.

So, sure, you can use a strained construction of any language. But this language is clear. This language is clear and our intent is clear and our letters are clear. There is no ambiguity, but if you want to try to create one, it is wiped out by our statement of intent.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. NICKLES. Mr. President, I ask unanimous consent that a "Dear Colleague" letter from myself be printed in the RECORD. I think this clearly, plainly shows the definition of client includes people or is expanded to include people above their assessments or dues.

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

U.S. SENATE,
Washington, DC, October 5, 1994.

DEAR COLLEAGUE: The Senate will soon consider the conference report on S. 349, the Lobbying Disclosure Act of 1994. This is not the same bill that many of us supported when it originally passed the Senate.

It is important to note several conference provisions expanding the thrust of bill will affect thousands and perhaps millions of individual Americans who, by most definitions, could hardly be characterized as "lobbyists."

As you know, many concerns regarding coalitions, associations and grassroots efforts were raised on the House floor regarding this legislation. The rule on the bill narrowly passed by a vote of 216 to 205. A close reading of the legislation, its definitions and requirements validate these concerns.

Sections 104(a)(2) requires organizations which employ one or more lobbyists to register with the Office of Lobbying Registration and Public Disclosure. Under 104(b)(2), each registration must contain "the name, address, and principal place of business of the registrant's client" along with other information. Similarly, under Section 105(b)(1), the "name of the client" must be disclosed in semiannual reports by the registrant.

Who is defined as the client and thereby has their name, address and place of business disclosed? The term "client" is defined in 103(2). It states that in the case of a coalition or association that employs lobbyists, the organization itself is the client provided the lobbying is paid for through regular dues and assessments. However, in 103(2)(B), the client is defined as individual members of the organization if lobbying activities are financed by members outside of regular dues and assessments. Specifically, it states:

"* * * In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is—(B) an individual member or members, when the lobbying activities are conducted on behalf of, and financed separately by, 1 or more individual members and not by the coalition's or associations's dues and assessments."

Just think of all of the organizations which, in addition to annual dues, regularly call on their members to help finance the organization's efforts. Under this bill, those individual Americans would have their names, addresses and place of business submitted to and publicly disclosed by the federal government because they stood up and supported something in which they believe.

Equally concerning is a provision in Section 105(b)(5). While Section 104 requires registration, Section 105 requires semiannual reports. Section 105(b)(5) requires the reports to contain—

"the name, address, and principal place of business of any person or entity other than the client who paid the registrant to lobby on behalf of the client."

This provision would have a profound effect on many coalitions and associations which are supported by individual donors but do not have memberships, dues or assessments. The donors became the "person or entity other than the client" and, again, unsuspecting Americans end up with their name, address and place of business submitted to and publicly disclosed by the federal government for standing up and supporting something in which they believe.

For such organizations, the individuals are not members; they are simply donors and do not fall within the "client" definition in 103(2)(B). In this case, the organization is both registrant and client. The resulting confusion is emblematic of the problems throughout this bill.

Senator Levin, in a September 30 floor statement came to the defense of the Section 105(b)(5) provision, citing a Senate floor amendment and the Senate report. Note, however, that it is the conference report that presents the problems. In the Senate-passed bill, this provision applied only to lobbying firms. The provision was expanded in conference to also affect organizations which use in-house lobbyists, as noted on page 53 of the conference report.

The registration and reporting provisions I have outlined will serve to stifle and suppress the rights of individual Americans to stand up and be counted, to participate in the American democratic system. The conference agreement is poorly constructed. The end result may not have been the intent but it is certainly the effect.

I hope you will join me in working to address these serious concerns which I trust you share. This bill should not pass in its present form.

Sincerely,

DON NICKLES,
U.S. Senator.

Mr. LEVIN. Mr. President, I ask unanimous consent that a document that has been prepared to answer the various concerns which have been raised—the fictional concerns—be printed in the RECORD.

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

CONFERENCE REPORT ON LOBBYING DISCLOSURE PORTION OF LOBBYING DISCLOSURE BILL

The Lobbying Disclosure Act would—

Close loopholes in existing lobbying registration laws;

Cover paid, professional lobbyists, whether they are lawyers or non-lawyers, in-house or independent, and whether their clients are for-profit or non-profit;

Cover, for the first time, lobbying of policy-making officials in the executive branch;

Require disclosure of who is paying whom how much to lobby what federal agencies and congressional committees on what issues;

Streamline reports and eliminate unnecessary paperwork:

Provide, for the first time, effective administration and enforcement of disclosure requirements by an independent office.

REPONSE TO MISLEADING CLAIMS ABOUT THE CONFERENCE REPORT

False statement about the bill: The bill would require citizens who contact or call Congress or come to Washington to express their own views to register as lobbyists.

What the bill actually does: Only paid, professional lobbyists would be required to register under this bill, as with current law. Like the bill that passed the Senate, the conference report specifically defines a lobbyist as an individual who is "employed or retained by a client for financial or other compensation" to make lobbying contacts (subject to de minimis exclusions).

False statement about the bill: The bill would place a "gag rule" on grassroots lobbying.

What the bill actually does: the bill would not place any limitations or disclosure requirements on grassroots lobbying by citizens who organize to present their own views to the Congress. What the bill would do is to require paid, professional lobbyists to estimate how much they have spent to stimulate lobbying at the grassroots.

False statement about the bill: Section 104(b)(5) of the bill would require paid, professional lobbyists to disclose the names of unpaid individuals or volunteers involved in grassroots lobbying whom they contact as part of a lobbying campaign.

What the bill actually does: Section 104(b)(5), by its terms, requires the disclosure

only of a person who is hired by a lobbyist to stimulate a grassroots lobbying campaign. The bill expressly states, in Section 103(6) that only the paid, professional lobbyist must be disclosed under the bill and not "volunteers who receive no financial or other compensation" for their work.

False statement about the bill: Section 105(b)(5) would require organizations employing lobbyists to disclose their membership or contributors' lists.

What the bill actually does: No provision in the bill requires disclosure of membership or contributors' lists. Section 105(b)(5), which was added on the Senate floor, requires paid, professional lobbyists to disclose the name of "any person or entity other than the client who paid the registrant to lobby on behalf of the client." As Sen. Levin explained when this provision was adopted by the Senate, it would require only that "if a lobbyists's bills are paid by somebody other than a client, the identity of the person who pays the bills would have to be disclosed." [Congressional Record, May 5, 1993, page S5492].

False statement about the bill: The bill would require religious organizations to register as lobbyists.

What the bill actually does: Sections 103(9)(B) and 103(10)(B)(xviii) expressly exempt religious organizations, such as churches and associations of churches, from having to register. The Baptist Joint Committee, the U.S. Catholic Conference and the Religious Action Center of Reform Judaism have all provided letters endorsing the language in the bill.

False statement about the bill: The bill would require journalists, talk show hosts, and people who call talk shows to register as lobbyists.

What the bill actually does: Journalists are not covered by the bill, because they are not paid to contact government officials on behalf of clients. Moreover, the bill contains two applicable exemptions: one specifically excluding journalists (section 103(10)(B)(ii)) and one excluding any communication "through radio, television, cable television, or other medium of mass communication." (Section 103(10)(B)(iii)).

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

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 conference report to accompany S. 349, the Lobbying Disclosure Act:

Carl Levin, Daniel K. Akaka, D. Inouye, Byron L. Dorgan, Harry Reid, J. Lieberman, Patty Murray, Dianne Feinstein, Frank R. Lautenberg, Russell D. Feingold, Tom Harkin, Paul Simon, Paul Wellstone, Howard Metzenbaum, Claiborne Pell, Chris Dodd, Herb Kohl.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the conference report accompanying S. 349, the Lobbying Disclosure Act, shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Tennessee [Mr. SASSER] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Alaska [Mr. STEVENS] is necessarily absent.

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

The yeas and nays resulted—yeas 52, nays 46, as follows:

[Rollcall Vote No. 322 Leg.]

YEAS—52

Akaka	Ford	Mitchell
Baucus	Glenn	Moseley-Braun
Biden	Graham	Moynihan
Boren	Harkin	Murray
Boxer	Hatfield	Pell
Bradley	Inouye	Pryor
Brown	Jeffords	Reid
Bryan	Johnston	Riegle
Bumpers	Kennedy	Robb
Chafee	Kerrey	Rockefeller
Cohen	Kerry	Roth
Daschle	Kohl	Sarbanes
DeConcini	Lautenberg	Simon
Dodd	Leahy	Specter
Dorgan	Levin	Wellstone
Exon	Lieberman	Wofford
Feingold	Metzenbaum	
Feinstein	Mikulski	

NAYS—46

Bennett	Durenberger	Mathews
Bingaman	Faircloth	McCain
Bond	Gorton	McConnell
Breaux	Gramm	Murkowski
Burns	Grassley	Nickles
Byrd	Gregg	Nunn
Campbell	Hatch	Packwood
Coats	Heflin	Pressler
Cochran	Helms	Shelby
Conrad	Hollings	Simpson
Coverdell	Hutchison	Smith
Craig	Kassebaum	Thurmond
D'Amato	Kempthorne	Wallop
Danforth	Lott	Warner
Dole	Lugar	
Domenici	Mack	

NOT VOTING—2

Sasser	Stevens

The PRESIDING OFFICER. If there are no other Senators desiring to vote, on this vote, the yeas are 52, the nays are 46. Two-thirds of the Senators voting, not having voted in the affirmative, the motion is rejected.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that at 2 p.m. the Senate proceed to the consideration of a joint resolution relating to Haiti notwithstanding rule XXII, which I now send to the desk on behalf of myself, Senators DOLE, NUNN, and WARNER; that when the Senate considers the joint resolution, there be a time limitation of 4 hours and 20 minutes for debate, with 20 minutes under the control of Senator WARNER; 1 hour under the control of Senator BYRD; and 3 hours equally divided, and controlled between myself and Senator DOLE or our designees; that no amendments or motions be in order to the resolution and preamble; that when the time is used or yielded back, without intervening action the Senate vote on passage of the joint resolution; that upon adoption of the joint resolution, the preamble be agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. DECONCINI. Mr. President, reserving the right to object, and I do not intend to object. I would like to know or ask the majority leader or minority leader, how do I get 10 minutes to speak on this subject matter? Can I have some guarantee I would have that?

Mr. MITCHELL. The Senator has just obtained it.

Mr. DECONCINI. Thank you.

Mr. MITCHELL. Mr. President, I ask that the request be withheld momentarily.

I modify the request to add 15 minutes for the senior Senator from Arizona and 15 minutes for the junior Senator from Arizona.

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

Mr. MITCHELL. Mr. President, I now send the joint resolution to the desk.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, the Senate will shortly go into recess, and those Senators who wish to do so are invited and encouraged to attend the address by South African President Mandela at a joint meeting of the Congress which will occur in the House Chamber at 11 a.m.

The Senate will remain in recess until 2 p.m., at which time the Senate will begin consideration of the Haiti resolution, which has just been introduced on behalf of myself, Senator DOLE, Senator NUNN, and Senator WARNER. Pursuant to that agreement, a vote will occur at approximately 4 hours 55 minutes after debate begins, if all time is used.

However, Senators should be aware that it is possible that not all time will be used, so a vote could occur prior to the expiration of that time. But there will be a vote today on that resolution.

Mr. President, I note the presence of the distinguished Republican leader on the floor and I yield the floor at this time.

Mr. DOLE. Mr. President, I want to just reaffirm that there will be a vote on the resolution and the debate—what time did the leader say debate will start?

Mr. MITCHELL. The debate will start at 2 p.m. Under the order, there is

a total maximum time of debate 4 hours 55 minutes. So the vote will occur at approximately 6:50, or prior to that if not all time is used.

Mr. DOLE. I thank the Chair.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senator from Vermont be permitted to address the Senate as in morning business for 3 minutes, and that at the conclusion of his remarks, the Senate stand in recess as under the previous order.

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

SPRAYING PESTICIDES IN AIRPLANES

Mr. LEAHY. Mr. President, last night the Senate passed a resolution regarding the spraying of pesticides in airplanes. Many times, people who fly in airplanes to other countries find that somebody walks through spraying insecticides as they arrive in these countries. What they do not know is that this is something called Black Knight Roach Killer, and it says "avoid breathing, avoid contact with skin and eyes" on it. But they never tell us this.

We have now passed a resolution calling on countries to stop this. People have literally died from this, and people have been injured by it. And what we have now is a resolution passed calling on countries to stop this dangerous practice. I applaud the Senate for doing it. It is time for it to end.

I ask unanimous consent that statements and letters be printed in the RECORD at this point.

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

ASSOCIATION OF FLIGHT ATTENDANTS,
Washington, DC, September 28, 1994.

Hon. PATRICK LEAHY,
Chairman, Committee on Agriculture, Nutrition and Forestry, Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: The Association of Flight Attendants, AFL–CIO, representing 35,000 flight attendants at 22 carriers, strongly supports the Sense of the Senate Resolution concerning the dangerous practice of disinsection of aircraft.

Passengers on international flights are often unaware that upon arrival to their foreign destination, their cabin will be sprayed with pesticide while they are still on board. Pesticide spraying required by some governments is subjecting flight attendants and passengers to pesticide inhalation and skin absorption.

This problem is particularly acute for our members who regularly fly to such destinations. Despite warning labels that the disinsective is hazardous if inhaled or absorbed through the skin, flight attendants are required on each flight to spray several cans of such disinsective.

Because the airplane cabin is our workplace, we are also very concerned with the practice of treating cabins with a residual disinsective that has not even been registered with the Environmental Protection Agency.

This resolution is an important step forward in our mutual goal to eliminate the practice of disinsection of aircraft cabins. AFA urges all members of the Senate to support this Sense of the Senate Resolution. For the health and safety of flight attendants and passengers, it is time for the United States to take a leadership role to end this hazardous practice.

Sincerely,

DEE MAKI,
National President.

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington DC, September 30, 1994.

Senator PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: We understand that you are considering a sense of the Senate resolution calling upon the United States to advocate, at the Spring 1995 meeting of the Facilitation Division of the International Civil Aviation Organization, the amendment of the Convention on International Civil Aviation to end the practice of disinsection of aircraft cabins and to make every effort to gain the support and cosponsorship of other member nations of ICAO.

As you know, the Air Transport Association has vigorously supported the efforts of the United States Government to get foreign governments to rescind their requirements that aircraft be disinsected prior to arrival. We firmly believe that the practice is not in our passengers' best interest, but carriers are powerless to unilaterally breech governmental requirements.

The course you have proposed, bringing the United States position to ICAO, should further the best interests of our citizens and ensure equal treatment of passengers flying on the airlines of all nations.

Therefore, we wholeheartedly support your efforts to obtain passage of this sense of the Senate resolution.

Sincerely,

JAMES E. LANDRY,
President.

Mr. LEAHY. I yield the floor.

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF SOUTH AFRICA

The PRESIDING OFFICER. Without objection, in accordance with the previous notice, the Senate will now stand in recess until 2 p.m. for the purpose of attending a joint meeting with the House of Representatives to hear the very distinguished President of South Africa, Nelson Mandela.

Thereupon, the Senate, at 10:38 a.m., recessed, and the Senate, preceded by its Secretary, Martha S. Pope, and its Sergeant at Arms, Robert L. Benoit, proceeded to the Hall of the House of Representatives to hear an address delivered by His Excellency, Nelson Mandela, President of South Africa.

(For the address delivered by the President of South Africa, see today's proceedings in the House of Representatives.)

At 2 p.m., the Senate, having returned to its Chamber, reassembled, and was called to order by the Presiding Officer [Mr. CAMPBELL].

UNITED STATES POLICY TOWARD HAITI

The PRESIDING OFFICER. The hour of 2 p.m. having arrived, under the previous order the Senate will now proceed to consideration of Senate Joint Resolution 229, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 229) regarding United States policy toward Haiti.

The Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The Senator from Rhode Island [Mr. PELL] is recognized.

Mr. PELL. Mr. President, I am designated for the moment to manage the time, and I have a statement I want to make.

The PRESIDING OFFICER. The Senator may proceed.

Mr. PELL. Mr. President, I travelled to Haiti this weekend on a bipartisan delegation exceedingly well-led by Senator DODD. The trip helped me make some important judgments about the situation in Haiti as the Senate considers this resolution on the Haiti operation. During the visit, the danger of setting a date certain for the withdrawal of U.S. troops was brought home to me in my discussions with our military commanders, our troops, business leaders, and Government officials. Accordingly, I am particularly pleased the pending resolution does not fix an end-date. General Shelton told us in no uncertain terms that setting a date certain at this time would jeopardize the lives of our troops and their mission.

I believe the United States mission in Haiti has been very successful thus far, and I believe our troops, under the exceptional leadership of General Shelton, are doing a tremendous job. Morale was high among the troops and the Haitian population warmly welcomed their presence. Our troops have accomplished a great deal in just 2 weeks: Parliament has reconvened; the mayor of Port-au-Prince with whom we met was reinstalled this week after 3 years in hiding; the de jure government has regained control of TV and radio; widespread repression and political killings have ceased, and the paramilitary groups are being disarmed.

There have been scattered incidences of violence in recent days, but based on what I saw and heard, I believe press coverage greatly exaggerates the situation giving the public the impression of widespread chaos and violence. As we drove through Port-au-Prince, I did not see looting or shooting, but rather Haitians going about their normal business.

Many naysayers—eager to criticize—have begun to warn against mission creep. I would remind my colleagues that the goal of the U.S. operation is to establish a stable and secure environment for the return of the democratically elected Government. Disarming

the paramilitary groups is, of course, critical for providing security for the transition of power and for creating an environment in which democracy can flourish. More importantly for the United States, we have a great stake in disarming the paramilitary groups to ensure the continued safety of our troops.

Since our visit, there have been some new developments which bode well for the success of the mission. Col. Michel Francois, the Haitian police chief and one of the three coup leaders who must step down under the United States-negotiated settlement, has fled to the Dominican Republic and United States troops have arrested dozens of members of the paramilitary groups and disarmed numerous others. Moreover, the leader of the paramilitary group FRAPH that has been responsible for much of the recent violence, called for peace yesterday and endorsed the return of President Aristide. And, police monitors from other countries are arriving in Haiti this week, easing the task of the United States troops.

Like many of my colleagues, I had been opposed to the use of military force in Haiti and so advised the President. Fortunately, an invasion was averted thanks to President Clinton's decision to make one last effort at reaching a diplomatic solution. We now have more than 20,000 troops on the ground, however, and our full support is key to ensuring both their safety and the success of the mission.

While this issue has stirred much discussion in Congress, I hope today's debate will not be divisive or partisan. Division at home will only jeopardize the lives and safety of U.S. troops. The anti-Aristide forces are astute observers of Washington and they are hoping that opposition in Congress will force an early withdrawal of U.S. troops. If they believe Congress is trying to pull the plug on the mission, they will try to incite disorder in Haiti—perhaps by attacking some of our soldiers in order to force an early withdrawal. If the anti-Aristide forces understand that the United States is committed to the mission and will not be frightened off by a gang of thugs, the risks to our troops will be enormously reduced. I would ask my colleagues, why should be breathe new life into the opposition movement as it is crumbling?

Mr. President, I urge my colleagues to support the pending resolution. Incidentally, I would like to thank Senator FEINGOLD for his contributions to its consideration.

The PRESIDING OFFICER. Who yields time?

The Senator from New Hampshire.

Mr. GREGG. Mr. President, as I understand the unanimous consent agreement, we have 1½ hours allocated to a side. Is that correct?

The PRESIDING OFFICER. The minority designee has 1½ hours.

Mr. GREGG. I yield myself such time as I may consume of that period.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, we are here today to discuss again the issue of Haiti, and we have before us a joint resolution which has been worked out after considerable negotiation between both sides, and I wish to add my name.

I ask unanimous consent to add my name as a cosponsor of that resolution.

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

Mr. GREGG. Mr. President, this resolution outlines some of the concerns which we as a Congress have relative to the activities in Haiti and what we believe and hope the administration will do in order to address the issue of Haiti.

First and foremost, it commends our troops in Haiti for the superb job they have done in what amounts to an extraordinary difficult, if not impossible, situation.

We have put on the ground in Haiti 20,000 American soldiers, and we have asked them to pursue a mission for which they have not sufficiently been trained. Our soldiers, who are the best in the world, are trained to fight a designated enemy. They have not traditionally been trained to occupy a country and police and run that country. That is what we are being asked to do today in Haiti right down to the issue of when the electricity gets turned on, when people are told to go out and when they go out and how they can walk the streets. Those are the rules that our soldiers are being asked to enforce.

So it is a difficult task for them, but they are doing it extraordinarily well, and we congratulate them in this resolution and appropriately so.

The resolution also points out that it is appropriate that the leadership of Haiti over the last 3 years leave, that Mr. Cedras and his group give up power and turn the power over to the elected government.

The resolution also calls for the lifting of unilateral economic sanctions, which only makes sense. Of course, if we are going to militarily occupy a country, it makes no sense that we should have sanctions against that country.

Equally important, and I would read this section specifically, section (e) of the resolution says:

> Congress supports a prompt and orderly withdrawal of all United States Armed Forces from Haiti as soon as possible.

That is a key element of this agreement. In addition, the agreement calls for a full accounting of the cost of this undertaking, of the number of American military, and other individuals who will be involved on the ground there, and of the various commitments which this country has made in order to pursue this undertaking, including arrangements which were made with other nations in order to obtain the votes in the United Nations in order to effect the authority to pursue this policy in Haiti so that we will find out what the agreements were behind the understandings which were reached.

Why is all this important? It is obviously important because up until this time, in my opinion, this administration has not defined a national interest which justifies us being in Haiti in the first place. It has not defined a national security interest and has not been able to define a mission which justifies the huge expenditure of cost and the risk to which our troops are being put.

Therefore, this resolution is an attempt to encourage the administration to give us such a definition.

I am not sure that they can, having seen the situation on the ground and having observed it now for a considerable amount of time. But at least they should attempt to do so in a manner which makes it clear to the American people why they are being asked and why our soldiers are being asked to take this risk.

This is important because the mission appears to be evolving daily. In fact, it appears to be in the process of almost a minute-to-minute change in its definition of what is being asked to be done.

For example, on October 2, we heard the Deputy Secretary of Defense on a national news show saying, "The mission has not changed one bit. We have had a consistent policy."

I am not sure he said that with a straight face, but at least he said that. But then he added, "We are not going to provide a police function."

And today we read in the Washington Post, 4 days later, a statement by a U.S. official:

> Clearly, the United States has been drawn into doing more traditional police work than originally intended. There was a real assumption the Haitians would carry out this function. We were naive? I guess to some degree.

The fact is that we are not only doing a police job down there, we are actually in a military occupation of the nation of Haiti, much the same as we militarily occupied Germany or Japan after World War II. And as part of that military occupation, we are, in a de facto manner, running the government in the day-to-day operation of that country, including the police function. And we are being drawn by different factions within the Haitian population to do things to benefit this faction versus that faction.

Granted, there are a lot of black hats in Haiti who need to be dealt with aggressively. But there are also a lot of gray hats and, in my opinion, there are virtually no white hats. What we are seeing is that this element and that

element drawing us this way and that way. One element wants us to disarm their enemies, another element wants us to disarm their enemies, and it just happens that the two elements conflict with each other and our soldiers are being put in the impossible situation of almost being asked to take weapons away from the people.

And they are saying, "If we give you our weapons, then our families will be at risk of mob violence," because that is the way this nation has worked in the past. They are saying, "We do not want to put our families at risk." And if they risk mob violence, then we are putting our troops at risk in a domestic conflict, such as if you had a fight within a family. And they are not trained to do that. They are trained to fight an enemy, a clear, definable enemy. And in Haiti it is hard for them to find such an enemy or define such an enemy. So they are in a very, very precarious situation.

This resolution attempts to define more clearly what their role is, how long they will be there, and what it is going to cost. And that is appropriate and important.

And we also have to ask: Why have we risked so much in the way of American lives and American dollars in order to reinstitute the government of Mr. Aristide? Because that appears to be the underlying action.

Once again a bit independent of this resolution, but I must raise that question, because we continue to see issues which are raised around the operation and the activities of this gentleman which call into question what his motives are and what his intentions are.

We now find from our DEA that he may have been involved in bribery activity with the Columbia drug cartel. That is one representation made in the news media.

Second, we find that he has refused, or his people have refused, his lawyers have refused to sign a status-of-force agreement, which would allow our troops to know a little bit better what we are doing down there, a traditional agreement you reach when you put troops down on the ground in some other country. Yet the lawyers say they will not sign the status-of-force agreement until they get an agreement from us that we will go out and protect Aristide and his people first, hopefully with our troops, and, secondly, disarm the Aristide opponents as they are picked and chosen by the Aristide faction. And thus they are negotiating with us for this status-of-force agreement.

We find, in taking over this country with our troops and putting at risk our military people in order to put him back in power and get rid of this thug Cedras, that Mr. Aristide was angry with our action, angry with the agreement. "Angry and disappointed" is the term used in the reports by Mr. Carter, and he reflected that anger by refusing to acknowledge the action and thank the American people for what has been done for a period of time. And we find that is a major question as to just what this administration has been saying to Mr. Aristide we will do.

In fact, it appears that, under this most recent report in the Washington Post yesterday by Mr. Graham, that "U.S. officials have shared with Aristide's representatives a number of papers outlining American plans and intentions in Haiti."

And what I hope is that, using this resolution, the administration will also be inclined to share those papers and intentions with the Congress and with the American people, for it would be nice for us to know what the intentions are here.

We know that there is a plan floating around out there somewhere that says we are going to get into infrastructure rebuilding, that we are going to maybe go as far as hire 60,000 Haitians in a make-work program, that we are going to rebuild the police force, rebuild the court system. All of this is going to be very expensive and involve a fair amount of American military personnel and then private support personnel through our AID development program. We need to know how long we are going to be there, how many people are going to be involved and how much the cost is. And that is what the goal of this resolution is.

The purpose, therefore, of the resolution is really to get some definition from the administration as to what it has cost us to date, what the plans are for the future, and to also encourage the administration to move as quickly as possible to remove all American troops from Haiti.

What the resolution does not do is set a specific date. And that, I think, is an appropriate decision. Setting a specific date, according to our commanders on the ground, would, in their opinion, put at risk our military personnel, and that is the last thing we want to do. So we have not asked for a specific date.

Obviously, many of us feel that as soon as Mr. Aristide returns to power—and we hope that he will go back to Haiti sooner rather than later—that at that point we can see our troops begin to be drawn down and drawn down quickly. But I do not know that that is going to be the attitude that this administration takes.

In fact, my sense is that the commitment that they are making is for a fairly long haul, with a lot of dollars and a lot of people involved; maybe not military people, but at some level AID-types involved.

And so if that is their decision, if they are going to be involved there for a long time, if that is the intentions and plans as outlined and given to Mr. Aristide, then the American people need to know that.

What this resolution essentially calls for is not a disclosure to Mr. Aristide what we plan to do down there, but to the American people of what we plan to do down there.

So I think it is an appropriate decision to go forward with this resolution at this time. I think it is obviously good that it has received bipartisan support, and I am certainly hopeful that the administration will follow the terms of it and by doing that inform the American people more fully of what is happening in this very significant foreign policy area.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut [Mr. DODD] is recognized.

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

Mr. President, I hope today that we can bring to a close, at least temporarily, this extensive debate on Haiti. I think we have now had some eight different proposals that have come before this body in the last several months regarding Haiti and our involvement in it.

Let me say at the outset how much I happen to support what President Clinton has done. I realize, Mr. President, that I may be in a minority in this body making that statement, but I think the facts and the events of the last almost 3 weeks prove that statement to be accurate.

It is miraculous indeed—and there is no other word to use to describe it than miraculous—that we have not lost a single service man or woman in Haiti in almost 3 weeks through violence on the ground in Haiti. There have been, I gather, two of our men in uniform who have taken their own lives, but those were circumstances, obviously, that did not relate to their duties or presence in Haiti.

It is, I think, evidence of the fact that the overwhelming majority of people in Haiti have welcomed, in fact have embraced warmly, to put it mildly, the presence of these United States forces. Without them I do not think there was much hope that we would have seen the demise and the disarming of the paramilitary forces that have terrorized that nation—not just over the past 3 years since the coup ousted the democratically elected President of that country but, frankly, this is the second and third generation of terrorists in Haiti who have deprived that nation of even an ounce of decency in the conduct of their normal daily activities.

Just to listen to some of the stories and to now bear witness to some of the places where Haitians have been held and tortured is horrifying. These are a people who have been gripped with fear because of the malicious and violent

conduct of a handful of people who for their own self-interests have decided to terrorize their people.

I have heard it said on this floor there is no mission for the United States in Haiti. I could not disagree more, nor could General Shelton and the other senior military people who are there on the ground, going through the daily exercise of disarming the elements who have terrorized that nation. This is a country that does not exist thousands of miles from our shores. It is within a couple of hundred miles of our shores. Some 150,000 people in that nation of 7 million, over the past number of months, have fled Haiti seeking asylum and freedom. Many have gone to the Dominican Republic because that is the easiest route of departure, since the two countries share the island of Hispaniola. But we also know that some 14,000 Haitians departed in the flimsiest, ricketiest, if you will, of craft, jeopardizing their lives trying to make it to the shores of our own country in ships and boats you would not want to trust on the calmest of lakes in this Nation. They knew full well their lives were in jeopardy, but faced with a choice of staying where they were and the horrors they faced there, they were willing to take that risk of their own lives and the lives of their families in order to seek freedom.

It is not an exaggeration to say that it would probably be likely, had action not been taken, that 200,000 to 400,000 people in that nation would have done what any normal-thinking person would have done and that is to seek freedom and asylum and to leave Haiti, given the repression that existed.

Unfortunately—or fortunately—these refugees were not going to go to Colombia or to Venezuela or to Brazil or Spain or Cuba. They were going to try to come to the United States of America. And there is a significant cost associated with that.

I point out, just with the refugee population that exists in Guantanamo, the estimates are of a price tag exceeding $200 million a year to handle that refugee population. If I am correct in my estimate that those numbers would have exploded beyond the present level over the next year or more, then the cost to the American taxpayer of trying to handle these people faced with the problems they had, the decision to try to remove the dreaded FRAPH and attachés and military elements that were engaged in this behavior was in the interests of our own country.

I argue as well it was in the interest of Haiti and its neighbors, as reflected by the unanimous vote at the U.N. Security Council, the unanimous support of the Organization of American States.

This is not the United States acting alone. At times we have done that in the past. We did that in Grenada. We did that in Panama. I stood in this very Chamber and supported the Reagan and Bush administrations when they took those actions, even though we acted alone, because I thought there was a justification. Others disagreed. I did not. I thought there was a good cause.

I also happen to believe in this case there is a good cause, the immediate threat of a wave of humanity coming to our shores, seeking refuge here. And we, because of our tradition and because of our history, do not sit idly by while people are suffering. We try to reach out with a hand to make a difference. I suspect that is what we would continue to do.

So, deciding to step in here to eliminate the cause for these thousands of people seeking a safe harbor, I think was justified.

But on another level I think there is a justification as well. We just heard, a few moments ago, Nelson Mandela speak in the Chamber of the House of Representatives as the President of the Republic of South Africa. I sat in this Chamber and participated in the debates on South Africa. Much of the language that is today being used to describe President Aristide was used to describe Nelson Mandela in this very Chamber. Some of the same language that has been used to describe this democratically elected President of Haiti was used to describe Nelson Mandela and his efforts. Today we applaud him with a standing ovation in our own Chambers of Congress because of the success of democracy. We were ridiculed, we were criticized, we were told we were unrealistic, that we ought to be thinking in stark economic terms and not be overly concerned, to allow our economic interests to be overcome by human rights.

Yet we heard Nelson Mandela in the Chamber of the House of Representatives, as did those who were present just a few moments ago in Statuary Hall, deeply thank the U.S. Congress because in his darkest hour a majority of the American Congress stood up and fought for the human rights and decency and freedom of all South Africans. That ought to be a badge of honor, a moment in which all of us can take collective pride. Of all the free nations in the world, we stood most firm in trying to support the freedom of all South Africans.

Today, in a nation 200 miles from our shore, another people are seeking their freedom, their justice, their opportunity. I do not think anyone in this Chamber ought to be embarrassed, or feel somehow it is not a justifiable cause, for us to try to stand up for another people who were seeking their freedom. That more than anything else is what this is about.

I fully understand there are conflicts raging all across the globe and in every instance you do not necessarily send military forces. We did not in the case of South Africa. We took strong action. And when the Congress of the United States speaks, people listen all over the globe. The moral authority and the weight of our words and our actions has significance. We should not underestimate that.

My strong hope would be we would pass a resolution that would not shy away from fighting for democracy, fighting for those who were duly elected in their country, fighting for those who have been terrorized and worse over the last 36 months by dreaded military elements and their paramilitary supporters in the island nation of Haiti. In the next few days we will witness the return of the duly elected President of that country. Never before that I know of in modern history has a duly elected President of his country been returned to that nation when that President has been subjected to a coup.

People will say we should not be engaging in unprecedented actions. But we have witnessed over the past several years, unprecedented actions. We watched the collapse of the Soviet Union. We watched a leader of Israel and a leader of the Arab world speak just a few weeks ago in the very Chamber from which Nelson Mandela spoke a few moments ago, a sight I do not think many of us ever thought we would see in our lifetime. And we heard just a few moments ago, Nelson Mandela, who spent 27 years in jail, incarcerated in his own nation without the privilege of even seeing, except on rare occasions, his own children and family. His photograph could not be used. Anyone who associated with him was a banned person.

Yet we have witnessed through, in part, our own actions here, not only the liberation of that individual but democracy and freedom at last being given a chance in South Africa.

I believe, while the return of President Aristide may be unprecedented, it is something we ought to take great pride in, take great pleasure in seeing occur, because in no small measure it will have occurred because this country stood up. In this case, military forces have made a difference. It is the proper exercise of the use of force counterbalanced with diplomacy.

Listen to the words, if you will, of Evans Paul, the mayor of Port-au-Prince—who has been in hiding for the last 3½ or 4 years because he was a marked man, marked by the very elements we are disarming today—as he stood on the steps of city hall in Port-au-Prince the other day, returning to his post as duly elected mayor of that city. Never before, he said, in recorded history has the greatest power on Earth reached down to help one of the weakest nations on Earth to achieve democracy and freedom.

That is not a U.S. Congressman talking. This is not a mayor in one of our

own cities. This is the mayor of Port-au-Prince describing the actions of this Nation. And yet, to listen to some of the debate over these past several weeks, there is almost this sense that we are somehow doing something terribly wrong in Haiti and, yet, overwhelming voices are applauding our action, not only in that nation but across the globe.

Why is there this sense of shame? Why is there this sense of disappointment that somehow we are not doing something right, and because it is this President who took the action. The rest of us, during other crises, whatever disagreements we may have had, once the decision was made, we rallied behind, with rare exception, whether it was the Persian Gulf, Panama, Grenada, to cite most recent events where United States military forces have been used.

Can we not in this Chamber today come together, whatever disagreements there may have been—and legitimate they were, to express concern about injecting U.S. forces in a hostile situation. Today, those forces are doing a magnificent job. We are about to see the unprecedented action of the return of a democratically elected president in that nation. Can we not applaud that now? Can we not say, despite our legitimate worries, our legitimate concerns, in fact it has worked; it is doing the job? And that this small nation, while it has not achieved pure democracy and is a long way from it, has one thing, Mr. President, it did not have 3 weeks ago? It has a chance. It has a chance for a better future for its Government and, more important, its people.

We cannot guarantee freedom. We cannot guarantee justice. We cannot guarantee that there will be no violence. But we are, at least, through our actions, diplomatically, politically, and militarily creating the opportunity for that freedom, creating the opportunity for that justice, creating the opportunity that these people may just have a chance to live without the threat and fear of violence and torture and murder of innocent civilians that was the case in Haiti for these past 3 years.

Mr. President, I applaud what President Clinton has done. I think history will judge him well for the decision he took. It is a tough decision. It was a decision not without its problems and risks, and we all know that. But instead of now decrying that, I think we ought to express some support for his action and a willingness to get behind it and see if we cannot even make it work better.

So, Mr. President, we will have an opportunity later this afternoon to vote on a resolution. It is not a resolution that, frankly, I am overly enthusiastic about because it was crafted to try to accommodate a lot of different opinions around here that existed 3 weeks ago.

There is a new day in Haiti. The new day is upon us. Whatever the criticisms may have been over previous actions, as I said a moment ago, the policy is working, working far beyond the expectations of anyone, even those like myself who supported it. But we ought to get behind it and express our determination to do what we can to try to make it work. That is what we did in South Africa, and today we bore witness to the fruits of that effort.

I believe just as truly, Mr. President, that in time, we will also look back on this decision, this decision of this President, as a proper, a correct, and a courageous one that has served not only our own interests but the interest of a people in our neighborhood, in our hemisphere, who are seeking freedom and justice and democracy.

Mr. President, I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I just want to yield myself a minute to respond, and I will not respond to the entire argument set forth by the Senator from Connecticut. But I think one point needs to be addressed, and that is this attempt to wrap Mr. Aristide in the cloak of Mr. Mandela. I believe that to be most inappropriate.

Nelson Mandela is truly one of the great men of this century. Mr. Aristide has some serious problems. By our own representations of our own Drug Enforcement Agency, he has been named, or alleged to have been named, as taking a bribe from the Colombian drug cartel. He refused to thank the American people for a period of 4 days for the action we took out of peace. That is not the sign of a great leader. He has refused to sign the status of force agreement, and he continues to pursue a policy or has pursued a policy over the years of using mob violence to suppress his opponents.

To compare Mr. Mandela with Mr. Aristide is to compare George Washington with Huey Long. There is no comparison. I do think it is inappropriate to attempt to do that.

I yield 8 minutes to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 8 minutes.

Mr. COVERDELL. Thank you, Mr. President.

Mr. President, I did not support the invasion and expressed that many times on the floor of the Senate. Nor did I support what I guess we could best characterize as a military occupation of Haiti. I have great respect for my colleague from Connecticut, but I think he has made an argument in many ways in his remarks that he just gave that raised the very central theme of our grave concern, those of us who are concerned in the Congress, when he compared South Africa and the human crisis that was occurring in South Africa to a human crisis, indeed, that is happening in Haiti, the two very distinct precedents and statements made by this Nation about how to manage this dilemma.

Obviously, there is nobody in the Chamber that takes any heart from the suffering that was occurring in Haiti or any other place in our world, whether it is Somalia, Rwanda, or South Africa, and many other countries. In fact, about 75 of the 200-some-odd nations are having circumstances not unlike Haiti.

It is absolutely appropriate for the Congress of the United States to be engaged, as we are, in the precedents that we set as a nation about how we are going to manage these kinds of issues. I would say that the precedent that we set in South Africa comes very close to the kind of proper exercise of power of a nation such as the United States. It was diplomatic, it was forceful, and it was economic. But I do not believe it ever crossed anyone's mind that we would park the U.S.S. *Eisenhower* off the shores of South Africa and land thousands of highly armed military personnel to determine the outcome of that crisis.

Nor do I believe we should set that precedent in our own hemisphere. Each time there is an internal crisis that we do not agree with, the resolution will be the use of military armed power to resolve either the human crisis or the philosophical crisis. To be honest, the U.S. Treasury—setting aside the philosophy—the U.S. Treasury cannot nor should it be asked to resolve all these types of crises—economic, diplomatic, perseverance, pressure, regional, international—yes. Armed intervention where there is not an immediate national threat is the improper use of a highly trained, sophisticated military apparatus.

I join my colleague from Connecticut in commending the execution. I know I stand with all my colleagues in support of those troops while they are on the ground, but I think it is entirely appropriate that we are engaged in the process to remove that kind of force from this process in the appropriate way.

Should we set a date? I do not believe so, as yet. We are too early in the process, and it affects the security of our own personnel.

Mr. President, this situation is one of decades of suspicion and insecurity and disagreement. This is a nation without infrastructure and resources and leadership. You can only conclude, therefore, that only a long haul can come to terms with this. There is no short-term solution. And now you have 20,000 military on the ground, and you can only be confronted with the muddling question about what happens when they are removed, because there is no short-

term answer. And so this Congress, as the eloquent Senator from West Virginia has alluded to, and I suspect he may again, will come to terms as it must with the limits on its resources. It is entirely appropriate for us to do so. Nor should that be contrived to mean that somehow we are politicizing the issue.

Mr. President, I ask unanimous consent to be added to the resolution as a cosponsor.

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

Mr. COVERDELL. Mr. President, I yield back my time.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I yield such time as he may consume to the distinguished senior Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia [Mr. NUNN], is recognized for such time as he may consume.

Mr. NUNN. I thank my colleague from Connecticut.

I thank him for his leadership on this resolution and this important subject.

I rise today in support of the joint resolution on Haiti, of which I am a cosponsor, having worked on it with others, particularly with the leadership.

I wish to express my appreciation to the majority and minority leaders and a number of other Senators on both sides of the aisle who worked hard to work out this bipartisan resolution.

Mr. President, I believe that the resolution is self-explanatory. I do want to make a few brief observations, however, and I will also make a few remarks about the situation in Haiti as we find it today.

First of all, the resolution ensures that the Congress is formally notified by the President of our strategic objectives, of U.S. policy, the military mission, and the rules of engagement.

The resolution also ensures that we are kept informed on at least a monthly basis of the situation in Haiti. Many of us on the Armed Services Committee, Foreign Relations Committee, and Intelligence Committee will be following it, of course, on a daily basis.

Second, the resolution may be most notable for what it does not include. It does not include a fixed date for the withdrawal of United States forces from Haiti. It also does not attempt to narrowly and rigidly limit the mission of our forces there. In my view this is a welcome result as it gives our military commanders the flexibility to do what they have to do in a dynamic, complex, unpredictable, and still very dangerous environment.

Mr. President, as to the situation on the ground in Haiti, first and foremost, I commend the men and women of our Armed Forces for the skill and professionalism with which they are carrying out their duties. Their efforts in Haiti merit the support of all Americans, whether one supports our Government's policies relating to that unfortunate country or not. And I am confident the people of America in overwhelming proportions do support our military men and women in Haiti, and I am also confident that is true of an overwhelming number of Members of the Senate and the House.

I encourage the administration and the leaders of these nations that are cooperating with us to accelerate their efforts to bring relief to the people of Haiti. If the lot of the Haitian people is not improved and improved very soon, in terms of both food and security, the mission of our forces will be increasingly more difficult.

I was disappointed that the U.N. Security Council did not immediately lift the economic sanctions on Haiti rather than delaying the lifting until President Aristide returns to Haiti, despite the fact that President Aristide himself called for the immediate lifting of most of the embargo.

Mr. President, I must say that I have been informed that our own organization, AID, is not moving boldly in the direction of bringing relief, waiting instead for the return of President Aristide. I am also disappointed in that. I think it is a mistake, and I think it makes our military mission there more difficult. I believe it is essential that we do what we can each and every day before October 15 and after October 15 to alleviate the suffering of the Haitian people. Without that alleviation of suffering, the troops in Haiti will be in more danger and their mission will be more difficult.

VISIT TO THE SENATE BY NELSON MANDELA, PRESIDENT OF SOUTH AFRICA

Mr. DODD. Mr. President, I ask the Senate stand in recess, with the permission of the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia has the floor.

Mr. NUNN. I will be glad to yield.

I believe the request is that the Senate stand in recess for 5 minutes to greet Nelson Mandela, the President of South Africa.

Thereupon, at 2:46 p.m., the Senate recessed until 2:59 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CAMPBELL).

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

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

Mr. President, as we all know, this is a very special day where we have heard the wonderful comments, inspiring comments, of the President of South Africa, and I think it gives us a great deal of hope, not only in South Africa but everywhere in the world where people are divided by race or religion or by culture or by economic class, as we see in the situation in Haiti.

Mr. President, the days and months ahead will require much in the way of alleviating the suffering of the Haitian people from the other departments and agencies of the United States Government, including especially AID, our allies from the United Nations, and especially from President Aristide and his supporters. I will be watching their performance very closely and will not hesitate to speak out if I think their actions are inappropriate and are endangering the safety of American military forces.

Mr. President, I want to note that although, as I have already pointed out, this resolution does not state a fixed or even a target date for the withdrawal of our forces at this time, the Senate through the power of the purse and the House through the power of the purse retain the power to do so in the future if such proves necessary.

Finally, although as I have noted on the Senate floor several times, I did not support an invasion of Haiti, I am pleased that the Haitian people now will have an opportunity to build democracy in their own country. I said very specifically "build" not "restore" or "reestablish" democracy because there has never really been a functioning democracy in Haiti. The United States has taken the lead now in giving the Haitian people that opportunity. It will require hard work and determination by the citizens of Haiti if they are to succeed. It cannot be done for them. It cannot be done by military force. It cannot be done by U.S. or international occupation. It must be done by the Haitian people themselves. It will not happen overnight, but it will require a long, step-by-step process, as the fundamental institutions of a democracy are being built. These institutions include a freely elected and functioning parliament—and those parliamentary elections taking place pursuant to this Haitian Constitution this year are enormously important—a police force separate from the army that is trained and disciplined and under civilian control; a small professional army under civilian control; and an independent judicial system. Success will also require the cooperation and assistance of many other nations acting in concert with the United Nations and the legitimate government of Haiti.

Finally, I want to mention my strong belief that a broad amnesty law must be enacted by the Haitian Parliament if the reconciliation that President Aristide supports is to take place. In that connection, I want to note that there have been some incorrect media reporting about the terms of the Carter-Jonassaint agreement, the Port-au-Prince agreement, with respect to amnesty and retirement of General Cedras, General Biamby, and Police Chief Francois.

First, it should be noted that the Governors Island Agreement that was signed by President Aristide and General Cedras in June 1993 called for, quoting from that agreement, "an amnesty granted by the President of the Republic within the framework of article 147 of the National Constitution and implementation of the other instruments which may be adopted by the Parliament on this question."

President Aristide only has the authority under the Haitian Constitution to grant political amnesty. I noted a headline yesterday morning that said President Aristide refuses to grant broad amnesty. President Aristide has only limited power as to what he can grant—namely political amnesty. He does have enormous influence over the Parliament, however, and I think it is important for him to take this lead in terms of what the Parliament may do. But a general amnesty or a broader amnesty is within the discretion of the Haitian Parliament.

The Governors Island Agreement also provided that General Cedras "has decided to avail himself of his right to early retirement." The Carter-Jonassaint agreement called for Cedras, Biamby, and Francois to retire "when a general amnesty will be voted into law by the Haitian Parliament, or October 15, 1994, whichever is earlier." There was no guarantee of amnesty in the agreement negotiated by President Carter, by General Powell, and by myself. Anyone reading that agreement can determine that there was no guarantee of amnesty.

I have seen several media reports talking about a guarantee of amnesty. That simply is incorrect. There was no guarantee. The question of amnesty is up to the Haitian Parliament. But I do believe it is essential that amnesty be granted if democracy is going to be restored and if the pattern of retribution and violence that has been too long in the Haitian culture is to be stopped.

Thus, both the Governors Island Agreement and the Carter-Jonassaint agreement call for the same thing; that is, for General Cedras to retire and for the Haitian Parliament to exercise its discretion in deciding whether to grant a broader amnesty for him. Additionally, it is interesting to note, despite a lot of media comment—particularly editorial comment that did not seemingly understand the Governors Island Agreement—that neither the Governors Island Agreement nor the Carter-Jonassaint agreement required Cedras and company to leave Haiti.

Finally, Mr. President, I want to serve notice that if there is no amnesty, if the cycle of retribution and violence that has plagued Haiti for decades is not broken, and if the step-by-step process of building democratic institutions does not begin, I for one will not support the extended presence in Haiti of the men and women of the Armed Forces of the United States. I believe that our role there should be limited, in any event. We are talking about a matter of months, not years. But if we see a pattern of retribution, if we see no amnesty granted by the Parliament, if we do not see leadership by President Aristide in regard to breaking this pattern of retribution, then I think that the U.S. Senate and U.S. Congress will take a different view in the months to come relating to this resolution.

There will be other resolutions, I am sure, next year depending on the situation on the ground in Haiti. The people of Haiti have an opportunity, what we call a window of opportunity, to begin to build democracy. A resumption of the historic pattern of retribution and violence would not only result in my view in an early withdrawal of United States forces from Haiti, but it would also doom democracy in Haiti.

I am hopeful that President Aristide and the leaders of the Haitian Parliament, as well as the citizens of Haiti, will avail themselves of this window of opportunity for beginning a democracy that can bring peace and prosperity to that country that has too long suffered under dictatorship and under a pattern of violence and retribution that must be broken.

Mr. President, I thank my friend from Connecticut. I now yield the floor.

Mr. GREGG. Mr. President, I yield 10 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky [Mr. MCCONNELL] is recognized.

Mr. MCCONNELL. Mr. President, first I want to thank the distinguished Senator from New Hampshire for his leadership on the Haiti issue going back to the debates that we heard here in this body on amendments to the foreign operations bill earlier this summer. I think his efforts have been truly outstanding.

Mr. President, I want to talk about a little different aspect of this issue. The Senate and the American people are bearing the cost of the occupation of Haiti in terms of the danger to our military personnel, and the cost in dollars of the occupation of a country with 20,000 of our troops.

Mr. President, there is a hidden cost as well and it is this: It seems perfectly clear that in return for Russian acquiescence to our invasion of Haiti—or, shall I say, occupation of Haiti—by virtue of their support for the U.N. resolution, the administration has said in effect to the Russians, maybe even said it openly, you do what you will in the New Independent States. In other words, the hidden cost of the occupation of Haiti is that we are in effect saying to the Russians you go ahead and do what you will in Ukraine or Georgia or Armenia, as Azerbaijan, or anywhere else in the former Soviet Union and we will utter not a peep.

This policy, Mr. President, is extraordinarily distressing to many Americans, Americans of Eastern European descent who are quite concerned about the reemergence of the Russian empire in what the Russian Foreign Minister calls the near abroad.

This is sort of a "Russian Monroe Doctrine," Mr. President, in which the Russians essentially lay down the policy that it is their prerogative to intervene at any time, with or without concurrence, in the internal affairs of any of those countries that used to make up the Soviet Union. And many of us suspect that their view may well be that that Russian preeminence also applies to what used to be the Warsaw Pact.

So suffice it to say, Mr. President, the policy of this administration with regard to Russia, which it hails as one of its great foreign policy achievements is, in fact, just the opposite. Our policy in that part of the world is: Whatever Russia wants, Russia gets, whether it is funneling all of our foreign assistance through the Russians, or whether it is attempting to defeat earmarks, as we experienced in the foreign operations conference last summer.

We, in the Senate bill, earmarked assistance for Ukraine, earmarked assistance for Georgia, earmarked assistance for Armenia, and had an amendment offered with regard to Russian troop withdrawals from the Baltics. We went to conference with the House, and the administration in concert with the House conferees, stripped out all of those earmarks, and a message was perfectly clear. It was this: We do not want to offend the Russians. We do not want to offend the Russians.

So what we are saying in effect, Mr. President, is that whatever the Russians want in that whole area of the world, which clearly is in our national interest—we fought a war in Europe 50 years ago, and the European political ideology dominated that part of the world. It is the reason that we had the cold war.

We may argue about whether or not we have any national interest in Haiti. Most of us think we do not—national interest nor national security interests—but nobody would argue that we do not have national interests in Central Europe. That was what the cold war was all about. Yet, here, we are essentially acquiescing to the reemergence of the Russian empire by just rolling over and saying to the Russians: Whatever you want to do in that part of the world, fine. So the administration, in effect, asked the Russians for permission to go into Haiti, and the quid pro quo for that was: You do what you will in your part of the world, and we will utter not a peep.

Mr. President, I think that is a major, if you will, hidden cost of the

occupation of Haiti—a hidden cost of the occupation of Haiti. Why in the world we would want to go into Haiti and referee this internal dispute is beyond me, Mr. President. I do not know anybody in the Senate, certainly not on this side of the aisle, and I suspect most on that side, who can state convincingly an argument that Haiti is in our national interests, and certainly not our national security interests.

What is particularly disturbing about the Russian aspect of this is the blatant nature of the administration's quid pro quo. For example, the administration's "Russia-first" policy, to which I referred, was underscored last month by our U.N. Ambassador Madeleine Albright. She concluded a swing across Europe just last month with a September speech in Moscow in which she said: "Russia is an empire where the mother country and the colonies"—the colonies—"are contiguous." "Is an empire," she said, not "was" an empire. A slip of tense? Well, maybe. But the speech went on to assert an equivalent status between the United States and Russia conceding "Russia's mandate and activities in the near abroad were appropriate."

This is the American Ambassador to the United Nations in Moscow saying openly and publicly: You do what you will in what used to be the Soviet Union. It is no concern of ours.

Fortunately, Mr. President, a Danish journalist in the audience reminded Ambassador Albright that history and human psychology made Russia's emerging role more unsettling than the activities of a Nation like ours with a 200-year tradition of political pluralism and freedom.

Some might ask why this Russia-first approach should matter. After all, important progress has been made in internal and economic reform in Russia, and we are happy about that. None of us needs reminding that the last summit was held in the wake of a near overthrow of the Yeltsin government, a violent attack on parliament, and a defeat of key economic reforms. There is no doubt that Russia has changed for the better.

But, Mr. President, there is an important difference between supporting Russian internal reforms and supporting Russian external ambitions. And that, Mr. President, is clearly one of the hidden costs of the Haiti invasion. We have said, in effect, to the Russians: Do not object to what we do in Haiti, and you have a free hand, as far as we are concerned, in all of the areas that used to make up the Soviet Union.

Mr. President, there are a number of insertions I would like to make in the RECORD.

I ask unanimous consent some attachments be printed in the RECORD.

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

[From the Chicago Tribune, Oct. 4, 1994]

WILL U.S. PAY 'HIDDEN COST' FOR HAITI?

(By Mitch McConnell)

In a recent interview, Foreign Minister Andrei V. Kozyrev was asked to respond to critics in the Clinton administration who questioned Russian regional ambitions. "The president should fire them immediately," he replied.

Fortunately, for Kozyrev, Boris Yeltsin and Russia, their critics within the administration are few, and even those have limited access to senior policy makers. But is that in American interests? By seeking immediate improvement in our relationship with Russia, are we sacrificing longstanding and long-term interests in regional European stability? Are we risking our economic and national security interests for the perception of cooperation?

There has been widespread speculation in Washington policy circles, supported by commentary from Moscow, that Russia agreed not to veto the United Nations resolution on our use of force in Haiti in exchange for broader latitude for their activities in the new independent states of the former Soviet Union. This latter prospect chills the political souls of emerging democracies from Estonia to Ukraine. As well it should.

Strong evidence confirms their collective cause for alarm. Our ambassador to the United Nations concluded a swing across Europe with a September speech in Moscow. "Russia is an empire where the mother country and the colonies are contiguous," Madeleine Albright noted. A slip of tense? Perhaps. But the speech went on to establish an equivalence between the U.S. and Russia, conceding Russia's "mandate . . . and activities in the near abroad (were) appropriate." A Danish journalist reminded Ambassador Albright that history and human psychology made Russia's emerging role more unsettling than the activities of our nation with its 200-year tradition of political pluralism and freedom.

So far, largely with American consent, Russia is exercising its options in the neighborhood. Its foreign intelligence service issued a report arguing the merits of political and economic reintegration of the former Soviet republics under Russian leadership. Western opposition to the idea was characterized as "dangerous" by the agency's chief. The argument endorsed Russian-led reunification; it left no room for the voluntary, independent decisions of sovereign nations to seek a common course.

Reintegration has been echoed by senior Russian defense officials who have urged the creation of a unified security zone. With Russian troops in Moldova, Georgia and Tajikistan, many of the new republics publicly wonder whether these calls aren't commands.

Just as the recent intelligence report offered an interesting preview of Russia's summit agenda, last year a similar report was released in advance of the annual NATO conference. That report opposed any expansion of NATO unless and until Russia was accorded special status. Even the vague terms of the Partnership for Peace were challenged unless Russia was offered premier standing.

Moscow's view prevailed then as now. Due to strident Russian opposition, bilateral exercises between the U.S. and Poland were canceled just before Clinton arrived in Warsaw; no nation could be permitted joint exercise in advance of those scheduled with Russia.

A year ago, the administration held up Partnership for Peace as a road map to NATO. Now, it is clear that Russia has been accorded sweeping rights of first refusal. That is a devastating blow to an alliance that has guaranteed European security for 45 years.

Why should any of this matter? After all, important progress has been made in advancing political reform and building the private sector in Russia. No one needs reminding that the previous summit was held in the wake of a near overthrow of the Yeltsin government exacerbated by the parliament's defeat of key economic proposals. No doubt, on many fronts, Russia has changed for the better.

But there is a significant difference between American support for Russia's internal process of change versus their extra-territorial pursuit of national interests. To date, the U.S. has committed nearly $3 billion in direct support for Russian political and economic reform because it serves our mutual interests in expanding global trade and markets and advancing democracy.

In contrast, U.S. consent to the involuntary reintegration of the new independent states, recognition of a Russian sphere of influence over the so-called near abroad or allowing Russia a veto over defense policy in Europe directly undermines American national security interests in regional peace and security.

We have not yet reached a point where U.S. and Russian goals, let alone principles are one and the same. While there certainly are overlapping interests, there are also starkly divergent, if not competitive, global agendas.

Advancing common interests and protecting American interests are not mutually exclusive. We can pursue a verifiable arms control agenda with Russia, as we limit their unilateral peacekeeping operations in the region. We can encourage the expansion of Russian free markets, as we oppose their continued sales of lethal technology to Iran. We can support their active participation in United Nations decisions, and still object to their recent effort to open a commercial dialogue with Iraq in violation of the spirit, if not the letter, of international sanctions.

We should remember Yeltsin will not live forever, and in fact, is due to leave office by 1996. A Russia in Vladimir Zhirinovsky's chokehold is a different nation to be reckoned with. While the Clinton administration may hold a benign view of Yeltsin's aggressive international pursuit of Russian interests, democracy does not foretell nor guarantee his successor.

The summit offered Clinton and Yeltsin, the U.S. and Russia, an opportunity to continue to define and pursue common ground. We can and should offer Russia support to establish itself as a successful international economic and political power. But that success must not come at the expense of the political sovereignty, security or economic independence of any other nation.

Our license to act in Haiti is not worth the freedom which has swept Europe. Our invasion should not cost us European stability and security.

[From the Washington Post, July 24, 1994]

YALTA II

(By Lally Weymouth)

Recently, the Russian ambassador to the United Nations, Yuli Vorontsov, asked the world body to bless the Russian deployment of peace-keepers to the Abkhazia region of Georgia. Informally. Vorontsov has said that without some sort of U.N. endorsement of Russian peace-keeping in Georgia, Moscow

would veto a resolution authorizing the dispatch of troops to Haiti.

Verontsov got his wish. This week, as a consequence, the Clinton administration entered into a cynical deal with Russia that at least one U.N. diplomat compares with the controversial 1945 "spheres of influence" Yalta pact. In exchange for a Russian promise not to veto a U.N. resolution on Haiti, Washington gave Moscow the green light to conduct its own "peace-keeping" operation in Georgia.

What this really means is that the United States has given Russia the right to reoccupy the Caucasus and other former Soviet republics in return for Russian acquiescence in U.N. Security Council resolutions on Haiti.

In supporting, albeit tacitly, Russian "peace-keeping" in Georgia, the United States appears to have redefined the U.N. peace-keeping mandate. For example, under the U.N. Charter, no more than one-third of a peace-keeping force can come from any one country. But the "peace-keepers" in Georgia are almost exclusively Russian.

How did Georgia become a pawn in an international power game? Back in January 1991, civil war broke out between South Ossetia—an autonomous region in Georgia—and ethnic Georgians. The South Ossetians had previously declared their intent to secede from Georgia.

Four months later, Georgia's then leader, Zviad Gamsakhurdia, proclaimed that Georgia was seceding from the Soviet Union. This act sparked civil strife in Abkhazia, an autonomous republic of Georgia. In the fighting that ensued, Abkhazia initially gained the upper hand—thanks in part to help from Moscow.

Just one year later, Gamsakhurdia was ousted from power in a coup orchestrated by local warlords. Shortly thereafter, in March 1992, former Soviet foreign minister Eduard Shevardnadze became the leader of Georgia. Shevardnadze, however, found himself in a difficult position. During the summer of '93, Gorbachev's former emissary to the West—a man who'd helped end the Cold War—discovered that the Abkhazian secessionists were beating back the Georgian army, thanks to Russian help. Moreover, many Northern Caucasians had come to the aid of the Abkhazian secessionists. To complicate matters, Gamsakhurdia, the former president, suddenly mounted a powerful challenge to Shevardnadze. Gamsakhurdia's forces actually began to march toward Tbilisi. Suddenly, victory for the deposed leader looked certain.

At this key moment, an isolated Shevardnadze reversed policy and turned to his former Russian tormentors—the anti-Gorbachev element led by Boris Yeltsin—for assistance. At Moscow's urging, Georgia agreed to join the Commonwealth of Independent States (CIS), while Shevardnadze signed a collective security agreement that allowed Russia to establish bases in Georgia. Moscow responded in July and August '93 by dispatching 900 marines to Georgia: They enabled Shevardnadze to defeat Gamsakhurdia quickly. This deployment marked the first official Russian involvement in a conflict in the Caucasus.

Russia subsequently deployed so-called "peace-keepers" to Georgia and Abkhazia—but not in the manner envisaged by Shevardnadze. The ex-Soviet foreign minister had hoped to use the Russian troops to occupy Abkhazia. Instead, the Russians stationed their troops along the Ingur River—effectively partitioning Georgia.

Trapped in Moscow's embrace, Shevardnadze came to Washington last March seeking American support and funding for a U.N. peace-keeping force. The former Gorbachev deputy begged Washington not to leave him alone to face Moscow. But he secured little or no help from the Clinton administration; Congress was similarly unresponsive. Indeed, at a press conference ostensibly held in his behalf, reporters focused on Whitewater.

A few months ago, CIS demanded and got "observer status" in the U.N. General Assembly. Russia's aim was to equate the CIS with other regional bodies, such as NATO. This week at the United Nations, Russia tried but failed to secure international recognition of this equivalency. A senior Clinton administration official insists that the United States deserves credit for refusing to equate the CIS with other regional bodies like NATO or the Organization of American States: The latter have a presumptive right to conduct peace-keeping operations in their areas without Security Council approval. But a foreign diplomat argues that this week's U.N. resolution effectively means that "CIS is being welcomed de facto as a regional arrangement."

In the past, Russia has insisted its interest in Georgia and the rest of the "near abroad" turned on a desire to protect Russians living in the republics. Now that claim no longer withstands scrutiny. There aren't many Russians in Abkhazia. Currently, Russia asserts that it desires to bring peace to embattled regions. Close study of the situation in Georgia doesn't support Moscow's claim. The Russians, after all, supported the Abkhaz separatists against Shevardnadze—the man who helped bring down the "Evil Empire."

Thanks to Clinton's eagerness to invade Haiti, Russia—with U.S. support—has been granted U.N. backing to begin to reconstitute its empire. Georgia will likely prove only the first step toward a new Russian assertiveness. Moscow is also seeking to amend the Treaty on Conventional Forces in Europe so it can move troops and armaments to its Caucasus region—just across the border from Georgia.

According to well-informed experts, Russia will move next on Nagorno-Karabakh, an Armenian-populated enclave, where the government of Azerbaijan is already under pressure to permit Russian peace-keepers and/or a "separating" force. Abkhazia will probably be the model: Russia will in all likelihood freeze Armenian gains in place and then sign an agreement permitting it to establish bases.

STATEMENT OF U.S.-RUSSIAN RELATIONS

The member organizations of the Central and East European Coalition are alarmed at the direction Russian foreign policy has taken and United States reaction to that policy. On September 21, Russia's foreign intelligence agency released a disturbing report which outlines the recreation of a Russian empire. The headline for this story in The Wall Street Journal was "KGB Successor Wants Rebirth of Old Empire;" The Washington Post entitled it "Russia's Spy Chief Warns West: Don't Oppose Soviet Reintegration." Regardless how the story is titled, the fact is that this report confirms a pattern of dangerous Russian activity.

In January 1992, The New York Times reported that then Russian Vice President Aleksandr Rutskoi said he would "seek a redrawing of borders that would reflect a 'glorious page' in the nation's past." Russia has indeed pursued such a course of action using political and economic intimidation as well as military force.

In Tajikistan, the Russian military assisted Tajik, communists in overthrowing the democratically elected government. In Moldova, the Russian 14th Army, under the leadership of General Lebed, has assaulted the territorial integrity of Moldova with the creation of the illegal Trans-Dniestr Republic. In Georgia, it was the Russian military which armed the Abkhazian rebellion against the Georgian Government.

Political threats and intimidation have been a chief weapon in Russia's arsenal. The Russian Parliament enacted legislation illegally annexing Sevastopil from Ukraine. Until the United States Senate passed legislation threatening a cut off of economic assistance, Russia refused to withdraw its troops from the Baltic Nations on the schedule it originally set. After publicly stating that he does not oppose Polish membership in NATO, President Yeltsin sent letters to the United States, Germany, Great Britain, and France warning against allowing Poland, Hungary, and Czechoslovakia to join NATO.

Russia's main weapon against its neighbors, however, has been economic warfare, especially the wielding of its energy sword. While Russia claims to have raised oil prices to world market levels, it has, in fact, been selling oil at different prices to different nations depending on the level of the country's subservience to Moscow. Ukraine has been a principle target of this effort.

In addition, Moscow has wielded the oil weapon in reverse. In the case of Kazakhstan and Turkmenistan, Russia has refused to allow their oil to pass through Russian pipelines until these nations granted Russia a percentage share in their oil industries. Just last week, Russia publicly refused to recognize an oil agreement between Azerbaijan and Western oil companies.

Russia's interference in the internal affairs of its neighbors has been justified as either peacekeeping or the protection of ethnic Russians in these countries, the so-called "near abroad." In virtually all the areas of Russian "peacekeeping" however, Russia is responsible for either starting or exacerbating the conflict. In the case of protection of the "near abroad" it should be noted that we are not talking about protecting Russian citizens; we are talking about foreign nationals who happen to be of Russian heritage. This principle, if accepted, is a dangerous precedent. Fifty-five years ago, Nazi Germany justified its aggression on this basis; today, Serbia is doing likewise.

One must also consider that there are about 25 million non-Russians living in the Russian Federation. Is Russia prepared to accept the right of Ukraine or Germany, for instance, to intervene in Russian internal affairs to defend Russian citizens of Ukrainian or German heritage? This is not idle speculation. There are, in fact, as many ethnic Ukrainians in Russia as there are ethnic Russians in Ukraine. This principle can, indeed, be a slippery slope!

The information packet which we provided you expands on these issues in greater detail. It contains disturbing quotes from both Russian President Boris Yeltsin and Foreign Minister Andrei Kozyrev as well as a partial chronology of what is internationally unacceptable Russian behavior toward its neighbors.

For the Coalition, however, the more disturbing issue is United States acceptance of this pattern of Russian behavior. When Russia helped overthrow the democratically elected government of Tajikistan, Washington was silent; when Russia dismantled the nation of Moldova, Washington was silent;

when, one year ago, Chairman Eduard Shevardnadze pleaded for U.S. condemnation of Russia's actions to destabilize Georgia, Washington was silent; when the economies of Kazahkstan and Turkmenistan were threatened by Moscow, Washington was silent; when Ukraine's territorial integrity was threatened by Russia, Washington was silent.

When President Yeltsin objected to the membership of Poland, Hungary, and Czechoslovakia in NATO, the Clinton Administration acquiesced. America was embarrassed when, in Naples, President Clinton said Russian troops would be out of the Baltic Nations by August 31 and President Yeltsin countered with a firm "nyet." Yet, the Clinton Administration strongly opposed the actions of the United States Senate which adopted, by a vote of 89 to 8, legislation suspending aid to Russia if the troops were not withdrawn on the schedule originally set by Russia.

While continuing to express concern about ethnic Russians outside of Russia, the Administration has yet to defend ethnic non-Russians in Russia, whose rights are routinely violated. If the United States accepts Russia's right to protect ethnic Russians outside of Russia, as it appears it has, then it must also accept Russia's right to protect the three million ethnic Russians living in the United States. In the not too distant future we may see Russian troops in Brighton Beach!

Most disturbing of all, however, was U.S. Ambassador Madeleine Albright's September 6th speech in Moscow. Ambassador Albright equated Russia, an empire for six hundred years, with the United States, a democracy for over two hundred years and justified Russia's interference in its neighbors' internal affairs under the guise of "peacekeeping." In her justification, she stated that Russia "is an empire where the mother country and the colonies are contiguous." It is troubling to the Coalition that the Clinton Administration not only accepts but justifies a behavior by the Russian empire that we would oppose if pursued by any other nation.

In her speech, Ambassador Albright referenced Chairman Shevardnadze's request, under duress, for Russian assistance but failed to mention Shevardnadze's plea, just one year ago, for U.S. condemnation of Russia's campaign to destroy Georgia. While praising Russian actions in Georgia, she ignored her own June 21 statement where she said: "although Russia desires stability, there have been troubling aspects to its policy towards the new republics. Russian military units in Georgia and Moldova have exacerbated local conflicts."

And, finally, she admitted that the United States worked to insure a United Nations mandate for Russian "peacekeeping" in Georgia. Many have suggested that the Clinton Administration had, in fact, traded Georgia for Haiti at the U.N.

On September 6, *The Washington Times* reported the existence of a State Department policy paper which states: "It is understood that a Russian sphere of influence is being recognized with Europe extending to the eastern border of Poland, leaving the Baltics somewhat up for grabs . . ." At the same time, in a State Department reorganization, the nations of the former Soviet Union are being consolidated in one bureau, thereby giving legitimacy to a Russian "sphere of influence."

The Coalition is concerned about this pattern of United States policies which cedes the nations of Central and Eastern Europe to a Russian "sphere of influence." Fifty years ago this February, the United States made similar concessions to Russia at Yalta. That was followed by a fifty-year cold war. We feel that the policies being pursued by the Clinton Administration are morally and politically wrong, dangerous, and will result in a new cold war.

FOREIGN POLICY STATEMENTS BY PRESIDENT YELTSIN AND MINISTER KOZYREV

1. "Russia's economic and foreign policy priorities lie in the countries of the Commonwealth of Independent States . . . Russia's ties with them are closer than traditional neighborhood relations; rather, this is a blood relationship. . . . We can't stay indifferent to the fate of our countrymen. I do not mean special rights or privileges. But the people of Russia will not understand if I don't say now [that] the independent states have to prove through their actions that guaranteeing the human rights of national minorities is indeed the cornerstone of their foreign policy. And here neither selective approaches nor double standards are permissible. . . . The main peacekeeping burden in the territory of the former Soviet Union lies upon the Russian Federation. . . . Attempts by others to use the tensions between the commonwealth states for one's own advantage are extremely short-sighted." Boris Yeltsin (address to the United Nations), The Washington Post, September 27, 1994

2. "Nobody and nothing can free Russia from the political and moral responsibility for the fate of countries and peoples which for centuries have moved forward together with the Russian state." Boris Yeltsin (address to graduates of the military academies), RFE/RL Daily Report, June 28, 1994

3. "A strong and powerful Russian state, is also in the interest of our closest neighbors. A strong Russia is the most reliable and real guarantor of stability on the entire territory of the former Soviet Union.

"It is our duty to make the year 1994 the year of close attention to the problems of people of Russian extraction living in neighboring states. . . . It is Russia's duty to secure and to (implement) this practice in reality, not in words. When it comes to the violations of the lawful rights of people of Russia, this is not an exclusive internal affair of some country, but also our national affair, an affair of our state . . . Russia has the right to act firmly and toughly when it is necessary to defend the national interests." Boris Yeltsin, "State of the Nation" Address before the full session of the Federal Assembly, February 24, 1994

4. "The countries of the CIS (Commonwealth of Independent States) and the Baltics—this is a region where the priority vital interests of Russia are concentrated.

"We should not withdraw from those regions which have been the sphere of Russian interests for centuries and we should not fear these words (military presence)." Andrei Kozyrev, *Reuter*, January 18, 1994

5. "Dear fellow-countrymen! You are inseparable from us and we from you. We were and will be together. We are defending and will defend your and our common interests, using the law and our solidarity. In the new year of 1994 we will do so with greater energy and decisiveness.

"We are so indissolubly bound by history, economics and our joint fate that we simply cannot live separately. Our peoples just would not allow it." Boris Yeltsin (New Year's message to ethnic Russians living outside of Russia), *Reuter*, December 31, 1993

6. "Russia considers itself a great power and a successor to the Soviet Union and all its might." Boris Yeltsin, *Itar-Tass*, December 8, 1993

7. "We are a great power by reason of our destiny and normal good relations are in our interests . . . both in the economic and military sense, we are a superpower. There is no use getting angry over the perceptions of (Russia) by near abroad. Anyhow, everything will get back to its old place." Andrei Kozyrev, *Rossiskaja Gazetta*, December 7, 1993

8. "Russia has made the peacemaking, and the protection of human rights, particularly that of national minorities, the priority of its foreign policy, first of all in the territory of the former USSR.

"Russia realizes that no international organization or group of states can replace our peacekeeping efforts in this specific post-Soviet space . . . peacemaking cannot be separated from the protection of human rights." Andrei Kozyrev, Address before the United Nations Organization, September 28, 1993

9. "The world community is increasingly coming to understand Russia's special responsibility in this difficult task. I think the moment has come when responsible international organizations, including the United Nations, should grant Russia special powers as a guarantor of peace and stability in the region of the former union." Boris Yeltsin, *The New York Times*, March 1, 1993.

10. "Our principal task is to . . . give effect to the concept of a successor state, enabling Russia as a whole painlessly to take the place of the former USSR in the United States and its specializing institutions, and in the whole system of international relations . . . (and to) create a distinctive zone around Russia of good neighborly relations and cooperation . . .

"It should not be forgotten that the Commonwealth of Independent States (CIS) brings together peoples who have been linked to Russia for centuries. It is also obvious that the entire geographic area of the former USSR is a sphere of vital interest to us . . .

"The situation of the Russian-speaking population in states of the former USSR presents a considerable and complex problem for the Russian Federation's foreign policy and diplomacy. We are counting on support from the NATO member nations to help ensure protection for the rights, life and dignity of the Russian minorities . . .

"In relations with the nations of Eastern Europe, it is vital for us to achieve a fundamentally new level of political and economic links, making use of previously acquired positive experiences in practical aspects of collaboration. The future of Eastern Europe lies in its transformation—not into some kind of buffer zone, but into a bridge linking the East and West of the continent . . .

"It is essential to achieve greater practical efficiency in the use of force to put out 'brush fires.' Russia has undertaken peacemaking operations in a whole range of regions—Moldova, Georgia, Tadjikistan—providing forces and resources in accordance with agreements with the appropriate countries. We recognize our responsibility for stability in that part of the world . . ." Andrei Kozyrev, *NATO Review*, Vol. 41, #1, February 1993.

A PATTERN OF DANGEROUS RUSSIAN POLICIES

1992

In January, *The New York Times* reported that Russian Vice President Aleksandr Rutskoi said he would "seek a redrawing of borders that would reflect a 'glorious page' in the nation's past." *The New York Times, January 31, 1992.*

On April 4, vice President Rutskoi travelled to Crimea and told naval officers in Sevastopol that Crimea must once again be

part of Russia. *RFE/RL Daily Report, April 6, 1992.*

Russian waged a campaign to undermine the political and economic independence of Ukraine. *RFE/RL Daily Report, June 10, 1992 & June 11, 1992.*

On May 21, 1992, in violation of numerous treaties, the Russian Parliament enacted legislation declaring void the 1954 Treaty transferring Crimea to Ukraine. *The Washington Post, May 22, 1992.*

Russian documents demonstrate the Russia views the Baltic nations as their property and has no intention of withdrawing troops. *Financial Times, June 15, 1992.*

As early as June 5, there were reports that Russia's 14th Army was transferring arms and ammunition to the "Dniester" Russian insurgent forces in Moldova. *RFE/RL Daily Report, June 5, 1992.*

In a June 5 story, *The Financial Times* quoted Sergei Stankevich, as adviser to President Yeltsin, as saying: "It is important for Russia to defend the legal and other rights of Russians outside of Russia," a remark reminiscent of statements made by Milosovic and Hitler. Stankevich was referring to ethnic Russians and not Russian citizens. *Financial Times, June 5, 1992.*

On June 19, President Eduard Shevardnadze accused Russia of military intervention in Georgia. *The Washington Times, June 20, 1992.*

On June 21, Russian forces attacked the Moldovan police who were responding to Russian insurgent activity. *Financial Times, June 1992; The Washington Post, June 22, 1992.*

Evgenii Ambartsumov, chairman of the Russian Supreme Soviet's Committee on International Affairs, stated that he agreed with Vice President Rutskoi's threats against Moldova and Georgia. *RFE/RL Daily Report, June 24, 1992.*

Sergei Stankevich stated in an article that Russia should be more aggressive toward its neighbors. RFE/RL Daily Report, June 24, 1992.

President Shevardnadze of Georgia and President Mircea Snegur of Moldova accused Russia of imperialism. RFE/RL Daily Report, June 24, 1992.

Referring to Crimea, Vice President Rutskoi stated that he does not recognize any agreements that gave Russian land to other countries. The Washington Times, August 8, 1992.

On December 7, the Russian Congress of People's Deputies questioned the status of Sevastopol as a Ukrainian city. RFE/RL Daily Report, December 8, 1992.

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Russia will open a consular office in the Trans-Dniester region which will grant Russian citizenship to local citizens desiring it, said General Aleksander Lebed, commander of the 14th Russian Army in Moldova. RFE/RL Daily Report, January 7, 1993.

Marshal Evgeniy Shaposhnikov, head of the CIS, again claimed all ex-Soviet nuclear weapons as belonging to Russia. RFE/RL Daily, January 26, 1993.

Russia demanded world prices from Ukraine for oil and gas. Russian Deputy Prime Minister Viktor Shokin said Ukraine could have subsidized energy if it made concessions over the Black Sea fleet, allowed Russian military bases to be established in Ukraine, and allowed Russia to export energy supplies through Ukraine's pipelines. The Financial Times, February 19, 1993.

President Boris Yeltsin declared Russia must be given the freedom to act as a guarantor of peace in the former Soviet bloc with special powers granted by the United Nations. The Financial Times, March 1, 1993, Christian Science Monitor, March 2, 1993.

Ukraine attacked President Yeltsin's remarks as seeking international endorsement for dominance in the region. The Washington Times, March 2, 1993.

Sergei Stankevich, political advisor to President Yeltsin, warned Poland against developing foreign and military ties with Ukraine. Other senior Russian officials told East European officials not to build embassies in Kyiv, since they will be downgraded to consular section in 18 months." The Financial Times, March 17, 1994.

Eduard Shevradnadze asserted that Georgia was forced into war within the Abkhazian region. "Separatism has taken root over several decades thanks to the special interests of a third force." The continued presence of Russian troops is preventing a peaceful settlement in Abkhazia. The Financial Times, April 13, 1994.

Over one-third of the Black Sea fleet ships raised Russian flags, further adding tension to the dispute between Russia and Ukraine over ownership of the fleet. The New York Times, The Washington Times, UPI, May 31, 1993.

Russian President Boris Yeltsin said Estonia's citizenship law was a verison of apartheid and ethnic cleansing. "Yielding to the pressure of nationalists [the Estonian leadership] forgot about some geopolitical and demographic realities. The Russian side has the ability to remind them of it." The Christian Science Monitor, June 6, 1993.

Russian Defense Minister Pavel Grachev bluntly ruled out the U.S.'s offer to mediate the Russian-Ukrainian dispute over nuclear weapons with Ukraine. Grachev said the only appropriate role for the U.S. is to put pressure on Ukraine to force Ukraine to turn over her nuclear weapons to Russia. *The Star Ledger, June 7, 1993.* Grachev also refused to accept a plan which would place Ukraine's nuclear weapons under international supervision. The Washington Post, June 7, 1993.

Russia's Foreign Ministry dismissed suggestions that the U.S. would play a more active role mediating disputes in the former Soviet Union and said that Russia considers itself the key player for "maintaining stability in the region." The Washington Post, August 14, 1993.

Russian Foreign Minister Andrei Kozyrev declared in his address before the U.N. General Assembly, that no other group of nations "can replace our peace-making efforts" along the borders of the former Soviet Union. The Washington Post, September 29, 1993.

Turkish Prime Minister Tansu Ciller warned the Clinton Administration of Russian dominance in Central Asia, suggesting Western aid to Russia should be linked to Russian support for democracy inside and outside of Russia. A series of advances by Russia across the southern belt of the former Soviet Union alarm Turkish officials and businessmen in the region. The Washington Times, September 25, 1993.

Russian Foreign Minister Andrei Kozyrev admitted Russian peacekeeping was a method to retain Russia's sphere of influence. "There is a danger of losing a geopolitical position that has been gained over centuries," he wrote in *Isvestia*, October 8, 1993. The Christian Science Monitor, October 22, 1993.

President Boris Yeltsin adopted a more aggressive military doctrine sanctioning the use of Russian troops beyond Russian borders. It rejects the longtime Soviet promise not to use nuclear weapons first, promising only not to use them against non-nuclear states. *The Washington Post, November 4, 1993.*

President Yeltsin warned NATO Secretary Manfred Woerner against enlarging NATO saying that early attempts to incorporate Eastern Europe would damage Russia's strategic interest and damage reconciliation with the West. *The Washington Post, December 10, 1993.*

Two days before Russian elections, Polish Foreign Minister Andrzej Olechowski urged the West to allow Poland to join NATO. The West is "too optimistic about Russia," he said, and "is playing into Russia's hands by not seeing the signals of imperial thinking." *The New York Times, December 12, 1993.*

Newly-elected Vladimir Zhirinovsky said "he would not allow Russia's borders to be shrunk further," but instead, Russia should be recreated within its former borders. He also insisted that the former Soviet Republics in Central Asia, the Caucuses and the Baltics must be brought back into Russia's orbit. *RFE/RL Daily December 14, 1993.*

Polish Foreign Minister Andrzej Olechowski, pleading for admittance into NATO, said "We cannot disregard the results produced by Zhirinovsky . . . his agenda includes restoration of the former Soviet Empire, and given how many votes he got we can no longer write his opinions off as a bad joke." *The Washington Times, December 16, 1993.*

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Polish President Lech Walecsa warned that the world risks the reemergence of the Soviet bloc and communist regimes if Western powers do not admit Poland, Hungary, and the Czech Republic into NATO. Such a refusal of the West to issue a clear directive and timetable for admittance would be "a major tragedy" that could lead to another Yugoslavia in Europe. *The Washington Post, January 4, 1994.*

President Yeltsin's press secretary, Vyacheslaw Kostikov, declared President Yeltsin was alarmed by the prospect of East European nations joining NATO. The Foreign Ministry said Lithuania's application was "odd" and "counterproductive" and that the Baltics are a "part of the near abroad" "a sphere of Russia's vital interest." *RFE/RL Daily, January 7, 1994.*

Foreign Minister Andrei Kozyrev announced that complete withdrawal of troops from the Baltics would be against Russia's interest because it would create a security vacuum and it would leave ethnic Russians undefended. "We should not withdraw * * *.

Russia began cutting off natural gas supplies to Ukraine and Belarus, forcing metallurgical and chemical plants to consider shutting down. A Ukrainian official said the effect of the decision would be "like a bomb exploding on Ukraine." The Washington Post, March 4, 1994.

Russia is using its vast economic leverage to reassert political power in Central Asia, acquiring percentages of lucrative Western energy deals in the republics surrounding the Caspian Sea. "Russia is holding Kazakhstan hostage," said an oil executive in Almaty. The Washington Post, March 18, 1994.

Russia has decided to join NATO's Partnership for Peace, using rape as an analogy. A Russian Security Council official said that only by joining can Russia help shape the program "according to Russia's national interest." The Washington Post, March 18, 1994.

Russia's demand for a special status in NATO before signing the Partnership for Peace plan has angered its former Warsaw pact allies who worry about a repeat of the

post-World War II division of Europe. The Washington Times, May 22, 1994.

Turkish leaders warned that because of Western neglect, the choices for the region's countries were between renewed Russian domination and an Islamic resurgence, which they say is being supported by countries like Iran, Saudi Arabia and Pakistan. The New York Times, June 19, 1994.

The Russian Parliament approved sending 3,000 peacekeeping troops to Georgia's breakaway province of Abkhazia in a move intended to assert Moscow's role in the former Soviet Union territory. The Washington Post, June 22, 1994.

U.N. Ambassador Madeleine Albright said that there have been troubling aspects to Russia's policy towards her neighbors. "Russian military units in Georgia and Moldova have exacerbated local conflicts." The Washington Post, June 21, 1994.

Kazakhstan accused Russia of cutting off most of the republic's oil exports, paralyzing its most lucrative industry. *The Financial Times, June 28, 1994.*

Hungarian Foreign Minister Geza Jeszensky, reflecting disappointment in the U.S.'s policy towards East European membership in NATO, said that a dangerous power vacuum has been created in Eastern and Central Europe, which may attract "new imperialists" from Russia. The Washington Times, July 6, 1994.

President Boris Yeltsin, during a meeting with President Clinton, when asked whether he would comply with the August 31 target date for withdrawal of Russian troops from Estonia answered, "Nyet." The New York Times, July 11, 1994.

President Yeltsin tied Russia's economic and political transformation to Moscow's status in the world community and its ability to conduct "a vigorous foreign policy . . . above all in the CIS." Recent Russian diplomatic successes have turned Moscow into a "nerve center of world change." *RFE/RL Daily, July 21, 1994.*

A five-page Russian document establishes Russia's desire to re-establish a sphere of influence in Europe by gutting NATO. This proposal calls for making the CSCE the primary international organization in Europe, rather than NATO. One diplomat said, "Russia's objective is to go for the complete dissolution of NATO." *The Washington Times, August 16, 1994.*

Ranked as Russia's 13th most popular leader, General Alexander Lebed of the Trans-Dniester's 14th Army enclave, rejected the idea of Russian democracy during a recent interview. "Our leaders have said 'for centuries our state has been totalitarian but starting this minute we will be a democratic state.' That is just not possible. After all we are still the Soviet people." *The Financial Times, September 6, 1994.*

The largest deal between foreign oil companies and Azerbaijan was signed—but Russia refused to recognize the $8 billion dollar deal, demanding that the pipeline route should pass through its territories, giving it a stranglehold over energy exports from Azerbaijan. *The Financial Times, September 21, 1994.*

The head of Russia's foreign intelligence service, Yevgeny Primakov warned the West that it must accept the re-integration of most of the former Soviet Union or face the return of the Cold War. He released a report "Russia—CIS Does the West Need to Change Its Position?" which calls for a reintegration of the former Soviet Union and says an economic union is inevitable and a defense and political union is desirable. *The Wall Street Journal, The Financial Times, September 22, 1994.*

Foreign Minister Andrei Kozyrev urged the United States to expand bilateral economic relations with Russia in order to stabilize the CIS. He said those U.S. advisors who oppose Russia's role in CIS economic integration and conflict resolution "are giving very bad, incorrect, and irresponsible advice." *RFE/RL Daily, September 22, 1994.*

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Mr. Eugene Iwanciw, Ukrainian National Association, Inc., 400 North Capitol Street, N.W., Suite 859, Washington, DC 20001, TEL: 202-347-8629, FAX: 202-347-8631.

Mr. Linas Kojelis, US-Baltic Foundation, 1211 Connecticut Avenue, N.W., Suite 506, Washington, DC 20036, TEL: 202-986-0380, FAX: 202-234-8130.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER (Mr. DORGAN). The Senator from Connecticut [Mr. DODD] is recognized.

Mr. DODD. Mr. President, I will just take a couple of minutes, if I can, here. First of all, with regard to the resolution before us, I think the Senator from Georgia has properly characterized the resolution. I am pleased that the resolution does not have any fixed date here for the reason articulated, I think rather clearly, by General Shelton and others: that such a target date or a fixed date would be counterproductive and, in fact, could pose a threat to our own forces by requiring some acceleration of activities as they try to complete their mission there.

I would secondly point out that as I read this resolution, it looks more like an OSHA regulation, in some ways, than a resolution on Haiti, since there are more reporting requirements in here than one might normally expect. Nonetheless, the burden will fall on those who have to write the reports. I hope there is as much attention paid by those who are insisting upon these reports when they are prepared, as when they required them. It is usually just a taxpayer cost and ends up on the shelf someplace. That has been my experience. If this is what is needed in order to get some consensus around here, I accept it. While I am not enthusiastic, as I said, about the resolution, I will nonetheless support it.

Let me point out that we were pleased a few minutes ago to have the visit of Nelson Mandela here in the Chamber of the U.S. Senate. It was truly an honor for all of us that the President of the Republic of South Africa would be joining us. I will not belabor the point. I have made the point that not too many years ago, when we were debating the issue of sanctions on South Africa in this Chamber—which I recall vividly as one who participated in that debate—there was some rather interesting rhetoric used to describe the person that we so warmly welcomed in this Chamber, which is worth, I think, just referencing, because some of the same language has been used to describe President Aristide.

I refer interested colleagues to the congressional debate of October 1, 1986, if they are interested in reading some of the language used to describe Mr. Mandela.

And I quote here.

> We also have heard repeated comments by those who favor the intrusion of the U.S. Government into the affairs of South Africa that Nelson Mandela is a hero. The fact is that Mr. Mandela pleaded guilty to conspiracy to murder. That is why he was jailed. The fact also is that Mrs. Mandela boasted that they had enough automobile tires and bicycle tires to create enough "necklaces" to impose their will upon those in the majority who have the courage to stand up and say "We don't want sanctions."

If I took away Mandela, you will find similar remarks have been made about President Aristide. The debate goes on with numerous references to Mr. Mandela's communism, his strong support for Lenin and Marx ideals.

Those are hardly the remarks we heard earlier today from the President of South Africa talking about democracy and the fight for it.

I merely point out the mere coincidence of events that on the day that we

welcome, and properly so, and welcome as warmly as we have, Nelson Mandela for his courageous effort over the years, 27 of them spent incarcerated in his country, that we are debating a resolution regarding Haiti, another nation seeking its freedom and its democracy, in this case not thousands of miles from our shores in South Africa but a mere 200 or so from our shores where they have also faced repression of a similar kind in their own nation. And that much of the same language used to describe Nelson Mandela some 8 years ago is being used today too frequently to describe President Aristide.

In my view, the time will come when President Aristide will be received as warmly for his struggle and his fight for democracy in his country as Nelson Mandela is, properly so, today in his nation.

Again, I would hope that we can adopt this resolution, that our troops will get out of Haiti as soon as possible, that there will be a restoration of civilian government, a new police force and a military in that country that will respect civilian government. And that small country will have a chance for freedom, just as South Africa had never had a chance of true democracy and freedom for itself until President De Klerk, who in my view deserves in many ways as much credit for the achievements in South Africa—it is remarkable what he did as the President of that nation—and accompanied now by President Mandela, such as has been in Haiti for these last number of years where they have also never known freedom and democracy but are on the brink of having a chance at it.

The hard work will be ahead in trying to provide economic opportunity for people—jobs, decent housing, and so forth—that makes democracy thrive and succeed. But they ought to be given first a chance to speak freely, elect their chosen leaders without fear of intimidation. In the next week or so we will see unprecedented action of a duly elected President, thrown out of his nation in a military coup, going back to his nation to be received warmly by the overwhelming majority.

I might point out that in a recent visit, including a group which I took to Haiti last year, even members of the business community who forcibly told us they had not supported President Aristide, politically urged his immediate return to the country so they will have a chance of stability and the restoration of democracy.

Again, after this resolution, which I am confident will be adopted, we will adjourn, and the military force will withdraw and the multilateral forces will assume the lion's share of the responsibility. And we will all look back on this, despite our disagreements of how the military ended up in Haiti, supporting the overall outcome and the results that I am hopeful will occur in Haiti in these coming weeks and months.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition.

Mr. GREGG. Mr. President, I yield 7 minutes to the senior Senator from New Hampshire.

The PRESIDING OFFICER. The senior Senator from New Hampshire [Mr. SMITH] is recognized for 7 minutes.

Mr. SMITH. Mr. President, I thank my colleague for yielding.

Before the Senator from Connecticut leaves the floor, it would be interesting after Mr. Aristide has assumed power to look ahead 10 years and see how much democracy there is in Haiti.

I think most of us would agree that the past track record does not bode too well for the future of democracy in Haiti, which really brings me to the point.

I do support this resolution, but in doing so I want to point out that the administration policy, in my opinion, toward Haiti is an unmitigated disaster. We do not have any national security interests in Haiti. We have no economic interests in Haiti. We do not have a clear military objective in Haiti. And rather than training to fight and win wars, our Nation's premier rapid deployment forces are serving as police officers in a foreign land with no clear rules of engagement. Their mission is unclear to the American people, and that mission, if there is one, seems to evolve and change on a daily basis. They are risking their lives every day, every minute as we speak, and they already have been risking their lives, for a cause that is suspect and a policy that is undefined. That is simply wrong.

Perhaps most outrageous is the fact that the President never sought the approval of the American people, through their elected officials, for this reckless endeavor. It is ironic and, frankly, offensive to me, speaking personally, that the President would tout the authorization of the United Nations for his Haiti policy, yet not seek congressional approval. In effect, the President is saying that his action is justified because Boutros Ghali approved it, and at the same time he did not seek the approval of the U.S. Congress, the elected representatives of the American people. The last time I read the Constitution it vested these authorities in the Congress, not the United Nations.

There was no emergency in Haiti, no United States citizens in imminent danger, and no requirement to act prior to congressional approval. In fact, it is clear that the reason President Clinton did not seek congressional endorsement was because he knew that this policy would have been rejected by the Congress. That is hardly a legitimate reason, Mr. President, to commit U.S. military forces, the best of America, in harm's way.

Is that legitimate reason to do that? I think not. It was not a reason to commit them, and it is not a reason to keep them there any longer.

Mr. President, the resolution before the Senate is very clear. It is a rejection of the Clinton policy, pure and simple. It states that the President should have sought congressional approval prior to deploying troops to Haiti and that they should be brought home as soon as possible. It is responsible in the sense that it does not put a specific date which could, in fact, risk the lives of American troops. Importantly, it also requires the President, once and for all, to go on the record in a report to Congress and outline what the national security objectives are, what is it that he is pursuing in Haiti, what is he trying to do. As Senator NUNN has so eloquently said, how can you restore democracy where there has never been democracy. There has to be democracy at some point in the past before you can restore it in the future.

The truth is all we have heard so far from the administration is the excuse that we had to occupy Haiti because the President had threatened to invade so many times that we would lose face if we failed to deliver on that threat. That is a pretty pathetic and unacceptable rationale for risking American lives. I reject it categorically, and based on the abundance of mail and telephone calls I have received from New Hampshire and, frankly, from around the country, so do the American people reject it.

No one ever said that conducting foreign policy would be simple or easy. It is not. We do not need 535 Secretaries of State. But as a Presidential candidate, the President sought to trivialize his inexperience and disinterest in foreign affairs. Now we are living with the consequences. They are disastrous. Our credibility throughout the world is in question. Our troops are being stretched to the limit to implement the agenda of the United Nations and some humanitarian interest rather than the national security interests of our Nation.

The American military, I say to our colleagues, is a national treasure. It is the thing that works the best in all of the U.S. Government. Think of any other Government agency, any other Government entity that works better than the military. It is not a law-enforcement agency to be contracted out wherever or whenever the United Nations sees fit. Mr. President, it is time to bring our troops home.

I want to close by commending those troops. They are the best. I have been out there in the field with them on many occasions, not in Haiti as my colleague was, but I have seen the job they do. I have witnessed it firsthand. I have been a member of the military, and I express my absolute commitment

to do everything possible to secure their safe and expeditious return. But while they are in harm's way we should provide them with whatever they need.

I adamantly oppose the occupation of Haiti by American troops, and I oppose the policy of sending them there and offering them up as policemen without clear objectives. But they are there—they are there, and they need our unequivocal support. We do not need another situation as we had in Vietnam.

As Americans, we have an obligation to do every single thing we can to give them the maximum support, encouragement and equipment they need to defend themselves and to get home safely. That is what I want to happen.

I would just say, Mr. President, if any American soldier were to lose his or her life I would have to say, for what? For what?

Mr. President, let us bring the troops home and bring them home quickly. I urge my colleagues to support this resolution.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, will the Chair advise me how much time is remaining?

The PRESIDING OFFICER. The Chair advises the Senator from New Hampshire that he controls 54 minutes and the Senator from Connecticut controls 50 minutes.

Mr. GREGG. I thank the Chair.

Mr. President, I yield 10 minutes to the Senator from Arizona.

Mr. McCAIN. Mr. President, under the unanimous-consent agreement, I believe I have 15 minutes.

The PRESIDING OFFICER. The Senator from Arizona controls 15 minutes in his own right under the unanimous-consent agreement.

Mr. McCAIN. The Senator does not have to yield me any time. According to the unanimous consent agreement, I have 15 minutes. I appreciate the generosity of the Senator from New Hampshire.

Mr. President, I state emphatically, I did not support the President's proposal to intervene in Haiti. I do not support his policy now.

If the Democratic leadership had given the Senate an opportunity to vote on this matter before our troops ianded in Haiti, I would have voted against it. A majority of this body, in my view, would have voted against it. The American people would have voted against it. I found it extremely distressing that when the Senate found an opportunity to offer an amendment on this issue before our troops were dispatched to Haiti, we were prevented from voting.

Mr. President, I have ventilated that situation often enough that I will not review how that transpired.

But the fact is that I believe the administration made a very, very serious error in committing American troops to an enterprise in which the American people did not give significant or at least majority support.

Years ago, after the Vietnam war, Mr. President, Gen. Maxwell Taylor, who was Chairman of the Joint Chiefs of Staff under President Kennedy, and later as Ambassador to South Vietnam, said, in the review of that tragic chapter in American history, that there are certain criteria that need to be met before sending American troops overseas in a military engagement. Among those were a clear strategy for prosecuting that enterprise, a clear exit strategy, and most importantly the support of the American people.

Because we found out during the Vietnam war that, over time, that no matter how efficiently the performance of our men and women in the military, no matter how overwhelming our military superiority may be, without the support of the American people, as soon as casualties mount, public support will dissipate. By the way, the time for the information on the number of casualties becomes less and less as we get instantaneous information. I can remember during the Vietnam war that it was incredible to many Americans that we would receive information from the battlefields of Vietnam as short a time as 24 hours after the recording of those events took place. Now, as we know, we receive that information instantaneously.

In fact, if it was not rather tragic, it would be a little amusing, as we see as many cameramen as troops in some incidents that have transpired during our occupation of Haiti.

But the fundamental premise remains, Mr. President, that you have to have the support of the American people.

Now, there are various precedents that we can look at in citing the need for this support. I suggest that Vietnam is one where that support was not secured and the Persian Gulf engagement was one in which the support of the American people was obtained.

In fact, at the time of the invasion of Kuwait, only 37 percent of the American people supported sending United States troops to liberate Kuwait. The President of the United States then went to the United Nations, he went to the American people, and he went to the Congress, the representatives of the American people, both here and in the other body. He did, in my view, a superior, in fact, a superb job of convincing the American people that our vital national security interests were indeed at stake in the Persian Gulf.

In that previous poll that I mentioned, where only 37 percent of the American people supported our engagement in the Persian Gulf, at the end of the debate and vote here in the U.S. Senate—which some, I was not one of them, but some called perhaps the Senate's finest hour in recent years, where this issue was ventilated in spirited debate and, frankly, extremely insightful discussion—then the American people did support it, as did a majority of this body and a majority of the other body. So that when later American lives were placed at risk, where American casualties were sustained, we saw an outpouring of patriotism, of support, of concern, and love that perhaps we had not seen since World War II.

We certainly did not see this kind of support during the Vietnam war, and there was very little of it manifested in the Korean war.

At the conclusion of the engagement in the Persian Gulf, we greeted those men and women who served with such distinction with parades and with an upsurge of patriotism that was heartening to all Americans.

Mr. President, I am sorry to predict to you today that none of that will happen in Haiti, because the majority of the American people today do not believe that our vital national security interests are threatened in Haiti.

The American people do believe, as I do, that we have an interest in Haiti. We have an interest in stopping human rights abuses in Haiti. We have an interest in restoring President Aristide. We have an interest in trying to uplift the grinding poverty that afflicts most of the citizens of that unhappy and tragic land.

We also have an interest in stopping the killing in Rwanda. We have an interest in stopping the killing in Liberia. We have an interest in stopping the killing in Bosnia, which many predict will get worse as this winter wears on.

Many of us have an interest in stopping the killing in Azerbaijan. Many of us have an interest in stopping conflicts in some 47 places in the world where armed conflicts are taking place today, as I speak.

However, the people of the United States have not made the profound and difficult decision that our interests in Haiti are so compelling that we risk our treasure and our most precious blood, that of America's youth. I believe that since the occupation of Haiti, the President of the United States and his administration have still not made, or even attempted to make a case, to the American people that our vital national security interests are involved and that the problems of Haiti require our military involvement.

Mr. President, I do not pretend to be a military strategist or even tactician. I once served, obviously, as is well known. But that does not mean that I pretend to have the talents of so many enlightened and educated people who spend their lives in this business. But I do pay attention to their opinions and their views. And I have yet to meet a person who is a military historian, who is a tactician or a strategist, who can

tell me how this situation can end beneficially either for the people of Haiti or the people of the United States.

One of the reasons many of these experts are convinced that this situation is one which is increasingly difficult to solve is because of the fact that we were there once before. We were there once before. We were supposed to be there for a few months and we stayed 19 years. Admittedly, there were significantly different circumstances. But the motivation to maintain order was fundamentally the same on the part of President Woodrow Wilson as it is today on the part of President William Clinton.

I believe this bipartisan solution should have made clear that we should not have intervened in the first place, but this resolution does make two very important points in a manner which will not undermine the safety of our troops or their performance of the mission they have been ordered to perform.

First, the President should have sought congressional approval before employing United States Armed Forces to Haiti. Second, the resolution offers support for the withdrawal of United States Armed Forces as soon as possible. In my view that does not mean as soon as order is restored to Haiti. It does not mean as soon as democracy is flourishing in Haiti. It does not mean as soon as we have established a viable nation in Haiti. As soon as possible means as soon we can get out of Haiti without losing any American lives.

There may be different interpretations of this resolution on the other side of the aisle because I think clearly this resolution will be approved overwhelmingly in the upcoming vote. But it is my view, and I think the majority of the American people's view, and I want to make it clear, that as soon as possible means as soon as possible, exactly what those words say.

In addition, the provisions of this resolution require the President to report to Congress on the policy objectives, mission, and rules of engagement in Haiti. This information will help Congress to keep track of the evolution of our mission, otherwise known as mission creep.

This resolution will not, however, prevent mission creep. Congress may monitor the situation and encourage the President to limit the mission of our troops in Haiti. But it is ultimately the Commander in Chief's responsibility.

I am deeply concerned that the mission has already begun a Somalia-like evolution. Our original mission in Haiti was based on cooperation with the Haitian military and police—a very unsound basis, I will admit, but it was the stated mission upon the arrival of American troops. The Haitians were to police themselves. But the cooperation that was to prevent mission creep has not materialized and United States troops have assumed a greater and greater responsibility for policing Haiti. Despite the obvious shift in the mission, administration officials reassure us constantly that our troops are not involved in police work. Yet we all see on CNN what they are doing. Day by day their mission expands. American military personnel have been tasked with preventing looting, stopping Haitian on Haitian violence, protecting private property, and arresting attaches.

Perhaps my definition of policing is very different from that of the administration, but I would call all of this police work, and I would call it all very, very dangerous.

Our success in limiting Haitian on Haitian violence and United States casualties are at best tactical successes. It will be months or years before we can evaluate any progress toward accomplishing the loosely stated mission of establishing order and democracy.

I also want to point out the practical problems we are already hearing from our military people in Haiti. They are supposed to prevent violence, but only too much violence. They are supposed to stand aside if something happens, but if someone's life is in danger then they are supposed to intervene. It is very, very difficult for an American military person on the spot, viewing a disturbance, to know when that fight or beating or whatever it is, crosses a line between harassment and a life-threatening situation. What our people on the ground there are telling us is they are faced with decisions that have to be made at the moment on the scene. Clearly their mission and role there is very ill-defined.

There is an aspect of this I want to discuss again that has the American people confused and I believe is a very, very significant contribution to the lack of support for this effort. One night not too long ago the President of the United States comes on national television and says to the American people: These are thugs, these are murderers, they are rapists, these are human rights abusers; their time has come. "You must go."

That is a clear-cut, unequivocal statement on the part of the President of the United States that unless these people leave power, and indeed leave the country as was later elaborated by administration people on national talk shows the following Sunday, then we are going to invade.

Much to the astonishment and amazement of many Americans, the next day we did not invade. We sent a delegation—which is certainly laudable. But the results of that delegation were that it came back to tell the American people that these murdering, raping thugs are now honorable military men who need to have honorable military retirements—that these are men whose rights under international law would be violated if they were forced to leave the country. And the chief negotiator, former President Carter, said he was ashamed of the President's policy.

Not only are the American people confused—I keep track of these events and I am confused. Are these people murdering thugs or are they honorable military people? I would like to know, which is which? Are they going to be forced to leave Haiti or are they going to have an honorable retirement? Frankly, one of the most respected persons I know is saying: Well, you can say what you want. Once you get there and you have taken over the country it does not matter. What happens the next time we face a problem and we send people down to negotiate? Are they going to look back and say: You told them in Haiti certain things would happen, but once you got there they did not happen?

Who are these people? Who is President Aristide? I suggest his autobiography ought to be read. It is full of Marxist ideology and liberation theology. I have seen films where he extolls the virtues of necklacing. Who is the enemy in Haiti and who is the friend? The American people, I think, need to know that. Who are we supporting and who are we opposing?

Mr. President, has my time nearly expired?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. I support the resolution and appreciate the indulgence of the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I yield 10 minutes to the Senator from North Carolina, the ranking member of the Foreign Relations Committee.

The PRESIDING OFFICER. The Senator from North Carolina [Mr. HELMS], is recognized for 10 minutes.

Mr. HELMS. Mr. President, at this moment more than 21,000 U.S. service men and women have been sent to occupy Haiti. They have no business being there and we should get them out right away.

I am deeply concerned when at any time and for any reason United States troops are placed in harm's way and I am especially concerned because the United States has absolutely no vital interest at stake in Haiti.

I heard a report which was on television, and followed up by a report in the New York Times, about apprehensions about the venereal disease AIDS. The astonishing percentage of people in Haiti who have AIDS is enough to make the President and all the rest of us who had anything whatsoever to do with sending those troops down there think again about what we have done to our own people.

I am especially mindful that many thousands of these troops in Haiti

today come from 29 separate military units, and they reside in my home State of North Carolina. Tonight, from Fort Bragg to Camp Lejeune, the loved ones are waiting and wondering and praying for the husbands and fathers and mothers and wives and sons and daughters to come home safely.

Many Senators have spoken about the morale of our troops in Haiti, commenting that they appear well prepared and that they are in good spirits. And of course they do and they are. Notwithstanding the vigorous efforts of liberals in the Congress of the United States to destroy it, the American military remains the finest fighting force on Earth. Our troops are, indeed, well trained and well equipped because under the vision and leadership of Ronald Reagan the United States made a commitment to rebuild our military, a military which had been allowed to fall into a state of such deep disrepair the soldiers could not fight and ships could not sail and airplanes could not fly. So it should be no surprise that our troops are well prepared for their mission in Haiti, thanks to Ronald Reagan.

But Senators need to be reminded that the central question is not the morale of those splendid men and women whom we have sent to Haiti. The question is, why are they there in the first place? I will repeat what I have said on this floor since the issue was first debated in October of last year, 12 months ago.

The United States has no national security interest in Haiti, and removing the warlords who have run Haiti for the past 3 years is not worth one American life, nor is installing into power on the shoulders of 21,000 U.S. servicemen and women, a sworn enemy of America, Jean Bertrand Aristide. It just does not make any sense.

I also find it intriguing that many of the Senators who are showering praise today upon Gen. Hugh Shelton and the rest of our military personnel in Haiti are, in many instances, the very same Senators who have unfailingly voted to slash defense spending. If they had had their way, our armed services today would be so hollow that we might find it difficult to mobilize a force to occupy even a defenseless island like Haiti. So it is ironic, when you stop to think about it, that liberals who attempted during the past 12 years to weaken the readiness of our armed services are so committed to our occupation of this tiny island.

By way of example, perhaps I should mention that when Communist guerrillas threatened to destroy democracy in El Salvador where our Nation's security was truly at risk, liberals prohibited more than 55 U.S. military advisers—55 people—to go inside that country. They would not let them go. Today, many of these same liberals argue that we must keep 21,000 servicemen and women indefinitely in a nation which is of no security interest to the United States whatsoever.

In addition to the cost in U.S. personnel lives, which may be high, the financial cost of restoring Mr. Aristide to office is an abuse of American taxpayers' money. Last week, I submitted in the CONGRESSIONAL RECORD a list of 17 separate categories of U.S. expenditures totaling more than $891 million, and these costs continue to skyrocket. The Pentagon now believes its mission alone will cost more than $1 billion, and that does not include more than $300 million in foreign aid that the President intends to give to Haiti over the next 12 months. Nor does it include at least $70 million which U.S. taxpayers will be expected to cough up as our contribution to the U.N. force involved in Haiti. And with a national debt of $4,692,749,910,013.32, as of yesterday afternoon, our Nation can ill-afford to take on new debt, additional debt to install Mr. Aristide to power.

So the situation now in Haiti is an accident waiting to happen. President Clinton has failed to provide our troops and the American people with anything remotely appearing to be a definition of our mission there. When our troops entered Haiti about 2 weeks ago, we were told that the Haitian military alone would be responsible for disarming the Haitian thugs. Now American troops serve as the policemen of Haiti, intervening in fist fights among the looters and the raiders and they are trying to disarm the thugs.

I am not going to dwell further on these points because I, and many other Senators, have made them before, but allow me to say that the President and his advisors have made a grave mistake by placing United States troops in Haiti. We simply cannot afford the cost of this occupation financially, but far more important, the President will never be able to justify the cost of this occupation in terms of American life and American dollars.

Mr. President, please get our troops out of Haiti now before they begin coming home in body bags.

Finally, Mr. President, I ask unanimous consent that a listing of all North Carolina based military personnel be printed in the RECORD.

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

NORTH CAROLINA-BASED MILITARY PERSONNEL ORDERED TO INVADE HAITI

Marine Corps Forces:

1. Special Purpose Marine Air Ground Task Force—Caribbean of approx. 1,800 Marines, Camp Lejeune.

Army Forces:

1. 1st Corps Support Command, Ft. Bragg.
2. 16th Military Police Brigade, Ft. Bragg.
3. 503rd Military Police Battalion, Ft. Bragg.
4. 2-159 Medium Lift Helicopter Battalion, Ft. Bragg.
5. 20th Engineer Brigade, Ft. Bragg.
6. 27th Engineer Battalion, Ft. Bragg.
7. 37th Engineer Battalion, Ft. Bragg.
8. 525th Military Intelligence Brigade, Ft. Bragg.
9. 319th Military Intelligence Battalion, Ft. Bragg.
10. 519th Military Intelligence Battalion, Ft. Bragg.
11. 2nd Material Movement Center, Ft. Bragg.
12. 330th Material Movement Center, Ft. Bragg.
13. 46th Corps Support Group, Ft. Bragg.
14. 264th Corps Support Battalion, Ft. Bragg.
15. 18th Finance Group, Ft. Bragg.
16. 18th Personnel Service Battalion, Ft. Bragg.
17. 44th Medical Brigade, Ft. Bragg.
18. 55th Medical Group, Ft. Bragg.
19. 28th Combat Support Hospital, Ft. Bragg.
20. 261st Area Support Medical Battalion, Ft. Bragg.
21. 32nd Medical Logistic Battalion, Ft. Bragg.
22. 56th Medical Battalion, Ft. Bragg.

U.S. Army Reserve:

1. 422nd Civil Affairs Battalion Support Element, Greensboro.

Air Force Units:

1. 4th Wing, Seymour Johnson AFB.
2. 23rd Wing, Pope AFB.

Air Force Reserve:

1. 53 Aerial Port Sq., Fayetteville.
2. 916 ARG, KC-10A, Goldsboro.

National Guard Units:

1. 145 AG, C-130, Charlotte.

Mr. HELMS. If I have any time remaining, I yield it back and I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator suggests the absence of a quorum. Does either Senator yield time at this point?

Mr. HELMS. I withdraw, unless——

Mr. DODD. Mr. President, I suggest the absence of a quorum and ask that the time be charged to both sides equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GREGG. 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. GREGG. Mr. President, I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

Mrs. HUTCHISON. Thank you, Mr. President. I want to thank my colleague from New Hampshire and also my colleague from Connecticut for putting forth this bipartisan resolution. I think it is very important that those of us who believe that the mission to Haiti should never have been embarked on speak out loudly and clearly so that the President and the administration know that this mission must come to a close at the earliest possible moment.

I originally opposed the invasion of Haiti because I was simply not convinced that there is any threat to our

national interest that is significant enough to warrant the loss of even one American life. Administration officials have suggested that we are prepared for casualties in Haiti during this occupation. Mr. President, I am not. I was not prepared to accept United States casualties resulting from an invasion of Haiti, and I am certainly not prepared for casualties resulting from the occupation of Haiti.

On September 24, in the first firefight of the American intervention in Haiti, a United States Navy interpreter was wounded and 10 armed Haitians, policemen or attaches, were killed by Marines outside a police station in the north coast city of Cap-Haitien. We have had the first United States casualty and the first Haitians killed as a result of our intervention.

Since then, Haitian-on-Haitian violence has escalated rather than abated. Looting has become widespread, and the tension between our troops and parts of the populace have increased. One American soldier has been shot in the abdomen. This is a very similar pattern, Mr. President, to what took place in Somalia. At first, the Somalis welcomed us. Then they took up arms against us, with disastrous results.

On September 29, an explosion at a political rally killed five Haitians and wounded many more. U.S. soldiers were in close proximity to the explosion and luckily none were killed or injured.

On September 30, two U.S. photographers were injured by mob violence. The President has yet to report to Congress and answer our serious concerns and questions regarding this mission.

I am becoming increasingly troubled by the apparent mission creep which characterized our involvement in Somalia and is becoming apparent in Haiti as well. Originally, administration officials briefed the Senate that United States forces would be routed around Haitian-on-Haitian acts of violence. Now the violence is finding our troops much as it did in Somalia. In addition, the policy regarding our troops' intervention in acts of violence between Haitians has been changed. The new policy puts our troops between the two opposing sides. The only outcome of this can be more American casualties.

Mr. President, I believe it is important to reiterate this point. The President chose not to seek congressional approval prior to sending combat troops into Haiti when there was absolutely no national security interest and no reason to do that. There was no U.S. citizen being threatened.

Then the President's representatives briefed the Congress that we would not involve our troops in violence between Haitians. Now the President has said, again without seeking congressional approval, that this policy is altered and our troops are directly in harm's way. Let us not forget that President Bush ordered United States troops into Somalia for the purely humanitarian purpose of ending a politically imposed famine. It was the Clinton administration that changed the mission to one of nation building.

We are all familiar with the tragic outcome of that intervention. We lost precious American lives. It appears that our military is once again being plagued by mission creep as part of a misguided cause of nation building. I think that nation building is a term that reflects the arrogance of many in this country who think that Haiti or Somalia can have democracy imposed upon them at the point of a bayonet.

I am sure my office is not unique in the Senate. I have received hundreds of thoughtful letters, phone calls, and telegrams since President Clinton addressed the Nation. The one theme which predominates is that the President has simply failed to present a clear and convincing case that there is, indeed, a vital national security interest in Haiti.

Advocates of an interventionist foreign policy have always advanced lofty goals, but in the final analysis these goals must be achievable and they must be worth the price we pay.

Even if democracy in Haiti were achievable at the point of a bayonet, is it worth the life of one American soldier or marine? This is an internal decision that must be made by the Haitian people. Is it worth the estimated 500 million to 850 million taxpayer dollars that will be added to our deficit for this intervention?

One of the many thoughtful letters that came into my office was from a retired colonel, Richard Platt, of Universal City, TX. He wrote:

> I have served my country as a soldier for 35 years, including two tours of duty in Vietnam. I had hoped that we as a nation had learned from our mistakes. Apparently I was wrong. It appears that we have again committed brave young Americans in a disastrous mission in support of inept political policies. The United States has absolutely no vital national interests in Haiti, and it is not worth a single American life. It is time to speak up—loudly.

That is what he wrote to me. Mr. President, I am taking Mr. Platt's advice, and I am speaking. I am going to speak loudly, as I have in the past, because I think that is the best way to send the message to the President.

This mission must be defined. It must be defined clearly and narrowly. And the American people must understand it. Most of all, Mr. President, I hope by speaking out, we will shorten this mission to the very briefest possible time that our troops would be in harm's way. I am going to speak to try to make that happen.

Thank you, Mr. President.

I thank the Senator from New Hampshire.

I yield the floor.

Mr. FEINGOLD addressed the Chair.

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

Mr. FEINGOLD. With the consent of the floor leader, Senator DODD, I yield myself 10 minutes.

The PRESIDING OFFICER. Without objection, the Senator is recognized for 10 minutes.

Mr. FEINGOLD. I thank the Chair.

As we debate the Mitchell-Dole resolution regarding the United States policy toward Haiti, I would like to discuss an issue that goes beyond the specific military operation and calls attention to the disturbing institutional process by which we arrived at this point.

Today, there are over 19,500 United States troops in Haiti. This is a U.S.-led mission with phenomenal contributions from other nations and is scheduled for transition to a U.N. peacekeeping force for phase 2, which is to be responsible for maintaining public order, professionalization of the police force, and assisting in the legislative election.

Mr. President, simply speaking, the United Nations authorized this mission, but the U.S. Congress never did.

We have debated and voted on the issue of United States troops in Haiti on several occasions in the past year. We have also voted on a series of haphazard and ad hoc resolutions relating to the United States troops in several other conflicts such as Haiti, Bosnia, and the Golan Heights.

Mr. President, it has been a sloppy and ineffective approach to war powers.

I believe that Congress should have had a central role in authorizing the Haiti mission because it is a large military operation where our troops may face imminent hostility. For that reason, I introduced a resolution 2 weeks ago, shortly after our troops went into Haiti, calling for an up or down vote on the deployment of United States forces in Haiti on or before October 15, 1994, when the mission in Haiti can obviously become more perilous. I strongly believe that Congress has a responsibility to vote up or down on this particular mission.

I compliment the House Foreign Affairs Committee for taking up a resolution which did take a position on this issue. They voted to authorize the mission until March 1, 1995. Now, Mr. President, I am not at all sure I agree with the authorization or the withdrawal date chosen, but at least that committee faced the issue head on.

There, Chairman Lee Hamilton noted:

> The presence of more than 15,000 U.S. troops in Haiti is a significant foreign policy action. It is important for Congress to vote to authorize the deployment of U.S. troops overseas whenever they are placed in situations where there is the potential for combat.

Obviously, Mr. President, the Haiti situation is such a situation.

Despite what has turned out to be a political battle, war powers should not be a partisan issue. The underlying issue is not simply whether Members of this Congress support or oppose President Clinton's decision on Haiti. It is what power we would have if a different President in the future would decide to deploy 50,000 troops, for example, to Costa Rica for inappropriate or obscure reasons. That is why I am focusing on this issue. With the precedent we are setting in Haiti, such abuse by a less well-meaning President could well occur.

Our Founding Fathers did not leave these kinds of decisions to one person. The Constitution mandates a balance of powers, in most cases, of the use of Armed Forces. In this case, though, only the Chief Executive ordered the deployment of 19,000 Americans into combat. He also unilaterally decided that he did not have to seek congressional authorization to do it.

Mr. President, I was particularly troubled by the legal rationale the administration offered for the President's deployment of forces to Haiti. In a letter from Walter Dellinger in the Office of Legal Counsel at the Department of Justice to Senators DOLE, COHEN, THURMOND, and SIMPSON, the administration cited some legal justification for this unilateral action, including an argument that the deployment was in accordance with a sense-of-the-Congress resolution attached to the Department of Defense appropriations bill in October 1993.

Mr. President, I ask unanimous consent that that letter be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGAL COUNSEL,
Washington, DC, September 27, 1994.

Hon. ROBERT DOLE,
Hon. ALAN K. SIMPSON,
Hon. STROM THURMOND,
Hon. WILLIAM S. COHEN,
U.S. Senate, Washington, DC.

DEAR SENATORS, I write in response to your letter of September 15, 1994, in which you requested a copy or summary of any legal opinion that may have been rendered, orally or in writing, by this Office concerning the lawfulness of the President's planned deployment of United States military forces into Haiti. After giving substantial thought to these abiding issues of Presidential and congressional authority, we concluded that the President possessed the legal authority to order that deployment.

In this case, a combination of three factors provided legal justification for the planned deployment. First, the planned deployment accorded with the sense of Congress, as expressed in section 8147 of the Department of Defense Appropriations Act, 1994, Pub. L. No. 103–139, 107 Stat. 1418, 1474 (1993). That resolution expressed Congress's sense that the President would not require express prior statutory authorization for deploying troops into Haiti provided that he first made certain findings and reported them to Congress. The President did make the required findings and reported them. We concluded that the resolution "evince[d] legislative intent to accord the President broad discretion" and "'invite[d]' measures on independent presidential responsibility." Dames & Moore v. Regan, 453 U.S. 654, 678 (1981) (quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637 (1952) (Jackson, J., concurring)). Second, the planned deployment satisfied the requirements of the War Powers Resolution. Finally, after examining the circumstances, nature, scope and duration of the anticipated deployment, we determined that it was not a "war" in the constitutional sense. Specifically, the planned deployment was to take place with the full consent of the legitimate government, and did not involve the risk of major or prolonged hostilities or serious casualties to either the United States or Haiti. For those reasons, which are set out in detail below, we concluded that the President had legal and constitutional authority to order United States troops to be deployed into Haiti.

I.

First, the Haitian deployment accorded with the sense of Congress, as expressed in section 8147 of the Department of Defense Appropriations Act, 1994, Pub. L. No. 103–139.[1] That provision was sponsored by, among others, Senators Dole, Simpson and Thurmond. *See* 139 Cong. Rec. S14,021–22 (daily ed. Oct. 20, 1993).

Section 8147(b), 107 Stat. 1474, of the Act states the sense of Congress that "funds appropriated by this Act should not be obligated or expended for United States military operations in Haiti" unless certain conditions (including, in the alternative, prior Congressional authorization) were met. Section 8147(c), 107 Stat. 1475, however, added that

[i]t is the sense of Congress that the limitation in subsection (b) should not apply if the President reports in advance to Congress that the intended deployment of United States Armed Forces into Haiti—

(1) is justified by United States national security interests;

(2) will be undertaken only after necessary steps have been taken to ensure the safety and security of United States Armed Forces, including steps to ensure that United States Armed Forces will not become targets due to the nature of their rules of engagement;

(3) will be undertaken only after an assessment that—

(A) the proposed mission and objectives are most appropriate for the United States Armed Forces rather than civilian personnel or armed forces from other nations, and

(B) that the United States Armed Forces proposed for deployment are necessary and sufficient to accomplish the objectives of the proposed mission;

(4) will be undertaken only after clear objectives for the deployment are established;

(5) will be undertaken only after an exit strategy for ending the deployment has been identified; and

(6) will be undertaken only after the financial costs of the deployment are estimated.

In short, it was the sense of Congress that the President need not seek prior authorization for the deployment in Haiti provided that he made certain specific findings and reported them to Congress in advance of the deployment. The President made the appropriate findings and detailed them to Congress in conformity with the terms of the resolution. *See* Letter to the Speaker of the United States House of Representatives from the President (Sept. 18, 1994). Accordingly, this is not, for constitutional purposes, a situation in which the President has "take[n] measures incompatible with the expressed or implied will of Congress," *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. at 637 (Jackson, J., concurring). Rather, it is either a case in which the President has acted "pursuant to an . . . implied authorization of Congress," so that "his authority is at its maximum," *id.* at 635, or at least a case in which he may "rely upon his own independent powers" in a matter where Congress has "enable[d], if not invite[d], measures on independent presidential responsibility." *Id.* at 637.

II.

Furthermore, the structure of the War Powers Resolution (WPR) recognizes and presupposes the existence of unilateral Presidential authority to deploy armed forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." 50 U.S.C. §1543(a)(1). The WPR requires that, in the absence of a declaration of war, the President must report to Congress within 48 hours of introducing armed forces into such circumstances and must terminate the use of United States armed forces within 60 days (or 90 days, if military necessity requires additional time to effect a withdrawal) unless Congress permits otherwise. *Id.* §1544(b). This structure makes sense only if the President may introduce troops into hostilities or potential hostilities without prior authorization by the Congress: the WPR regulates such action by the President and seeks to set limits to it.[2]

To be sure, the WPR declares that it should not be "construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances." 50 U.S.C. §1547(d)(2). But just as clearly, the WPR *assumes* that the President already has such authority, and indeed the WPR states that it is not "intended to alter the constitutional authority of the . . . President." *Id.* §1547(d)(1). Furthermore, although the WPR announces that, in the absence of specific authorization from Congress, the President may introduce armed forces into hostilities only in "a national emergency created by attack upon the United States, its territories or possessions, or its armed forces," *id.* §1541(c), even the defenders of the WPR concede that this declaration—found in the "Purpose and Policy" section of the WPR—either is incomplete or is not meant to be binding. *See e.g.*, Cyrus R. Vance, *Striking the Balance: Congress and the President Under the War Powers Resolution*, 133 U. Pa. L. Rev. 79, 81 (1984).[3]

The WPR was enacted against a background that was "replete with instances of presidential uses of military force abroad in the absence of prior congressional approval." Presidential Power to Use the Armed Forces Abroad Without Statutory Authorization, 4A Op. O.L.C. 185, 187 (1980). While Congress obviously sought to structure and regulate such unilateral deployments,[4] its overriding interest was to prevent the United States from being engaged, without express congressional authorization, in major, prolonged conflicts such as the wars in Vietnam and Korea, rather than to prohibit the President from using or threatening to use troops to achieve important diplomatic objectives where the risk of sustained military conflict was negligible.

Footnotes at end of article.

Further, in establishing the funding a military force that is capable of being projected anywhere around the globe, Congress has given the President, as Commander in Chief, considerable discretion in deciding how that force is to be deployed.[5] *See Johnson v. Eisentrager*, 339 U.S. 763, 789 (1950); *cf. Maul v. United States*, 274 U.S. 501, 515–16 (1927) (Brandeis and Holmes, JJ., concurring) (President "may direct any revenue cutter to cruise in any waters in order to perform any duty of the service"). By declining, in the WPR or other statutory law, to prohibit the President from using his conjoint statutory and constitutional powers to deploy troops into situations like that in Haiti, Congress has left the President both the authority and the means to take such initiatives.

In this case, the President reported to Congress, consistent with the WPR, that United States military forces, together with units supplied by foreign allies, began operations in Haitian territory, including its territorial waters and airspace. The President stated in his report that he undertook those measures "to further the national security interests of the United States; to stop the brutal atrocities that threaten tens of thousands of Haitians; to secure our borders; to preserve stability and promote democracy in our hemisphere; and to uphold the reliability of the commitments we make, and the commitments others make to us, including the Governors Island Agreement and the agreement concluded on September 18 in Haiti." Letter to the Speaker of the United States House of Representatives from the President, at 2 (Sept. 21, 1994). We believed that the deployment was fully consistent with the WPR, and with the authority Congress reserved to itself under that statute to consider whether affirmative legislative authorization for the continuance of the deployment should be provided.

III.

Finally, in our judgment, the Declaration of War Clause, U.S. Const., art. I, §8, cl. 11 ("[t]he Congress shall have Power . . . [t]o declare War"), did not of its own force require specific prior congressional authorization for the deployment of troops at issue here. That deployment was characterized by circumstances that sufficed to show that the operation was not a "war" within the meaning of the Declaration of War Clause.[6] The deployment was to have taken place, and did in fact take place, with the full consent of the legitimate government of the country involved.[7] Taking that and other circumstances into account, the President, together with his military and intelligence advisors, determined that the nature, scope and duration of the deployment were not consistent with the conclusion that the event was a "war."

In reaching that conclusion, we were guided by the initial premise, articulated by Justice Robert Jackson, that the President, as Chief Executive and Commander in Chief, "is exclusively responsible" for the "conduct of diplomatic and foreign affairs," and accordingly that he may, absent specific legislative restriction, deploy United States armed forces "abroad or to any particular region." *Johnson v. Eisentrager*, 339 U.S. at 789. Presidents have often utilized this authority, in the absence of specific legislative authorization, to deploy United States military personnel into foreign countries at the invitation of the legitimate governments of those countries. For example, during President Taft's Administration, the recognized government of Nicaragua called upon the United States to intervene because of civil disturbance. According to President Taft, "[t]his led to the landing of marines and quite a campaign. . . . This was not an act of war, because it was done with the consent of the lawful authorities of the territory where it took place." William Howard Taft, *The Presidency* 88–89(1916).[8]

In 1940, after the fall of Denmark to Germany, President Franklin Roosevelt ordered United States troops to occupy Greenland, a Danish possession in the North Atlantic of vital strategic interest to the United States. This was done pursuant to an agreement between the United States and the Danish Minister in Washington, and was welcomed by the local officials on Greenland.[9] Congress was not consulted or even directly informed. *See* James Grafton Rogers, *World Policing and the Constitution* 69–70 (1945). Later, in 1941, the President ordered United States troops to occupy Iceland, an independent nation, pursuant to an agreement between himself and the Prime Minister of Iceland. The President relied upon his authority as Commander in Chief, and notified Congress only after the event. *Id.* at 70–71. More recently, in 1989, at the request of President Corazon Aquino, President Bush authorized military assistance to the Philippine government to suppress a coup attempt. *Pub. Papers of George Bush* 1615 (1989).

Such a pattern of Executive conduct, made under claim of right, extended over many decades and engaged in by Presidents of both parties, "evidences the existence of broad constitutional power." Presidential Power to Use the Armed Forces Abroad Without Statutory Authorization, 4A Op. O.L.C. at 187.

We are not suggesting, however, that the United States cannot be said to engage in "war" whenever it deploys troops into a country at the invitation of that country's legitimate government. Rather, we believe that "war" does not exist where United States troops are deployed at the invitation of a fully legitimate government in circumstances in which the nature, scope, and duration of the deployment are such that the use of force involved does not rise to the level of "war."

In deciding whether prior Congressional authorization for the Haitian deployment was constitutionally necessary, the President was entitled to take into account the anticipated nature, scope and duration of the planned deployment, and in particular the limited antecedent risk that United States forces would encounter significant armed resistance or suffer or inflict substantial casualties as a result of the deployment.[10] Indeed, it was the President's hope, since vindicated by the event, that the Haitian military leadership would agree to step down before exchanges of fire occurred. Moreover, while it would not be appropriate here to discuss operational details, other aspects of the planned deployment, including the fact that it would not involve extreme use of force, as for example preparatory bombardment, were also relevant to the judgment that it was not a "war."

On the basis of the reasoning detailed above, we concluded that the President had the constitutional authority to deploy troops into Haiti even prior to the September 18 agreement.

Sincerely,

WALTER DELLINGER.

FOOTNOTES

[1] In speaking of the deployment, we should be understood to include, not only the actual deployment begun on September 19, but the military operation that was planned, and in part initiated, before an agreement with the Haitian military leadership was negotiated on September 18 by former President Jimmy Carter, Senator Sam Nunn and General Colin Powell (the "September 18 agreement"). As the President noted in his televised address of September 18, that agreement "was signed after Haiti received evidence that paratroopers from our 82nd Airborne Division, based at Fort Bragg, North Carolina, had begun to load up to begin the invasion which I had ordered to start this evening." Text of Clinton's Address, The Washington Post, Sept. 19, 1994, at A17.

[2] It should be emphasized that this Administration has not yet had to face the difficult constitutional issues raised by the provision of the WPR, 50 U.S.C. §1544(b), that requires withdrawal of forces after 60 days involvement in hostilities, absent congressional authorization.

[3] The WPR omits, for example, any mention of the President's power to rescue Americans; yet even the Comptroller General, as agent of Congress, has acknowledged both that "the weight of authority" supports the position that "the President does possess some unilateral constitutional power to use force to rescue Americans," and that §1541(c) "does not in a strict sense operate to restrict such authority." 55 Comp. Gen. 1081, 1083, 1085 (1976). *See also* Peter Raven-Hansen and William C. Banks, Pulling the Purse Strings of the Commander in Chief, 80 Va. L. Rev. 833, 879 (1994) ("[a] custom of executive deployment of armed force for rescue and protection of Americans abroad has developed at least since 1790"); id. at 917–18 ("since 1868 the so-called Hostage Act has authorized and required the President to 'use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate [the] release' of American citizens 'unjustly deprived of [their] liberty by or under the authority of any foreign government.' . . . [T]he Hostage Act lends further support to custom and may constitute congressional authorization for at least this limited defensive war power.").

[4] Even though the President has the inherent power to deploy troops abroad, including into situations of hostilities, Congress may, within constitutional limits, regulate the exercise of that power. See, e.g., Santiago v. Nogueras, 214 U.S. 260,266 (1909) (President had power to institute military government in occupied territories until further action by Congress); The Thomas Gibbons, 12 U.S. (8 Cranch) 421, 427–28 (1814).

[5] We recognize, of course, that the WPR provides that authority to introduce the armed forces into hostilities or situations where hostilities are clearly indicated may not be inferred from an appropriation act, unless that statute "states that it is intended to constitute specific statutory authorization within the meaning of this chapter." 50 U.C.S. §1547(a).

[6] *See* Note, *Congress, The President, And The Power To Commit Forces To Combat*, 81 Harv. L. Rev. 1771, 1790 (1968) (describing other limited interventions and suggesting conclusion that "'war' in the sense of article I, section 8, requiring congressional sanction, does not include interventions to maintain order in weak countries where a severe contest at arms with another nation is likely to result"). Here, of course, there is still less reason to consider the deployment a "war," since it was undertaken at the request of the recognized, democratically-elected government, and not merely to "maintain order."

[7] Moreover, the deployment accorded with United Nations Security Council Resolution No. 940 (1994). There can thus be no question but that the deployment is lawful as a matter of international law.

[8] President Grover Cleveland had also opined that a "military demonstration" on the soil of a foreign country was not an "act of war" if it was "made either with the consent of the [foreign] government . . . or for the *bona fide* purpose of protecting the imperiled lives and property of citizens of the United States." 9 *Messages and Papers of the Presidents 1789–1897* 466 (James Richardson ed., 1898).

[9] The Danish King and ministers were in German hands at the time.

[10] Although the President found that the deployment would not be without risk, he and his senior advisers had also determined that the United States would introduce a force of sufficient size to deter armed resistance by the Haitian military and thus to hold both United States and Haitian casualties to a minimum. The fact that the United States planned to deploy up to 20,000 troops is not in itself dispositive on the question whether the operation was a "war" in the constitutional sense, since the very size of the force was designed to reduce or eliminate the likelihood of armed resistance.

Mr. FEINGOLD. I thank the Chair.

Now, while Mr. Dellinger cites an escape clause for the President to act in dire circumstances, he seemingly ignores the fact that the principal purpose of the resolution passed by this body was to ensure that "funds should not be obligated or expended for United States military operation in Haiti" unless authorized in advance by Congress or under certain limited emergency situations where there was not time to seek and receive congressional authorization.

I have to say that I am dismayed at the line of reasoning propounded by the administration. A sense-of-Congress resolution which was clearly designed to limit the use of appropriated funds for a military operation in Haiti without prior congressional approval was intentionally interpreted to authorize an unauthorized expedition.

The language cited by Mr. Dellinger in his September 27 justification refers to an exception to the general limitation in the resolution which allowed such deployment if the President reported in advance to the Congress on a number of conditions.

What, in fact, happened is that the President ordered the invasion on Sunday, September 18, and sometime close to midnight—well after the decision had been made and implemented—he transmitted to Congress a report advising Congress of the objectives and charter of the deployment. To argue that a report submitted after an invasion order had been issued was compliance with the advance report requirement makes a mockery of congressional intent.

Mr. President, Mr. Dellinger's letter makes two other arguments for the legal justification for the deployment without congressional authorization which I would like to touch on briefly.

First, he refers to the War Powers Resolution and states that its structure makes sense only if the President has authority introduce troops into hostilities or potential hostilities without prior authorization by Congress. He argues that the War Powers Resolution simply regulates such action by the President and seeks to set limits to it. The letter goes on in my view to minimize the War Powers Resolution by suggesting that while Congress obviously sought to structure and regulate unilateral deployments, "its overriding interest was to prevent the United States from being engaged, without expressed congressional authorization, in major prolonged conflicts such as the wars in Vietnam and Korea." I found it astounding that the administration does not recognize the link between the evolution of both Korea and Vietnam from limited actions to major wars.

The final argument that article I, section 8 of the Constitution does not require specific prior congressional authorization for the deployment of troops at issue here must also be challenged. I believe that when the United States deploys almost 20,000 troops, combat-ready, in the circumstances at hand, it is a word-game to assert that congressional authorization under article I is not at issue.

Given that the invasion of Haiti contained no pretense of an element of surprise, there was no reason to circumvent the original intent of the resolution: That the President should seek congressional authorization prior to an invasion such as the one conducted in Haiti. I voted for the resolution invoked by Mr. Dellinger, but since the administration has demonstrated that it does not recognize a fundamental role for Congress in the use of force, I will be far more reluctant in the future to vote for any other resolutions on specific missions which provide or will be construed to provide a mechanism for the administration to circumvent the need for congressional approval of military deployments.

Mr. President, we should not let this action go unchallenged. A provision in the Mitchell-Dole resolution we are considering today, which states that "It is the sense of the Congress that the President should have sought congressional approval before deploying U.S. Armed Forces to Haiti," acknowledges the problem.

However, the resolution does not go ahead and authorize the deployment. The resolution also avoids the opportunity to authorize phase II, the UNMIH mission. Another provision explicitly states that "Nothing in this resolution should be construed or interpreted to constitute congressional approval or disapproval of the participation of the U.S. Armed Forces in the United Nations Mission in Haiti." Obviously, Mr. President, if we are going to authorize United States participation in the UNMIH mission, now is the time to do it.

However, with the circumstances before us today—when United States Forces are already deployed—it appears that the Senate is going to sidestep a direct up or down vote on the United States mission in Haiti. This is precisely the reason we are in dire need of an overhaul of the War Powers Resolution, which has proven unworkable.

To conclude, Mr. President, I am hopeful that next Congress, when we have finally grown tired of the seat-of-the-pants amendments on the use of force, our committees will delve into this issue and we will be able to develop a process where, in concert with the administration, the use of force is a shared decision, as envisioned under the Constitution, between the executive and legislative branches, not just the decision of one person, the Commander in Chief.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Mr. ROBB). Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the President pro tempore, Senator BYRD.

Mr. BYRD. Mr. President, how much time does Mr. BROWN wish?

Mr. BROWN. Ten minutes.

ORDER OF PROCEDURE

Mr. BYRD. I ask unanimous consent that I may yield the floor, without losing my right to the floor, to Mr. BROWN for not to exceed 10 minutes, and then to Mr. DORGAN for not to exceed 10 minutes, that I then be recognized, and that the intervening time not be charged to the time under my control.

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

The Senator from Colorado is recognized for up to 10 minutes on time chargeable to the Senator from New Hampshire.

Mr. BROWN. Mr. President, let me thank the distinguished Senator from West Virginia. I appreciate his courtesy, and I want to also commend the distinguished Senator from Wisconsin for his thoughtful comments. He has been consistent on this subject. He is one who has spoken out both on the floor and in the Foreign Relations Committee on which we both serve. I commend him for not only a consistent but a thoughtful approach.

Mr. President, as one Republican who supports the War Powers Act, I share his concern about the procedures that have been followed in the deployment of United States combat forces into Haiti. Specifically, Mr. President, I think it is unfortunate, even tragic that the President refused to seek the approval of the U.S. Congress before this deployment was made—this in spite of the fact that this Senate made it quite clear that they expected to be consulted and involved in the decision to commit U.S. forces to combat.

Moreover, Mr. President, let me be specific. It is my belief that the timing of the sending of those forces was partly associated with an effort to avoid votes which were scheduled that following week in both Houses of Congress. In other words, part of the rationale for deploying forces without prior congressional approval was an attempt by the executive branch to circumvent the President's responsibility to consult Congress. Making the circumvention even more deplorable was the fact that the Congress had clearly expressed its wish to be involved in any decision to commit U.S. forces.

Some will say the War Powers Act allows the Commander in Chief to deploy forces in a variety of situations, and that is quite true. But one should not think about these War Powers provisions without noting what made the Haitian adventure different. It did not involve an emergency or an unexpected circumstance. As a matter of fact, this invasion has been talked about by the

President for many, many months. Clearly, one cannot justify the deployment of forces on the basis that it involved emergency action. It did not. The deployment cannot be justified on the basis that there was an urgent need for secrecy or that the secrecy of the operation would be jeopardized by going to Congress. Clearly, it would not. No secret was made of the plan to invade.

The simple fact is that the deployment of forces was completed in such a manner as to avoid congressional involvement. Mr. President, I think it was a mistake. I think it was a mistake because the Constitution is quite clear in giving Congress the power to declare war. The War Powers Act is quite clear in setting forth responsibilities. Furthermore, the Congress has been quite clear in its resolve and its interest that the President seek prior authorization from Congress before we deploy our forces in the field of combat in Haiti.

Mr. President, I am concerned about the decision to deploy United States forces to Haiti for two additional reasons. One, we did not have a clear mission, and deployment in Haiti was not vital to our national security interests. If we have learned one thing from our experience in Vietnam, in Lebanon, in Somalia, it is that it is a mistake to deploy United States combat forces around the world without a commitment to win, without clear objectives, without a clear purpose. How many tragedies do we have to endure before we learn that about U.S. overseas deployments?

The second issue is one that should concern all Americans. That is, the administration's implied message that the authorization by the United Nations Security Council was adequate for the deployment of U.S. forces, and the implication that the approval of the U.S. Congress was not needed.

Mr. President, this is a dangerous precedent. The forces that serve the United States are not only paid for by the U.S. taxpayers, but fall under the purview of the U.S. Constitution and the system of government we have established. We do not have American forces subject to United Nations authorization. They are subject to American authorization. To use the United Nations to circumvent the Congress of the United States is a mistake—a mistake for this President, and for other Presidents who might do so.

There are two parts of this resolution that are very important and are part of the reason why I will support the final text. Section 1, subparagraph (b) says this:

> The President should have sought and welcomed congressional approval before deploying U.S. Armed Forces in Haiti.

I believe that is absolutely correct. Is it a tough criticism of the President? Yes, I think it is. Hopefully, however, it is a policy the President will learn to adopt.

There is a separate section, section 5, that is helpful:

> Report on U.S. agreements. Not later than November 15, 1994, the Secretary of State shall provide a comprehensive report to Congress on all the agreements of the United States entered into with other nations, including any assistance pledged or provided in connection with the United States efforts in Haiti. Such reports shall include information on any agreements or commitments relating to the United Nations Security Council actions concerning Haiti since 1992.

Mr. President, we have not had full disclosure from the administration as to what commitments and agreements were made in ancillary discussions to secure the support and participation of other nations. The American people are entitled to know what commitments were made or what verbal understandings were reached, and this resolution makes it clear that all of this information is called for. As one of the chief authors of this section, it is particularly important that the Congress receive effective reporting on all verbal or written agreements entered into by the executive branch to secure other nations support.

Finally, I would like to express my disappointment that this resolution comes to the floor without the ability to amend it. A strong effort was made in this body to avoid amendment in the original resolution after United States forces were deployed to Haiti. The implication was that if we insisted on amendments, no resolution would have been brought forth. That was the case when we first considered a Haiti resolution, and it is the case this time.

It is a mistake to prevent amendments and to coverup the deep feelings of many Members on this issue. Members of this body, I think, should have a chance to offer amendments. I had hoped to offer one that added to the sense of the Congress: The United States does not have vital national security interests which justify the military occupation of Haiti.

Mr. President, the fact is the Deputy Secretary of State, in a writing in 1992 in Time Magazine, said the following:

> Once a country utterly loses its ability to govern itself, it also loses its claim to sovereignty and should become a ward of the United Nations.

Mr. President, I do not agree with Deputy Secretary of State Strobe Talbott. I do not think we ought to have countries all over the world who become the ward of the United Nations. The United States, the United Nations' largest financier, should not have to pay the bill for all of those countries. Secretary Talbott suggests in those articles that making Somalia and similar anticountries, as he describes them, U.N. protectorates or trust territories is a good idea.

It would be a disaster. The American population should not have to pay the bills for all those other countries that "loses [their] ability to govern" themselves. Should we help? Certainly, under circumstances where we can.

Second, Mr. President, asking the approval of Congress before we send our men and women into harm's way is not just an issue that deals with the powers of Congress or the powers of the President. Perhaps we think about it in those terms. Nonetheless, I am convinced that it deals with the very heart and fiber of the commitment we have to the American fighting men and women who put on the uniform in this country.

We should not put our people in harm's way. We should not put them in combat without making sure we are committed to the objective they are risking their lives for. To put them in harm's way as has been done in Haiti, and in Somalia, shows a callous disregard for the commitment and the devotion of the fighting men and women of this country.

We owe them a clear commitment. We owe them a clear objective. We owe them our resolve and support. One of the tragedies of Vietnam is that the men and women who served in the uniform of this country in Vietnam served with a great deal more commitment than our Congress did. Our Congress never laid out a clear commitment to win in that combat. The Presidents of both parties who directed our country during that time period never made a final commitment to the objectives they were willing to risk the lives of American soldiers for.

I think it is wrong for politicians to send young men and women to war without clear objectives, without the clear support of the Congress and without any indication that the country is committed to them and to their mission. Avoiding a vote in Congress is a way of avoiding putting Congress on the line. We should never do it again.

Let us pray that the commitment and the courage displayed by our men and women in Haiti, and in service around the world, is matched in the future by our political leaders, who seem so willing to risk their lives.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from North Dakota [Mr. DORGAN] is recognized for up to 10 minutes.

Mr. GREGG. Mr. President, parliamentary inquiry. Is this time to be charged to Senator DODD.

The PRESIDING OFFICER. The time is to be charged to the majority leader or his designee.

Mr. GREGG. Thank you.

Mr. DORGAN. Mr. President, I do not think this is so much a debate as it is a discussion, because I do not think there is great disagreement on the floor of the Senate on this issue.

I felt that we should not have committed armed forces to an invasion of

Haiti. I wrote the President to tell him this in early August. I still feel that way. I feel now that we ought to find a way to withdraw our forces from Haiti as quickly as possible.

I do not think there is much disagreement on this point. This resolution really moves in that direction and, frankly, I think most Members would agree with me when I say that our troops should come home soon.

However, I came to the floor to talk not so much about the use of military strength, or about vital security and national interests, but about life in Haiti. I am not an expert on Haiti, but I have been there.

I want to tell you that before we began this debate today, and after this debate will end this evening, and 5 months ago, and 5 months from now, the dominant condition affecting the lives of the people who live in Haiti is gripping, wrenching poverty. This debate will not change that. American troops will not change that.

I went to an area in Haiti with my late friend, Congressman Mickey Leland, on a hunger trip. We viewed a project that the U.S. Agency for International Development was sponsoring. Briefly, it was a project dealing with hogs. It came about because Haitians had had to kill all the hogs in Haiti because of disease. All the hogs in Haiti had been eradicated.

So the Agency for International Development was reintroducing hogs in Haiti, and they had a hog project. And they would bring together little groups of about 15 to 20 families, who collectively would receive a sow and own it. Their responsibility was to feed it, and then they would take it walking over the island to where they could get this sow bred, and they would continue to feed the sow, and the sow would have piglets.

The promise was that if you and other people like you, a number of families, get together, and you take this sow that we will give you, if you get the sow bred and feed it, you will have a dozen other pigs, and you will increase the stock of wealth for food, for sustenance, for the future. USAID showed us this project, and they were very proud of it.

They showed us a Haitian who had this pig. After we saw this pig, a woman took me aside, and she said to me, "You know, they want us to feed this pig because they tell us that if we do that we will get more piglets. We will all be better. But I cannot feed my children." With tears in her eyes, she said: "I do not have food for my children. But to be better off in the future, I should feed this pig now."

This was a wonderful project, but it demonstrated the gripping problem of Haiti. You will find people, with tears in their eyes, who cannot get food to eat, who cannot get medical treatment for their children. Congressman Leland and I went to some of the few neonatal clinics in Haiti. We held in our arms children who were dying.

Now, I represent a part of the country that produces more food than we need. Yet if I get on a plane today, I can fly to Haiti as quickly as I can fly to Bismarck, ND, in my State. When we talk about Haiti, we are talking about a neighbor.

I hope the debate here today is not whether we care about a neighbor, whether we care about Haiti. The debate is about the use of military force and vital security interests. I understand all of that.

As I said before, I think the introduction of troops in Haiti is not going to change a bit the dominant feature of Haitian life, which is that people are desperately poor. They will be desperately poor unless we decide that that condition of human poverty in our neighborhood can be remedied. We can do a much, much better job, all of us, through the multilateral agencies, the World Bank, and the IMF, and the Agriculture Department, and other means, to try to improve the human condition in Haiti. The Haitian people are neighbors of ours.

People say let us deal with things here at home first. Yes, I agree with all of that. But we cannot stand here and say it does not matter to us that in our hemisphere close to our borders live people in some of the most gripping, wrenching poverty anywhere in the world.

We can change that. The interesting thing in Haiti, as my friend from Connecticut will know, is when you fly into Haiti, you see an island that looks from the air to be about half brown and half green. The green part of the island is the Dominican Republic and the brown part is Haiti. In Haiti, they cut down much of the vegetation for fuel.

You wonder to yourself: if you were in charge of Haiti, how on Earth could you get out of this? How can you deal with these problems on your own? These problems require America's attention. Our military force, no, not in my judgment, but our attention, yes.

We need to understand that when our forces leave, there will still be ways to help people in our neighborhood who very much need our help.

Does anyone here understand what kind of courage it must take for a group of people, including children, to get in a small boat, which may not be seaworthy, and put out to sea and try to sail to America? I know many people consider the Haitian boat people a nuisance. They do pose a problem for our country, but they are in many, many cases very brave people risking their lives to try to better their condition.

The best way to improve the lives of Haitians is for us to find ways to help Haiti, not with military force, but in other ways.

I would say to my colleagues that all of this relates to hunger. Hunger in the world creates instability.

My friend, the late Harry Chapin, the wonderful singer, used to say if you could solve the hunger problems of the world you would correct most of the problems that now require military action.

Hunger creates instability. It is in our own enlightened self-interest to tackle this problem.

When I began, I noted that it is a paradox that we are the bread basket of the world, and we produce all of this wonderful food, yet we have in our neighborhood people dying, people in Haiti with children who do not have enough to eat. In Cite Soleil, near the Port-au-Prince airport, a slum of 250,000 people, children were playing in garbage dumps, in open sewers. Haiti has some of the worst poverty you see anywhere around the globe.

We talk about national security interests and the use of force. There is not much debate about that because most of us feel we ought to withdraw the troops very quickly. Those who say that we have a national security interest in Haiti have a pretty thin case. But it is not a thin case to suggest that we, all of us, have a responsibility to look out for our neighborhood, to help people who desperately need it, and to decide there are some things we can do through the aid agencies that exist.

I would make one other observation. We have enacted an embargo around Haiti, an embargo that now has been lifted. Embargoes, by and large, strangle the poorest people in the countries where embargoes have been imposed. And that is certainly true in Haiti.

But let me tell my colleagues what just happened this morning. A missionary friend of mine, who is now in Haiti, called to tell me there are a million and a half pounds of desperately needed food and medicine in a ship sitting at the pier in Port-au-Prince. The missionaries cannot get it off loaded for various reasons. So I spent some time on the phone trying to figure out how to get that million and a half pounds of food and medicine off the ship that is now at the pier.

This is the sort of thing that we must speed up if we are to help the human condition in Haiti.

I am not a foreign policy expert. The foreign policy experts here will discuss a lot of higher sounding things. But in the final analysis, the question for the people of Haiti is what will their life be like tomorrow or the next day? What will life be like, for themselves and those they love?

The answer to that question will largely be determined by whether the Haitian people have enough to eat, and whether the hospitals and clinics in Haiti are able to treat those who are sick.

We, and others in the world in our situation, can and should help the Haitian people out of this terrible, terrible

predicament in which they find themselves.

Let me thank the Senator from West Virginia for the patience and courtesy he has extended to me.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Under the most recently adopted unanimous-consent agreement, the President pro tempore is recognized, and under the previous order the President pro tempore controls up to 1 hour.

Mr. BYRD. Mr. President, I thank the distinguished Chair.

I understand that Mr. GORTON wishes to speak for 5 minutes and Mr. DECONCINI wishes to speak for 7 minutes.

I ask unanimous consent that my rights to the floor may be protected while I yield a total of 12 minutes, not against my time, but I yield 12 minutes of our time so that those two Senators may be recognized and they will get time from my own side appropriately and then I may then be recognized again.

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

The Chair recognizes the Senator from New Hampshire, Senator GREGG.

Mr. GREGG. Mr. President, I yield 5 minutes to the Senator from Washington.

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

Mr. GORTON. Mr. President, the resolution before us is a fairly good response to a terrible solution. The majority leadership prohibited this body from taking effective action before the occupation of Haiti, almost certainly because that kind of occupation would have been repudiated by the vast majority of the Members here. Today, however, we are faced with a profoundly different set of challenges. We are faced with an occupation in being.

Domestic discord under circumstances like this will almost inevitably damage the morale of our armed services in Haiti, perhaps eventually our effectiveness, and may itself result in American casualties. It should, therefore, be avoided.

I have expressed my strong objections to our mission in Haiti on a number of occasions, but those objections in no way reflect upon my admiration for the troops we have there today. They have done a remarkable job, and they certainly have my full support and I believe that of all of the Members of this body.

Since the President plans to keep them there until at least March, however, I believe it most appropriate that we now turn our attention to returning those troops safely and as promptly as possible.

The first part of any such effort is implicit in the resolution before us now. While many Senators, including this one, want to see the troops brought home as soon as possible, our senior military commanders warn that a mandated, date certain withdrawal might well jeopardize soldier, sailor and marine lives. I defer, therefore, and am willing to let the military determine the manner and the date on which the troops can best be removed.

I also consider it important that we help the administration clarify its goals. The objective that it has offered—the creation of an environment in which democracy can be restored—is at least a moving target. It is highly questionable that there has ever been a democracy in Haiti which could be restored.

First, our military had originally considered the de facto military forces in place to be their greatest obstacle, but it is now the pro-Aristide forces hungry for quick justice that occupied attention. In a similar vein, our military has been forced to relinquish its plan to work with the Haitian military and has intensified the search for guns by buy-back or confiscation. Each of these policy shifts could possibly endanger American lives, and may still do so. If we can clarify our overall goals, therefore, and what is required of our armed services precisely, we can minimize the danger to our troops.

Finally, even when we do clarify these goals, it may very well be left to this body to decide whether we can ever reach the apparent goals that this administration has laid out for our military.

Some 75 percent of Haiti's population is unemployed and a third relies on aid for food and health care. After 200 years of despotic government, featuring coups, assassinations, and corruption, there is little civil society to rebuild in Haiti. Congress may need to intervene, as it did with Somalia, to prevent our soldiers from pursuing a mission that can only be achieved at unacceptable cost, if, indeed, it can be achieved at all. Bayonets are not generally a good foundation for a new democracy.

Since these three issues cannot be effectively addressed as most of the Senate would have hoped—through a debate over a Presidential request for congressional authorization—we are left to do what we can now that the occupation is in place. On the whole, I consider the resolution we have before us helpful: It will demonstrate this body's support for the troops, express our disappointment with the administration for not seeking congressional authorization, and demand that the administration clarify its goals in Haiti. I certainly will vote in its favor. But, as this occupation continues into its third week, I stress to this administration that we have placed our troops in danger in order to pursue a probably unattainable goal, one not in the vital interests of the United States, and that if our troops linger too long in Haiti it will be difficult to sustain bipartisan support for their presence there. Clear goals and a prompt removal are very, very much in order.

I thank the distinguished Senator from West Virginia for yielding.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona, Senator DECONCINI, is recognized for up to 7 minutes, with time chargeable to the majority leader or his designee.

Mr. DECONCINI. Mr. President, I believe I have time under the unanimous consent agreement for up to 15 minutes. I suggest the time be charged against that time.

The PRESIDING OFFICER. The 7 minutes that the Senator has requested will be chargeable to the Senator. And the Senator is recognized under the order in his own right.

Mr. DECONCINI. I thank the Chair and I thank the distinguished President pro tempore for this time.

Mr. President, I have listened to some of the debate here. I am pleased to see that there is going to be, I believe, unanimous support for the resolution before us concerning Haiti.

What disturbs me, Mr. President, is the tremendous amount of rhetoric and I think politicking that has gone on here directed towards President Clinton and his policy in Haiti.

Mr. President, I do not need to remind anybody that President Clinton is our Commander in Chief and deserves the support of this body and the support of the American people.

We cannot both stand up and praise our troops and then run down the President of the United States for his policy in Haiti. That only serves to undermine our troops. Our men and women serving in Haiti deserve our strongest praise and support. That they have performed their mission with tremendous professionalism is reflected in the great warmth with which they have been received by the Haitian people.

The mission in Haiti, by any assessment, has been highly successful. It is clear that the criticism is purely and simply a political attack against this President. Despite all evidence of the success of the mission, opponents continue to exploit the issue for the November elections.

I support this resolution. It is very reasonable and does not set a time certain, but expresses the concern of all of us, No. 1, that Congress should be involved; No. 2, that we should get out as soon as we can; and, No. 3, as I read it, that the policy of the Clinton administration is succeeding. It is an important issue that merits the reasonable discussion that we are having today. But, Mr. President, I believe we jeopardize our mission and our approximately 20,000 troops that are in Haiti if we let this continue to be politicized.

I understand what the Democratic leadership had to agree to in order to ensure that no date certain for the withdrawal of our troops was included in this resolution. However, I must point out that the Republicans would never have tolerated this type of micromanaging resolution with a Republican in the White House. And I have been here long enough to experience exactly what I just said.

The distinguished Republican leader, Senator DOLE, when he was speaking of the failed coup attempt against Noriega, said:

A good part of what went wrong did not happen last weekend. It started happening many years ago when Congress first decided to start telling the President how he ought to manage a crisis.

Yet, many of our colleagues continue to tell this President how he ought to manage this situation, as if they were President. Well, some of them will run for President. Let them then make those decisions.

It is President Clinton's leadership which allowed our troops to go into Haiti, not as an invasion force but peacefully. It is President Clinton who has begun to achieve what was sought by the Bush administration—the restoration of a legitimately elected President of Haiti and the building of democratic institutions in that country.

It was President Bush who said, in September of 1991, after the coup in Haiti:

This constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States.

After 3 years of negotiations and other peaceful attempts to get General Cedras and the other leaders of the coup to step aside, President Clinton made a decision that it was time to bring an end to the terror and impoverishment that the military in Haiti were perpetrating against the Haitian people.

He was prepared to send in troops to restore democracy, a policy articulated by President Bush and then Secretary Baker.

The coup by Cedras and Co. snuffed out overnight the democracy that the Haitian people were beginning to build for the first time in their history. Efforts to peacefully restore the democratically elected Government of Haiti were met with lies, broken promises, and arrogant disregard by Cedras and his groups.

During the debate in this Chamber before our troops went into Haiti, many Republicans claimed that the President was motivated by a desire to bolster his numbers in the polls. That, of course, did not happen. So the continued harping on this policy is surely, in part, motivated by a desire to affect the November election this year.

The 180-degree turn made by those Republicans attempting to tie the hands of a Democratic President, after they argued that two previous Republican occupants of the White House should remain unfettered, is astounding.

Where were these Republicans during the Panama, Grenada, and Persian Gulf operations? If Senator DOLE's comments during those debates are any indication, they were arguing that the Democrats should not interfere in the President's foreign policy.

During that debate, the distinguished minority leader said:

I think my own view is the President of the United States has to make the final decision.

Continuing with the quotation:

. . . the primary thing is not pleasing all Members of Congress, it's protecting American lives in that area and restoring democracy. You can't please every Member of Congress, whatever you do, though I think in this case it should be almost unanimous.

While I think it is appropriate to debate the issue of congressional participation on such issues, it should not be made a political issue, once a decision has been made, as a decision has been made here.

After the debate and the vote in the Persian Gulf, every Senator voted—I believe every Senator, except maybe one—to support the President completely, as we did during the Grenada and Panama invasions. And that is the proper role of this body and that is what we ought to do now.

Mr. President, the President's policy in Haiti deserves praise, not politically motivated criticism. The military thugs who forced the democratically elected government from power are no longer terrorizing Haitian citizens, and great progress has been made toward restoring civil order, building the foundations for democracy, and monitoring and training the Haitian police.

While I want our troops to come home as soon as possible, a fixed date for their return, in my view, would be unsound. It is the generals who need to be consulted and the President who has to make the final decision.

I thank, again, the distinguished President pro tempore for permitting the 7 minutes that he so graciously did, as he always does, in giving time to Senators and putting their preferences before his own.

The PRESIDING OFFICER. The Senator's time has expired. Under the previous order, the President pro tempore is recognized for up to 1 hour.

Mr. BYRD. Mr. President, I thank the Chair. Mr. President, I cannot support the joint resolution offered by the majority leader and the minority leader.

Mr. President, some 20,000 American troops are now deployed in Haiti. This formidable force is intended to maintain order during the transition of power and return of the democratically elected Government of Haiti. According to current plans, lesser numbers of United States troops, perhaps 2,000 to 3,000, will remain in Haiti after the peacekeeping mission shifts to a U.N.-run operation. And the United Nations mission will remain in Haiti until the next democratically elected President of Haiti is inaugurated in February 1996. So, the President and the administration have committed the United States to a substantial and long-term operation. This commitment is not risk-free, either, as the events of Saturday, September 25, proved, when one American soldier was wounded and 10 Haitians were killed, or on Sunday, October 3, when a United States soldier was wounded in a deliberate attack.

Creating a stable environment in Haiti that allows for the return of the migrants now housed at Guantanamo, Cuba, and which allows Haitians to live in peace in Haiti, is a result that they, and we, should hope for. But, inevitably, there are costs involved. The military costs of intervening in Haiti are estimated at about $120 million for the remainder of fiscal year 1994 and about $300 million in fiscal year 1995, according to the Department of Defense. U.S. reconstruction and humanitarian assistance in fiscal year 1995 will total some $200 million, according to preliminary figures provided by the Office of Management and Budget. Some estimates of the combined cost of United States actions in Haiti from different think tanks have ranged as high as $1.5 billion through 1996—that is billion spelled with a "b"—including costs already incurred for sanctions enforcement and migration-related costs.

These are substantial sums, and are yet another reason why the Congress should be actively involved in these decisions. Thus, this commitment in Haiti raises important questions, not only about our actions toward that nation, but also about the way this body and the executive branch make decisions on matters of war, peace, intervention, foreign policy, and coalition-building.

In my view, regarding the matter of Haiti, prior to the military action ordered by the President on Sunday, September 18, there were far too many mixed signals, far too much overblown rhetoric, and far too many threats to take military action without the full force of congressional and public support behind them. And then in the end, with an invasion that was launched on a Sunday and pulled back, the Congress was faced with a fait accompli, an invasion ordered to begin at midnight on a Sunday night, when Congress was not in session, before expected congressional action early in the following week. While last minute negotiations fortunately altered the invasion and transformed it into an agreed-to, and relatively trouble-free, occupation, the fact remains that U.S. troops were committed to an action in a sovereign nation without the authorization of Congress.

But for those last minute negotiations there would have been an invasion.

I now read from a letter written by Abraham Lincoln on February 15, 1848, addressed to a friend, William H. Herendon. The letter is to be found in the collected works of Abraham Lincoln.

> * * * Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion, and you allow him to do so whenever he may choose to say he deems it necessary for such purpose, and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect, after having given him so much as you propose. If today he should choose to say he thinks it necessary to invade Canada to prevent the British from invading us, how could you stop him? You may say to him, "I see no probability of the British invading us"; but he will say to you. "Be silent: I see it, if you don't."

The provision of the Constitution giving the war-making power to Congress was dictated, as I understand it—this is what Lincoln is saying to his friend—by the following reasons: Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This, our convention understood to be the most oppressive of all kingly oppressions, and they resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us.

The invasion of Haiti was launched when Congress was not in session, near the close of the fiscal year, near the close of the session of Congress.

My problem with this pending resolution is not that I disagree with its provisions. In fact, I agree with them. I certainly agree that the President should have sought and welcomed congressional approval before deploying United States Armed Forces into Haiti. I believe, of course, that it is unlikely that such authorization would have been given by the Congress.

And what would that tell you? That would say that the American people were not behind such an invasion. This is the "people's branch" and the administration well knew that the people's branch would not give it authorization, would not authorize an invasion because the people's branch accurately represented the opposition of the people to such an invasion.

The President, having chosen to deploy forces without such authorization, is in the difficult position of having not secured congressional support for the commitment he has undertaken for the Nation. I believe this is politically unwise for any President, because if unexpected calamities occur, such as happened in Somalia last year and in Beirut a decade ago, then the commitment of forces can become politically untenable overnight, forcing an embarrassing withdrawal.

I also agree that our forces should be withdrawn from Haiti in a "prompt and orderly" manner. In fact, I voted for an earlier resolution offered by the two leaders on this matter, with identical language, on September 21, 1994. Further, I believe the resolution before us contains very useful reporting requirements as regards costs, the planned follow-on U.N. operation, security, duration, and other matters. But resolutions such as this one, and the one on September 21, are not binding, and they do not substitute for the constitutional role that the Congress has with regard to matters of war.

In fact, there is much in the pending resolution that I agree with. My concern is that it does not go far enough. The resolution does not include the setting of specific parameters on the duration and scope of this operation, which was done in the cases of both Somalia and Rwanda, and done in both instances at my urging and on my amendments. I believe that we should stand and take the responsibility to fund this operation, if we support it, and for a specific timeframe. Afterward the operation would transition to the United Nations, or end entirely, or be extended if the President requested such an extension and appropriate funding, and Congress approved the request and the funds. I believe that is the way to discharge our responsibilities and our constitutional role, and it would serve as a mechanism for the President to develop what support he can for his policy.

The President sought the United Nations' support, but not the Congress' support, not the elected representatives of the American people. Go to the United Nations, yes; get their OK, get their approval, get their blessing. But do not ask the Congress for its approval or for the funds. That was the course that was followed.

Madison wanted the power of the Commander in Chief to be kept separate from the power to take a nation to war. In "The Writings of James Madison," volume VI, page 148, Madison states as follows:

> Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.

Jefferson praised the transfer of war power, as we find in "The Writings of Thomas Jefferson," volume V, page 123:

> We have already given an example, one effectual check to the Dog of war by transferring the power of letting him loose from the executive to the legislative body, from those who are to spend to those who are to pay.

Section 2 of article II of the U.S. Constitution—Mr. President, we ought to read that document once in a while. Alexander the Great, who was a friend of Aristotle and a student of Aristotle, admired most, of all literature, the "Iliad," written by Homer. Alexander asked Aristotle to correct a copy of the "Iliad" for him. Plutarch tells us that Alexander the Great slept always with his dagger and a copy of Aristotle's corrected version under his pillow—under Alexander's pillow.

Mr. President, I do not sleep with a copy of the Constitution under my pillow, nor do I sleep with a copy of the "Iliad" under my pillow, but I always keep a copy of the Constitution near, if not in my pocket—and it is not always there—but nearby, along with the Bible and a copy of "Plutarch's Lives." I try to retire to that Constitution, as I do to the Bible, and other books, from time to time, and each time I find something in them I did not find before.

Section 2 of article II of the U.S. Constitution I am well acquainted with. It is not something I discovered yesterday or the day before. Here is what it says:

> The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States * * *

But the actual calling of the militia into service is done by the Congress, not by the President. As we note in paragraph 15 of section 8 of article 1, the Congress shall have the power "to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions; * * *."

We are accustomed to the now familiar pattern of most recent chief executives; namely, that of invoking the title "Commander in Chief" and descriptions of him as being the sole organ of foreign relations or chief of administration, to suggest a conclusion of constitutional invulnerability. No statutory or court decision of authority is ever volunteered in support of the conclusion. At its heart, this issue is a separation of powers issue.

Then, at the heels of any introduction of forces, comes the cry not to legislate any timeframe or other criteria governing the scope or duration of the operation, or invasion, on the claim that we have to "support our troops on the ground." "Don't jerk the rug out from under our troops; we have to support them." So the administration gets them in on a Sunday and then they are in. We heard that for nearly a decade in Vietnam, some of my colleagues will recall. It is as if the introduction of forces somehow somehow, somehow, suspends the operation of our constitutional distribution of powers.

The Constitution divides governmental powers into three areas; legislative, executive, and judicial. And distributes these powers among three coequal branches: Congress, the President, and the Courts; and it provides a

system of checks and balances to keep the powers separate and the branches equal. Underlying this scheme of government in the area of immediate concern is the desire to establish interdependence between Congress and the Executive in hopes of fostering cooperation and consensus in the supersensitive areas of national security and foreign affairs. As Commander in Chief, and the chief spokesman in the field of foreign relations, the President has independent powers, not simply those conferred on him by statutes. But, at the same time, by virtue of its power over the purse and its powers to raise and support armies, and its powers to provide and maintain a navy, and its power to regulate both, Congress has broad constitutional powers implicating both national security and foreign affairs.

The separation of powers principle is not intended to benefit me, or this branch in particular, or any other Members who temporarily hold this high office. It is meant to protect individual liberty—the individual liberty of the people who come here and visit in the galleries, who walk the streets and toil in the mines, and who sweat in the fields of this country.

The purpose of the separation of powers and checks and balances is to protect the individual liberty of every man, woman, and child in this great country. That is why the Framers separated those powers. That is why the Framers wrote into that great document the checks and balances, the main balance wheel of which is the power over the purse.

The separation of powers principle is intended to prevent one branch of government from enhancing its position at the expense of another branch and, thus, disturb the delicate balance of powers that the Framers assumed as the best safeguard against autocracy. The President certainly has command of the army and navy and the militia, and he may respond to an attack upon the United States or deal with a sudden and unexpected emergency without any previous authorization by the Congress. He has that inherent power to act in a sudden, unexpected emergency to protect this country against an invasion. There is also authority for the proposition that he has inherent power to act to safeguard American lives and property abroad. It should be noted, however, that Congress is under no legal obligation, Congress is under no constitutional obligation, to fund any foreign or military policy advocated by this President, the last President, or any President of the United States, and the President is totally dependent upon Congress for authority or money, and usually both, to implement any policy. Congress is under no legal obligation or constitutional obligation to supply either or both. While Congress cannot deprive the President of command of the army and navy, only Congress can provide him with an army, or a navy, or a militia, to command.

The Constitution in article I, section 1, states, "all legislative powers"—not just a few, not just some, not many, not most but all, all legislative powers—"herein granted"—here—"shall be vested"—not may be vested, shall be vested—"in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Now, I know around here in many instances it depends on whose kettle is calling the pot black, and we will rise in indignation if it is the President of the other party doing something but few will rise in indignation and support this Constitution when it is a President of one's own party. It is a great tendency to point the finger, stand on the sideline and be the first to criticize if something goes wrong. Why not read the Constitution. We take an oath to support and to defend it, to live by that Constitution. The Constitution is always there. It does not sleep. It does not rest. It does not take recess. And it is for me, it is for our President, whether he is a Republican or Democrat, and it is for this Congress now, yesterday, and forever to abide by.

The Constitution in section 9, article I, paragraph 7 states, "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by law." This provision is a restriction upon the disbursing authority of the executive branch, and it means that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress. Accordingly, the absolute control of the moneys of the United States is in Congress—that is what this Constitution says—and Congress is responsible for its exercise of this great power only to the American people—not to any political party, but to the American people; not to any President, not to any general but to the American people; not to any newspaper but to the American people.

The power to make appropriations includes the authority not only to designate the purposes of the appropriations, but also the terms and conditions under which the executive department of the Government may expend appropriations. The terms and conditions under which appropriations are made are solely in the hands of Congress, with the President allowed one thing—the right to veto a bill in its entirety—and it is the plain duty of the executive branch of the Government to comply with those terms and conditions set forth by the Congress. The power of the purse provides the most effective basis for ensuring compliance by the executive branch.

Now we have before us another nonbinding measure in the form of a joint resolution offered by the majority leader and the minority leader. This language in this resolution neither defines the mission of the United States operation in Haiti nor places any limits on how long it may last, nor how may troops might be committed, nor how much money might be spent.

The administration has stated that United States forces should help stabilize the security situation in Haiti so that orderly progress can be made in transferring the functions of government to the democratically elected Government of Haiti. This joint resolution does not help to keep the mission limited to this reasonable goal. It simply requires the President to prepare and submit to the Congress within 7 days a statement on the administrative policy on Haiti, the military mission, and on the general rules of engagement. Any changes to the policy, the military mission, or to the rules of engagement are to be reported to the Congress within 48 hours. And so, if the Congress were to disapprove of the policy, or to any changes in the policy, mission, or rules of engagement, additional extraordinary effort would be necessary to register disapproval or to legislatively limit the administration after the fact.

The administration's stated goal is a reasonable one, given the situation in Haiti, but I believe that unless it is linked to a definite termination point, and a funding cutoff, this mission could keep United States troops in Haiti for a very long time, as they were earlier so engaged for 19 years in this century, trying to stabilize the situation. There is nothing in this joint resolution to stop the administration from leaving U.S. troops there indefinitely. I do not believe that the President intends to mire the United States in an indefinite nation-building exercise—in fact, I am sure he does not—nor am I saying that the democratically elected Haitian Government cannot smoothly take over the functions of government and maintain order. Indeed, I pray that they can, but we cannot predict what problems might arise. Karl von Clauswitz astutely observed in 1832 that, "War is the province of uncertainty; three-fourths of the things on which action in war is based lie hidden in the fog of a greater or lesser degree of certainty." If the mission that has been outlined by the President cannot be accomplished within a reasonable amount of time, then I think the Congress, the administration, and the American people ought seriously to consider the long-term prospects for success in this operation.

Linking a defined mission to a definite end, enforced by a funding cutoff, can be a positive tool. As we have learned from previous United States military missions abroad, most recently in Somalia and Rwanda, it prevents mission creep, the gradual expansion of a mission from one of limited and well defined tasks to one that gradually expands to all-inclusive and

long-term nation-building. Having committed the prestige of the United States to this mission in Haiti, it becomes all too easy to keep gradually expanding our mission there in an attempt to guarantee the long-term success of the operation. I believe that it would be useful for the administration, and for the Congress, to exercise the tool of restraint in regard to the Haiti operation.

We must take care to prevent the United States military mission in Haiti from expanding into nation-building. Defining, and thereby limiting, the mission and duration of the operation effectively prevents mission creep. Our mission is not democracy-building. We heard all this talk in the beginning about restoring democracy. We are not restoring democracy. One cannot restore that which does not already exist.

Our mission is not democracy building.

I hope the people of Haiti can build a strong, sound democracy. The early success of the operation in Haiti bodes well for this difficult effort. But it is not a job for the U.S. military, and not the job of the Department of Defense.

This joint resolution before us also requires monthly reports on the progress being made toward a transition to the U.N. mission in Haiti. I agree with this goal of a speedy transition to the United Nations. But without the possibility of a firm date for the U.S. mission to end, what incentive is there for the United Nations to take over? The mission in Haiti now is paid for exclusively by the nations participating in the operation, which means that the United States is paying nearly all of the costs. When the United Nations assumes its role in Haiti, if it ever does, the United Nations must not only find the troops for the mission, but it must find the funds. The United States pays just over 30 percent of the prospective U.N. operation in Haiti. So what incentive is there for the United Nations to move quickly to take over in Haiti? If they can stall long enough, the United States could remain in Haiti, almost alone, until the inauguration of the next President of Haiti, in February 1996. That is the target day for the end of the U.N. mission in Haiti. Anything less than a fixed date for a United States withdrawal risks keeping far larger numbers of United States troops in Haiti than would otherwise be the case.

The lack of any definitive date for an end to the United States operation in Haiti puts our troops there at greater, not lesser, risk. I know that the Chairman of the Joint Chiefs of Staff and the Secretary of Defense, among others, have argued that setting a fixed date for the end of the U.S. mission "puts our troops on the ground at risk." Well, a fixed date for withdrawal did not have that effect in Somalia, and it did not have that effect in Rwanda. I do not believe it will in this case, either. In fact, the lack of a foreseeable end to what virtually amounts to a United States occupation of Haiti may actually put our troops at greater risk. Elements in Haiti that want to see us pull out in a panic know that all they have to do is to stage a bloody and vicious attack on our troops, as happened in Somalia. That would change the mood on this floor pretty dramatically, and there would be lots of support for an amendment to withdraw immediately. Although there seems to be little support for such a measure now, I believe that it would be much better to act reasonably and calmly to establish limits now, rather than to wait for panic later.

In addition to "putting our troops on the ground at risk," opponents of a date certain for a U.S. withdrawal argue that setting a date hurts the morale of the troops.

Of all of the laughable excuses that I have seen trotted out by the administration in support of the action that has been taken, it is this one. Setting a date might hurt the morale of the troops. That is nonsense.

I have difficulty understanding how active duty troops sitting in the hot sun in Haiti, far from their families, or reservists called away from their families and from their jobs, could fault their elected representatives for demonstrating concern about keeping their mission limited in scope and concern about bringing them home as quickly as possible. I do not think they want to be in Haiti forever, any more than I think the people of Haiti want United States forces in Haiti forever. I think the families of American troops in Haiti also want to know that the Congress is keeping a watchful guard on their loved ones, as well as on their tax dollars.

Mr. President, we have heard a lot of concern expressed here for the threats to military readiness, and how all these peacekeeping missions are eating into the military's operations and maintenance accounts, and into military training accounts and the like. On many occasions, Senators from both sides of the aisle have come to the floor to warn against anything that would threaten our readiness or let the military slip back into a "hollow force." In the fiscal year that just ended, the need to divert funds from training, operations, and maintenance accounts to cover the incremental costs of unbudgeted peacekeeping, humanitarian, and other crisis operations left many military units too short of funding to continue training, keep up flying hours, or to maintain their equipment. Secretary of Defense Perry was forced to invoke the venerable Feed and Forage Act. That act, dating back to 1820, allows the Department of Defense to incur funding deficiencies to continue basic support for the military.

The Senate Appropriations Committee has tried to assist the Department of Defense in dealing with these funding shortfalls by including supplemental funding in the foreign operations and defense appropriations bills to replace funds expended for the incremental costs of operations in Rwanda, Cuba, and Korea. Yet, here we are, in this resolution, accepting an open-ended military operation over which the Congress exerts no control, where the Congress accepts a commitment of troops for an indefinite period—and that is why I will not vote for this resolution—and where the administration—given so much flexibility in terms of mission and duration—is merely directed to report on its plan for "financing the costs of the operation and the impact on readiness without supplemental funding." Let me repeat that: "without supplemental funding." In an era of sharply declining budgets, it seems highly unlikely that this administration—or any administration—can pay for the incremental costs of a substantial military operation without either supplemental funding or more cuts in training, operations and maintenance, or R&D and procurement programs. This is true for other Government agencies and departments as well. Without supplemental funding for new initiatives in Haiti, for reconstruction and development aid that will keep Haiti on the path toward long-term stability and dissuade "economic refugees" from again seeking United States shores, other priority programs will suffer. Without supplemental funding for the Department of State, the Department of Justice, or the Agency for International Development, important counterproliferation and counternarcotics programs, and aid to Russia and the former Soviet States, might all suffer.

If we are serious in this body about our constitutional prerogatives and our responsibilities, we have got to exert our authority and fulfill those responsibilities. We cannot hide behind what are virtually toothless, hortatory resolutions and claim that we have, thereby, lived up to our constitutional duties. A failure to do so merely opens the door for the "mission creep" we all claim that we so worry about, particularly in missions of this type which are nontraditional and which call upon our fighting men to perform tasks to which they are unaccustomed.

Destroy their morale? Impair their morale? Well, I will laugh all the way home. I would not want one of my grandsons or granddaughters in Haiti this afternoon. I do not think it would destroy or hurt their morale to have a cutoff date, or a cutoff of funds. Let me say parenthetically that I would not support cutoff dates, or a cutoff of funds if our military forces were engaged in any military conflict that involved the security interests of this

country—never. I would not be a party to drawing the line and cutting off funds where the security interests of this country were engaged. But the security interests of this Nation are not involved in Haiti. Haiti is not a threat to the security of this country. There is no sudden unanticipated emergency requiring the use of troops, without the approval of Congress.

I have no doubt that President Clinton fully intends to try to remove our troops in a timely fashion, but there is always the tendency to want to stay just a little longer in missions such as this, as we stayed too long in Somalia.

Once our troops are in a country, then you can be sure that this administration, or any administration—I have been here through several administrations and they are all alike in that respect—will find some reason, some excuse to go further, or some excuse as to why Congress should not act. Well, do not jerk the rug out from under our President, they say. Do not jerk the rug out from under our troops. Do not do anything to hurt the morale of our troops. Do not do anything to put them at great risk.

I believe a time certain for withdrawal would be a constructive act by this body, and one which would reassure the mothers and fathers of our service men and women about the length of time we will ask their children to remain in harm's way.

We in the Senate often like to have it both ways on matters pertaining to war and foreign policy. Not too many days ago dozens of Senators took to this floor to excoriate the administration on the proposal to commit troops to Haiti. The rhetoric was hot—oh, sweet rhetoric—hot, heavy, and angry, and the warnings of doom reverberated throughout the rafters of this Chamber. Now, only weeks later, because no lives have yet been lost in combat, the heat of the moment has become the warm glow of complacency about this matter. How magically the passion cools here. How quickly things change.

But constitutional responsibilities do not change, and our duty to act in the people's best interests never alters. And the words of Members in this Senate must confuse and confound when we excoriate on one day and shrug shoulders on the next.

That, in my view, is what this resolution amounts to, in terms of any real assertion of the constitutional role of the Congress—a shrug of the shoulders.

I would find little comfort in reports and mission definitions if one of my fine grandsons or granddaughters were in Haiti today. This resolution—this piece of paper would bring me little comfort—little comfort. No wonder the American people are disgusted with the men and women who run away from their constitutional duties. Reports are useful, but they are no guarantee of a speedy return home for our young men and women like an end date certain, backed up by a cutoff of funds, enforced by a vote in this body.

The President can always come back, state his case, make a good justification for our extending the date, ask for more funds, and if a good case has been made, Congress can vote to provide the moneys, undoubtedly.

I believe that the setting of such a date is our solemn responsibility. I believe that the setting of such a date is a constructive act which would help focus and tighten the scope of the mission.

I believe that the setting of such a date will help the United Nations to get its act together and prepare to move into Haiti as quickly as possible.

My amendment on Rwanda helped the military to focus and to complete that mission ahead of schedule and with considerable savings in cost. I believe that my amendment on Somalia ended a situation wherein the original stated mission had not only crept beyond its boundaries but galloped totally out of control. Both of those measures contained certain end dates with a cutoff of funds on those dates.

To me our duty is clear. While I opposed a United States invasion of Haiti, and so stated well in advance, I do not propose to hamstring our troops in the field or the rest of the Department of Defense by supporting language that could clearly undermine our readiness, and that is what this language in this resolution can do—undermine our readiness, because we continue to draw down funds that are needed by our military forces to keep our military forces ready. Nor do I want to support language that might cause other important foreign policy or Justice Department initiatives to be robbed to pay for programs in Haiti. I remain consistent in my belief that the Congress has a greater role to play in this matter than the feeble one—the feeble one outlined in this resolution.

Madam President, I yield whatever time remains to the two sides, and I ask unanimous consent that it be divided equally among the two sides.

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

The 7 minutes will be equally divided.

The Senator from New Hampshire.

Mr. GREGG. May I ask how much time remains?

The PRESIDING OFFICER. The Senator has 22 minutes remaining.

Mr. GREGG. Madam President, I yield 7 minutes to the Senator from South Carolina.

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

Mr. THURMOND. Madam President, I wish to thank the able Senator for his kindness.

Madam President, I am proud to be an original cosponsor of this resolution.

Many Members of the Senate worked hard, in a bipartisan manner, to develop the resolution we are considering today. The resolution contains all the elements I believe to be necessary.

The resolution commends the men and women of the Armed Forces who are performing a difficult mission in an outstanding manner. Our young men and women are once again demonstrating to the world that they can accomplish the most complex missions and do them very well. Every day we, and the world, see disciplined military personnel who understand their jobs and perform those jobs under adverse circumstances. I am proud of these young Americans. I know the American people are proud of them too. I hope our friends and enemies around the world are also watching. Both should be confident of America's capabilities.

Madam President, these magnificent young people of our military forces deserve to know why they are there and what they are to accomplish. The American people deserve this as well. That is why we have asked the President to clearly define the national security objectives and the military mission of our forces in Haiti. These markers must be established for all to know. I am concerned that we are already witnessing mission creep. We were told that only 15,500 U.S. Forces would be necessary in Haiti. Today there are about 25,000 and some Marines have been redeployed. We were told that U.S. Forces would not become Haiti's police force. Yet we see American soldiers arresting Haitians, patrolling streets and performing crowd control duties. We were told U.S. Forces would not be an occupying force. We see our military taking over radio stations and running electric power plants. This sounds like an occupation to me.

Our troops also deserve to know they have the full backing of the American people whenever they are committed to a difficult and dangerous mission. This backing is most clearly manifest by a congressional resolution prior to committing U.S. Forces to a nonemergency situation. Such a resolution demonstrates the support and resolve of the American people and helps to sustain the national commitment if the situation becomes more difficult than anticipated. The administration passed up the opportunity for such a resolution. Today, we express the sense of the Congress that the President should have sought congressional approval.

Madam President, we have not established a specific date for the withdrawal of our forces. We do, however, express the sense of the Congress that all U.S. Forces should be withdrawn from Haiti in a prompt and orderly manner as soon as possible. This is an important point. Our military commanders need the flexibility and latitude to conduct their operations. Military commanders should be working

toward accomplishing their mission, not against an arbitrary time table. At the same time, I think the resolution is very clear that we do not intend to have U.S. Forces in Haiti for a protracted time. If there is not significant progress toward withdrawal by the time Congress returns in January, I am sure we would consider more stringent measures.

As I have said before here on the floor of the Senate, I urge the President to work with the Organization of American States to develop a plan for the humanitarian, economic, and political recovery in Haiti. This resolution recognizes the lifting of the economic embargo and the President's efforts to persuade the United Nations to lift their sanctions. These are positive steps. I hope to see more positive initiatives on the political and economic fronts from the United States unilaterally and from our regional partners.

The resolution also requires detailed monthly reports as long as our forces are in Haiti. The most important of these reports are the costs and sources being used to fund the operation. The longer we are involved in Haiti, the more scarce resources needed for military readiness are consumed. Even if there is a supplemental appropriation later next year, Army, Navy, Air Force and Marine units will have missed critical training opportunities and readiness will have begun to erode. Money alone cannot bring back the lost training or degraded readiness.

In conclusion, Madam President, Joint Resolution 229 is a good resolution which preserves the flexibility of the military commanders and expresses, in a clear, concise manner, the sense of the Congress on the withdrawal of U.S. Forces; the necessary departure of the de facto government; and the orderly transition to the legitimate government of Haiti. I urge my colleagues to support the resolution.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Madam President, we have no Senators over here at this moment. We expect several to arrive momentarily.

In the meantime, if my colleague from New Hampshire does not object, I suggest the absence of a quorum and ask unanimous consent that the time be charged against both sides equally.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. EXON. Madam President, I ask the manager of the bill on this side of the aisle to yield me 5 minutes.

Mr. DODD. Madam President, I am happy to yield to my colleague from Nebraska 5 minutes, or some additional time if he so needs it.

Mr. EXON. I thank my friend from the great State of Connecticut, and I thank the Chair.

Madam President, I am going to be very brief on this because I think probably most of the issues from almost every perspective have been addressed already on this matter.

I wish to associate myself with the remarks just made by my great friend and colleague from South Carolina. I think Senator THURMOND summed up the whole situation very, very well.

I would also say that I think there has been a very good debate on this matter. Many important things have been brought out. Certainly, the very well put remarks by the President pro tempore, the senior Senator from West Virginia, should be listened to and understood by all.

I was very much impressed by the remarks made by Senator DECONCINI, the Senator from Arizona. I thought some excellent points were made earlier in the debate, and I have been able to listen to most of it, by the junior Senator from North Dakota.

I think that there has been some good input on the matter that confronts us.

From the very beginning of this controversy, though, Madam President, I would simply like to say that this Senator from the State of Nebraska did not feel that troops should have been sent to Haiti in the first instance, but that is by the boards. The Commander in Chief made that decision. The Commander in Chief's decision may turn out to be right. But we have an obligation to express our views on this matter.

I am particularly impressed by the fact that with all of the other controversy and rancor that we have had in this body in the last few days, and especially the last few weeks of this session, the majority leader and the minority leader, with the assistance of many other Senators, have come to what I think is the right and proper action in the nonamendable joint resolution that is before us.

From the very beginning of some of the actions that have been suggested on this matter, I was shocked and amazed of what I thought was an inappropriate, ill-timed, ill-conceived resolution that came out of the House of Representatives on this. And I hope that a little more cautious look by the Members of the House of Representatives will see the wisdom of the very laborious, the very detailed, joint resolution that has been presented by the majority and the minority leaders.

Among anything else, it indicates to me that we can get together on some things that are most important. I do not know of anything more important than backing the troops that are there now, who are doing a truly outstanding job. And I believe that this Senate previously, and the people of the United States as a whole, while they do not always agree with the actions that are taken, are fully committed to the great men and women who are carrying on that action in Haiti today.

Let us pray, let us hope that they will be successful; that things can be worked out. And if that happens without bloodshed, then I think we can look back on this as, once again, the U.S. Senate doing its proper action by bringing this matter up for debate.

The whole war powers situation confronts us time and time again. We have never solved that to the satisfaction of this Senator. However, I think it would be very unwise for us to do anything more than what we are doing with this resolution.

By and large, I think that the leadership that we have seen from many of our senior Members of this body, especially including the senior Senator from South Carolina, who I think summed up my situation as about as well could be summed up in the remarks that he made a few minutes ago on the floor of the Senate. I congratulate Senator THURMOND once again. It has been a pleasure to work with him over the years. Here was a case where I think he was right on point.

I simply hope that we would overwhelmingly pass this bipartisan joint measure that has been hammered out by the majority leader and the minority leader and get on with other pressing business that we have to face.

Once again, I thank the hard work of all that made it possible to come to this bipartisan compromise. I hope it will receive resounding support when we vote on it in about an hour in the Senate.

I thank my friend from Connecticut for yielding me this 5 minutes.

I yield back any remaining time.

Madam President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Madam President, I ask unanimous consent that Senator MCCAIN be added as an original cosponsor.

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

Mr. GREGG. Madam President, I suggest the absence of a quorum, with the time being charged against both sides.

Mr. EXON. Will the Senator withhold?

Mr. GREGG. Yes.

Mr. EXON. I would like to be allowed to continue for 1 more minute, on the time of the of the Senator from Connecticut.

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

Mr. EXON. At the close of my statement, I had intended to give some additional remarks, but I was afraid I was running out of time. Therefore, I asked for an additional 1 minute.

Madam President, there has been no harder worker than Senator CHRIS DODD from Connecticut on this whole matter. He has gone down to Haiti. Before he went down there and since he came back, his advice, his counsel, his carrying the ball on this measure has been very impressive to this Senator from Nebraska.

Among those that I wish to single out for special commendation and for a job well done, it is my friend and colleague from Connecticut, Senator DODD.

I yield back any remaining time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair would advise the Senator from Nebraska that he cannot technically put in a quorum call.

The Chair would ask the Senator from Connecticut if he wishes to do so.

Mr. DODD. Madam President, I suggest the absence of a quorum and ask that the time be divided equally.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GREGG. Madam President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has 19 minutes left.

Mr. GREGG. Madam President, I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

Mr. GRAMM. Madam President, I want to begin by agreeing with several things said by the distinguished Senator from West Virginia, Senator BYRD. I guess it was inevitable in writing a sense-of-the-Senate resolution related to Haiti that if we were going to get most Members of this body to agree with it, if we were going to have bipartisanship, it was ultimately going to be what the distinguished Senator from West Virginia called it, and that is a toothless resolution.

I am in agreement with the Senator from West Virginia. I never supported sending American troops into Haiti. I want to get them out as quickly as possible, and I would like to set a time limit on their stay in Haiti. I would like to say to the President that as of a certain date, we want our troops out of Haiti.

There are those who argue that to set a time limit is to endanger American lives and, based on that argument, though it is an argument I do not agree with, I have withheld my support for an effort that would set a deadline for withdrawing American troops. But in reality exactly the opposite is true. I agree with the Senator from West Virginia. I believe that terrorist elements in Haiti on both sides of this conflict clearly understand that engaging in terrorist acts against Americans will affect our policy.

I have watched what is going on in Haiti, and I have visited with Members of the Senate who have gone to Haiti and who have brought us back reports. I have concluded the same thing that the American people concluded before we ever went into Haiti; that we have put American troops into an unwinable situation.

I am also deeply concerned that we are slowing down training functions all over America, as we siphon off money to pay for this police action in Haiti. I am concerned about it for two reasons. First, I want to maintain our readiness and our training. But, second, it tells you something about the level of defense cuts that the Clinton administration has imposed on the Nation, when routine training missions must be sliced to pay for an operation consisting of but 20,000 troops sent into Haiti.

I can remember during the Carter administration when our planes did not fly and our ships did not sail because we did not have the money. I am concerned that not only do we have President Carter setting foreign policy in Haiti, but more ominously, are also adopting President Carter's defense policy.

I am concerned that what we are witnessing, and what many Members of this body have participated in, is the destruction of the greatest defense that the world has ever known. I urge my colleagues who have voted to cut defense in order to fund social programs to look at the training missions we are canceling in order to pay for a 20,000-person police action in Haiti. If that does not tell you something about where we are in defense, if that does not send up a red flag or set off an alarm, then I do not think Members of the Senate are awake.

In terms of Haiti, I believe each of us, in carrying out our constitutional responsibilities, have to ask one—and really only one—relevant question when we are talking about whether or not America ought to intervene militarily. There are many ways you can express it. You can talk about America's dominant interest. You can talk about whether or not the President has a plan to get out at least as detailed as the plan he is using to get in. You can ask the question of whether or not things are going to be permanently different once you leave compared to when you got into this action. I think the answer to each and every one of those questions is no.

But there is a more fundamental question, and for those of us who have children, as I do, it is probably an easier question to understand. I have a son 21 and a son 19. I think the relevant question, in sending 20,000 American troops into Haiti to basically be police officers, is: Would I be willing to send one of my own sons?

It seems to me, when we know with virtual certainty that if we stay in Haiti long enough, floundering around without a workable policy, in the midst of what clearly is going to become a crossfire, Americans are going to be killed. And the question is, if our sons or daughters were there, would we be satisfied with the mission? Would we be satisfied with what we are trying to achieve? Would it be worth the risk? Would it be worth the potential sacrifice?

I think the answer to these questions was "no" long before the President sent in our troops. I think it is "no" today. I am reluctantly going to join my colleagues in voting for this sense-of-the-Senate resolution. But the bottom line is, it does not change policy and I want this policy changed.

I do not want to try to play President when somebody else was elected President. There is no doubt about the fact that President Clinton, as Commander in Chief, has the authority to send American troops into Haiti. That is not the question. The question is, is it a wise policy? Is it a workable policy? Can we change things in Haiti?

I think the answer in each case is no.

I want to get American troops out of Haiti as quickly as we can get them out. I would like to set a time limit on American involvement in Haiti. But because members of our military have urged us not to do it, because so many in the administration believe it is a mistake, I am going to withhold. The Congress is going to adjourn tomorrow. The President will then, obviously, not have Congress around to second-guess his decisions. But when we come back in January with a new Congress, and I hope a dramatically different Congress, if we are still in the same situation in Haiti, I want to go on record as saying at that point I am going to support an effort to set a time limit on this involvement. I urge the President to get American troops out of Haiti.

I have watched the television pictures of what is happening in Haiti. I was stunned, as I am sure other Americans were, at the recent newspaper photo where a Haitian protester with a knife in his hand grabbed a dove away from a person who was marching for peace, and bit the bird's head off. Are we going to sell that person on democracy using American military power?

I am not sure if there are good guys in this struggle. I do not believe what we are going to achieve in Haiti is worth the loss of a single American life. I want American troops out of Haiti. I did not support sending them there. The President cannot get them out too soon to suit me. But if we come back in January and American troops are still in Haiti, the President can be

prepared for the United States Senate to vote on setting a time limit to pull our troops out.

If our troops are still in Haiti in January, the President can expect a vote at some point to cut off funds for this operation. The President had a right to start the involvement; we have a right and an obligation, in my opinion, to terminate it. If the President does not make the decision to bring our troops home, at some point we are going to make that decision for him.

Madam President, I reserve for our ranking member the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from New Hampshire has 7 minutes 20 seconds remaining.

Mr. GREGG. Madam President, I suggest the absence of a quorum and ask that the time run against both sides equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MIKULSKI). Without objection, it is so ordered.

Mr. GREGG. Madam President, I ask unanimous consent that 5 minutes of the time under the unanimous-consent agreement which was yielded to Senator WARNER be yielded to Senator FAIRCLOTH.

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

The Senator from North Carolina may proceed.

Mr. FAIRCLOTH. Madam President, before coming to the Senate, I spent 45 years of my life in the private sector meeting a payroll as a businessman and farmer. The private sector is a world that rewards common sense and hard work. But I learned very quickly, coming into Washington, ideas which make absolutely no sense to the working people of America seem perfectly reasonable to career bureaucrats in Washington who have become further and further removed from the realities of the understanding of everyday American working people.

Madam President, I can think of no better example of an utter lack of common sense than Bill Clinton's decision to send our troops to Haiti. The people of America know that it does not make common sense to say that you want to restore democracy by occupying an island nation with a history of being ruled by voodoo priests, witchdoctors, and blood-thirsty dictators.

The American people know that it does not make common sense to put the lives of young American men and women at risk in order to install a Haitian President who encourages his followers to put burning tires around the necks of his political opponents.

The American people know that it does not make common sense to think that this occupation will permanently change anything about Haitian society. They know that we have occupied Haiti before, and the last time we were there it took us 19 years before we could withdraw our troops. They know that despite that earlier occupation, Haiti is a squalid, wretched place that only the Haitian people themselves can ever hope to fix.

The common sense possessed by the American people seems to elude their Commander in Chief, Bill Clinton.

To him, and to his fellow Rhodes scholar elitists at the State Department, the world is a geopolitical chess game, and American soldiers, sailors, marines, and airmen are pawns in the game. Bill Clinton believes that it makes common sense to try to control the fate of everything from America's health care system to the future of backward island nations with a history of voodoo worship makes perfect sense.

It does not matter to Bill Clinton that the American people do not want this occupation. It does not matter to Bill Clinton that Congress was blocked from having a vote as he led us to the brink of war. He actually believes that he should be able to impose his will on the lives of individuals whenever he pleases, and Congress and the American public have no choice but to follow blindly along, like lemmings into the sea. That is wrong!

Mr. President, an administration with a Commerce Secretary, Ron Brown, who was a lobbyist for the bloody Duvalier dictatorship in Haiti, has no moral authority to now pontificate about human rights in Haiti.

An administration that will not repudiate Marion Barry, the crack cocaine-smoking candidate for Mayor of the Capital of the United States of America, has no moral authority to preach about drug dealing in Haiti.

And an administration with a Surgeon General, Joycelyn Elders, who has insulted and demeaned the Catholic Church, has no moral authority to now piously invoke the term "Father Aristide" to try to legitimize the mentally unbalanced man they want to install in power.

As a young man I visited Haiti on several occasions. I saw first hand the violence and death that has plagued that island nation for hundreds of years. On one occasion I saw two people brutally gunned down in the street by the ton-ton macoutes—the savage band of killers and thugs that are the traditional enforcers for the dictators, witchdoctors, and voodoo priests that have long controlled this tiny island nation.

The United States has absolutely no reason to be in Haiti. We have no vital interests in Haiti. Our National security is not at stake. We have no guarantee that an invasion will curtail immigration to the United States, or solve Haiti's political problems.

All we have gotten so far for the millions of American tax dollars spent, and the thousands of American lives put at risk, is the sight of United States that are forced to stand by and watch Haitians being beaten in the streets.

All we have gotten so far is the specter of the mentally unbalanced Mr. Aristide complaining about the American President who has tried to put him in office in Haiti, and of Jimmy Carter telling Mr. Cedras on Haitian soil that he was ashamed of America's foreign policy.

We now learn that the American taxpayers are going to be actually paying the Haitian military that Bill Clinton was going to wage war against only days ago. Is there any wonder that the world has lost confidence in an American foreign policy that changes every day?

I can tell you, Madam President, that Haiti is not worth one drop of American sweat, much less American blood. I will support American troops as long as they are in Haiti, but I will not support the decision to send them there in the first place.

The tragedy of Haiti will not end until the Haitians, themselves, end it. Until that happens, no amount of American intervention will make a bit of difference in the long run. Let us hope that the tragedy of Haiti does not become an American tragedy as well.

I yield my time.

I thank the Senator from Virginia.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia now controls 13 minutes.

Mr. WARNER. Madam President, first, I ask unanimous consent that among those listed as cosponsors on this resolution, the name of the Senator from Virginia follow that of the distinguished ranking member of the Armed Services Committee, Senator THURMOND. Senator THURMOND worked very hard on this resolution together with his staff under the direction of General Reynard.

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

Mr. WARNER. Now, Madam President, I first wish to commend the leadership of the Senate reaching a consensus on this very important resolution. I was privileged to work with them in that effort. I also wish to commend the codel leader, Senator DODD, of Connecticut, joined by Senator PELL, Senator LEVIN, myself, Senator COVERDELL, and the current manager of our time, Senator GREGG, in our work down there. It was a pleasure to be with these gentlemen.

Now, Madam President, I am going to be fairly reserved in my remarks even

though I have some very strong feelings on this issue. I do so because I wish to put myself at this very moment into the combat boots of several thousand United States soldiers patrolling the dangerous streets and villages and towns of Haiti. We must regard the remarks we make here as such that they can be heard and perhaps even misinterpreted by some in Haiti. So let us use a measure of caution, that we not in any way through this debate raise the level of risk to a single United States soldier or, indeed, others trying to bring about some resolve of this crisis in Haiti.

As I mentioned, I traveled to Haiti with our codel, which enabled me to gain some valuable perspectives about this problem.

At the outset, I want to say what pride I take as an American in those wearing the uniform of our Nation, carrying out the orders of the Commander in Chief, whether it be on land, on sea, or in the air.

Every American can take pride in the manner in which they are carrying out a mission, a mission which has really no textbook or manual precedent. Throughout our 200-year military history, many books have been written on how to conduct various military operations. I studied them myself. But the manual—the textbook for this mission—is still being written. Fortunately, we have excellent troops, well trained, well disciplined, good morale. Whatever we do here has to be supportive of that. And they are under the leadership of very able senior officers. We should take pride in what they are trying to do. General Shelton, commander of the U.S. forces, multinational forces in Haiti; Vice Admiral Johnson, commander of the naval forces in the joint task force; and, Major General Meade, commander of the 10th Mountain Division.

Mr. President, I support this resolution. I appreciate having had the opportunity to work on it. The resolution most significantly does not contain a date certain for withdrawal of our troops. I do not say that as criticism to the distinguished Senator from West Virginia and others. I respect their views. But my opinion on this was gained from talking with our military commanders, not just General Shelton, but right down to the lieutenants and the sergeants and the troops themselves, that the members of the codel had the opportunity to visit with on a one-on-one basis. We do not want to say anything here, nor do we want to put anything in the resolution which would raise that risk. And there are certain dynamics generated by a date certain which could raise that risk. So I am pleased that this resolution does not have a date certain. And if it did, I could not support it.

Also a date certain could have complicated General Shelton's plans to carry out this mission as best he can in what he views as the time available to him. We all want our troops to come home safely as soon as possible. Many of us, including the Senator from Virginia, stood on this very floor and said in a respectful way to the Commander in Chief, the President, do not send U.S. troops to Haiti. But that has been done through the exercise of the President's powers under the Constitution. So we start from that point of how best to address that situation. Our first priority is the safety of our men and women. And then the mission must be carried forward in such a manner that will enhance, I repeat enhance, not discredit the foreign policy of this country.

This mission is not clearly defined. It changes from day to day. We are fortunate that we have had only two casualties insofar as I know as of this moment. But the President has the authority under the Constitution and he has put the troops there.

I say that the second consideration is our foreign policy. If for any reason the world perceives—and particularly those other nations who are now committed to joining us in this operation—if the world perceives that we carried this policy out in a manner other than showing leadership and resolve, then what will the North Koreans say when we go and lay down a set of conditions to resolve that problem, a problem I regard a hundredfold more serious than Haiti?

All along I have joined with those that questioned whether we have any vital security interest in Haiti. But that debate is for a later day from where we are now.

So those are the two reasons that guide me in supporting this resolution. First, to keep our troops safe; and, second, I want our Nation to be viewed by the world as a credible working partner in resolving those problems where hopefully henceforth we have a vital national security interest.

While we were there in Haiti, we met with General Cedras. I am sure Senator DODD has outlined in detail the groups with whom we met. We were assured by the general that he would leave office—I stress office, not the country—by October 15. And all of us are hopeful that the return of President Aristide will be conducted in a spirit of reconciliation to the extent it can be achieved. Reconciliation—that is the atmosphere in which we can bring our troops back with the least amount of risk and harm.

The parliament has been working throughout the day. I do not know what they may or may not have resolved. In my own judgment, they will probably have a resolution which will not be clearly specific, which will not perhaps meet the objectives and goals that many of us would like to see. Perhaps it is going to be left vague and ambiguous on purpose so they can be interpreted in many ways. Perhaps, so that a spirit of reconciliation can be achieved to avoid further loss of life and injury, not only to the troops of the United States but the troops and police of other nations, and, of course, to the people of Haiti.

I would like to address another issue. This word "disarmament" should never have been used in the context of the province of Haiti. You go to the dictionary, go to the history books. Disarmament relates to the conferences primarily after World War I when the Nation's sat down and tried to figure out how to disarm themselves—the Naval Conference on Disarmament, the Disarmament Conference, and to get rid of mechanized weapons. You are never going to disarm Haiti totally. There are weapons under almost every bed, hand grenades squirreled away here and there. And to think that our troops should ever be given the mission to go into a house for search and seizure is absolutely wrong. We learned that lesson in Somalia. Our troops are doing the best they can to remove the weapons where they have good intelligence to know there are caches and repositories of some magnitude. That they can do, although the risk is great. Never underestimate the risk to our troops down there.

Our delegation traveled through the streets. On one street corner they would wave. On the next corner they would shake their fists. And if you did a U-turn, when you passed by the corner where they waved their hand, they would raise the fist and those that raised their fist would wave. It changes that quickly. It is a situation where anything can erupt at any time.

So let us be very careful in the use of the word "disarmament" and not convey the impression to the people of Haiti or to the people of that hemisphere or to the people in this country that our troops are going to be able to withdraw these weapons and make this a tranquil land. It is not achievable. But—our troops, to the extent they can—will provide an orderly means perhaps through the weapons buy-back program, or otherwise, to get the weapons out of the hands of people. Every weapon seized, every weapon bought back in some manner diminishes the risk to our people.

Then, Madam President, we have to turn to the question of the cost estimate. It is incalculable at this time. The Senate Armed Services Committee received estimates of perhaps more than $1 billion. We do not know. But that is a cost we have to watch and watch carefully. It is a cost that should be borne by other nations of the world, because we have problems here at home. We have pockets of poverty and despair here in the United States which parallel, in many respects, what we

saw in Haiti last Saturday. These dollars are needed here at home as badly as they are needed abroad.

Mr. President, I remain concerned about a number of issues which are as yet unsettled. The Haitian Parliament has not yet agreed on the type of amnesty to be granted or the form it will take. This is key to an orderly transition in Haiti.

What will be the extent of the United States role in the United Nations mission in Haiti [UNMIH] and how long will the United States forces be involved? I recall well that it was after the United Nations took over the operation in Somalia that much of the risks to our troops began there: The mission creep, the hunt for Aideed and finally the battle of October 3–4 1993, where 18 United States soldiers were killed and 83 were wounded. While we were supplying humanitarian relief with one hand, the other was entrapped into combat operations.

The latest cost estimates indicate that our efforts in Haiti will cost upward of $1 billion. I am not optimistic that the long-term outcome of our endeavor to instill democracy in Haiti, where it never has existed, will prove worthy of the cost in dollars as well as the efforts and sacrifices of our men and women in uniform and their families. Many of our troops in Haiti were in Somalia last year. We are asking a lot of these brave soldiers. I hope and pray for the rapid and safe return of all those we have committed to the operation in Haiti.

Mr. President, in closing, I am compelled to make one final observation. I fear that we have focussed a disproportionate level of our attention on Haiti, where we have no clear national security interests. Now that we have committed our Armed Forces, however, we must focus our attention there in the interests of the safety of the men and women we have committed to that effort.

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator's time has just expired.

Mr. WARNER. Madam President, that is a very dramatic announcement. I accept that, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida, Mr. GRAHAM, is recognized.

Mr. GRAHAM. Madam President, I yield myself 10 minutes.

Mr. DECONCINI. If the Senator will yield. If I am correct, the Senator from Arizona has 7 minutes, or something like that, remaining in his time and he is prepared to yield that back, unless the leadership would like to have that time.

I will yield my time to the Senator from Iowa, from the 7 minutes reserved for the Senator from Arizona. I ask unanimous consent that that occur.

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

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Madam President, I support this resolution. Although it is not the resolution which I would have written, it represents a fair consensus on an issue of great national importance.

Principally, I support this resolution because of what it does not say. What it does not say is a specific time for withdrawal of our troops from Haiti. The safety of our troops depends upon the restraint of not establishing in advance a specific date for their withdrawal. If our enemies knew that we had a date certain for withdrawal, they would take advantage of that deadline and endanger the security of our men and women in uniform.

The safety of our troops must be our principal priority. We should be proud as a Nation of what our troops are accomplishing in Haiti. They are doing their jobs in a professional and efficient way.

Frankly, I am disturbed and surprised by the comments of some of my colleagues this afternoon, who seem to be disappointed by the success that our troops have had in Haiti. Obviously, this is a mission which is fraught with difficulties and uncertainties. Gratefully, we are appreciative for the treatment of our troops to date, and that we have been able to accomplish this difficult, complex and, as the Senator from Virginia stated, almost unprecedented mission, with minimal casualties. But we understand that no one should underestimate the jeopardy of the circumstances in which our troops are placed in Haiti.

Madam President, many of us today, and millions around the world, heard the President of the Republic of South Africa, Nelson Mandela. He stated that we—and particularly the United States of America, with its special responsibility—are embarked on a principled and courageous endeavor to support democracy in the world. Haiti is another example of that principled and courageous endeavor to support democracy.

Our United States national interests are clearly at stake in the circumstances of Haiti. Some of those interests include the signal that we are sending to the hemisphere and to the world that we are ready to stand by our commitments in support of democratic principles. I fear that had we vacillated in Haiti, it would have become the first of a series of attacks upon democratic regimes, particularly the new and fragile regimes of the Western Hemisphere.

Madam President, as in South Africa, we are standing by the principles that are older than our Nation itself, in support of human rights around the world. One of the fundamental principles of Thomas Jefferson, in writing the Declaration of Independence, was that he was not writing a statement for only those colonialists who lived on the Atlantic shore of North America; rather, he was writing a document of universal principles. We stood by those universal principles of human rights in South Africa. We are doing so again in Haiti and, when we do so, we are standing for the very best in our Nation's tradition. Because Haiti is part of the neighborhood of the Western Hemisphere, we are standing by our own self interests in protecting democracy and human rights in Haiti. As we have tragically learned, when conditions deteriorate in our neighborhood, we are not immune to the adverse consequences, whether they be in the form of persons fleeing from persecution and abject poverty, seeking to reach this country, to the sale and sovereignty of the country, to the drug traffickers, to the endangerment of the United States citizens in that country. All of those, and more, become at risk when democracy and human rights are challenged in the Western Hemisphere.

So, Madam President, I am disappointed that some of my colleagues continue to criticize the President while our troops are on the ground in a vulnerable circumstance, while they are taking all the risk. I want to be recorded in full support of the courageous decision by the President. I want to be recorded in full support of our courageous, highly professional, and patriotic men and women who are carrying out this mission. It is at times like this that we should come together as Americans, beyond partisan bickering, and fashion our support for our troops who are committed to this mission and to some of the most fundamental principles, the protection of democracy, and a commitment to universal human rights.

I am proud of what America is doing in Haiti. And tonight I look forward to our continued contribution toward building in that nation institutions that will make it a peaceful, human rights-respecting country with a sense of future and prosperity for its people.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I am about to yield 5 minutes to our colleague from South Dakota. I am confident he will express strong support for the present situation in Haiti.

Before I do so, let me just commend my colleague from Florida for an excellent set of remarks. He is very knowledgeable about the situation in Haiti, and his comparison to the situation in Haiti and what transpired in South Africa—coincidently, this resolution occurring on the very day that Nelson Mandela addressed a joint meeting of Congress—I think is appropriate.

I also commend our colleague from Virginia, Senator WARNER, who accompanied Senator GREGG and me on our trip last week to Haiti. While I disagree with a couple of points, I think he properly and carefully identified the appropriate military questions and issues as well as the foreign policy issues, and I commend him for his remarks.

I am glad to yield 5 minutes to the distinguished Senator from South Dakota.

The PRESIDING OFFICER. The Senator from New Hampshire has 2 minutes remaining.

Mr. GREGG. I yield the remainder of my time to the Senator from South Dakota also, and I thank the Senator from Connecticut for his courtesy in yielding to the Senator from South Dakota 5 minutes.

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

Mr. PRESSLER. Madam President, I thank the accommodation for 7 minutes. I thank the Senator from Connecticut for his kindness.

Madam President, I have been very, very concerned about an issue recently reported in the New York Times. President Clinton said on June 8 that one of the reasons for possibly invading Haiti was because of that country's involvement in the drug trade. I ask unanimous consent to insert this article in the RECORD at this point.

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

U.S. SAYS HAITI'S MILITARY RUNS COCAINE

(By Howard W. French)

PORT-AU-PRINCE, HAITI, June 7.—Haiti's military leaders have been working with Colombian traffickers for the past four years to help move hundreds of pounds of cocaine each month from South and Central America to the United States, American diplomats and other officials say.

In their first detailed account of the role of the Haitian armed forces in international narcotics traffic, American officials said that much of Haiti's military leadership, including its commander, Lieut. Gen. Raoul Cédras, either has been actively involved with Colombian drug dealers or has turned a blind eye to their trafficking in cocaine, accepting payments for their cooperation.

For months, United States officials have discounted reports of drug trafficking by senior Haitian officers, and some see the sudden turnabout as an attempt to lay the groundwork for a possible invasion to restore the exiled Haitian President, the Rev. Jean-Bertrand Aristide.

The American officials are now saying that the Haitian officers are earning hundreds of thousands of dollars each month for allowing their country to be used as a transshipment center by the main Colombian drug rings in Cali and Medellin.

HAITIAN MILITARY INFORMERS

The officials who discussed the role of Haitian Army leaders said that their information had been developed in recent months in large part thanks to cooperation from members of the Haitian military itself.

"These sources have been very specific about the dates, the sources and the quantities of narcotics involved, and we have this first hand now," said one American official, who spoke on the condition of anonymity. Asked if the evidence against Haiti's military was sufficiently strong to take legal action against them, the official said, "We are pretty close."

The disclosure of the investigation comes three weeks after President Clinton cited Haiti's involvement in the narcotics trade as one of the national security concerns that had convinced him that international military action might be required in Haiti.

In recent days, as speculation has grown about a possible United States-led military action to oust the country's military leaders, members of the Haitian high command have begun consultations here with lawyers who represented Manuel Antonio Noriega, the former Panamanian leader who is serving a 40-year sentence in a Federal penitentiary.

General Noriega, who was accused by the United States of involvement in international narcotics trafficking and money laundering, was captured in an American military intervention in 1989 and brought to the United States for trial.

GENERALS 'R' US

Two of General Noriega's lawyers, Frank Rubino and John May, acknowledged today that they had recently been in Haiti for talks with the military. Refusing to discuss further any details of their involvement here, Mr. May, who was contacted by telephone in Miami, said, "Generals are our business."

CONGRESSMEN SKEPTICAL

Haitian military officials have denied any involvement in the narcotics traffic. Following a recent cocaine seizure, Col. Antoine Atouriste, the officer in charge of Haiti's antidrug force, said that reports about the drug running role of the Haitian military were part of an international campaign to destroy it.

Father Aristide has long asserted that his country's army had been kept in power by narcotics profits.

Members of Congress who are opposed to the use of American force to reinstate Father Aristide say that they are skeptical of the case being put together against Haiti's military leaders and say they suspect political motives lie behind the charges.

"There is less true concern over the narcotics problem that there is to lay a foundation for some kind of military action in Haiti," said Robert Torricelli, Democrat of New Jersey, who heads the House Foreign Relations subcommittee on Western hemisphere affairs. "There is a problem with narcotics in Haiti, but it is no larger than any number of other places."

Officials who discussed details of the Haitian military's role in cocaine trafficking said that until the recent embargo was placed on the country, cocaine was regularly air-dropped into Haiti or delivered by ships from Panama and Colombia.

The role of the Haitian military, the officials said, was to provide protected landing strips and ports, assuring that the unloading of the cocaine was undisturbed.

"Then it is taken to other locations by waiting vehicles, distributed to other points around the country and held until it can be shipped onwards in loads of 50 to 100 kilograms," an official said.

Because of the international embargo against Haiti, officials said they believed the country had an unusually large stockpile of cocaine on hand, which it was unable to export.

Mr. PRESSLER. This allegation about Haiti was repeated by the President and other administration officials several times. Then suddenly they stopped saying it and there was no further discussion of it.

I would like to know what they found out or why they have dropped that subject. Maybe they found out that Haiti did not have any involvement in the drug trade. Or maybe they found out that the door led to some embarrassing places.

Madam President, I am concerned that the reason the administration suddenly stopped citing Haitian drug trafficking as a justification for invading Haiti was because of reports that, while President of Haiti several years ago, Jean-Bertrand Aristide may have taken bribes from Colombian drug dealers to permit drug smuggling routes to operate through Haiti. These serious allegations have not been thoroughly investigated by the U.S. Government. At a time when United States troops are putting their lives on the line in Haiti preparing to restore Aristide to power, these allegations must be thoroughly examined.

Madam President, today I have written to President Clinton expressing my concerns. Yesterday, in the Judiciary Committee I asked Lee Brown, the drug czar about this matter. He said he did not know anything about it, that it would not be his office's concern.

Someone in the White House must know because they were citing the drug trade in Haiti as a reason to invade that country earlier this year. They were investigating Haitian drug trafficking, then suddenly they became silent. Is it possible that one of the doors—one of the paths of corruption led someplace that they did not wish?

Again, I have written to the President today expressing my concerns. I have previously written to Janet Reno and others about it as well. Included with the letter is a list of questions which I think deserves to be fully disclosed.

I ask unanimous consent that a copy of my letter to the President be printed in the RECORD at this point.

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

U.S. SENATE,
Washington, DC, October 6, 1994.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I am deeply disturbed by recent allegations that, while President of Haiti, Jean-Bertrand Aristide accepted payments from foreign drug traffickers. It is my understanding that the Drug Enforcement Agency (DEA), acting on orders from the White House or the Justice Department, recently investigated drug trafficking in Haiti. During the course of the investigation, the DEA ostensibly uncovered information linking Mr. Aristide to Colombian drug money. If true, these charges pose

serious questions about American involvement in the effort to return Mr. Aristide to power.

I have previously written to Attorney General Janet Reno asking her to provide any information concerning the allegation that the Justice Department denied a request from DEA field agents to interview Mr. Aristide. I have also asked Senators Biden and Hatch, as Chairman and Ranking Member of the Senate Judiciary Committee, to hold hearings on this matter.

Let me say that I was not the first to raise the issues I am discussing today. These allegations first appeared in the press and they need to be addressed publicly by the Administration. Cloaking any of this information under a heavy blanket of top secret security clearances is not acceptable. The American public has the right to know. They are paying for the Haiti operation. Their sons and daughters are serving there. Enclosed is a list of questions which I think deserve to be answered. I would greatly appreciate a prompt response from your Administration.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

Enclosure.

SENATOR LARRY PRESSLER—QUESTIONS TO PRESIDENT CLINTON REGARDING THE DEA INVESTIGATION INTO DRUG TRAFFICKING IN HAITI

(1) Was an investigation of drug trafficking in Haiti conducted by the DEA, FBI, CIA, State, or Justice Departments?

If so, who ordered the investigation and when? Who in the Justice Department or the White House was involved? Was it the result of a classified memo drafted in early April by Deputy Assistant Attorney General Mark Richard directing federal agencies to investigate rumors of Haitian drug trafficking?

(2) Is the investigation ongoing or has it been concluded? If it has been concluded, why was this done?

(3) What was the original purpose of the investigation? Has the purpose changed over time? If so, why?

(4) Whom did the investigation target? Who in the Haitian government or military have been or are now the subject of this investigation?

(5) What have been the results of the investigation, to date?

Was any evidence uncovered that suggested that Jean-Bertrand Aristide, or those closely associated with him, accepted payments from foreign drug traffickers?

If so, who in the Administration was informed of the results of the investigation to date? When was each person informed? Was anyone in the White House or the Justice Department informed, and if so, who and when?

(6) During the course of the investigation, was there a request from DEA field agents conducting the investigation to interview personally, or otherwise question in any form, Jean-Bertrand Aristide regarding these accusations? If the request was made, explain fully the circumstances surrounding the request.

Who made the request? To whom was it made? When was the request made?

In what form was the request made? If in written or electronic form, please provide a copy of the request and any notes or memorandum concerning it which the DEA has in its possession.

(7) Who within the Administration, both inside and outside the DEA, was aware of the request to question Aristide?

(8) Was the request to question Aristide ultimately denied? If so, who denied it. When was the denial made? Why was the denial made? Was the denial based on political factors?

Prior to the final decision not to question President Aristide, was the request submitted to an "oversight committee" composed of members from the DEA, the Justice Department and/or others? If so, who were the members of the "oversight committee"? On what dates did they meet to discuss the request? What was the committee's determination?

Prior to the final decision not to question President Aristide, was any Administration official in the Justice Department, the White House, or any other government agency consulted or contacted regarding the request? If so, who was consulted? On what dates did the consultations occur?

At any time during the consideration of the request to question President Aristide, did any Administration official suggest reasons for denying the request based, in whole or in part, on political considerations. If so, which Administration officials made the suggestion? When was the suggestion made?

(9) In the course of the investigation, did DEA field agents, or other law enforcement officials interview a Mr. Molina, a former lieutenant of the Medellin drug cartel regarding an allegation that Aristide, while in power, accepted drug money from the cartel?

What did Molina tell DEA field agents? Did he allege that Jean—Bertrand Aristide accepted money from the Medellin drug cartel?

Was Molina ever given a polygraph or other lie detector test? If so, who administered the test? What were the results? Who in the Administration was informed of the results?

Did the DEA agents, under the direction of the Justice Department, offer a deal to Molina in return for his cooperation?

If so, who in the Administration authorized the deal? What were the precise details of the deal offered to him? Were drug charges against Molina, pending in the U.S., dropped as a result?

Was Molina ever brought to the United States for questioning? If so, is Molina still in U.S. custody? If not, where is he and why was he released? Was Molina allowed to leave the U.S. as a condition of the deal offered to him?

(10) Did the DEA, or other U.S. law enforcement agency, ever interviewed any other individual who substantiated the allegation that Aristide, or those close to him accepted, payments from foreign drug traffickers?

If so, who was interviewed? What was said? When did the interview or interviews occur?

Mr. PRESSLER. Madam President, let me say I am not the first to raise the issues I am discussing today. These allegations first appeared in the press, and they need to be addressed publicly by the administration. Cloaking any of this information under a heavy blanket of top secret security clearance is not acceptable. The American public has a right to know. They are paying for the military operation in Haiti. Their sons and daughters are at risk there.

Let me briefly outline my concerns. On May 21 of this year, the Washington Post reported that Deputy Assistant Attorney General Mark Richards drafted a classified memo directing Federal agencies, including the DEA, CIA, FBI, State and Justice Departments to investigate narcotics trafficking in Haiti.

I ask consent to insert this article in the RECORD at this point.

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

[From the Washington Post, May 21, 1994]

U.S. INVESTIGATES ALLEGATIONS OF HAITIAN DRUG TRAFFICKING

(By Pierre Thomas)

The Justice Department is investigating allegations that top Haitian military officers have been heavily involved in cocaine trafficking since the mid-1980s, administration sources said yesterday.

Federal law enforcement officials have received tips that the officers protected or allowed cocaine shipments to enter and leave the country freely, federal sources said. The sources described the inquiry as being at a preliminary, "fishing expedition" stage.

"There have been rumors for years, and now given the current heightened concern, this has emerged as a priority," said one high-ranking administrator who asked not to be named.

The Haitian military has come under increasing scrutiny since its overthrow of democratically elected President Jean-Bertrand Aristide in September 1991. The military has repeatedly ignored international calls for the restoration of Aristide to power.

Deputy Assistant Attorney General Mark M. Richard drafted a classified memo in early April requesting that federal agencies, including the FBI, the State Department, Drug Enforcement Administration and CIA, comb their files for information about Haiti drug trafficking, sources said.

The investigation is centering on Max Paul, Haiti's director of ports, and more than a dozen military officials including: Lt. Col. Michel Francois, the head of police in Port-au-Prince, the capital city; Brig. Gen. Jean-Claude Duperval; and Col. Antoine Atouriste. Francois previously has strongly denied any involvement in drug trafficking.

But several administration sources stressed there is little concrete evidence so far tying these Haitian officials to any specific wrongdoing.

"We are a long way from confirming any of this," said one official. "We are a long way from indicting these people and having enough evidence to present to a court. We think that some of these people are dirty. So far we just don't have it."

Other administration sources also pointed out that drug trafficking in Haiti is small compared to the volumes of drugs moved through other transshipment points in the region.

A recent State Department report on international drug trafficking said: "Haiti continues to be used by Colombian trafficking organizations as a base of operations and transshipment point for the movement of South American cocaine to the United States. The government of Haiti has had little success in attacking the problem and clearly has an inadequate interdiction and enforcement capability."

While noting that Haitian officials are "susceptible" to corruption—presumably because of the country's impoverished condition—the State Department report said the "United States government does not have evidence directly linking senior [Haitian] officials to drug trafficking." The report also

said that "compared to trafficking indicators in other areas such as the Bahamas or Mexico, the current level of detected air and maritime drug-related activity in Haiti is low."

Mr. PRESSLER. During the course of this investigation, it is my understanding the DEA uncovered allegations that Jean-Bertrand Aristide accepted payments from Colombian drug traffickers while President of Haiti. The allegations were made by an informant interviewed by the Drug Enforcement Agency and deemed credible by the Miami DEA office.

I further understand that the Miami office of the DEA requested an interview with Aristide to substantiate the charges. This request was denied by officials in Washington on the advice of an interdepartmental oversight committee composed of officials from the DEA, Justice Department, and other Federal agencies.

The decision to not question Aristide disturbs me deeply. In effect, the decision prevents DEA investigators in the field from doing their job.

I want to know why this decision was made by the Justice Department and the DEA. Was the decision based on political factors? Is the administration attempting to suppress an investigation which could prove embarrassing to Mr. Aristide?

Why has the administration stopped citing Haitian drug traffic as a reason to invade Haiti? They did earlier this year.

A New York Times article dated May 20, 1994 quoted President Clinton as citing drug trafficking as one of the reasons why the United States might have to invade Haiti.

I ask unanimous consent to print this article in the RECORD at this point.

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

[From the New York Times, May 20, 1994]

PRESIDENT LISTS REASONS TO USE FORCE IN HAITI

(By Douglas Jehl)

WASHINGTON.—President Clinton today offered the clearest explanation yet of why his Administration is considering the use of military force in Haiti while resisting it elsewhere in the world.

"It's in our backyard," the President said at a White House news conference as he ticked off the first in a list of six reasons why he is weighing military action to oust Haiti's leaders if economic sanctions do not force them to step down.

He said Haiti's proximity to the United States and the danger that more of its citizens could seek refuge in southern Florida meant that his Administration had an obligation to force an end to the military dictatorship there.

Mr. Clinton's comments, in response to a question at a joint appearance with India's Prime Minister, also represented a response to Republican critics who say it would be wrong to risk American lives to restore the exiled President, the Rev. Jean-Bertrand Aristide.

With a tighter United Nations embargo on Haiti to take effect at midnight on Saturday, aides to Mr. Clinton emphasized that no American military action there was imminent. After facing criticism on past occasions in which the Administration has appeared to back away from tough talk on Bosnia, the aides said no decision on whether to use military force in Haiti will be made until the sanctions have been given time to work.

But with opinion polls showing mounting public dissatisfaction with his conduct of foreign policy, the aides say that Mr. Clinton has grown concerned that he has failed to cast the challenges he faces in proper context and that, in particular, he has not adequately explained why his Administration is suddenly devoting so much attention to Haiti after 32 months of military tyranny there.

A senior White House official who said Mr. Clinton had planned his answer described it as part of an effort to build public support for military action in Haiti that would allow him to act even if other countries remain opposed to such a mission.

Among the six reasons Mr. Clinton mentioned today as adding up to a "significant" American interest in restoring democracy to Haiti were its proximity and the fact that Haiti had been used as a staging area for drug shipments bound for the United States. In addition, he said Haiti was now the only country in the Western Hemisphere where military leaders have seized power from an elected leader, making it and Cuba the hemishere's only remaining non-democracies.

MASSIVE OUTFLOW FEARED

He also mentioned the several thousand Americans who live in Haiti and the one million Haitian-Americans who live in the United States as reasons Americans should be intent on restoring democracy there.

But Mr. Clinton saved his strongest warning for what he described as "the continuous possibility" that Haitians left poor and desperate under military rule would join in a "massive outflow" and seek refuge in the United States.

Mr. Clinton spoke after a meeting with Prime Minister P. V. Narasimha Rao of India on a day in which he devoted unusual attention to security issues. He had back-to-back meetings with his top foreign policy advisers and with American military commanders from around the globe.

His meeting with Mr. Rao was the first between an American President and an Indian Prime Minister in seven years, a lag emblematic of the uneasiness between the two countries after successive Administrations have spoken disapprovingly of India's human rights record and its development of nuclear weapons.

Outside the White House today, hundreds marched in opposition to India's policies in Kashmir and other northern regions, and Mr. Clinton acknowledged that the United States and India still had differences over human rights and the spread of nuclear weapons.

But the President praised India for having overcome internal strife and remaining the world's second largest democracy, and he said of the disagreements that "in the content of our common interests and our common values, we believe they can be managed in a constructive way."

The yearlong American standoff with North Korea over nuclear weapons still has the potential to become the Administration's biggest foreign policy crisis. But Mr. Clinton and his aides have made clear in recent weeks that they are looking with more impatience at the intransigence of Haiti's military leaders, who seized power in September 1991 from Father Aristide, the democratically elected President, and have refused since last fall to honor an agreement in which they pledged to step down.

The strict United Nations sanctions that are to be imposed on Saturday represent a new effort by the United States and other powers to force Lieut. Gen. Raoul Cédras and his fellow commanders from power. But the President has been forthright in saying he would consider using military force to oust them if the sanctions fail, and Administration officials say the misery the embargo may inflict means that the White House could reach that point of decision as soon as this time next month.

TIME FOR THEM TO GO

Mr. Clinton said recently of the military commanders that "it's time for them to go," and aides have described him in recent weeks as increasingly determined to see democracy restored.

The President's new special adviser on Haiti, William Gray, held a well-publicized meeting here today with Father Aristide in a sign of the White House's commitment to stepping up its efforts on his behalf.

Asked today why he appeared to be putting Haiti in a different category from Bosnia and Rwanda, where he has ruled out putting United States forces in ground combat roles, Mr. Clinton said he was not prepared "to discuss hypothetical uses of force." But he went on to make clear that he believed that the American interests in Haiti set that country apart from more distant trouble spots.

His remarks seemed intended in part as an answer to critics like Senator Bob Dole of Kansas, the Republican leader, who this week said an American invasion of Haiti "would be the wrong act at the wrong time for the wrong reason." Senator Dole and other Republicans have called on Mr. Clinton to seek a compromise with Haiti's military leaders that would restore democracy without providing for Father Aristide's return, but that is a step the White House has been unwilling to take.

Mr. PRESSLER. In fact, during this past spring, other members of the administration were using drug trafficking as an excuse to intervene in Haiti. Then suddenly, we heard no more from the administration about drug trafficking in Haiti. It was as if the stage went dark. Was this because of information uncovered by the DEA investigation? Did information come to light implicating Jean-Bertrand Aristide?

Allegations to this effect were made by a Colombian national, a Mr. Molina, reputedly a major lieutenant of Pablo Escobar, the former head of the Medellin, Colombia, drug cartel. Mr. Molina allegedly named Haitian generals among those who accepted cash payments from the Colombian drug cartel. More importantly, Mr. Molina also allegedly named Mr. Aristide. I understand that when Mr. Molina provided this information, he was given a lie detector test by the DEA. He passed.

In return for his cooperation, I understand Mr. Molina was offered a deal by the Justice Department. Apparently, Mr. Molina was facing at least one indictment in the United States for operating a "continuing criminal enterprise." If convicted, he would have

faced life in prison. Instead, the charges against Mr. Molina were dropped and he was allowed to return to Colombia.

I have also received information alleging that a second informant has substantiated the allegations against Jean-Bertrand Aristide. This case is still pending.

Such cases are frequently murky. Nevertheless, allegations having been made, the U.S. Government has the responsibility to pursue them. Mr. Molina has been described as being "reliable" in other DEA cases. Would it not be better to put to rest allegations against Mr. Aristide by allowing him to be interviewed by the DEA? Instead, the Government has decided not to allow Mr. Aristide to be questioned.

As each day passes, more information comes to light. The allegations against Mr. Aristide have been the subject of two ABC news stories, as well as articles which have appeared in the Wall Street Journal and the Washington Times.

I ask unanimous consent to print these articles in the RECORD at this point.

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

TRANSCRIPT OF ABC NEWS REPORT ON "GOOD MORNING AMERICA," SEPTEMBER 18, 1994

ABC News has learned that Federal law enforcement officials have been investigating a report that Haitian President Jean Bertrand Aristide may have been involved in Payoffs to Haitian officials by Colombian drug traffickers. The allegations came from a Colombian drug dealer cooperating with the Drug Enforcement Agency. ABC'S Jim Angle has more:

As the U.S. pushed to return Aristide to power, administration officials were wrestling with a potential public relations disaster. The DEA had uncovered allegations that Aristide, while in office, took payoffs from a cocaine cartel. Law enforcement sources told ABC News that when Agents asked to question Aristide, Washington squelched the idea.

That was denied by Defense Secretary William Perry on "This Week with David Brinkley:

"There have been uncorroborated Allegations made by an informant about President Aristide. Those were investigated by the Justice Department. Nobody was told that they couldn't do it."

The informant a former member of Pablo Escobar's cartel, told the DEA that payoffs were going not only to Haiti's top three military leaders—President Raoul Cedras, Army Chief of Staff Phillipe Biamby, and chief of Police, Michel Francois . . . but also to President Aristide himself. Justice Department sources say there is no other information to back up the claims and Aristide supporters were outraged:

"There is no truth to any allegations that President Aristide has been involved in drug trafficking or drug payoffs or anything of the kind. This is absolute garbage."

Justice Department officials say the investigation has not been closed but now that Haiti's military leaders have agreed to depart, allegations about the past are likely to be far less important than questions about Haiti's future.

TRANSCRIPT OF ABC NEWS REPORT ON "WORLD NEWS TONIGHT," SEPTEMBER 19, 1994

With the United States on the verge of invading Haiti to return President Aristide to power, there was one last-minute embarrassment—the DEA had recent information that Aristide, while in office, took payoffs from the Pablo Escobar cocaine cartel.

And law enforcement sources told ABC that when agents asked to question Aristide, Washington killed the idea. That was denied by Defense Secretary William Perry on "This Week with David Brinkley":

"There have been uncorroborated allegations made by an informant about President Aristide. Those were investigated by the Justice Department. Nobody was told that they couldn't do it."

The informant was one of Pablo Escobar's lieutenants who is now cooperating with the DEA * * *. He said that payoffs were going to Haiti's top three military leaders—President Raoul Cedras, Army Chief of Staff Phillipe Biamby, and Chief of Police, Michael Francois.

But the Colombian informant also said his Haitian connection, Franz Biamby, a cousin of the Army Chief of Staff, saw Aristide take a suitcase filled with several hundred thousand dollars in payoffs.

Franz Biamby, now in jail in Miami, admitted to authorities that he smuggled cocaine. And he implicated other Haitian officials—but not the top three military leaders * * *. or President Aristide.

The administration was hoping to do to Haiti's military leaders * * * what the United States did to Panamanian leader Manuel Noriega—arrest them and put them in jail.

The administration had cast a wide net in an effort to build a drug case against the military leaders * * * The last thing it wanted to hear were new allegations against Aristide.

Defense Secretary Perry said today the matter is closed:

"The Justice Department made a very detailed investigation of this. They concluded that the evidence did not support this allegation by one informant."

But other sources tell ABC News the investigation is still open.

Justice Department officials met last Thursday, even as the United States was preparing Haitians for an invasion, to decide how to handle this political hot potato.

This evidence was flimsy * * * but officials couldn't stop the investigation without appearing to interfere * * * just as the United States was preparing to put lives on the line to return Aristide to power.

[From the Wall Street Journal, Sept. 22, 1994]

U.S. FACES DILEMMA ON RESTORING HAITI'S LEADER, AS AMERICANS WONDER IF ARISTIDE IS GOOD OR EVIL

(By Robert S. Greenberger)

WASHINGTON.—When President Jean-Bertrand Aristide returns to Haiti, the question here is will he go back as the good guy or the villain?

The Clinton administration policy is anchored on restoring President Aristide as Haiti's elected leader by Oct. 15. But four days into the U.S.'s peaceful occupation of the Caribbean nation, support for that goal is in danger of eroding.

President Aristide finally delivered a belated "thank you" to the U.S. yesterday for its efforts to restore him to power. But his three-day delay in doing so has only fueled concerns in the U.S. that the administration is saddled with an unreliable and temperamental partner.

ARISTIDE IS CRITICIZED

Democrats in the past few days have begun attacking the Haitian leader as an ingrate. "The proper response from Mr. Aristide is not to second guess or nitpick. The proper response is two words: 'thank you,'" Rep. David Obey of Wisconsin, one of the few members of his party who had advocated an invasion of Haiti, said earlier this week.

Meantime, critics from the right are pressing a campaign to demonize the Haitian priest, circulating stories about his involvement in violence and unfounded rumors about drug payoffs and even murder. On the night President Clinton gave his nationally televised speech on Haiti, the American Conservative Union aired a TV ad showing a 1991 Aristide speech—in Creole—that appeared to encourage "necklacing," or putting a tire around a political opponent's neck and setting the tire on fire.

Efforts to tar Mr. Aristide in the public mind could prove critical to the long-term success of the U.S. mission in Haiti. Americans only support such military endeavors when they have a clear sense of battling evil. Former President Carter fogged that distinction by extolling the "bad guy,"—Lt. Gen. Raoul Cedras—as a patriot and a man of honor just a few days after President Clinton had labeled the same general a thug and a murderer. An effective attack on President Aristide, the supposed "good guy" in this international melodrama, could push public patience over the edge.

"It's my impression that the events of the last few days have really changed the way Aristide and Cedras are viewed as hero and villain," says Christopher Caldwell, assistant managing editor of the American Spectator and author of a scathing attack on President Aristide in that conservative magazine's July issue. In response, President Aristide's defenders, and paid publicists, are pressing to polish his image among Americans and counter the attacks.

EXAGGERATION OR TRUTH?

Many of the charges surfacing against Mr. Aristide from Mr. Caldwell and others on the right clearly are the product of innuendo and exaggeration. Reed Irvine, who heads Accuracy in Media, a conservative watchdog group, passes on a "tip" that President Aristide ordered the killing of a Haitian priest earlier this summer, to put the spotlight back on Haiti instead of the Cuba crisis. Mr. Irvine concedes he heard the story from someone he doesn't know, who claims to have Pentagon connections. Nevertheless, a small Washington newspaper ran the story.

But the 41-year-old President Aristide also has given his opponents plenty of material to work with. He is a radical Roman Catholic priest who has fought with his church and often spewed anti-American statements. His stubbornness and independence continue to drive U.S. officials to distraction. Although his human-rights record during his short tenure as Haiti's elected president was vastly superior to what came before and after, he clearly encouraged, or in some cases didn't act to prevent, mob violence. In one instance, he stalled an investigation of the murders of five jailed youths.

TARGETING LEGISLATORS

Much of the anti-Aristide efforts are directed toward Congress, a fertile field for anti-interventionist sentiment. When House leaders were negotiating the language of a resolution praising the negotiated agreement in Haiti, Republicans insisted that the

document wouldn't praise President Aristide. Democrats agreed. On the Senate floor, GOP Sen. Phil Gramm of Texas, citing descriptions of President Aristide as a "anti-American Marxist demagogue," declared, "I don't see a good guy in Haiti."

President Aristide isn't unarmed in this battle of perceptions. A bevy of highly paid aides has been peppering the airwaves, noting that President Aristide was democratically elected with nearly 70% of the vote and was beginning to bring real reform to Haiti's impoverished masses when he was ousted by the military in September 1991.

The public-relations firm of McKinney & McDowell received $191,000 during a seven-month period that ended in April, according to the most recent filing with the U.S. Justice Department. And the Miami law firm of Kurzban Kurzban & Weinger, P.A., acting on behalf of President Aristide, dispersed $594,500, to several law firms and individuals. Among the most prominent spokespeople is former Democratic Rep. Michael Barnes, whose law firm receives a monthly retainer of $27,500. The money comes from Haitian government bank accounts in the U.S. that were frozen following the military coup and that now are controlled by President Aristide.

FAVORABLE HUMAN-RIGHTS RECORD

Beyond the public relations, President Aristide had a generally favorable human-rights record during his seven months in office, says Kenneth Roth, executive director of Human Rights Watch, a private group. Nevertheless, he adds, President Aristide has one "large blight on his record." In July 1991, five youths were arrested by police and later murdered; President Aristide blocked an investigation of a leading suspect, the police chief, who was a strong Aristide supporter.

The State Department's human-rights report for 1991 concluded that, "although there were few institutional advances made to improve respect for human rights during the Aristide government, there were fewer instances of abuse by soldiers, which resulted in a greater sense of personal security."

President Aristide's history with his church is also somewhat mixed. According to a spokesman for the National Council of Catholic Bishops, he was expelled from his order, the Salesians of Don Bosco, in November 1988 because he no longer was living up to the principles and the restrictions of the order, which primarily is focused on the needs of the poor. Prior to the expulsion, which later was approved by Rome, he was given several warnings by his superiors for preaching violence. The Salesians, however, say President Aristide chose to leave because of the order's restriction against mixing religion and politics.

ALLEGATIONS OF DRUG TIES

Another recent attack on President Aristide involves allegations of ties to the drug trade. In a letter to Attorney General Janet Reno, written the day after the U.S. reached agreement with Gen. Cedras in Haiti, Sen. Larry Pressler, a South Dakota Republican, citing an ABC News report, called for an investigation of charges that President Aristide received money from drug dealers.

Carl Stern, a Justice Department spokesman, says the charges, which weren't new, had been investigated and "there was no basis found for going further."

But such charges are kept alive by a network of conservatives that includes talk-radio shows. Armstrong Williams, host of "The Right Side," says he receives hundreds of calls from listeners who characterize President Aristide as a criminal and unfit for U.S. support. Mr. Williams, in turn, passes on tidbits that buttress that perception. "Aristide," he says, "is my favorite subject these days."

[From the Washington Times, Oct. 4, 1994]

PRESSLER URGES PANEL TO PROBE CLAIM THAT ARISTIDE TOOK BRIBE, ASKS WHY DEA INTERVIEW OF OUSTED LEADER WAS BARRED

(By Jerry Seper)

Sen. Larry Pressler wants the Senate Judiciary Committee to investigate accusations that deposed Haitian President Jean-Bertrand Aristide and his top aides took payoffs from Colombian drug dealers to keep Haitian smuggling routes to the United States open.

In a letter to Senate Judiciary Committee Chairman Sen. Joseph R. Biden Jr., Delaware Democrat, and Sen. Orrin G. Hatch of Utah, the ranking Republican on the panel, the South Dakota Republican described the accusations as "extremely serious."

"Such allegations, if true, are extremely troubling given the administration's strong support for President Aristide and his return to power," Mr. Pressler said.

In a separate letter to Attorney General Janet Reno, Mr. Pressler sought information on the Justice Department's role in an ongoing Aristide investigation and asked if the department had refused to allow U.S. Drug Enforcement Administration agents in Miami to question the ousted president.

"I also wish to know whether the Justice Department refused DEA permission to interview President Aristide, the department's reasons for denying such a request and the name of the department official responsible for that decision," said Mr. Pressler, himself a Judiciary Committee member.

The Aristide accusations surfaced this year when a former member of the Medellin drug cartel in Colombia told the DEA Mr. Aristide and several aides took bribes from cartel leaders to guarantee cocaine smuggling routes through Haiti to the United States.

The former Medellin lieutenant and top aide to Pablo Escobar, the cartel's late boss, told DEA agents in Miami that the payoff was given to Mr. Aristide in the months before his ouster in September 1991 by a military coup.

The informant, now a government witness, described the suspected Aristide payoff and payment of bribes to key aides during interviews earlier this year, first reported last month by ABC News.

An investigation is under way, although a request by DEA agents in Miami to question Mr. Aristide in the probe was rejected last month by a Justice Department oversight committee. The Undercover Review Committee challenged the informant's credibility but did not stop the investigation.

Justice Department sources said the informant could not provide specific corroboration and showed "some deception" in a polygraph test administered by the DEA. Some department officials said the polygraph findings were "mixed" but not disqualifying.

Although the decision not to question Mr. Aristide came at a time the Clinton administration was considering using military force to return him to power, Miss Reno has denied that politics played any role.

Mr. Aristide has denied the accusations. A spokesman described statements by the informant as "nonsense."

The informant, the sources said, told the DEA that the Aristide payoff was delivered by Franz Biamby, the Medellin cartel's Haitian connection. Mr. Biamby, a suspected drug smuggler, is a cousin of Brig. Gen. Philippe Biamby, chief of staff to Lt. Gen. Raoul Cedras, Haiti's military leader.

The sources said Mr. Biamby told the informant he personally delivered a money-filled suitcase to Mr. Aristide. The information came during an investigation of Mr. Biamby's suspected ties to Haitian drug smugglers, along with that of other former and current Haitian civilian and military leaders, they said.

"It's hard to believe the Clinton administration would seek an investigation of Haiti's military leadership and their roles in drug smuggling and not know the DEA would also come up with the Aristide connection," said one source close to the investigation.

In his letter to Miss Reno, Mr. Pressler said he understood the DEA discovered Mr. Aristide's suspected ties to the Medellin cartel after the White House had directed the agency to "investigate allegations of profiteering from drug trafficking" by military officials in Haiti, including Gen. Cedras.

"During the course of this investigation, the DEA ostensibly uncovered information linking not only Haitian military officials to drug money, but also President Aristide," he said.

In May, the Justice Department confirmed it was investigating drug trafficking by the Haitian military, naming 14 top military officers, Haiti's port director and the Haitian National Intelligence Service as investigative targets.

[From the Washington Times, Oct. 3, 1994]

ESCOBAR AIDE TELLS DEA OF ARISTIDE BRIBE

(By Jerry Seper)

A former member of a Colombian drug cartel, now a government informant, has told the U.S. Drug Enforcement Administration that ousted Haitian President Jean-Bertrand Aristide personally took a bribe from cartel leaders to guarantee that cocaine smuggling routes through Haiti to the United States would remain open.

The unidentified informant, according to Justice Department sources, told DEA agents in Miami that the cash—several thousands of dollars stuffed in a suitcase—was given to Mr. Aristide in 1991 by members of the Medellin drug cartel, headed at the time by Pablo Escobar.

The informant is deemed "credible" by Justice Department officials in other pending cases, the sources said.

A former Medellin cartel lieutenant and top Escobar aide, the informant described the suspected Aristide payoff and the payment of bribes to other Haitian officials, including key Aristide aides, during several interviews this year with DEA officials.

An investigation into the accusations is continuing, although a request by DEA agents in Miami to question Mr. Aristide in the probe was rejected last month by a Justice Department oversight committee. The Undercover Review Committee challenged the informant's credibility but did not stop the probe.

The sources said the informant could not provide specific corroboration and showed "some deception" in a polygraph test administered by the DEA. Some Justice Department officials said the polygraph findings were "mixed" but not disqualifying.

The informant told agents in Miami that the Aristide payoff was delivered by Franz Biamby, the Medellin cartel's Haitian connection, the sources said. Mr. Biamby, a suspected drug smuggler, is a cousin of Brig.

Gen. Philippe Biamby. Gen. Biamby is chief of staff to Lt. Gen. Raoul Cedras, Haiti's military leader.

According to the sources, the informant said Mr. Biamby told him he had personally delivered the money-filled suitcase to Mr. Aristide. The information, they said, came during an investigation of Mr. Biamby's suspected role in drug smuggling in Haiti, along with that of other former and current Haitian civilian and military leaders.

The sources said the informant often served as a "bagman" for Escobar, the notorious Medellin boss who was killed in a shootout with Colombian police last year.

At one time, Escobar headed a drug trafficking operation out of Medellin, Colombia, and had a net worth of more than $2.5 billion. He was blamed for the deaths of hundreds of people—including presidential candidates, judges and police—in a series of assassinations and car bombings.

Justice Department officials have denied that politics played any role in the decision to turn down the interview request, although it came at a time when the Clinton administration was considering using military force to return Mr. Aristide to power.

Attorney General Janet Reno said last week the decision to reject the Aristide interview was made by the department's undercover review committee. She said committee members, including criminal division lawyers who are assigned to the panel, were "participating in a DEA structure, and I've tried to do it the way it's always done to make sure that there is no political interference."

DEA spokesman Bill Ruzzimenti has declined comment, saying that, as a matter of policy, the agency will neither confirm nor deny that anyone is the subject of an active investigation.

Mr. Aristide has denied accusations that he was involved in drug payoffs. A spokesman described statements by the informant as "nonsense."

White House spokesman David Levy did not return calls to his office last week seeking answers on what and when administration officials knew about the Aristide investigation.

The DEA informant accused Mr. Aristide and his aides of using Haitian military officers and others to protect incoming drug flights and outgoing shipments, the Justice Department sources said.

Haiti has long been a suspected transshipment point for cocaine headed to the United States from South America. Haitian officials and military leaders, according to law enforcement authorities, have long been involved in an international smuggling network that uses freighters, small boats, commercial airliners and smaller aircraft to smuggle drugs to the United States. Its remote landing strips are easily accessible to small planes flying too low to be detected by radar.

The DEA has estimated that a ton of cocaine is smuggled through Haiti to the United States each month. A 1992 State Department report described Haiti as a "transshipment point of illegal narcotics, especially cocaine, into the United States."

Mr. Aristide is a Roman Catholic priest who was expelled in 1988 from the Salesian order, one of the church's largest, for using religion to incite hatred and violence. He was elected president in December 1990 and overthrown nine months later in a military coup. He is expected to return to Haiti after coup leaders step down Oct. 15.

As president, he repeatedly used implicit threats of mob violence to intimidate his opponents in the business class, the National Assembly and the military.

In September 1991, shortly before his ouster, he invoked "God's justice" in urging his followers to "necklace" opponents—hang discarded, gasoline-filled tires around their necks and set them ablaze. He did not mention burning tires explicitly but referred to the smell of something burning.

Mr. Aristide is still a priest in the eyes of the church because he never officially received a dispensation from his vows. Church law bars priests from holding elected office, except in unusual circumstances.

[From the Washington Times, Sept. 30, 1994]

DEA PROBES REPORT OF ARISTIDE DRUG LINK—COLOMBIAN SMUGGLERS SAID TO USE HAITI

(By Jerry Seper)

U.S. Drug Enforcement Administration agents are investigating accusations that deposed Haitian President Jean-Bertrand Aristide took bribes from Colombian drug dealers to ensure that longstanding Haitian smuggling routes into the United States remained open.

The DEA probe, according to Justice Department sources, has focused on the ousted president and several top aides. They are suspected of accepting payoffs during the Aristide presidency to guarantee Haiti's use as a transshipment point for millions of dollars in cocaine bound for the United States.

Mr. Aristide and his aides, some of whom stayed in Haiti after the Aristide government was overthrown in September 1991, were accused by a DEA informant of using Haitian military officers and others to protect incoming drug flights and outgoing shipments, the sources said.

The probe is continuing despite a department decision last month rejecting a DEA request to question Mr. Aristide in the case. The sources said the department's Undercover Review Committee, which oversees high-profile cases, rejected the request after challenging the informant's credibility.

The interview request was rejected as the Clinton administration was considering using military force to return Mr. Aristide to power, although Attorney General Janet Reno yesterday denied that politics played a role in the decision.

A militant Roman Catholic priest, Mr. Aristide was elected president in December 1990 and overthrown nine months later in a military coup. He is expected to return to Haiti after coup leaders step down Oct. 15.

The Aristide investigation began after information on the suspected payoffs was given to DEA agents by the informant, who has been described as reliable in other cases. The sources said the unidentified informant was unable to provide specific corroboration and showed "some deception" in a polygraph test administered by the agency.

"We get allegations, we pursue them in every way we can without any political interference," Miss Reno said during her weekly press briefing yesterday. "DEA has a structure for making informed decisions . . . to ensure there is no political interference, and I insisted that it be done that way."

Initially, she said the DEA made the decision not to question Mr. Aristide: "DEA made a decision; it was not made by the department." Later, however, she acknowledged the decision had been made by a committee within her department.

DEA spokesman Bill Ruzzimenti declined comment yesterday, saying that, as a matter of policy, the agency will neither confirm nor deny that anyone is the subject of an active investigation.

White House spokesman David Levy did not return a call to his office yesterday seeking answers on what and when administration officials knew about the Aristide investigation.

Haiti has long been a suspected transshipment point for cocaine headed to the United States from South America. Haitian officials and military leaders, according to law enforcement authorities, have been involved in smuggling since the 1980s.

The DEA investigation, according to Justice Department officials, has focused on a suspected Haitian-Colombian smuggling network established by Haitian Col. Jean-Claude Paul, who died in 1988 under suspicious circumstances.

Col. Paul, who at one time provided protection for Mr. Aristide during the priest's rise to political prominence in Haiti, was suspected by U.S. drug agents of making $40 million by facilitating cocaine shipments for the Medellin cartel between December 1986 and his death in November 1988.

Indicted in March 1988 by a federal grand jury in Miami on charges of aiding drug traffickers, Col. Paul died nine months later of poisoning at his home in Port-au-Prince. He had been accused of conspiring to import 200 pounds of cocaine into the United States. Also indicated were his brother, Antonio Paul, and his ex-wife, Marie Merielle Delnois.

As commander of the powerful Dessalines Barracks in Port-au-Prince, he was accused of using one of his personal airstrips in Haiti to ferry Colombian cocaine into the United States. The indictment came after a DEA informant, Osvaldo Quintana, outlined the suspected smuggling operations to a grand jury.

The 49-year-old colonel became one of the most powerful army officers in Haiti after the fall of the Duvalier family dictatorship in February 1986. He remained a key figure after being forced into retirement and managed to avoid being sent to the United States for trial.

Col. Paul died Nov. 6, 1988, after eating a bowl of soup containing a "toxic substance," which was not identified. A maid and gardener were arrested but not charged.

Fritz Pierre-Louis, a former Haitian army lieutenant who later defected, told a Senate subcommittee in 1988 that he personally turned over confiscated cocaine to Col. Paul only to have it disappear. Mr. Pierre-Louis said 70 percent of the colonel's Dessalines Barracks forces was involved in the drug trafficking.

Haiti is a key part of an international smuggling network that has long used freighters, small boats, commercial airliners and smaller airplanes to smuggle drugs to the United States. Its remote landing strips are easily accessible to small planes flying below radar level.

The DEA has estimated that a ton of cocaine is smuggled through Haiti to the United States each month, although shipments have been slowed by the recent U.S. embargo. A 1992 State Department report described Haiti as a "transshipment point of illegal narcotics, especially cocaine into the United States."

Mr. Aristide has denied any involvement in drug trafficking and has publicly condemned suspected trafficking within the Haitian military leadership that overthrew him. During his exile in Washington, he said the military leaders who deposed him were responsible for $500 million in smuggling annually.

Seizures of cocaine in Haiti, however, dropped from 3,812 pounds in 1990, the year before Mr. Aristide assumed power, to 415

pounds in 1991, after he took over as president.

In May, the Justice Department said it was investigating drug trafficking within the Haitian military. It said prosecutors had evidence that military officers were continuing to protect incoming and outgoing cocaine shipments.

A six-page memo named 14 top military officers. Haiti's port director and the Haitian National Intelligence Service as targets of the Justice Department probe. The memo said authorities had established "that the Haitian military have been closely involved in the facilitation of drug trafficking since at least the early 1980's."

The memo, which said indictments were not expected in the immediate future, said drugs confiscated from smugglers often were sold to other traffickers for delivery in the United States. It also said Haitian officers were closely involved with Colombian smugglers, although it did not identify the dealers.

According to the memo, the key target was Lt. Col. Michel Francois, chief of police in Port-au-Prince. Col. Francois, not the nation's military chief, Lt. Gen. Raoul Cedras, was identified as the most powerful figure in the regime that overthrew Mr. Aristide.

The memo does not mention Gen. Cedras as an investigative target. A confidential Senate report last year said the general's role in smuggling was not clear.

Mr. PRESSLER. Madam President, this decision not to interview Mr. Aristide is even more disturbing since American military forces are currently occupying Haiti and, according to a recent New York Times article, we are spending $5 million on covert activities to restore Aristide to power.

I ask unanimous consent to print in the RECORD the New York Times article at this point.

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

[From the New York Times, Sept. 27, 1994]

C.I.A. REPORTEDLY TAKING A ROLE IN HAITI

(By Elaine Sciolino)

WASHINGTON, Sept. 27.—In a move that some lawmakers believe could subvert the democratic process in Haiti, President Clinton has approved a secret contingency plan that authorizes unspecified political activities to neutralize the opponents of President Jean-Bertrand Aristide, senior Administration officials said today.

In addition, the $5 million plan authorizes the Central Intelligence Agency to spend $1 million on propaganda activities to help ease Father Aristide's return and to use covert means to protect American forces there from hostile military groups, the officials added.

To avoid charges that the United States is interfering, the C.I.A. does not have the authority to undertake political activities on its own, the officials added. But the vague nature of the term "political actions" has alarmed some lawmakers who fear that money could be used to corrupt politics in Haiti.

Administration officials briefed key lawmakers last Wednesday about Mr. Clinton's order, known as a finding, as required by law. Since then, the C.I.A. has begun to use some of the $1 million earmarked for propaganda for covert radio broadcasts and to penetrate military groups that might seek to harm American troops.

The officials briefing Congress told lawmakers that one of the goals was to "create a political climate" that would help put into effect the agreement that former President Jimmy Carter reached with Lieut. Gen. Raoul Cédras, Haiti's military leader, on Sept. 18.

Under that agreement, General Cédras and other military leaders must relinquish power after the parliament approves a general amnesty, or by Oct. 15, whichever comes earlier. The Clinton Administration supports an amnesty so that it does not have to forcibly remove the Haitian leaders if they refuse to leave.

A number of lawmakers said they were convinced that under the covert operation, pro-military legislators elected under disputed circumstances could be paid off to step aside, and that the C.I.A. had the authority to pay expenses, provide security or give other incentives to parliamentarians who do not want to vote for amnesty.

"I cannot discuss intelligence matters, but it would not be uncommon for the United States to get involved in some manner in promoting free and fair elections," said Senator Dennis DeConcini, Democrat of Arizona. "To me this could be done in many ways. I would think an open overt way would be the best. The institutions are there."

Senior Administration officials familiar with the Presidential finding insisted that it did not authorize the C.I.A. to bribe officials or try to influence the vote on amnesty.

"We have specifically excluded paying people off or getting involved in the political process in an intrusive way," said one senior Administration official. "We took those activities out. We have done absolutely zero in this domain, and I seriously doubt whether we will pursue this at all."

But a number of Administration officials conceded that there could be circumstances in which the United States might want to take action to stop the military from paralyzing Haitian politics, as it did last year in blocking the Governors Island accord, under which the military was to step down.

"Our concern is that the bad guys are going to bribe people, intimidate people, keep people away from the parliament," said one senior United States official. "On a limited basis, we may have to do things to counter that."

For example, if the United States uncovered a coup plot against Father Aristide, Washington could take measures to thwart it, officials said. And although, on paper at least, payments to deputies are not allowed, officials said they could be offered protection, transportation to and from parliament and other help.

Some lawmakers familiar with the plan also expressed concern about spending $1 million on C.I.A.-generated propaganda when Washington is already supporting an overt program, including two radio stations that broadcast messages from Father Aristide and the distribution of millions of pro-Aristide leaflets.

Administration officials countered that the covert propaganda program gives the Administration maximum flexibility and provides funds for activities like newspapers.

The secret order renders invalid an earlier $12 million secret plan to offer Haiti's three top military leaders a comfortable life in exile and to conduct covert activities that might undermine them.

Administration spokesmen officially refused to confirm or deny the existence of the secret programs. "Consistent with this Administration's steadfast practice, we do not comment one way or another on alleged intelligence activities," said Michael McCurry, the State Department spokesman.

As part of the plan, Mr. Clinton authorized the C.I.A. to introduce agents inside Haiti to detect plots to assassinate American soldiers or take them hostage.

In a formal review after the mission in Somalia, where 18 American troops were killed last October while trying to capture a clan leader, the President's Foreign Intelligence Advisory Board concluded 'that there was not sufficient support by the C.I.A., and that authority for covert operations should be in place whenever American forces were deployed in a potentially hostile environment, senior officials said.

Mr. PRESSLER. Apparently, we are spending millions of dollars in overt and covert aid to get rid of opponents of Mr. Aristide in order to return Mr. Aristide to power. Some of his opponents are alleged to have been involved in drug smuggling activities, and now there are allegations about Mr. Aristide as well.

It is unsettling to me that we are investing such large sums of money and putting U.S. servicemen in possible jeopardy on behalf of Mr. Aristide, yet the U.S. Government decides not to interview him about the allegations of an informant who is considered reliable.

I had hoped to appear before the Committee on Government Operations in the other body tomorrow to ask questions of the DEA Administrator, Tom Constantine. Regrettably, the chairman of that committee has refused my request to ask questions at the hearing.

Therefore, I have submitted my questions to the President. I want to know the results of the investigation into Haitian drug trafficking. What information has been uncovered? Who in the White House was notified of this information and when? Did the White House or the Justice Department make the decision not to question Mr. Aristide? Was the decision based on political factors?

Did the DEA interview Mr. Molina? Did the Justice Department cut a deal with him? If so, what were the details of the deal? Did he pass a lie detector test? Where is Mr. Molina now?

Madam President, what I want is simple. I want the administration to give a clear strong, unreserved statement that they know of no evidence that Jean-Bertrand Aristide, or anyone closely associated with him, accepted money from foreign drug traffickers.

The PRESIDING OFFICER. The Presiding Officer wishes to advise the Senator from South Dakota his time has expired.

The Senator from Connecticut.

Mr. DODD. Madam President, I want quickly, if I can, before yielding to the colleague from Iowa, to say with all due respect to my friend and colleague from South Dakota, that this is nothing new. Every day there was some new allegation raised about President Aristide.

Let me just inform my colleagues that we have received very credible evidence that the so-called source that our colleague from South Dakota refers to is totally unreliable, has been unreliable in dozens of cases before; that the major source of paid information that was received by our Government regarding Mr. Aristide came, in fact, from the very people who we are now trying to disarm in that country; that, in fact, a careful reading of the information from our Embassy in Haiti between January or February 1991 and the end of September 1991, when President Aristide was ousted in the coup, points to a clear, strong cooperation between the Aristide government and our Drug Enforcement Agency, and officials; that, in fact, the problem has resided in the very people we are trying to get rid of.

Colonel Francois, the head of police, the only job he had as a police officer, just moved into a $250,000 home in the Dominican Republic. He did not buy the place with a policeman's salary.

The problem is with the element we are trying to get rid of. I believe had there been further and serious allegations involving President Aristide and drugs, you would have heard of them a long time ago, given the effort to try and assassinate the character of this individual.

So I want the record to be clear for my colleagues.

Mr. PRESSLER. Will my colleague yield?

Mr. DODD. I will not yield.

There is absolutely no truth whatsoever to these 11th hour allegations regarding President Aristide and anyone who spends 5 minutes looking at it will draw the same conclusion.

Madam President, I am glad to yield 10 minutes to the distinguished Senator from Iowa.

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

The Senator from Connecticut has 2 minutes. The Senator from Iowa has 7 minutes.

Mr. DODD. I yield 9 minutes to the distinguished Senator from Iowa.

Mr. HARKIN. I thank the Senator for yielding.

Again, Madam President, there has been more disinformation and character assassination and rumor mongering about President Aristide than anybody I have ever seen.

This latest allegation of President Aristide and drug running has been leveled before. I am surprised by my friend and colleague from South Dakota, who is a good individual and an intelligent individual, to keep this kind of rumor mongering going. In fact, the article in the Washington Times dated October 3, to which my colleague refers, says that the information really came from Francois Biamby, who is the cousin of, guess who, Brig. Gen. Philippe Biamby. General Biamby is one of the heads of the military junta along with General Cedras. He is the one saying he delivered the money-filled suitcase to Mr. Aristide

Mr. PRESSLER. Will the Senator yield?

Mr. HARKIN. The Senator had his time. I will finish my statement.

I remember a year ago up in the secret office in room 407 when the CIA came in to give a briefing. I think the Senator from South Dakota may have been in on that briefing. At that time it was alleged that Mr. Aristide had taken drugs.

Well, guess where we got that information? After President Aristide was overthrown in the coup, Cedras and the military turned over to our people what they said were drugs that they had taken from President Aristide's residence. Based on that, the CIA gives us this information that he takes drugs.

Then we heard that President Aristide had been treated in a mental hospital in Canada. Well, it took me probably 45 days to 2 months to track that down. I finally did. This allegation has been totally, totally shown to be false. We had a person with an affidavit from President Aristide saying he could get any and all information from any hospital in Canada regarding any treatments he ever received. Armed with that, this individual went up to Canada to the hospitals and, of course, they said they had absolutely no record of ever treating him.

Just to show you the amount of disinformation the CIA can disseminate, when they first told us the year President Aristide had been in a mental hospital in Canada, it turned out that President Aristide was not even in Canada. He was studying biblical history in Israel. So you have to take this all into account.

I will tell you, there has been a campaign against President Aristide the likes of which I have never seen.

Mr. PRESSLER. Will my friend yield?

Mr. HARKIN. Madam President, there has been a lot of talk today about President Clinton. I want to say, Madam President, that President Clinton has done the right thing, the honorable thing, the good thing, and he has done it correctly.

President Clinton went the extra mile after he came into office to carry forward the policies of President Bush regarding Haiti. He went the extra mile to seek a peaceful solution. We had the Governors Island Accord. General Cedras signed it. Then there was the Harlan County incident. Rather than send our unarmed troops in there in harm's way, President Clinton sent them back and tried to seek a peaceful solution.

The PRESIDING OFFICER. Would the Senator from Iowa withhold?

It is difficult to hear the Senator from Iowa because of other conversations in the Chamber. The Presiding Officer would ask that other conversations cease.

Mr. HARKIN. President Clinton continued the negotiations. Then we put on the embargo. And then when it was clear that the Haitian generals would not leave, did President Clinton go off Lone Ranger-like to take care of Haiti? No. He went to the United Nations. He went to get other countries to support us. And, in fact, we have more nations supporting what we are doing in Haiti than we did in the Gulf war. So President Clinton went the extra mile.

And then, finally, he said, "Enough is enough, they have to go." And then, at the last minute, he sent a negotiating team down to Haiti for one last chance. And the negotiating team succeeded.

You know, Madam President, memories are short around here. I remember when Ronald Reagan went into Grenada. He did not go to the U.N. He did not go to seek any help. He went down there Lone Ranger-like; a country of 100,000 people. We lost 19 troops when we invaded Grenada. No one talks about that.

When we went after Noriega in Panama, we lost 24 U.S. soldiers. No one talks about that. I happened to have supported that. The day after Grenada, I got on the floor and supported it. I supported President Bush when he went to Panama.

And yet, while we are here in Haiti, while we are disarming the military and paramilitary Forces, while we are bringing Aristide back, we have not lost one American soldier and hope to God we do not lose any. Yet, for all of that, people get on the floor today and castigate President Clinton as though he did something wrong.

I want you to know I am proud of this President and I am proud of what he has done. We have finally taken steps to root out one of the worst dictatorships, terrorist organizations in this hemisphere and to stick up for the people of Haiti.

You do not have to take my word for it. Read the newspapers. Every day wherever our troops are in Haiti, the people come out and treat them as liberators, embrace them, turn over their guns to them.

As long as our troops are on the side of the Haitian people, they will not be harmed. The only harm that could possibly come to our troops would be from FRAPH and other paramilitary entities that are down there.

Finally, Madam President, I also want to praise President Aristide. His entire life has been one of fighting for the poor, those without power, those who suffered under the dictator Duvalier, the Tonton Macoutes and the repressive military. Here is a man who was elected in a free election with 67 percent of the vote. Under Aristide,

human rights abuses dwindled precipitously in the 8 months he was in office.

There was not one case of necklacing during his entire tenure in office. Oh, we always hear about that, but the fact remains, there was not one case of necklacing when President Aristide was in office. That happened before he assumed office.

Under his brief tenure, President Aristide stopped the drug trafficking, he halted abuses by the military, he paid off their foreign debts, he took away Government enterprises and turned them over to the private sector.

It was the military and the elite that said, "No, he had to go," and 8 months later he was overthrown in a coup. Since that time, a disinformation campaign the likes of which we have never seen has been continuing, trying to discredit him and tear him down.

The closest I can come to what has happened to President Aristide is Nelson Mandela. Today, President Mandela addressed a joint meeting of Congress. We all stood and applauded, wildly enthusiastic. But just a few years ago he was branded by some people here as a Communist terrorist, someone who, if let out and got power would unleash bloodletting throughout South Africa to seek vengeance. Madam President, it did not happen then.

President Aristide has vowed reconciliation without vengeance and that is what he will do.

Mr. DODD. Will my colleague from Iowa yield?

Mr. HARKIN. I am delighted to yield.

Mr. DODD. I just got off the phone with someone in the Deputy Attorney General's office, who called because he was disturbed over some of the comments made on the floor regarding the Justice Department's alleged interference with the Drug Enforcement Agency's handling the allegations regarding President Aristide's involvement with narcotics. He told me that at the briefings with Senator HATCH of Utah and Senator BIDEN of Delaware, the chairman of the Judiciary Committee, they are satisfied that the Drug Enforcement Agency made the decision on their own based on the fact there was no merit whatsoever to the allegations not to interview President Aristide. The Justice Department was not involved. Two of our colleagues, senior members of the Judiciary Committee, have been briefed on this point.

Mr. PRESSLER. Will my friend yield?

Mr. DODD. And, in fact, as to the allegations raised by our colleagues, for three times attempts have been made to communicate the same information and the calls have not been returned.

Mr. PRESSLER. Will my colleague yield?

Mr. HARKIN. How much time do I have remaining?

The PRESIDING OFFICER. One minute and 30 seconds.

Mr. PRESSLER. Will my colleague yield?

Mr. HARKIN. I do not have the time to yield.

Madam President, there is story that will come out in The Nation magazine tomorrow that paints a terrible picture of FRAPH, the right wing terrorist organization in Haiti, and the fact that it has close ties to our Central Intelligence Agency and Defense Intelligence Agency.

Madam President, if these charges are indeed true, it raises very serious questions as to what our CIA is doing in Haiti right now. I raised this issue here on the floor a week ago. Well, certain elements of the CIA who have been spreading disinformation about President Aristide are now back in Haiti again.

Madam President, I ask unanimous consent that this article from The Nation magazine be printed in the RECORD.

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

BEHIND HAITI'S PARAMILITARIES: OUR MAN IN FRAPH

(By Allan Nairn)

Emmanuel Constant, the leader of Haiti's FRAPH hit squad, is a protege of US intelligence. Interviews with Constant and with U.S. officials who have worked directly with him confirm that Constant recently worked for the C.I.A. and that U.S. intelligence helped him launch the organization that became the FRAPH. Documentary evidence obtained from other sources and confirmed in part by Constant also indicates that a group of attaches—some of them implicated in some of Haiti's most notorious crimes—have been paid for several years by a U.S. government-funded project that maintains sensitive files on the movements of the Haitian poor.

In my October 3 Nation article ["The Eagle Is Landing"] I quoted a U.S. intelligence official praising Constant as a "young, pro-Western intellectual . . . no further right than a young Republican" and saying that U.S. intelligence had "encouraged" Constant to form the group that emerged as FRAPH. Reached at his home on the night of September 26, Constant confirmed the U.S. official's account. He said that his first U.S. handler was Col. Patrick Collins, the U.S. Defense Intelligence Agency attache, who he described as "a very good friend of mine" (Constant spoke of dealing later with another official he called "[the US's] best liaison," but he refused to give a name). Constant said that colonel Collins had first approached him while Constant was teaching a training course at the headquarters of the CIA-run SIN (National Intelligence Service) and was also (at the Bureau of Information and Coordination [BIC] in the General Headquarters of the Haitian coupe regime) building a computer data base for Haiti's notorious rural Section Chiefs.

Giving an account that dovetailed closely with that of the US official, Constant said that Collins began pushing him to organize a front "that could balance the Aristide movement" and do "intelligence" work against it. He said their discussions had begun soon after Aristide fell in September 1991, They resulted in Constant forming what later evolved into FRAPH, a group that was known initially as the Haitian Resistance League.

Constant at first refused to go beyond his usual public statements on the FRAPH, but opened up after I told him that I understood that he knew Col. Collins. Our initial interview took place on the first day of the bold anti-FRAPH protests on the streets of Port au Prince. Constant said that he wanted to offer his men as "guides" for the occupation force, saying that "I've participated in the stabilization of this country for the past three years, and the US knows it very well, no matter what agency you talk to."

Two days after that, as a crowd marched past FRAPH headquarters, FRAPH gunmen opened fire killing one of the demonstrators. Five days later, in the wake of embarrassing coverage about both continued mayhem by the FRAPH and a US raid on a supposed pro-Aristide terrorist camp (that was actually—as it turned out—a world-famous dancing school). US occupation forces raided FRAPH's downtown Port Au Prince headquarters, carting away two dozen street-level gunmen (and women) as live cameras and cheering crowds looked on. Some US reporters proclaimed that this was the death of the terror system, and CNN's Richard Blystone, announcing that there was more crackdown to come, said that Constant was now "at large" (a claim also made by the next morning's New York Times).

Five minutes after Blystone's CNN broadcast, I reached Constant by telephone at his Port-au-Prince home. He said that the arrests had only been of low-level FRAPH people, and that he still intended to put his men at US disposal. He said that there were no US troops outside his house and worried that it might be set upon by mobs. Then he said that he had, just then, to leave for a meeting (on the street, he said) with a US Embassy staffer who was hitherto unknown to him but who he thought might be from the CIA.

He said that he would call back after the meeting, but he didn't, and I couldn't reach him again. But the next day Constant appeared in public guarded—for the first time—by US Marines, and stated his fealty to the occupation and his support for the return of Aristide.

Much of the US press played this as a stunning about-face, but, in fact, Constant had been saying those things in public and to me all week. He had told me that the Carter/Powell/Nunn-Cedras pact, was "the last chance for Haiti," and had expressed no worry about the return of Aristide, saying that the new Parliament, to be chosen in December, would be constituted in a way that would hem him in.

Col. Collins is now back in Haiti (his last tour ended in 1992). The Clinton administration has brought him back for the occupation, and he has refused to comment on the record. But a well-informed intelligence official (speaking before the FRAPH furor broke) confirmed that Collins had worked with Constant and had, as Constant says, guided him and urged him on. Collins has, in recent weeks, spoken quite highly of Constant and has said that Constant's mission from the United States was to counter the "extreme" of Aristide. Collins has also said that, when he first approached him, Constant "was not in position to do anything . . . [but] things evolved and eventually he did come up, [and] what had been sort of an idea and technically open for business—all of a sudden, boom, it takes on national significance."

When the relationship started, Constant was working for the CIA, teaching a course

at the Agency-run SIN on "The Theology of Liberation" and "Animation and Mobilization." The SIN, at that time, was engaged in terrorist attacks on Aristide supporters, as were Constant's pupils, army S—2 field intelligence officers. The targets included, among others, popular church cathecists. Constant says that the message of the SIN course was that though communism is dead, "the extreme left," through *ti legliz*, the grass-roots Haitian "little church," was attempting "to convince the people that in the name of God everything is possible" and that, therefore, it was right for the people to kill soldiers and the rich. Constant says he taught that "Aristide is not the only one: there are tens of Aristides."

Collins has recently acknowledged that FRAPH has indeed carried out many killings, but he has said that they have not been as numerous as the press and human rights groups claim. He has said that one approach is that "the only way you're going to solve this is . . . [that] it'll all end in some big bloodbath and there'll be somebody who emerges from it who will establish a society of sorts and a judicial system and he's going to say: O.K., you own the land, you don't—that's it, whether it's fair or not."

Though most U.S. officials would never speak that way, it's universally acknowledged that FRAPH is an arm of the brutal Haitian security system, which the US has built and supervised and whose leaders it has trained, and often paid. When I asked Constant, for example, about the anti-Aristide coup, he said that as it was happening Col. Collins and Donald Terry (the C.I.A. Station Chief who also ran the SIN) "were inside the [General] Headquarters." But he insisted that this was "normal;" the CIA and DIA were always there.

A foreign diplomat who knows the system well says that it is from those very headquarters that Haiti's army, with the police and the FRAPH have run a web of clandestine torture houses (one of them in a private home at #43 Fontamara), some of which are said to still be working as this article is written on the occupation's 17th day. According to the diplomat—who quoted internal documents as he spoke—the walkie-talkies of house personnel are routinely monitored by the U.S. Embassy, which, he said, also listened in on those of the U.N. Civilian Mission. Some interrogators wear shirts marked "Camp de Aplicacion" (an army base). The diplomat also detailed a structure of seven chief attaches who have run killings and brought victims to the torture houses.

Four of those senior attachés (as well as other, lower-ranking ones), according to documents and interviews, appear to have worked out of the Centers for Development and Health (C.D.S.), a large multiservice clinic funded mainly by the U.S. Agency for International Development. One of them, Gros Sergo (who was killed in September, 1993), listed C.D.S. on his résumé, writing that he worked in the archives and was a "Trainer of Associates" there. Another, Fritz Joseph—who, Constant says, is the key FRAPH recruiter Cité Soleil and who, according to official records, has been a chief attaché since the coup—is acknowledged by the C.D.S. director to have worked at C.D.S. for many years. The two others, Marc Arthur and Gros Fanfan (implicated by the UN in the murder of Antoine Izmery), have been named in sworn statements as having regularly received cash payments from C.D.S. Constant confirms that FRAPH leaders and attachés are working inside C.D.S. (and says specifically that Marc Arthur has worked there) and says he speaks often on the phone with the clinic's director, Dr. Reginald Boulos. Boulos denies that he speaks to Constant, says that Sergo's résumé is wrong, says he does not knowingly employ attachés, and says that he did not know until recently that Fritz Joseph was a FRAPH leader but that he fired him when critics pointed out that he was. Boulos said that C.D.S. files track "every family in Cité Soleil" but insisted that, as far as he knows, attachés don't have access to the archives. Boulos said he hadn't seen Sergo in years, and when told of an entry from Sergo's calendar that appeared to contradict that, he said it was mistaken. He also downplayed the fact that Sergo had listed him as a personal reference, along with coup leader General Raoul Cédras (Another AID-funded unit Haiti, Planning Associates, has also said, in AID meetings in Washington, that it employs FRAPH personnel).

Sergo's papers indicate that he reported to Police Chief Michel Francois (he has a pass, written on the back of Francois' card, authorizing him and Marc Arthur "to see the Chief of Police at all hours of the day and night"), that he and his squad organized anti-Aristide demonstrations, that, just before C.D.S., he was in the Interior Ministry's "intelligence police," and that he had appointments to meet with the CIA's SIN chief, Col. Sylvain Diderot, and with members of the Mevs. one of Haiti's ruling families.

Though some Haitian officials claim that Francois was on the CIA payroll, this is denied by Lawrence Pezzullo, the former US Special Envoy in Haiti, but Pezzullo did reveal that the CIA paid Francois' brother, Evans, now a Haitian diplomat in the Domincian Republic (Pezzullo joked, as to the Colonel himself, "you couldn't pay him enough to buy him.")

FRAPH emerged as a national force in the latter months of 1993 when it staged a series of murders, public beatings, and arson raids on poor neighborhoods. In one attack, Mrs. Alert Belance had her right hand severed by FRAPH machetes.

President Clinton, when it was convenient, later used photos of these macabre assaults to (accurately) brand Haiti's rulers as "armed thugs [who] have conducted a reign of terror." But, in the moment when that terror was actually at its height, Clinton used the FRAPH killings to harshly pressure Aristide to "broaden" his already-broad cabinet in a "power-sharing" deal. Pezzullo, in part echoing Collins' original vision for Constant (though he denies any knowledge of the arrangement), says that FRAPH was "a political offset to Lavalas" and that as the "bodies were starting to appear" "We said [to Aristide]: the only people seen operating politically now are the FRAPHistas," and that they had to "fill that gap with another force with the private sector, otherwise these FRAPH people will be the only game in town."

It is often pointed out that FRAPH embarrassed the US by chasing off the Harlan County, but in that case, US officials could not agree about whether the ship should even be there. Constant says he got no US guidance, but he openly announced his dockside rally the day before and he apparently did not get any US warning to call it off.

On the fundamentals, though, US officials have been united in pressing Aristide from the right. Constant said, in our first interview (well before his Marine press conference), that he might now be "too high profile" for the US. But even if he is, US intelligence is a system. And—as Constant once taught about Aristide—there are others in the wings.

Mr. HARKIN. I also ask unanimous consent that a paper, entitled "Background on FRAPH," also be printed in the RECORD.

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

[From the International Liaison Office for President Jean-Bertrand Aristide]

BACKGROUND ON FRAPH

FRAPH (Haitian Front for Advancement and Progress) is a right-wing, extremist, paramilitary organization comprised largely of current and former members of the security forces and their civilian collaborators. Members of FRAPH have carried out numerous illegal "arrests," beatings, torture, intimidation and murders of supporters democracy, often taking the victims to the local military barracks for incarceration. In most parts of the country, local FRAPH organizations work in very close collaboration with the military, and at times are better armed than the military. Military officials often claim that "FRAPH is we, we are FRAPH."

The acronym FRAPH sounds like the French and Creole words for "hit" and the group's symbol is a fist. The organization first came to international attention in October of 1993, when it organized to oppose the planned return of President Aristide under the Governors Island Accord. Since then FRAPH has worked to consolidate itself as a political front organization for the military coup regime. It recruits members through intimidation, seeking to convince Haitians that democracy will never return and that the only way to survive is to join FRAPH. FRAPH revives Duvalier's Tonton Macoute organization to fit the current political needs of coup leaders.

FRAPH'S LEADERSHIP:

FRAPH is "loyal primarily to the nation's shadowy police commander, Lt. Col. Michel Francois." (Douglas Farah, Washington Post, 1/26/94).

Emannual Constant, FRAPH leader, is the son of a former army commander under Francois Duvalier. (Bella Stumbo, Vanity Fair, 2/94)

FRAPH's secretary general Jodel Chamblain is a former Tonton Macoute. (Pamela Constable, Boston Globe, 1/22/94; Stumbo, 2/94). He reportedly participated in the massacre of voters in the election of November 29, 1987, as well as in Roger Lafontant's failed coup d'etat of January 1991.

Lynn Garrison, an advisor to Lt. Gen. Cedras and the Haitian military, a Canadian who also reportedly holds a U.S. passport and owns a Haitian art gallery in Los Angeles, claims he helped to found FRAPH. (Stumbo, 2/94).

FRAPH'S ORIGINS

FRAPH was consolidated when it organized a small group of thugs and turned back the U.S.S. Harlan County, arriving with an international mission as specified under the Governors Island Accord. To quote Emannual Constant: "I still can't believe we succeeded * * * We were all so scared. My people kept wanting to run away. But I took the gamble and urged them to stay. Then the Americans pulled out! We were astonished. That was the day FRAPH was actually born . . . now we know (Aristide) is never going to return." (Stumbo, 2/94).

FRAPH'S FUNDING AND ARMS

Michel Francois controls black market in gasoline and funnels resources into FRAPH. (Farah, 1/26/94).

FRAPH "receives funding from Francois and a few ultraconservative members of Haiti's elite." (Farah, 1/26/94).

The military supplies FRAPH with weapons (an obvious point, given that there is no other source of weapons in Haiti). (Farah, 1/26/94).

Many members of FRAPH (section chiefs, paramilitary attaches, and former Tonton Macoutes), now reportedly carry i.d. cards signed by army officers. (Haiti Info. Feb. 6, 1994).

FRAPH'S ACTIVITIES AND TACTICS

The U.N. International Civilian Mission to Haiti has identified FRAPH as being involved in extensive human rights violations. For example, in reference to repression of a youth group the Mission states: "Other members of the organization were reported to have been illegally arrested by members of the Duvalierist political organization *Front pour I ' advancement et le progress haitien* (FRAPH) on the day of their general strike, 7 October, and taken to . . . the site of a mass grave during the Duvalier era where bodies have regularly been discovered since the *coup d'etat*. One person . . . was questioned about the activities of supporters of President Aristide and shown photographs of several people . . . whom his interrogators said they were going to kill; he also saw some 20 bodies at the site." (Supplementary Report of the International Civilian Mission, Nov. 18, 1993).

FRAPH is responsible for burning down an estimated 250 homes in Cite Soleil, a large slum in Port-au-Prince, on December 27, 1993. Haitian human rights groups estimate 70 people murdered. According to the Boston Globe, "Driving residents out with clubs, they torched shacks with gasoline and grenades." (Constable, 1/22).

FRAPH members prevented the fire department from putting out the fire. After the fire, FRAPH members have been alleged to be present at offices where aid was being distributed to victims. (Report by the National Justice and Peace Commission, January 1994.)

FRAPH members gather intelligence for the military. (Farah, 1/26/94).

FRAPH organizes violent public demonstrations against democracy. (Stumbo. 2/94; Farah, 1/26/94).

FRAPH members make explicit death threats against President Aristide and his followers. For example: FRAPH leader Berniche Elysee of Jeremie stated "If Aristide comes back . . . I personally will kill him;" FRAPH member Joel Avril of Jeremie stated "If (Aristide) comes here, he is dead." Also, FRAPH member Frenel Jean stated, "It is better that 1,000 Aristide supporters die than one Macoute." (Farah, 1/26/94).

FRAPH uses U.S. flags at demonstrations and often chants pro-U.S. slogans. Constant has a large U.S. flag in his house. (Farah, 1/26/94).

FRAPH'S POLITICAL STRATEGY

FRAPH is expanding and consolidating its membership through the use of terror. "FRAPH has been opening dozens of offices around the country and signing up members with fear, free food and promises to end Haiti's crisis." (Susan Benesch, Miami Herald, 3/7/94) As one resident of Cite Soleil stated; "If you don't become a member of FRAPH, you had better leave or you'll be dead," (Haiti Info, Feb. 6, 1994)

FRAPH's political strategy appears to be: (1) prevent the return of President Aristide; (2) establish a reign of terror and wipe out democratic organizations in civil society; (3) consolidate itself as an organization; (4) attempt to take on the appearance of a legitimate political party in order to institutionalize its hold on power and gain international acceptance, probably through elections.

FRAPH is now beginning to attempt to portray itself as legitimate, civilian organization not directed by the military in "a bid to clean up its thuggish image." (Benesch 3/7/94). Emmanuel Constant "said the days of holding rallies surrounded by men with automatic weapons had passed, but that in the beginning 'people needed to feel a little fear.'" (Farah, 1/26/94).

Constant also said that "FRAPH's first goal was to do 'whatever is necessary' to keep Aristide out" and that "now the organization of the population is the second objective." (Benesch, 3/7/94).

To appear less violent "Constant said he recently obeyed Francois' request that FRAPH keep its weapons hidden." (Benesch, 3/1/94).

FRAPH is pushing for elections. Emmanuel Constant "would like to run for president and thinks he can win." (Farah. 1/26/94).

Mr. HARKIN. Madam President, what we are considering here is a resolution supporting our President and supporting our troops in Haiti. This troubled land needs some time. It needs our help. It needs our military there to make sure that violence is not wreaked upon the people of Haiti by the paramilitary groups. If we can not stick up for democracies in our own hemisphere, God help us. If we cannot stand on the side of the Haitian people who have welcomed us as liberators, to help them throw out the yoke of repression and to help them build a functioning democracy, then we have no right to claim leadership in the world or in this hemisphere.

Madam President, this resolution deserves the support of everyone here. We hope and pray that our troops will continue to do the same kind of work that they are doing in disarming and dismantling these groups. We hope and pray that the paramilitary groups in Haiti will not resort to the violence to which they have become accustomed in the past.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. This resolution deserves overwhelming support and approval by the Senate.

HAITI

Mr. JEFFORDS. Mr. President, events in Haiti continue to unfold amidst great uncertainty and danger for U.S. troops there. Although the United States-led United Nations effort offers hope to the people of Haiti that peace and democracy can come to their troubled homeland, the success of our current effort is by no means assured. I know I state the obvious, and voice the feelings of many in this Chamber, when I say we must take great care not to be drawn into a protracted and largely unilateral effort to achieve noble but ill-defined goals of stability and democracy in Haiti.

I welcomed the agreement reached by President Carter and his delegation with the military authorities in Haiti and commend President Carter, General Powell, and Senator NUNN. Clearly, United States Forces faced a much less threatening situation in Haiti upon arrival than they would if they had to fight their way ashore. While the agreement is not perfect, it may prove to be a basis for an orderly transition from authoritarian rule back to democracy.

The political stability and economic progress of our hemisphere are, in my view, solidly in our national interest. Our own domestic prosperity depends on having democratic societies with which to trade and which do not threaten our shores with massive waves of immigrants.

Three years ago, Haitian President Aristide was overthrown by a military junta. No matter what one thinks of Aristide personally, he was overwhelming elected president and still has the support of the majority of the Haitian people. Following the coup, the military government brutally suppressed Aristide supporters while human rights abuses on the island skyrocketed.

I supported the intensive diplomatic efforts by the United States and the international community to convince the unlawful military-led government in Haiti to step aside and allow a peaceful return to democracy. Unfortunately the Haitian military leaders refused to implement the Governor's Island Accords they signed last summer and have stonewalled all diplomatic efforts since then.

The United Nations has threatened and sanctioned the use of force to remove the illegal government from Haiti. And having made that threat, we—the United States and the international community—had to be willing to carry it out.

The on-going violence in Haiti is deeply troubling to me, and one of our objectives must be to see that it does not continue. Clearly the task of gaining concrete operational control over the Haitian police force is well underway. This process must be completed and these functions must be turned over to a U.N. force as soon as possible.

We need look no further than the immediate region to see an example of how this approach to ending a civil war can be successful. El Salvador, while different from Haiti, in many significant ways, provides a guide for successful demilitarization and separation of military and police forces. We can also look to Honduras, traditionally the second poorest country in the hemisphere after Haiti, for encouragement that a poor country, when it has a commitment to democracy, can make great progress in asserting civilian control over the military. The economy of Honduras is slowly, steadily gathering strength and attracting investment as the stability of democracy

creates a more healthy economic environment. With some assistance, this too, could happen in Haiti.

As we look to the swift completion of the United States military mission in Haiti and a replacement of U.S. soldiers with U.N. forces, I propose that we pause for a moment to look beyond Haiti, to think for a moment about what our national priorities and goals really are. Many of my colleagues do not see reinstatement of democracy in Haiti as in our vital national interest. I have argued that if we take the long-range view, it certainly is. This disagreement points up the need for better formulation and then clearer articulation of our vision of our place in the world. In the absence of a clear understanding of our role, it is impossible to sort out which trouble spots should get our attention and where we should expend our limited resources. I urge the President and the Congress to take up the challenge that this debate—as well as discussions of the tragedy in Bosnia—has so poignantly illuminated and begin the very difficult work of formulating a new expression of our national goals and priorities for the coming years.

Mr. BRADLEY. Mr. President, I would like to take a moment to explain why I am compelled to vote against the leadership's resolution on Haiti.

There is much in this resolution I agree with. For example, it states that, "the men and women of the United States Armed Forces in Haiti who are performing with professional excellence and dedicated patriotism are to be commended." I could not agree more.

It also says, "the President should have sought and welcomed Congressional approval before deploying United States Armed Forces to Haiti." Again, I fully agree.

This resolution also asserts that, "the departure from power of the de facto authorities in Haiti, and Haitian efforts to achieve national reconciliation, democracy, and the rule of law are in the best interests of the Haitian people." Who could argue with that?

However, the heart of this resolution is the statement that, "Congress supports a prompt and orderly withdrawal of all United States Armed Forces from Haiti as soon as possible."

Mr. President, this is not good enough. Our troops must come home by a specific date, not at some indefinite future time. As our experience in Somalia demonstrated, we need to set a legal deadline for United States withdrawal if this is to be anything more than a warm and fuzzy statement of good intentions. Without a legal deadline, U.S. decisionmaking will not develop and implement a plan for withdrawal. A sense of Congress that the troops should come home "as soon as possible" is not enough.

This is not a question of rushing the United States out of Haiti, leaving it to descend back into chaos. It is a question of setting the clock ticking so that the administration will have to formulate and implement a plan to turn over the job of policing Haiti to police.

In Somalia, our military went in with one mission, then saw it transformed into something very different. The result was tragedy. In Haiti, we are seeing the same phenomenon. Our troops were initially trained as invaders, then told they were partners with the Haitian authorities, and now have been transformed into police. Every day in Haiti brings an unforeseen circumstance which leads to a change in the mission.

Let me just list a few examples:

September 18: The Carter-Cedras agreement states, "the Haitian military and police forces will work in close cooperation with the U.S. Military Mission."

September 20: After U.S. soldiers watched Haitian police beat a pro-Artistide demonstrator to death, General Shalikashvili said, "We are not in the business of doing day-to-day law and order."

September 21: An unnamed "senior administration official" is quoted by the Washington Post describing a new approach: "Where a military personnel observes grave abuses by the Haitian police or military that threatens the life of a victim * * * he may be authorized to intervene by the senior United States commander on the ground."

September 22: U.S. troops seize the Haitian army's heavy weapons.

September 24–26: After a firefight in Cap Haitien and the resulting chaos, U.S. troops seize police stations, assume police responsibilities in the north of the country. General Shalikashvili announces that U.S. troops will intervene "if mob violence begins to threaten the overall stability of the country."

September 27: U.S. forces assume responsibility for security at the Parliament building.

September 30: Administration officials announce that the troop ceiling will be raised from 15,000 to 19,600.

October 1: U.S. forces move to disarm paramilitary groups. An unnamed senior official says the decision whether or not to intervene is tactical; that is, to be taken on a case-by-case basis.

October 2–3: U.S. forces seize paramilitary leaders.

October 5: The Washington Post quotes a United States official in Port-au-Prince as saying, "clearly, the United States has been drawn into doing more traditional police work than originally intended. There was a real assumption the Haitians would carry out their functions. Were we naive? I guess to some degree."

I opposed the use of American troops in Haiti absent a compelling rationale. Without a clear definition of the goals, means, contingency plans, and exit strategy, the administration should not deploy American troops. From the continuing mission creep we are witnessing in Haiti, it is clear that the administration does not have a clear goal, means, contingency plans, or exit strategy.

Mr. President, combat troops should not be turned into police. The two roles are totally different. One uses overwhelming force to crush a uniformed enemy; the other uses minimal force to control a civilian population. One requires fury, the other restraint.

History is filled with examples of the difficulty of using combat troops to try to impose civil order. We need look no farther than Israel's experience with the Palestinian intifada. The early days of the uprising in 1987 and 1988 were marked by high Palestinian casualties, in large part because Israel's magnificent combat troops were unsuited to the task of civilian riot control. Only after Israel deployed border police and other units trained in police functions did the casualty numbers drop.

Mr. President, I will vote against this resolution because I support our troops. I support them too much to go on record favoring their continued use as policemen in Haiti.

Mr. LAUTENBERG. Mr. President, I intend to vote for this resolution. But that vote is not a vote for, or an endorsement of, our policy in Haiti.

I should begin by observing that I agree with the resolution's claim that the President should have come to Congress for authorization prior to committing American troops to an invasion or long-term mission in Haiti. Frankly, Mr. President, I would not have authorized such action. I am not persuaded that vital national security interests were at stake in Haiti. Nor am I persuaded that the military can succeed, in the long run, in restoring and preserving democracy in Haiti for the long term.

Admirable as our motives for wanting to see democracy restored are, in my mind they do not justify the use of military force. Military force is not just an extension of diplomacy; it is the ultimate response to a direct and significant threat to our national security interests. Much as I despise what the dictators did in Haiti, I do not believe that their actions were a direct and significant threat to America's national security.

One of the reasons I would not have authorized our action in Haiti is the ambiguity that continues to surround our mission there. We have seen American soldiers standing by while Haitians slaughtered each other, and we have been appalled by that image. But when American soldiers intervene to prevent such action, they inevitably become involved in keeping civil order. This is not a military mission, it is a

civilian mission. And when our military performs civilian missions, they also become bogged down in civilian political disputes. Hopefully the multiple reporting requirements mandated by this resolution will help us avoid a gradual expansion of our mission into the sort of ill-fated nation building exercise which ended so tragically in Somalia.

Now, Mr. President, I have been pleasantly surprised by our success in Haiti so far. Things seem to be moving in the right direction. That is, in my mind, a sound reason to get out while the getting is good, not a reason to stay there until things turn sour. I want our men and women out of Haiti as soon as possible. This resolution does not accomplish that goal but it at least brings us closer to it. And in that spirit, I will support it.

One final point, Mr. President, I am disturbed by the possible precedent that is being established by our decisions to intervene militarily. In Haiti, despite a brief bow at the United Nations and none to the United States Congress, and a sustained effort to create a facade of multilateral support, the United States essentially decided to go in because we were disturbed by what was happening there and by the failure of diplomacy to achieve the results we wanted. Mr. President, if we adopt that as a rationale for military action, how can we prevent other countries from using it as well? If Russia objects to the behavior or internal politics of the New Independent States surrounding her and decides to intervene, how can we object? How will we distinguish our justification for using force from theirs?

That is not to suggest, of course, that unilateral American military action can never be appropriate. It is. But since it is a recourse of the state, it ought to be a last recourse, one which is used sparingly and only when the central interests of the United States hang in the balance. That is not the case in Haiti. And even if, as we all hope, things turn out well there, that ought not be the lesson we learn from our involvement in Haiti.

RESOLUTION ON UNITED STATES INVOLVEMENT IN HAITI

Mr. HATCH. Mr. President, I rise today to express my full support for the resolution that is now before us. This resolution is not restrictive in nature or an attempt to undermine, in any way, the efforts of our military forces who are carrying out their orders with impeccable skill. Rather, this resolution is clearly a request for essential information to be provided to the U.S. Congress on a matter of supreme importance.

Members from both Houses of Congress, Republican and Democrat alike, have been demanding a clearer explanation from the Clinton administration for the commitment of United States troops to resolve the Haitian situation.

Public opinion polls and media analysis throughout this ordeal have reflected frustration with what appears to be the development of American foreign policy and the commitment of U.S. Armed Forces without defined parameters. The questions posed by this resolution are an attempt by Congress to assist the Clinton administration in more clearly setting forth its goals in Haiti.

It would be troubling indeed if the administration were unable to respond to these questions publicly to Congress and to the American people. If such explanations could not be provided, it would be a disturbing indication that the administration is itself unclear about the foreign policy it is pursuing in Haiti and about the correct use of military power. I do not think, therefore, that the Clinton administration should view this resolution as unreasonable or onerous.

Mr. President, along with the great majority of my fellow Utahns, I was strongly opposed to employing United States troops to resolve the political and social problems of Haiti. I do not believe that U.S. troops should be used for nation building. Our painful experiences with mission creep and nation-building attempts in Somalia surely have not been erased or forgotten in such a short time. We cannot correct history, but we certainly can learn from it.

We find ourselves the biggest world power at a time of worldwide uncertainty. But certain principles remain fast. The administration is accountable to the American people and to their Representatives in Congress. The administration must communicate its policies promptly and is obligated to explain the rationale for its single-handed commitment of U.S. forces and, as of yet, untold hundreds of millions of dollars.

What precisely is the plan in Haiti? Our troops have been there nearly a month, and what do we know?

Vague generalities of a generic mission statement have been published. Unknown amounts of taxpayer funds have been committed. What is our explicit obligation to President Aristide? What is President Clinton's criteria for calling the mission completed and bringing our U.S. troops home?

You can't expect to run a successful business without a business plan. The American people want to know exactly what President Clinton's plan is for Haiti. Their money and their sons and daughters are the collateral for this U.S. investment, and it is understandable that they want to know both the risks and the returns.

Mr. President, I urge my colleagues to support this resolution.

THE CLINTON ADMINISTRATION'S POLICY ON HAITI—MORE QUESTIONS AND STILL NO ANSWERS

Mr. DURENBERGER. Mr. President, since September 19, 1994, 10,000 U.S. ground forces have been engaged in peacekeeping in Haiti—with another 10,000 or more members of the armed services on board ships in waters off the Haitian coast.

We are all extremely proud of the way that our men and women in uniform are conducting themselves in Operation Uphold Democracy. We were also proud of their conduct most recently in Somalia and in Rwanda.

There is nothing missing with respect to the dedication and loyalty of the United States forces now in Haiti. What is missing is leadership at the top.

This absence of leadership was evident in the Clinton administration's failure to consult with Congress before going to Haiti. As the Clinton administration failed to consult with Congress before turning what was a successful humanitarian mission in Somalia into a manhunt for Aideed and a disastrous nation-building project.

Failure to consult with Congress has deprived the American people of a full discussion of what the United States' interest is in Haiti and why we are there—if the Clinton administration knows.

If there is a present administration policy toward Haiti—both in the short term and the long run—it certainly has not been articulated to Congress or to the American people.

President Clinton's actions with respect to Haiti raise numerous question but provides no answers.

However, you can be sure that the United States will be feeding over one million Haitians a day. By next February or March the Clinton administration will be submitting a supplemental appropriation request for hundreds of millions of dollars just for food and other humanitarian assistance.

As has been the budgetary strategy in the past, there probably will be a huge supplemental appropriation to pay for the cost of our military presence in Haiti. But will the American people be willing to pay the bill next year?

What is happening now in the Pentagon is that money is being taken from accounts intended for other purposes and used to pay for our military presence in Haiti. This is an approach reminiscent of robbing Peter to pay Paul.

A Department of Defense estimate provided to Congress set the cost at $427 million over normal operating expenditures for the first 7 months of the operation.

Another estimate—apparently based on Department of Defense internal documents but not officially confirmed by DOD—estimated that it would cost $1.5 billion to invade Haiti and to maintain United States forces in Haiti through 1995.

However, these are only estimates. When have estimates of this nature ever been correct? The final bill will

probably be millions or billions of dollars more than any estimate provided by the present administration.

What the peacekeeping budget of the United Nations? About one third of that budget is paid by the United States. How much is the United Nations going to contribute to nation-building in Haiti?

And what is the international community doing to provide money and personnel to support the return of democracy to Haiti? We are told that 21 nations are expected to provide troops as well as law enforcement and technical personnel.

If what we are told actually happens, then some time in the near future there will be a U.N. force in Haiti comprised of persons from Bangladesh, Jordan, Poland, and Argentina as well as other countries.

Will these nations be willing to participate on a long/term basis in Haiti in support of what are basically United States domestic immigration interests?

What will the implications of our presence in Haiti be for other leaders in other parts of the world?

For instance, Boris Yeltsin says that he is now forced to have a sphere of Russian influence in the republics of the former Soviet Union since we have declared one through the United Nations in the Caribbean.

The American people and their elected representatives in Congress deserve answers to the many unanswered questions involved in the forcible return of Aristide to power.

We need to know what assurances we have that the Aristide regime will respect human rights and democratic values.

If the preservation of human rights is an issue of vital importance to the Clinton administration, why are we placing out trust solely in one man—Aristide? The past human rights record of the Aristide government was dismal.

The last time the United States occupied Haiti, United States troops were stationed in that country for almost two decades.

What plan does the administration have for bringing the U.S. troops home?

And what plan does the administration have for maintaining democracy and economic stability in Haiti over the long haul? And will the American taxpayers be willing to pay the bill?

United States aid to Nicaragua and El Salvador has dramatically decreased with the return of democracy to these countries.

Our total aid to Nicaragua in fiscal year 1990 was $262.2 million—the year Violeta Chamorro was elected president of that country. Our total aid to Nicaragua in fiscal year 1994 had dwindled to $56.7 million.

The same pattern is true for El Salvador. Total United States aid to El Salvador in fiscal year 1990 was $326.4 million and the total United States aid in fiscal year 1994—after the peace was restored—had declined to $97.3 million.

It looks as though our total aid to Haiti will drastically increase with the return of Aristide—the democratically elected president. This is in contrast to our severely declining assistance for democratic governments in Central America. This important paradox needs some explanation.

Can the United States afford to undertake the rebuilding of one of the poorest and most economically backward countries of the Western Hemisphere?

The answer to that question is clear. We cannot afford to rebuild Haiti at the expense of neglecting our many other obligations throughout the world.

The establishment of a true democracy in Haiti cannot occur immediately by force of arms. As is the case with other nations in the region, the nurturing of democracy takes time and will require broad-based support of the Haitian people.

It is Haitians that must rebuild Haiti. Not the United States.

Thank you, Mr. President. I yield the floor.

HAITI

Mr. DORGAN. Mr. President, I would like to talk briefly about my concerns about our mission in Haiti.

My colleagues will recall that I opposed a full-scale invasion of Haiti. I wrote President Clinton to express my concern that violent intervention may not help solve the difficult problems that Haiti faces. I told him that I did not support an invasion.

I did this because I do not believe that we have a national interest at stake in Haiti, American citizens are not in danger. The Haitian military threatens the Haitian people, but it does not threaten anyone else. Haiti does not control any resources that we depend on, and we don't have any bases there. So I did not see the rationale for an invasion, and I do not see a rationale for our current involvement.

However, now that almost 20,000 of our troops are in Haiti, I am glad that they have faced little violence or combat so far. But I want to say for the record that I think our troops should return home as soon as possible.

Let me just discuss briefly why I feel this way.

We have seen from bitter experience in Lebanon and Somalia that it is a lot easier to send troops into a chaotic country than it is to limit their mission while they are here. It goes without saying that the more deeply we get involved, the more dangerous our mission becomes.

The media reports clearly show that a climate of violence exists in Haiti. It is almost a climate of mob rule. If more looting and disorder occur, our troops may be forced by circumstances to protect one side or another. We have already had one casualty on this mission; taking sides among Haiti's factions will cause more bloodshed.

It also looks as if we might get bogged down in chasing people and weapons. I am very concerned that we are now trying to disarm Haiti's thugs and attaches. We are conducting searches for arms. To those of us who remember what led, a year ago, to the tragic deaths of 18 American Rangers in Mogadishu, these reports are troubling. While our intentions may be honorable, the consequences of our actions may be fatal.

Another lesson we learned in Somalia is that it is difficult to try to rebuild a shattered nation. The task might be easier in Haiti; Haiti has not suffered the civil war that Somalia did. Yet we are setting ourselves the challenge of reforming Haiti's military and police force, safeguarding Haiti's democratically elected leaders, and ensuring that next year's elections in Haiti are free and fair. The problem with all this is that when our mission involves reforming a nation's institutions, or any other nation-building activities, we are on a slippery slope to long-term involvement in that nation's affairs.

For all of these reasons, we should withdraw our troops and make way for a multinational or United Nations force as soon as possible. I might add that during that transition, the lines of communication and command must be extremely clear, so that there is no confusion at the operational level.

In closing, let me just say to my colleagues that our military will have virtually no role in solving Haiti's worst problem—its crushing, grinding poverty. I have toured these slums. I have seen how awful the poverty in Port-au-Prince can be. This poverty, which is the root of all of Haiti's troubles, cannot be addressed by an invasion. We can alleviate the poverty in Haiti only through a long effort of providing assistance through multinational development banks and private voluntary organizations.

The World Bank and other development and lending institutions should be providing the economic development experience, training and equipment that Haiti needs. Our military does not have any of these capabilities. The fact speaks volumes about who should be in Haiti, and who should not.

Mr. President, I thank the Presiding Officer and I yield the floor.

HAITI

Mr. KEMPTHORNE. Mr. President, I will support the pending resolution but I do so with some reluctance. I would have preferred to vote for a resolution that stated clearly that the United States of America has no national security interest in Haiti. In fact, the only vital national interest we have in Haiti today is the 20,000 American troops sent to that poor country.

I find the pending resolution a bit confused. Let me be clear. The resolution now before the Senate states, "the President should have sought and welcomed congressional approval before deploying United States Armed Forces to Haiti." At the same time, the resolution concludes with the statement, "Nothing in this resolution should be construed or interpreted to constitute congressional approval or disapproval of the participation of United States Armed Forces in the United Nations Mission in Haiti."

It seems as though the U.S. Senate is willing to criticize the President for not seeking prior approval but we are not willing to take a stand, yes or no, regarding this deployment of U.S. Armed Forces. Mr. President, this is shameful.

A number of my colleagues have already come the floor of the Senate to make the point that it is not worth the life of one American soldier to try to bring democracy to Haiti. I concur with this view because I believe Haiti has no history of democracy and it is naive to think that the temporary presence of American occupation forces and American economic aid will change the violent culture of Haitian politics.

I am also very troubled by the situation the President of the United States has put us in. To begin with, the invasion of Haiti that was averted by the courage and diplomatic skill of former President Carter, Senator SAM NUNN and General Powell was clearly timed to prevent the Congress from voting to disapprove of this act. Then, after thousands of United States troops have occupied Haiti, we are told we cannot vote to limit this occupation because we will endanger the lives of the American military personnel in Haiti. So the President prevented the Congress from voting to stop this invasion and now he says we can't vote to end this dangerous occupation. I completely reject this view.

As we saw in Somalia, the Congress can vote to force the withdrawal of United States troops from a situation in which our men and women in uniform are needlessly put at risk. In the case of Somalia, Senator BYRD's amendment forced the administration to bring our troops home and that act of Congress did not endanger our troops. I believe we can and should do the same thing in Haiti.

I will support the pending resolution to affirm my support for the brave American military personnel currently serving in Haiti. I will, however, continue to work to bring our troops home as soon as possible. In my view, that is what we should be voting on today.

Mr. President, I yield the floor.

HAITI

Mr. LIEBERMAN. Mr. President, the sons and daughters of America find themselves on foreign soil today in an effort to create the conditions which might make possible the development of democracy in the troubled land of Haiti. The people of Haiti deserve the opportunity to establish a democratic government which will respect the rights of all Haitians and give the much-oppressed people of Haiti a chance to live in peace.

But I continue to believe it is wrong to use the young men and women in our armed forces to carry out this mission. In that sense and many others, I want to associate myself with the remarks of the distinguished Senator from West Virginia [Mr. BYRD]. Are American national interests at stake in Haiti? I do not believe they are. Should we send our troops to each of the many countries in the world where there is not democracy? Certainly not.

I commend the men and women of our military services who have answered the call of their Commander in Chief as they always have in the past. I want to do nothing today or in the days ahead which might put our soldiers, sailors, marines, and airmen at any greater risk than they already are in Haiti. I applaud the authors of this resolution for making the very first element of it a commendation of our men and women who are serving with distinction in and around Haiti today.

I also applaud the authors for noting that "the President should have sought and welcomed congressional approval before deploying United States Armed Forces to Haiti." I have made this argument in the past months and the RECORD will note that I made the same argument to President Bush in 1990 and 1991 before the Persian Gulf War. When the American people are about to engage in war, unless the circumstances demand immediate action to protect American personnel or interests, the President owes it to the American people, the Constitution and the brave men and women he is prepared to commit to combat to come to the Congress and seek approval. I regret that the President did not come to us before he deployed our forces to Haiti. I hope that he will respond to this resolution promptly and ensure that the reports required in the resolution do, in fact, give us the full benefit of his thinking on the missions our people are supposed to perform.

I am also concerned, as the authors of the resolution are, with the costs of this operation. There will be real costs—at least one-half a billion dollars—for the deployment, the operation, and other forms of aid which we will provide in the days ahead. There are also real and potential costs in the readiness of our forces and their ability to respond to the next crisis which involves our national interests. We cannot continue to reduce the size and capabilities of our forces while simultaneously increasing their involvement in operations around the world. Ultimately, something must give. Equipment will wear out and we will not be able to replace it. Modernization—the essential means of ensuring our forces are ready to fight and win in the next decade and the next century—will continue to be underfunded. The men and women of the Armed Forces will be run into the ground and they will begin to ask, as many already have, is it really worth it for me to deprive my family and risk my life with deployment after deployment and little time at home in between? Ultimately, we will be unprepared when a genuine threat to American security occurs.

Operation Uphold Democracy is underway. I thank God that our forces did not have to confront hostile forces as they entered Haiti and that casualties and losses have thus far been very low. But I worry about their safety next week and next months and their ability to do all that they have been, and perhaps will be, asked to do. I would like our forces not to have been sent in the first place. But they are there now and I will give them the support they need to come home quickly and safely with their heads held high and their fellow countrymen appreciative of their efforts.

Mr. President, I am going to vote for this resolution because it supports our troops who are in Haiti today, reinforces the constitutional authority of the Congress to declare war, and calls for a prompt withdrawal of our forces as soon as possible.

We must recognize the dangers inherent in the course we are on in Haiti and around the world today. All of us in this country must address the question of our role as a world power and when we should use our military forces. There are other ways to support democracy than with American soldiers.

We can support democracy through economic sanctions as we did in South Africa, or through political aid as we did via the National Endowment for Democracy in Eastern Europe, or even through the provision of military equipment and training as we did for the anti-Communist freedom fighters in Afghanistan.

We need not and cannot send American troops to every country in the world where democracy is under siege. That, I hope, is the lesson we will learn from Haiti as we move quickly, according to this resolution, to bring our troops home.

Mr. BAUCUS. I rise in opposition to this resolution

The President did not seek my approval for occupying Haiti. And he will not get my approval now.

The American soldiers involved in this mission have performed admirably. They have shown themselves, and our country, as skilled in military tactics and noble in goals. They have carried this mission out brilliantly. But every day carries the same risk President Reagan ran in Lebanon, and the

same risk Presidents Bush and Clinton ran in Somalia. Haiti is full of armed, violent people. Snipers who shoot out of warehouses. Murderers with grenades that they toss into crowds. Thugs who may at any minute turn their weapons on a jeep full of 18- and 20-year-old marines. It is unacceptable.

And I do not believe this mission has a chance to succeed in the long run. Even if we suffer no disaster or casualty at any point in our occupation of Haiti, the problem in Haiti is a political issue which Haitians themselves must solve through a national reconciliation. That will not happen as long as American troops are enforcing order and government. The longer we stay, the longer any true solution to Haiti's problems will be delayed.

Every day we remain in Haiti is a day in which we continue placing our soldiers in a dangerous and explosive situation. And I think the mission should come to an end not "as soon as possible," as the resolution says, but on a certain, specific and imminent date. the only thing this resolution will accomplish is to force people at the State Department to fill out paperwork reports to Congress. It is not good enough.

Instead of voting on this, we should be setting a date certain to withdraw from Haiti. And we should back that up by withdrawing funds for the operation the day afterward.

I will vote "no," and I thank you, Mr. President.

Ms. MOSELEY-BRAUN. Mr. President, the United States mission in Haiti has two core objectives: First, to meet our commitment to restoring democracy to Haiti, and second, to meet that commitment peacefully, if possible. I support that policy and those commitments.

While it is still premature to assess the success of our actions in Haiti, the results so far are at least somewhat encouraging. Let's take a look at the facts.

United States troops have entered Haiti peacefully. Only one of our soldiers has been wounded to date.

American soldiers have begun to take arms off the streets through selective raids at locations arms have been stockpiled, and through a buy back program.

American soldiers are making substantial headway toward ending the indiscriminate violence and terror that ruled the streets in Haiti, and had sown fear among pro-democracy activists. Freedom is being restored.

Democracy, however, is more than the absence of violence. Democracy means that different voices have a forum to be heard. Democracy means that people with different ideas and views about how to govern agree to disagree. Democracy provides the rule of law and access to justice.

As Senator NUNN said to the Haitian generals, democracy is much more than the return of one man, President Aristide.

Because American forces entered Haiti, parliamentarians who had fled the country returned to their jobs.

Evans Paul, the mayor of Port-au-Prince, has been able to come out of hiding, and has returned to city hall.

We all know that for the fledgling democracy in Haiti to succeed, the streets must be safer, there must be greater stability, and the Haitian economy must begin to function again.

The United States has lifted the trade embargo against Haiti, and is allowing money transfers to resume, and the United Nations has followed suit.

The Haitian people have begun to hope again. People dance and march in the streets. Two weeks ago, ordinary Haitians through their only chance was to leave their country, even if that meant taking the terrible risk of going to sea in very small boats and rafts.

Now, that has begun to change. Two thousand Haitian refugees at Guantanamo Bay have volunteered to return to their homeland.

But much work remains to be done. The peaceful entry of our military forces into that country does not end our job.

The agreement negotiated by President Carter, General Powell, and Senator NUNN, has a number of points that will require future interpretation.

I share the view of General Powell, who said when he returned from Haiti, That all of the details "will be worked out in due course."

With our troops on the ground, I am confident that the agreement will be interpreted and implemented in a manner fully consistent with the United States view of that agreement. That is what we have seen so far, and there is good reason to believe that is what we will continue to see.

I also agree with General Powell's statement that we should "not lose sight of the overall achievement". While there will continue to be difficult moments in Haiti, and while there are still substantial risks that we must continue to be aware of, we should not forget that the U.N. resolutions are being implemented. President Aristide will soon return. And, as General Powell noted, we do have the opportunity for a future of peace and democracy in Haiti and a better relationship between our two countries.

General Powell's analysis is a good one. The agreement and the peaceful entry of our forces into Haiti was a real achievement. It does open real opportunities, and it does enhance the prospects for the future success of our policies in Haiti.

Our military leadership has set out two phases for operation uphold democracy. In the first phase, the Americans will establish order. Then in phase two, the forces of 28 nations will join us to maintain order and hold elections.

This first phase will only end when three conditions are met: No organized resistance remains, President Aristide returns, and a police force is present.

At that point, phase two will introduce a U.N. force with a much smaller American contingent, but one that is under American command.

But it is important to do the job properly. General Shalikashvili has said that setting a date certain for withdrawal will put our troops at risk, because it would change the dynamics on the ground. I am pleased, therefore, that the resolution before the Senate today does not set a specific date for the withdrawal of our forces, although I share the view expressed in the resolution that our forces should leave Haiti as soon as possible.

I would very much like to avoid putting any U.S. forces at risk. No one wants to see young American soldiers, sailors, or air force personnel wounded or killed.

In this situation, however, backing up our diplomacy with our Armed Forces was essential, not just to have any hope of achieving our objective or restoring democratic government to Haiti, but also because U.S. credibility was at stake. Failure to honor the commitments made by both this administration and the Bush administration would have repercussions for the United States around the world.

But the U.S. has kept its commitment, and in so doing, we have once again renewed our commitment to the principles that make the United States so unique on the world stage. In Haiti, we are demonstrating that we mean what we say, and that we are prepared to act based on our principles and our core values.

I want to commend the President for his leadership, for sending President Carter, Senator NUNN and General Powell, for their successful negotiations, which no doubt saved many lives of both Haitians and Americans.

But mostly, I want to commend the men and women of the U.S. military for the fine job they are doing in Haiti. We must allow them to complete their mission.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Madam President, is leader time reserved?

The PRESIDING OFFICER. The Senator has the right to use his leader time.

Mr. DOLE. I yield 2 minutes of that time to the Senator from South Dakota, Senator PRESSLER.

Mr. GREGG. Madam President, may we have order, please?

The PRESIDING OFFICER. The Senator is correct; the Senate is not in order.

The Republican leader has yielded 2 minutes of his time to the Senator from South Dakota.

We ask the Senate be in order.

Mr. PRESSLER. Madam President, the question I was trying to ask earlier is to invite my friends on the other side of the aisle to join with me in the letter to the President so we can lay this investigation out in the open. The Senator from Connecticut said that the ranking member of the Judiciary Committee was satisfied. I am told by staff, he has not necessarily said that. There is a very serious question about Mr. Aristide's involvement with drug traffickers that needs to be answered. The DEA's office in Miami was investigating this issue. Apparently, one of the roads, one of the paths they investigated led to the allegation that President Aristide himself took a bribe from Colombian drug traffickers.

I think we should have a definitive statement from the administration on that. They keep telling me to "take a classified briefing." Yesterday, administration officials gave a briefing to the chairman and ranking member of the Judiciary Committee. According to the Senator from Connecticut, the administration told him that the ranking member, the Senator from Utah [Mr. HATCH], was totally satisfied. I believe that is a mischaracterization of his view. Perhaps he will come to the floor and speak for himself.

But I still do not understand why my colleagues on the other side of the aisle will not join me in my letter to the President, asking these basic questions. They would not even yield to me several minutes ago. The administration wants me to take a classified briefing because they know that if I do, I will not be able to repeat what was said. The American people need to know if Jean-Bertrand Aristide took a bribe regarding drugs when he was in office. Earlier this year, the administration cited Haitian drug trafficking as one of the reasons for invading Haiti. Then all of a sudden they stopped talking about it. And I want to know why. Why will not the administration discuss the DEA investigation in public? Where did the investigation lead? What did they find? Who was involved in it? If it was the Haitian generals, say so. If it was President Aristide, say so. Instead, the administration says, "This is all classified; you can get a classified briefing." The American people want a public briefing.

My point is our troops are in Haiti. The American people need to know if they are being asked to restore a drug trafficker. Did Jean-Bertrand Aristide ever take a bribe for drugs when he was President or thereafter, or in any relationship? Did DEA field agents in Miami want to question Aristide and the White House prevented them? These are important questions which deserve to be answered.

The PRESIDING OFFICER (Mr. BRYAN). The time allocated to the Senator has expired.

Mr. DOLE. Mr. President, I thank the Chair and I thank my colleague from South Dakota for raising what I consider to be a very important question that should be answered, if not today, then tomorrow or very soon, by someone who—if anyone has the information. If not, there should be an investigation.

Let me say, first of all, this is a bipartisan resolution. It took a lot of doing by Members on both sides of the aisle. It can be interpreted by Members on either side of the aisle in a different way.

It is this Senator's opinion that we have no security interest in Haiti, no national interest in Haiti, and we should not be in Haiti. We made a mistake. And I do not think a careful reading of this resolution will give the administration much comfort.

But I must say I did not support setting an arbitrary withdrawal date, with which I think the President agreed we should not have a date. Members on both sides agreed we should not have a date.

First of all, it might increase the risk to young men and women there. But, second, it might imply, if some of us agreed on a date, say March 1, that we were buying into this policy for the next several months, and that is not the case. I am not buying into any of this policy. It is a mistake. It is a bad policy. We should not be there and we ought to come home. It is going to cost hundreds of millions of dollars. We are risking American lives every day. I just suggest maybe when Aristide goes back next week would be a good time for American troops to get out.

He has been restored. That is what it has been all about. Let us restore Aristide, and when he is restored, let us go home. Let us come home. Let us not risk any additional American lives.

We have heard administration officials say the last few days the mission in Haiti has not changed. I guess it is no surprise the American people are confused about United States policy toward Haiti when the administration denies the obvious. Everyone with access to a television knows U.S. policy in Haiti changes as fast as you can change the channel.

First, the policy was that police and army are allies in keeping order. Then we arrest and gag Haitian police. We were told that United States policy will be to stay neutral in Haitian violence. Then we were told American soldiers will intervene in certain cases of Haitian violence in certain circumstances. We were told United States Armed Forces would not be Haiti's police force, and then we see Americans patrolling streets, detaining Haitians, and stopping looters. This week, American forces added disarming Haitians to their mission.

If this is not a mission change, I do not know what it is. It is not just mission creep, it is mission leap. The only exit strategy in Haiti is for United States troops to change helmets from American green to United Nations blue, and that sounds more like a shell game than an exit strategy.

I have serious doubts the United Nations peacekeepers will be able to perform any better in Haiti than they have in Somalia or Bosnia. I stand second to no one in supporting American Armed Forces. The young men ordered to occupy Haiti have a difficult task. Some have called it Mission Impossible, bringing stability and democracy to a country that has little of either. American troops should not be used on missions that cannot be achieved in places where America does not have a vital interest.

It is ironic to hear some opponents of the United States policy in Central America defend the occupation in Haiti. We never sent more than 55 Americans to El Salvador, for example. Now we have 20,000 Americans in Haiti, and nobody says a word on the other side. I remember the arguments day after day after day on this Senate floor. It seems to me they used to say El Salvador is Spanish for Vietnam. Fortunately, they did not have their way, and El Salvador is peaceful and democratic today.

But, unfortunately, the occupation of Haiti shows the lessons of Somalia have not been learned. Like Somalia, our objectives are vague. Our mission is constantly changing. Like Somalia, we have embarked on nation building and we are relying on the United Nations to call the shots down the road. It is hard to avoid the observation that "Haiti is Creole for Somalia."

The President chose not to come to Congress before sending American troops to occupy Haiti. In fact, if you read this week's Time magazine, it was all designed. The President wanted to get the troops in there before Congress came back on a Monday, because we might possibly vote up or down. He chose to send troops without the support of the American people. It is a high-risk course to jump into a military adventure without the parachute of the public and congressional support.

But having said that, let me end where I started. This resolution has been worked out on a bipartisan basis. It can, as this Senator said, be interpreted by different Members on either side in different ways. But I must say I think it is a pretty fair resolution. It does not answer every argument somebody might have. It does not have in there that it is not in our national interest. Some of us would like to have had that inserted in the resolution.

But overall, it seems to me it is a statement that needs to be made and should be made and should have the full support of our colleagues in the Senate.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask unanimous consent to use the remainder of my leader time.

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

Mr. MITCHELL. Mr. President, I encourage all Senators to vote for this resolution. It is, in large measure, repetitious of that which the Senate has previously voted in favor of. I expect and hope that most Senators will vote for the resolution, so I will not address myself to that directly at this moment.

But I would like to express my disappointment, indeed my dismay, at many of the remarks that have been made during this debate. There seems to be almost a sense of sadness by some of our colleagues that things have gone so well in Haiti.

There seems to be almost a sense of disappointment that things have gone so well in Haiti. A few weeks ago, the illegal government had unlimited prospects and the democratically elected government had no prospects. As a result of President Clinton's decisive leadership and swift action by the United States, that situation has been reversed.

The argument is made that the President should have sought the approval of Congress. I believe he should have. I felt that way with respect to Panama, and I felt that way with respect to Grenada. But none of the three Presidents involved agreed with my view.

President Bush ordered the invasion of Panama without prior congressional approval. More than 20 Americans were killed. There was not a single bit of second-guessing and nitpicking about that from the people who are here today doing the second-guessing and nitpicking about President Clinton.

President Reagan ordered the invasion of Grenada without any prior congressional approval. Several Americans were killed in that operation. There was not a single bit of second-guessing and nitpicking about that by the same people who are here second-guessing and nitpicking about President Clinton.

If ever there has been a double standard at work here in the Senate, it has been in the reaction of those events, and very few Democrats—very few—if any, engaged in the kind of nitpicking and second-guessing on Presidents Bush and Reagan in those two incidents that our colleagues have engaged in here today.

Let us face it, this thing has worked. Not a single American has been killed as a result of this action, and we are going to have a democratically elected government restored. Is it so hard for our colleagues to acknowledge that something has worked and say a decent word about the President? Is it so difficult to refrain from this kind of nitpicking and second-guessing and trying to find fault?

This has been an instructive debate, Mr. President, not about the resolution, not about the Haiti operation, but about an attitude that has become so ingrained it seems virtually impossible for some of our colleagues to do anything except second-guess, nitpick, find fault, and try to criticize the President, whatever the circumstance. I regret it. I believe that all Americans, or at least most Americans, regret it.

I hope that this resolution will pass and this debate will conclude.

I yield the floor. I believe all time is up, and we are prepared to vote.

The PRESIDING OFFICER. All time having expired, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

Mr. DODD. Mr. President, I ask for the yeas and nays on the resolution.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution, regarding United States policy toward Haiti, pass?

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Alaska [Mr. STEVENS] is necessarily absent.

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

The result was announced—yeas 91, nays 8, as follows:

[Rollcall Vote No. 323 Leg.]

YEAS—91

Akaka	Ford	McConnell
Bennett	Glenn	Metzenbaum
Biden	Gorton	Mikulski
Bingaman	Graham	Mitchell
Bond	Gramm	Moseley-Braun
Boren	Grassley	Moynihan
Breaux	Gregg	Murkowski
Brown	Harkin	Murray
Bryan	Hatch	Nickles
Bumpers	Heflin	Nunn
Burns	Helms	Packwood
Campbell	Hollings	Pell
Chafee	Hutchison	Pryor
Coats	Inouye	Reid
Cochran	Jeffords	Riegle
Cohen	Johnston	Robb
Conrad	Kassebaum	Rockefeller
Coverdell	Kempthorne	Roth
Craig	Kennedy	Sarbanes
D'Amato	Kerrey	Sasser
Danforth	Kerry	Shelby
Daschle	Kohl	Simon
DeConcini	Lautenberg	Simpson
Dodd	Leahy	Smith
Dole	Levin	Specter
Domenici	Lieberman	Thurmond
Dorgan	Lott	Warner
Durenberger	Lugar	Wellstone
Exon	Mack	Wofford
Faircloth	Mathews	
Feinstein	McCain	

NAYS—8

Baucus	Byrd	Pressler
Boxer	Feingold	Wallop
Bradley	Hatfield	

NOT VOTING—1

Stevens

So the joint resolution (S.J. Res. 229) was passed, as follows:

S.J. RES. 229

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SENSE OF CONGRESS REGARDING UNITED STATES ARMED FORCES OPERATIONS IN HAITI.

It is the sense of Congress that—

(a) The men and women of the United States Armed Forces in Haiti who are performing with professional excellence and dedicated patriotism are to be commended;

(b) the President should have sought and welcomed Congressional approval before deploying United States Armed Forces to Haiti;

(c) the departure from power of the de facto authorities in Haiti, and Haitian efforts to achieve national reconciliation, democracy and the rule of law are in the best interests of the Haitian people;

(d) the President's lifting of the unilateral economic sanctions on Haiti, and his efforts to bring about the lifting of economic sanctions imposed by the United Nations are appropriate; and

(e) Congress supports a prompt and orderly withdrawal of all United States Armed Forces from Haiti as soon as possible.

SEC. 2. PRESIDENTIAL STATEMENT OF NATIONAL SECURITY OBJECTIVES.

The President shall prepare and submit to the President Pro Tempore of the Senate and the Speaker of the House of Representatives (hereafter, "Congress") not later than seven days after enactment of this resolution a statement of the national security objectives to be achieved by Operation Uphold Democracy, and a detailed description of United States policy, the military mission and the general rules of engagement under which operations of United States Armed Forces are conducted in and around Haiti, including the role of United Armed Forces regarding Haitian on Haitian violence, and efforts to disarm Haitian military or police forces, or civilians. Changes or modifications to such objectives, policy, military mission, or general rules of engagement shall be submitted to Congress within forty-eight hours of approval.

SEC. 3. REPORT ON THE SITUATION IN HAITI.

Not later than November 1, 1994, and monthly thereafter until the cessation of Operation Uphold Democracy, the President shall submit a report to Congress on the situation in Haiti, including—

(a) a listing of the units of the United States Armed Forces and of the police and military units of other nations participating in operations in and around Haiti;

(b) the estimated duration of Operation Uphold Democracy and progress toward the withdrawal of all United States Armed Forces from Haiti consistent with the goal of section 1(e) of this resolution;

(c) armed incidents or the use of force in or around Haiti involving United States Armed Forces or Coast Guard personnel in the time period covered by the report;

(d) the estimated cumulative incremental cost of all United States activities subsequent to September 30, 1993 in and around Haiti, including but not limited to—

(1) the cost of all deployments of United States Armed Forces and Coast Guard personnel, training, exercises, mobilization, and preparation activities, including the preparation of police and military units of the

other nations of the multinational force involved in enforcement of sanctions, limits on migration, establishment and maintenance of migrant facilities at Guantanamo Bay and elsewhere, and all other activities relating to operations in and around Haiti; and

(2) the costs of all other activities relating to United States policy toward Haiti, including humanitarian assistance, reconstruction, aid and other financial assistance, and all other costs to the United States Government;

(e) a detailed accounting of the source of funds obligated or expended to meet the costs described in subparagraph (d), including—

(1) in the case of funds expended from the Department of Defense budget, a breakdown by military service or defense agency, line item and program, and

(2) in the case of funds expended from the budgets of departments and agencies other than the Department of Defense, by department or agency and program;

(f) the Administration plan for financing the costs of the operations and the impact on readiness without supplemental funding;

(g) a description of the situation in Haiti, including—

(1) the security situation;

(2) the progress made in transferring the functions of government to the democratically elected government of Haiti; and

(3) progress toward holding free and fair parliamentary elections;

(h) a description of issues relating to the United Nations Mission in Haiti (UNMIH), including—

(1) the preparedness of the United Nations Mission in Haiti (UNMIH) to deploy to Haiti to assume its functions;

(2) troop commitments by other nations to UNMIH;

(3) the anticipated cost to the United States of participation in UNMIH, including payments to the United Nations and financial, material and other assistance to UNMIH;

(4) proposed or actual participation of United States Armed Forces in UNMIH;

(5) proposed command arrangements for UNMIH, including proposed or actual placement of United States Armed Forces under foreign command; and

(6) the anticipated duration of UNMIH.

SEC. 4. REPORT ON HUMAN RIGHTS.

Not later than January 1, 1995, the Secretary of State shall report to Congress on the participation or involvement of any member of the de jure or de facto Haitian government in violations of internationally-recognized human rights from December 15, 1990 to December 15, 1994.

SEC. 5. REPORT ON UNITED STATES AGREEMENTS.

Not later than November 15, 1994, the Secretary of State shall provide a comprehensive report to Congress on all agreements the United States has entered into with other nations, including any assistance pledged or provided, in connection with United States efforts in Haiti. Such report shall also include information on any agreements or commitments relating to United Nations Security Council actions concerning Haiti since 1992.

SEC. 6. TRANSITION TO UNITED NATIONS MISSION IN HAITI.

Nothing in this resolution should be construed or interpreted to constitute Congressional approval or disapproval of the participation of United States Armed Forces in the United Nations Mission in Haiti.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator HARKIN be recognized to address the Senate for up to 5 minutes in morning business, and following the completion of his remarks Senator SMITH be recognized to address the Senate in morning business for up to 5 minutes, and then at the conclusion of his remarks that I be recognized.

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

The Senator from Iowa is recognized.

Mr. HARKIN. I thank the Chair.

(The remarks of Mr. HARKIN pertaining to the introduction of S. 2526 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

TRIBUTE TO TROOPER JAMES NOYES

Mr. SMITH. Mr. President, I rise to pay tribute to a brave and dedicated New Hampshire State Trooper, Sgt. James Noyes, who was killed tragically in the line of duty at Gilford on this past Monday, October 3. Sergeant Noyes was the first State trooper to be killed by gunfire in the 47-year history of the New Hampshire State Police.

Mr. President, Sergeant Noyes was off-duty, at home with his family in Madison, when he learned of a stand-off in Gilford in which a despondent man who had lost his wife earlier this year was barricaded inside his home with a rifle, threatening to harm himself and others. True to his life-long sense of duty, Sergeant Noyes responded to the situation by rushing to the scene to help.

An expert hostage negotiator and a long-time leader of the State police swat team, Sergeant Noyes spent many hours patiently attempting to persuade the distraught man to lay down his weapon. Tragically, those efforts did not succeed and Sergeant Noyes, age 40, was shot to death. Sadly, the bullet that killed him passed behind the bullet-proof vest that he was wearing.

As grief-stricken as they are at his untimely death, the family of Sergeant Noyes can take justified comfort and pride in the fact that he lived his life so well. Reared in Massachusetts, James Noyes joined the New Hampshire State Police soon after graduating from the University of Massachusetts in 1976. Not long after that, he became a member of the State Police's Special Weapons and Tactics [SWAT] team. He became a leader of that elite corps of troopers, who handle hostage situations and other crises that require officers who have special training and the proper temperament.

Remembering how well-suited Sergeant Noyes was to his duties, Conway Police Lt. David Bennett said that he "had a natural presence—he could defuse most situations. He was unique in law enforcement." Moreover, Lieutenant Bennett remembered, Sergeant Noyes "was a dynamic trooper. He was in a learning mode continuously—he wanted to know how to do a better job."

Mr. President, the many tributes that I have read emphasize the degree to which Sergeant Noyes kept his priorities straight. As dedicated as he was to his career, he remained uncommonly devoted to his wife, Debra and their children, Nathan, Daniel, and Brianna. "He was a family man first," said Kenneth High School Athletic Director Ken Girouz. "He was with his sons and daughter as much as possible, and this is something that is difficult to do in his profession."

Sergeant Noyes also dedicated himself to his community, coaching local team sports and assisting with an anti-drug program in the schools. "One of the children said that when (Sergeant Noyes) coached, he cheered for his own team and the other team as well," said Madison Elementary School Principal Pat Durgin.

In its fine editorial paying tribute to Sergeant Noyes, the Manchester Union-Leader offered a profound insight. In the wake of the fatal shooting of Sgt. James Noyes * * *," the editorial said:

> Citizens should reflect on the risks faced daily by all law enforcement officers. And when one dies in the line of duty, it is important that we remember that "he" is "we", that he put himself in harm's way as our surrogate so that we did not have to do so.

Mr. President, my heart goes out to Debra, Nathan, Daniel, and Brianna Noyes as they mourn the tragic loss of their husband and father. I know what it is like to lose a father in the line of duty. May God bless them as they lay to rest a good and brave man who lived

a life of service to others and who died a hero so that others might be safe.

Mr. President, I ask unanimous consent that the full Manchester Union-Leader article be printed in the RECORD.

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

[From the Manchester Union-Leader Oct. 4, 1994]

DOUBLE TRAGEDY

ACCEPTANCE DOES NOT COME EASILY

(By Jim Finnegan)

Given the grave risks of the profession, it was inevitable that a New Hampshire State Police officer would one day be gunned down while performing his duty.

But what makes especially tragic Monday's shooting death of State Police Sergeant James Noyes—the first such occurrence in the agency's 57-year history—is the circumstances in which it occurred.

The Madison man and other members of the SWAT team were not trying to flush out some hardened criminal when they approached a home at 119 Morrill Street in Gilford at 5:45 Monday morning. On the contrary, Sergeant Noyes' killer, James Monsante, was a respected member of the community who by all accounts was depressed to the point of complete despair by the death of his beloved wife and apparently seeking ways to end his own life.

Sunday night's attempt by the police to negotiate with him had failed.

Monsante fatally shot Noyes and then died after he fired on police officers who had tossed a gas canister into his barricaded home. Theirs was a failed attempt to disorient the distraught man, whose family sought to have him undergo treatment through involuntary emergency admission to a mental hospital.

It is the very unpredictability of domestic violence cases that renders them so dangerous.

Sergeant Noyes, a much-respected family man and promoter of sports in his home town of Madison, was a skilled 17-year veteran of the SWAT team. Yet, he and his State Police comrades had no reason to anticipate tragedy when, responding to a request for assistance from the Gilford Police Department, they attempted to perform inherently dangerous duty that, to them, probably seemed almost routine.

So, what we have here obviously is a double tragedy, attested to by the fact that SWAT team members, although brought to tears by the loss of one of their own, embraced the Monsante family members who offered them heartfelt apologies.

In the wake of the fatal shooting of Sergeant James Noyes, who wanted to live, by James Monsante, who wanted to die, citizens should reflect on the risks faced daily by all law enforcement officers—faced, that is, regardless of how well they are trained. And when one dies or is injured in the line of duty, it is important that we remember that "he" is "we," that he put himself in harm's way as our surrogate so that we did not have to do so.

To be sure, we all appreciate their sacrifice. But shouldn't we make a special effort to tell them so, individually . . . before it is too late? A simple "thank you" will suffice.

Tragedies such as the one that occurred in Gilford are almost beyond human comprehension. We are told on such occasions that we must not forget the deceased, but that we must accept the fact of his or her death, and that is true. That acceptance, of course, does not come easily.

But it will come.

In the meantime, The Union Leader extends its sympathies to the Noyes and Monsante families in this their shared time of grief. May their departed loved ones rest in peace.

Mr. SMITH. Mr. President, I will conclude by saying that today was the funeral for James Noyes, and it is with deep sadness that I report this to my colleagues here in the Senate and to the country. He was, as many law enforcement officers are around the country, dedicated to his profession, and fully prepared to accept the risks. He died much too young.

Thank you, Mr. President. I yield the remainder of my time.

UNANIMOUS-CONSENT REQUEST

Mr. MITCHELL. Mr. President, one of the measures which I believe is of importance, and which the Senate should address, is legislation designated as H.R. 4822, an act to make certain laws applicable to the legislative branch of the Federal Government. This is the so-called congressional compliance legislation—legislation which would subject Congress to compliance with those laws that are applicable to others.

It was reported by the Committee on Governmental Affairs. I had earlier today notified the distinguished Republican leader and all of my colleagues of my intention at this time to seek consent to proceed to that legislation.

Accordingly, I now ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 710, H.R. 4822, an act to make certain laws applicable to the legislative branch of the Federal Government.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, I object on behalf of another member on this side of the aisle.

The PRESIDING OFFICER. Objection is heard.

Mr. MITCHELL. Mr. President, I regret the objection and will comment on it at a later time.

UNFUNDED FEDERAL MANDATES

MOTION TO PROCEED

Mr. MITCHELL. Mr. President, another bill which I believe should be addressed by the Senate and should be passed by the Senate is S. 993, a bill to end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Government pays the cost incurred by those governments in complying with certain requirements under Federal statutes and regulations.

I understand that that matter is on the calendar. The report has duly been filed and, therefore, consent is not required to move to proceed to that legislation.

Accordingly, I now move that the Senate proceed to consider Calendar Order No. 551, and that is S. 993.

The PRESIDING OFFICER. Is there debate?

If not, the question occurs on the motion.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I have two amendments that I would like to propose.

The PRESIDING OFFICER. If the Senator will suspend, the question occurs on the motion to proceed.

Mr. SIMON. I have no objection to proceed.

The PRESIDING OFFICER. The Senator from Connecticut.

THE CONGRESSIONAL COMPLIANCE BILL

Mr. LIEBERMAN. Mr. President, I take this opportunity on this motion to proceed to register my profound disappointment that objection was heard to the majority leader's request for unanimous consent to go to the congressional accountability or congressional compliance bill. I was unable to debate that motion at that time.

I want to say very simply and briefly that this is a bill that passed the House of Representatives with only four votes against. It is a bill that adopts a pretty basic and fundamental principle which is that laws that we pass here in Congress that cover every other employer and employee in America ought to cover us, ought to cover Congress, in our role as employer and all of our employees.

What is good for the goose is good for the gander. If these laws are important enough and fair enough for the employers and employees across America, they are important and fair enough for us and our employees to follow.

UNFUNDED FEDERAL MANDATES

MOTION TO PROCEED

The Senate continued with the motion to proceed.

Mr. LIEBERMAN. Mr. President, I need not belabor the next point I am going to make because it is in the air and it is in the media. Congress is at an all-time low in public esteem. This is not just a matter of politics and elections. This is a matter of the vibrancy of our form of government.

In a democracy, when you endanger the trust that exists between those who govern and those for whom we work and govern, the country is in some significant trouble.

I must say that one of the arguments, one of the points that I hear repeatedly in Connecticut when I talk to

people about this skepticism and cynicism about Government is that "you in Congress do not even live by the laws that you apply to everybody else. You create special privileges for yourself."

Mr. President, in so many ways that contention is wrong. But when it comes to this particular set of laws, nondiscrimination laws, fair labor standards, OSHA, the whole host of laws that we place on employers across America, the public is right. We have created a double standard, and it is an intolerable one, and it is time we ended it.

Mr. President, I deeply regret that it appears that on a matter of process, which is to say that the report on this bill coming out of the Governmental Affairs Committee has just been filed today and under the rules requires 2 days to lay over, unanimous consent would be required to take this measure up now. This is a bill that is not only right but the American people want it, demand it, and it is an opportunity for us to help restore the fabric, the strength of the relationship of trust between us and the people we work for.

The fact that it is going to be prohibited from being taken up on a procedural point I think will create more skepticism, more cynicism, more frustration, more fury directed toward Congress.

It has been my pleasure to cosponsor this measure with the distinguished Senator from Iowa, Mr. GRASSLEY, who has really been a leader and pioneer on this, and this is a strong bipartisan group. I am convinced if this bill came to a vote here, it would pass by an overwhelming majority.

Once again, the rules have been used to frustrate what is the will of not only the American people but the will of the great majority in this Chamber. I regret it, and I certainly will consult with the Senator from Iowa and see if it is possible, though not the preferable course, to attach this bill as an amendment to the next amendable vehicle—perhaps it is the unfunded mandates bill—that comes up.

Mr. President, I see my colleague from Iowa on the floor. I yield to him.

The PRESIDING OFFICER. Is there further debate?

The Senator from Iowa [Mr. GRASSLEY].

Mr. GRASSLEY. Mr. President, I reserve the right to object as well, but for the same purpose. As the Senator from Connecticut knows, I, too, join him in an expression of profound regret that presumably, under the guise of a late filing of a committee report, we are prevented at the last minute from taking this bill up.

People out in the grassroots do not understand these shenanigans. They are going to wonder why we put off the inevitable, because there is nothing more inevitable than this legislation.

The dam broke on this 3 years ago, when the Grassley-Mitchell amendment to the civil rights bill was passed. Now we have to go all the way and apply to the Congress all the laws that we exempted ourselves from. We are employers like the businesses of America are employers. There is no reason why we should be exempt from those laws if the people of the country cannot be exempt.

It is inevitable, because you can look at the vote in the other body this year, 427 to 4. That is an expression of how simple and concise this issue is to our constituents.

You cannot hold a town meeting, or give a rotary club speech, or attend any function where you have interaction with the public that this issue does not come up. They sense how wrong it is to we have two sets of laws;, one for Pennsylvania Avenue and the other one for main street America. We have two sets of laws, one for Capitol Hill and one for the rest of the Nation.

It just does not add up. We have worked hard, the Senator from Connecticut and I. So have a lot of other people in this body as well. We worked hard to make sure that this bill could go through, satisfying all but except the most extreme opposition. And we have done it. We have done it to a point where it is bipartisan. We have done it to a point where it is bicameral, Republicans and Democrats in the House, Republicans and Democrats in this body, working together to craft a policy that applies to Capitol Hill the same way it applies to the rest of the Nation.

The people are not going to tolerate this. It is just a question of when this bill passes. If it does not pass in the midnight hours of this Congress, it is going to pass early next year. It will pass.

I join my colleague from Connecticut. I join him in hoping that we can get this on some other legislation yet this year, because it is something that must be done. It is something that will be done. Most importantly, it is something that should be done and will be done because the people demand it. There is nothing more easily understood. There is no way you can camouflage this issue with any sort of tactics at the closing hours of this session.

I yield the floor and withdraw any objection.

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

Mr. KEMPTHORNE. Mr. President, in regard to the motion before us, which is S. 993, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KEMPTHORNE. Mr. President, I would like to address that motion before us, and I would like to do so and making as part of the RECORD two letters that were issued today. The first letter is from the President of the United States to the majority leader in the U.S. Senate. It says:

Dear Mr. Leader: As you know, this Administration supports the adoption of the "Federal Mandate Accountability and Reform Act of 1994," as drafted by Senators GLENN and KEMPTHORNE.

I urge you to schedule a vote in the Senate tomorrow on this important piece of legislation. I believe that it is important for the Senate to consider this matter and encourage the Senate to adopt this legislation without amendment.

Thank you for your consideration of this request.

Sincerely,

BILL CLINTON.

The next letter Mr. President, that I would like to make part of the RECORD is a letter with a letterhead that reads, the National Governors Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, dated October 6; and it is to all Senators.

The nation's state and local elected officials strongly urge the U.S. Senate to pass the State and local mandate relief bill, S. 993, before adjournment. Passage of this bill is our top legislative priority.

Not only will we oppose any amendment not supported by the bill managers, Senator John Glenn, William Roth and Dirk Kempthorne, but we view all amendments as an attempt to defeat our legislation. We urge the defeat of all partisan and extraneous amendments. Please stand with your State and local officials in support of this crucial legislation.

The PRESIDING OFFICER. Does the Senator from Idaho wish to place those two letters in the RECORD?

Mr. KEMPTHORNE. Mr. President, I do. I ask unanimous consent that they be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, October 6, 1994.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: As you know, this Administration supports the adoption of the "Federal Mandate Accountability and Reform Act of 1994," as drafted by Senators Glenn and Kempthorne.

I urge you to schedule a vote in the Senate tomorrow on this important piece of legislation. I believe that it is important for the Senate to consider this matter and encourage the Senate to adopt this legislation without amendment.

Thank you for your consideration of this request.

Sincerely,

BILL CLINTON.

NATIONAL GOVERNORS' ASSOCIATION; NATIONAL CONFERENCE OF STATE LEGISLATURES; NATIONAL ASSOCIATION OF COUNTIES; NATIONAL LEAGUE OF CITIES; U.S. CONFERENCE OF MAYORS

OCTOBER 6, 1994.

TO ALL SENATORS: The nation's state and local elected officials strongly urge the U.S. Senate to pass the state-local mandate relief bill, S. 993, before adjournment. Passage of this bill is our top legislative priority.

Not only will be oppose any amendments not supported by the bill managers, Senators

John Glenn, William Roth, and Dirk Kempthorne, but we view all amendments as an attempt to defeat our legislation. We urge the defeat of all partisan and extraneous amendments.

Please stand with your state and local officials in support of this crucial legislation.

Sincerely,

GEORGE V. VOINOVICH,
Governor of Ohio, Co-Lead Governor on Federalism, National Governors' Association.

KAREN MCCARTHY,
Missouri House of Representatives, President, National Conference of State Legislatures.

RANDALL FRANKE,
Commissioner of Marion County, Oregon, President, National Association of Counties.

SHARPE JAMES,
Mayor of Newark, New Jersey, President, National League of Cities.

VICTOR ASHE,
Mayor of Knoxville, Tennessee, President, U.S. Conference of Mayors.

Mr. KEMPTHORNE. Mr. President, this is an opportunity. We have a bill, S. 993, that is a bill of State and local governments. Literally you have advocates in every community in America that want us to pass this bill. In their letter today, they have stated that they want us to pass this bill without amendments, because this is a bill that has been through 18 or 19 months of tough fights, both in the Senate and the House. But it is bipartisan. That is evidenced by the fact that we have 64 Senate sponsors.

Mr. President, just to show you that the support for this bill continues to grow, I ask unanimous consent that Senators EXON and LAUTENBERG be added as cosponsors of this bill.

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

Mr. KEMPTHORNE. Mr. President, we will have the opportunity to discuss in great detail the bill, the mechanics of the bill.

But I have to ask, why is it that in contradiction to what our State and local partners are asking for, why is it, in contradiction to what the President of the United States is asking for, do we wish to now delay this with a series of amendments?

Why are we afraid to go forward with S. 993, so uncertain of the positions that we cannot stand the scrutiny of having mandates and identifying mandates, identifying the cost of those mandates so that we make the best decisions possible, and knowing full well that the mechanics of this legislation——

Mr. SIMON. If my colleague would yield, let me just respond to the question very briefly.

I would consider not to put an amendment on his bill, but I have two bills that have been approved unanimously—in the one case unanimously, and in the other case I frankly do not know whether it was unanimous. But I cannot call them up, because a Senator has a hold on them.

The only option I have is to put an amendment on a bill that I am a cosponsor of. I am for this bill. I do not have any other real option.

So I say to my colleague, I understand his concern and his preference for not having any amendments. I hope he understands I want to get a vote on my bill. The Presiding Officer and I have discussed this.

Thank you.

Ms. MOSELEY-BRAUN. Will the Senator yield?

Mr. KEMPTHORNE. In just a moment, if I may. I would like to respond to the senior Senator from Illinois.

I appreciate what the Senator has stated. I know we are at that point now where there are only hours remaining in this session and he needs to find a vehicle for some of these things to happen; the fact that his amendments do not in any way impact this legislation; this is simply a vehicle to allow him to go forward.

I think that is something that can be discussed with the managers of this bill.

Now I would be happy to yield, as long as I retain the right to the floor, to the junior Senator from Illinois

Ms. MOSELEY-BRAUN. I thank the Senator very much and I thank him for his courtesies.

I would like to second the remarks of my senior Senator from Illinois. Really, as a cosponsor of this legislation also, as the Senator from Idaho is aware, this was my first bill. The first bill I filed in the U.S. Senate was a bill to end the practice of unfunded mandates, to call for disclosure with regard to unfounded mandates. I came to his committee, Senator GLENN's committee, to discuss the issue, to raise the point.

I come from a background in local Government. I am fully aware of how important this matter is to people in State and local government.

So I concur and encourage this legislation. I support it. I want to work hard for it. I would like to see it passed.

I find myself, however, in the same situation as my senior Senator, having an amendment that should be unobjectionable, yet it was subject to a hold in the process. This is the last train out of the station. This is the last vehicle. This is the last opportunity to raise a matter that I think is very important to police and firemen all over this country.

So, I would very much like to have the opportunity, I would like to see this bill go out, but I would very much appreciate the assistance of all of my colleagues, frankly, in working through this. Perhaps we can get an agreement that some of the single holds that have been put on legislation that otherwise would be noncontroversial, can be lifted so that we can get this legislation passed, so we can do the job we were sent here to do.

Again, I thank the Senator for his courtesy, except to say I would very much appreciate his assistance in working through a process whereby we can achieve the objective that we all want to achieve with regard to this important piece of legislation regarding unfunded mandates, but that we can also attend to some of the other issues that, because of the peculiarities of our procedure, will not have another opportunity to be passed into law in this session.

Mr. KEMPTHORNE. Mr. President, in response to the comments by the two Senators from Illinois, I fully appreciate the dilemma they are in, and I imagine a number of Senators are in that same dilemma. I hope they will appreciate the dilemma I am in, in trying to help our State and local partners get this legislation through in these last remaining hours, that any of these extraneous amendments that we do allow does complicate the bill when it gets to the House. With just a few hours left, I have to tell my colleagues I will be doing everything I can to keep this as narrowly focused as possible because this is what our State and local partners have asked for. This is what the President of the United States has asked for.

With that, I would like to yield the floor to the chairman of the Governmental Affairs Committee, the Senator from Ohio, who will be the floor manager of this issue. He has been a leader in helping us get here to this bipartisan position on stopping unfunded Federal mandates.

The PRESIDING OFFICER. Does the Senator yield to the Senator from Ohio? The Senator from Idaho has yielded the floor?

Mr. KEMPTHORNE. Yes, Mr. President, I yield.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I rise in support of the Senator from Idaho. This issue, as the distinguished Senator from Illinois said a few moments ago, was the subject of some of her first legislation. It was the subject of some six different pieces of legislation proposed that were directed to the Governmental Affairs Committee. We have considered this legislation all this year, worked out the compromises on it, worked out the compromises with the House, and have what I think is a very important piece of legislation.

I am sure there is not a Senator in this Chamber who has not been approached by either Governors, their

mayors, associations, their county and municipal government representatives, who have been complaining bitterly for several years about the fact that we pass all sorts of legislation here and we require them to do all sorts of things at the State and local level. But we in turn do not provide the money to do those things.

In times past, up until about 8 or 9 years ago, the States could assimilate this and did. Some of the programs voted out of here were very expensive, but they assimilated these programs, put them in their budgets, and had enough taxing power that they could in fact cope with it.

But what started along about 1985 was the fact we had, between 1985 and right now, some I believe it is over 200 pieces of legislation that put so many billions of dollars' worth of requirements on the States and local communities that they could not cope. So there has been a rising tide of not only indignation —I will not say revolution, quite, but it has come close to that, I think, with some of the things expressed from some of the Governors, in particular. And I do not blame them. They are right. They are absolutely right. And their cry was, "No legislation without the bucks, without the money to go along with it." They came to Washington here, and they made the rounds of the offices. They have done this repeatedly over the last year, and for very good reason—they are being dealt with unfairly.

What we tried to do is redress that with this legislation by putting into effect a procedure requiring that an estimate be made of what the impact is going to be when we pass a piece of legislation, giving that job to the Congressional Budget Office so it will be able to tell the Congress how much it is going to cost the States and local governments and, in certain cases, estimate how much it is going to cost the whole country, the general population at large. We put limits on that. It is just to make sure everybody knows exactly what we are passing.

We say if we do not provide the money, if it is not a bill on which we also authorize the money to go along with whatever it is we are requiring, that if we do not provide the money, then a point of order would lie against the bill and we would have to have a second vote on it to say, regardless of the money, we want to see a vote on this bill.

But it would be a majority point of order. In other words, it would just be a tap on the shoulder to say: "Look, are you sure you want to do this to everybody? Here is the estimate on it." And that is all it is. That is all it is. It requires us to have better information, better estimates of what the financial impact is going to be on the State and local governments. And with the amendment that Senator DORGAN put on the bill in committee, it would also require estimates in certain cases of the impact on the regular civilian population. That is what this does. I do not think there are many people in here who would disagree—it is a good idea to pass something like this because it gives us more information to pass intelligent legislation, at the same time making certain we do not pass something here without due consideration of what the cost is going to be.

That is so fundamental, it seems to me, it is just hard to think we are having any problem with it. But the problem is this. We got it finally pretty well worked out. What we are trying to do, since it was so late in the session and since we did not have agreement on it until late, was to bring it up on a unanimous consent request and we hot lined that to make sure there was not any objection to bringing it up on a unanimous consent request, and to pass it by acclamation, which I think is, in effect, what everybody here would agree should be done with this piece of legislation.

We had it down on both sides to where we only had one amendment where we could not get the particular person involved to say yes, we will not put this on that bill.

So what has happened now is, on both sides, we now have a whole raft of bills being proposed, already brought up here, that in effect are going to come up and kill this whole thing. That is what it is going to come down to. The President realizes this. That is the reason for his letter. We had one notice out of the Office of the Press Secretary at the White House yesterday. But this one is from the President, who addressed it directly and has signed the letter that Senator KEMPTHORNE mentioned a moment ago. He is asking that this bill go through without amendment.

I know that is a big order. I know people have their individual bills that they have not been able to get through, and I appreciate that. But this is one of them, also. And I am afraid what is going to happen here if we cannot get agreement to let this go through without amendment is it will become a Christmas tree. We will pull it down tonight and no bill will go through this year for unfunded mandates. I do not want to see that happen. It is not going to deal fairly with the people out there in the State and local governments.

I am sorry the other bills have not been able to get through this year. But I think at this point for this to become a Christmas tree for amendments for other bills or proposals is going to kill it. And I would hate to see that happen.

The letter from the President was addressed to our majority leader and reads as follows. It was written today.

DEAR MR. LEADER: As you know, this Administration supports the adoption of the "Federal Mandate Accountability and Reform Act of 1994," as drafted by Senators Glenn and Kempthorne.

I urge you to schedule a vote in the Senate tomorrow on this important piece of legislation. I believe that it is important for the Senate to consider this matter and encourage the Senate to adopt this legislation without amendment.

Thank you for your consideration of this request.

Sincerely,

BILL CLINTON.

The President knows the importance of this because, as he has told the Governors, he was a Governor. He knows the impact and he is firmly behind what it is we are trying to do here.

But I am afraid this whole thing will be killed at this late time. I am sorry that we do not have days to look ahead to where we can take up every amendment, vote it up or down and use this as a Christmas tree for all sorts of considerations.

We do not have germaneness rules in the Senate, unfortunately, something I think we have to consider one of these days. But any bill, any amendment for any purpose whatsoever, can be attached to this legislation. I know that.

So I think the only way we are going to get this unfunded mandates bill through is if people agree that we will not have amendments, or our only option other than that would be to let each one be brought up and, at the appropriate time, move to table and hope we will be successful in that and still get the bill passed. But that itself can be a long and tortuous process this late in the session.

I do not know whether we can get agreement of people to hold off. If people are not willing to hold off their amendments, I do not have much doubt this thing is going to be dead, and that those who insisted on their amendments will be the ones who killed the bill. I hate to see that happen. That is a blunt statement of the facts.

I see the Senator from Idaho nodding his assent. There are so many amendments that people would like to have on any piece of legislation they can hook something onto right now. If this becomes the attachment point for all these things, then I doubt that it is worthwhile even wasting the Senate's time. We ought to pull it down. I hate to see that happen.

Mr. SIMON. Will my colleague yield?

Mr. GLENN. I will yield.

Mr. SIMON. I will just point out the two bills I have, I believe, are both supported by the administration.

Again, the one on the African-American museum has been approved unanimously by the Rules Committee, chaired by Senator FORD; the other one by the subcommittee chaired by Senator BUMPERS. I would be willing to, on my amendments—the African-American museum might have some controversy—I would be willing to say let us do it in 10 minutes, 5 minutes each

side. The other one we do not even need to take any time on at all.

Mr. GLENN. If we can be assured those were the only things that would be attached to this, why, obviously that would be quite acceptable to me. But we have a list that grew even during the day today. Every time we sent out a hot line, their people had other things they wanted to attach, and the list grew longer. I am afraid if we open this up——

Ms. MOSELEY-BRAUN. Will the Senator yield?

Mr. GLENN. I will yield.

Ms. MOSELEY-BRAUN. You mentioned germaneness. The amendment that I would propose has to do with allowing State and local governments to set retirement ages for police and firefighters. It is legislation that has passed the House before and has been subject to a single individual's hold on the Senate side.

Frankly, it seems like it would be one of the least controversial amendments possible, except that, again, under our rules, in spite of the fact it is germane, in spite of the fact it is something that just about every police and fire organization in the country has endorsed, the House of Representatives has endorsed, we have not had a chance to vote on it because of the operation of our rules.

My senior Senator has made a proposal. If there is any way possible we can work out an opportunity, I think this is an amendment that would have the support of just about everybody in this body. The National Conference of State Legislatures that worked so hard on the unfunded mandates bill supports this; the Conference of Mayors supports this amendment; the Association of Counties supports this amendment; the National League of Cities supports this amendment. I have a list that might take 10 minutes to read off who supports the amendment in behalf of police and firefighters.

Again, because of the vagaries and peculiarities of our rules, a single individual has been able to stop this amendment from being heard in the Senate. This is our only opportunity. I do not think it is a matter of wanting—I want to see this legislation passed, as the Senator from Ohio is well aware. I do not want to kill this bill. It is too important a piece of legislation. I want to see it passed. I want to see it supported.

At the same time, we have a matter of germaneness that is important to working people, police and firemen all over this country. It seems to me I would not be doing my job, fulfilling my responsibilities, if I were to let such opportunity, given the technicalities—this is an opportunity to get this matter passed into law. I would very much appreciate the help and assistance of the Senator from Ohio in getting this legislation added as an amendment to this important bill on the mandates.

Mr. GLENN. Mr. President, I do not question the desirability of all the legislation. I am not arguing against the proposals by either of the distinguished Senators from Illinois. I think these are probably very desirable things.

My problem is the fact that if the bill is once open, then we have a whole string of amendments on this, and it will probably go long enough that we just have to pull the bill down. At least that has been the indication from the hot lines we have sent out on this. We can start down that road. I hate to do it.

Before we decide exactly what direction we will go with this, I know the distinguished Senator from Delaware would like to make some comments on this. Mr. President, I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, let me start out by saying that I agree as to the importance of this piece of legislation, and I share very much the concern expressed by Chairman GLENN.

This legislation offers a significant reform in the relationship between the Federal Government, and State and local governments. In fact, it represents no less than a fundamental shift in the basic attitude of the Congress toward our cities, our counties, and our States.

Under this legislation, we are for the first time acknowledging, in a meaningful way, that there must be limits on the Federal Governments propensity to impose costly mandates on other levels of government.

As the representatives of those governments have very effectively demonstrated, this is a real problem. Cities, for example, generally are fortunate if they have sufficient resources just to meet their own local needs. Unfunded Federal mandates have put a real strain on those resources. This has been a practice of the Federal Government for the past 2 or 3 decades, but it has mushroomed in recent years to an intolerable level.

This has been, at least in part measure, a result of the Federal Government's own budget difficulties. In the past, if this government felt that a particular problem warranted a national solution, it would fund that solution itself. Mandates imposed on State and local governments could generally be off-set with generous Federal grants.

But the Federal Government no longer has the money to fund every governmental action it wishes to see accomplished throughout the land. In fact, it hasn't had the money to do that for many years. Instead, it borrowed for a long time, to cover these costs. But now the Federal deficit is so large, that the only alternative left for imposing so-called national solutions is to impose unfunded mandates. That is, the Federal Government has increasingly enacted requirements on State and local governments, requiring that they spend their own money on the priorities of the Federal Government. In all likelihood, without some mechanism to restrain it, this practice of the Federal Government will continue for years to come.

A parallel concern affects the private sector. The Federal Government—both Congress and the Executive Branch agencies—impose costly laws and regulations on the business community. It does this often with little understanding of the amount of these costs, or of their impact. This habit of the government, like that of the unfunded mandates on State and local governments, shows little likelihood of abating. Here, too, Congress needs to devise a mechanism that brings about some restraint.

Now, the difficulty in devising such restraining mechanisms lies in the recognition that we do, in fact, have a national responsibility to protect the environment, guard civil rights, and promote other important values. A flatout prohibition on any and all Federal requirements that impose costs on non-Federal entities, is probably impractical. It is likely unwise.

So the question has been, how best can we strike the right balance? How can we preserve certain important Federal responsibilities, while ensuring that these responsibilities are exercised cautiously? How can we do it, while being mindful that cities, counties, and States—and, indeed, the private sector—are not simply subdivisions of the Federal Government?

It is here that I must recognize the extraordinary leadership of my colleagues—the Senator from Idaho, in rallying broad support in the Congress for action on this issue, and the senior Senator from Ohio, in overseeing the development of this important bill that is now before us. It has been my great pleasure to work with my two colleagues in the shaping of this effective, but balanced legislation. I believe it will go a long way toward bringing restraint to Congress in the imposition of mandates.

Senator KEMPTHORNE, as a former Mayor himself, has truly been the champion of bringing relief to State and local governments. And he did so in a tenacious, yet reasoned way, that is the hallmark of an effective legislator. And when I requested last June, that Senator GLENN, as Chairman of the Governmental Affairs Committee, hold hearings on the issue, he responded favorably. He then made a sincere commitment to work with Senator KEMPTHORNE and me to see that a meaningful solution to this challenging problem would be developed and brought before the Senate. In his persistence, he has honored that commitment.

As I said, it has been my pleasure to have worked with both of them to get us this far. I also want to acknowledge the hard work, and good faith bargaining, of the major State and local government organizations—the so-called "Big Seven". Their involvement was vital, and their support crucial, in bringing us to this point.

I now call upon the rest of my colleagues to join us in supporting this important legislation, and to not stand in the way of its enactment. Our governors, our State legislators, mayors, and county officials are watching us tonight, so let us not let them down.

Mr. President, I yield the floor.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. Is there further debate on the motion?

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. I would just like to——

Mr. SIMON. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Idaho has been recognized.

Mr. KEMPTHORNE. Mr. President, I would just like to ask a question of the Senator from Delaware. I know that the Senator from Delaware realizes how critically important this is to our State and local partners. This is the legislation that they helped craft. They have asked that there be no amendment; the President has asked there be no amendment. The question is to the Senator from Delaware, the ranking member of the committee that is dealing with it: Is it accurate to say that among the Republicans, all Republican Senators who did have amendments they wished to offer to this bill have withdrawn those amendments in the spirit of this agreement?

Mr. ROTH. Yes. I say to my distinguished colleague, that is the situation as I now understand it. I applaud and appreciate the fact that there were a number of our colleagues on this side of the aisle who had amendments they wished to offer. But in the spirit of compromise and willingness to move ahead on an important piece of legislation, a piece of legislation, as I said, of critical importance to our State and local governments, they have agreed not to offer those amendments. So I hope that the same approach, the same willingness to cooperate and work together, will be true of our friends on the other side.

And so, yes, that is my understanding. Again, I want to congratulate the distinguished Senator for his leadership role in developing this piece of legislation.

Mr. KEMPTHORNE. Mr. President, I thank the Chair. I thank very much the Senator from Delaware.

The PRESIDING OFFICER. Is there further debate on the motion?

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRAIG. 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. GLENN. Reserving the right to object.

Mr. CRAIG. It is for the purpose of debate on this legislation.

The PRESIDING OFFICER. The Senator may proceed.

Mr. CRAIG. Mr. President, I thank the Senator very much.

I am pleased to join with the chairman and my colleague from Idaho, Senator KEMPTHORNE, this evening in debating a piece of legislation that has been a long time overdue in the Halls of this Congress.

To address the issue of Federal mandates is without question one of the most important issues with which this Congress can deal. We have seen for well over a decade across this country the growth of Federal policy that places on local units of Government an obligation to fulfill a certain Federal responsibility, a Federal requirement that ultimately costs that unit of government a great deal of money, and yet the Federal Government and the Congress of the United States pass on no Federal dollars by which to assist the local unit.

I remember very well when I was in high school and my father became a county commissioner. He came home one night grumbling because the Idaho Legislature had just passed a piece of legislation that was going to require Washington County, my home county, to expend a certain amount of money to fulfill a State responsibility, and the county simply did not have the money. And so that commission of county commissioners had spent all day deciding how much they would increase the levy on the taxpayers of the county to fulfill a responsibility that the Idaho Legislature said was important to the State, but the county commissioners and the citizens of the county had not yet deemed it so.

That is a perfect example of what the Congress of the United States, as a big brother to State and local units of government, has been doing now for nearly three decades, especially since the days of the Great Society legislation of the Johnson administration. But unlike now, when they required State and local units of government to do something, at that time they sent along a little money, whether it was in the form of direct grants in the total amount or whether it was sharing amounts in which State and local units of government had to participate.

At least at that time, when the Federal Government deemed it was important to do a certain thing at the local level, they sent along a little money to help do it. But you, Mr. President, and I know what began to happen in the early 1980's. As budgets became very difficult around here, as we began to sort out the public resources of this country to make a decision over expenditures for defense, which we all knew were important, and, of course, which helped win the cold war and change dramatically, my guess is, the landscape and the history of the world, it was during those debates and our desire to stimulate the economy of our country through tax reduction and therefore a general reduction in the rate of increase in Federal revenues that we began to progressively cut back on moneys that would flow to State and local units of government where there was a requirement to fulfill an obligation, whether it was a drinking water requirement, whether it was a curbing requirement, whether it dealt with handicapped people, or whether it dealt with areas of safety in transportation.

All of them began to tumble out to State and local units of government, and you and I began to hear the hue and cry from city councils and county commissioners and State legislatures saying: Do not do this to us. If you are going to ask us to participate in a certain way, please send a little money along with it, because what you are forcing us to do in essence at your mandate, at your bequest, is to tax our citizens. We get the blame for the taxation. You can go around—and I am talking about your being the Federal legislator—taking great credit for a certain piece of legislation but with no obligation or, in some instances, no wrath from the taxpayer.

Senator KEMPTHORNE, when he served as mayor of our capital city in Boise, clearly saw firsthand these kinds of problems. He began to recognize that if he was going to fulfill the responsibility of the city—and that was to address the obligations of the Federal Government in areas of transportation, recreation, public safety, and all of those kinds of things—he then would be caught up as a mayor and city council in raising levies for the purpose of taxation to fulfill the responsibility of the Federal mandate.

Clearly, at that time it becomes the responsibility to ask the question: Is this the right thing to do? Is this going to make the world better? Will it improve the condition under which our people live? Or is it clearly a form of taxation with not the kind of representation that our Founding Fathers intended?

So I watched as my junior colleague came to the Senate with a great sense

of determination that has produced and brought to the floor this evening S. 993, the Federal Mandate Accountability and Reform Act. Not only has he tugged our coats and brought us an awareness but he went out across the country to deal with the national mayors group, the U.S. Conference of Mayors. He spoke to them. He brought them along. He got their endorsement because they were the ones that were experiencing firsthand the problem and the nagging frustration of the Federal mandate. He spoke and brought along the National Association of Counties and the National League of Cities, and the National Governors Conference and the National Conference of State Legislators, and the Council of State Governments, and the National School Boards Association, and the U.S. Chamber of Commerce. And I have never seen such a cadre of support from such a broad base of the citizenry of this country on an issue of such concern.

I found it interesting because I know what some of my colleagues told Senator KEMPTHORNE. Well, that is an important issue. That is an issue that if you bring it up now we can spend several years debating. This is an issue that is really important and we really ought to talk about it. What they were saying to this freshman legislator was in a polite way you are a freshman and that is a good idea. Why do you not work on it? I do not think many realize—but I do—the determination of this freshman Senator that this is something you do not play around with. This is an issue whose time has come. This is an issue where the American people and all of these public servants across this broad array of associations and organizations that I just spoke to are beginning to say to their Federal Government, stop it. Let us govern our citizenry. Let us decide what is good for our people. Let us with our ability both to determine and their ability to pay make the decision on what is good for public safety, what is good in the area of transportation, what makes sense in water quality and all of those kinds of things that local and State units of government must address for their citizenry but were being forced to address in many instances well beyond their capability because of the requirement of a Federal mandate.

The bill you have before you and the one that I so strongly support is a very straightforward and simple piece of legislation. I am sure that both Senator GLENN, who has been very cooperative in working with Senator KEMPTHORNE in moving this legislation through, will spend a good deal more time discussing it this evening. But it is without question an unprecedented protection from unfunded mandates at State and local levels that we have not seen before. And it is going to be a fundamental and critical tripwire to all of us, a tripwire that will force us to stop and analyze the legislative process we are in to determine whether in fact the public policy we are advocating is going to be a Federal mandate to a local unit of government. And it will then require us to determine what kind of cost is involved.

We all love to talk about the good things that will flow from the public policy, how we are helping people and causing a better world to exist. But most of us do not really like to talk about the cost of it, and as a result we have not very often. It gets put into the base, it gets put into the broad funding mechanism, or in this instance it gets passed through to the city councilman or to the State legislator or to the county commissioner. And it says, you do it. It is a requirement. It is the law. It is a Federal law. And you pay for it. And you levy the tax. Then of course, the national politician is not faced with that very unpopular task of raising a tax to pay for a Federal program, an underfunded Federal mandate that we passed back through to a local unit of government.

The legislation imposes that mandates greater than $50 million in any fiscal year on a State or local unit of government can be considered by the Senate if a certain process goes forward. An estimation of the cost—my, a simple idea, is it not? But it has not been done before because we do not worry about it if we do not have to pay for it. It authorizes funds in the bill and it requires that they fully be paid for if it reaches a certain threshold level. In other words, it puts the burden back on us. If it is such a good idea, then why do we not pay for it? Why should we not ask the taxpayers to do it? Why should not we face the burden and responsibility of the impact of the public policy that we so anxiously and excitedly push forward to the American people so that we can claim credit and we can be reelected?

This is a very important piece of legislation. For us, it is accountability. But for the American people it is a realization of the fact that for the first time in well over 3 decades this Federal Government is going to turn to them and suggest the novel idea of asking their permission in certain instances or not doing it at all if we cannot bear the heat of the fiscal responsibility that is required in the legislation that we pass.

There are a variety of other tests. But the entire amount of the mandate for the life of the bill must be included, the cost, not just the amounts over $50 million. A lot of important steps and processes have been put into this bill—a simple test that we as a Government and as legislators are going to be required to use or ask of the Congressional Budget Office when we produce a piece of legislation that will have an impact or a responsibility for a State or local unit of government to carry out.

So once again, let me praise the work of my colleague, DIRK KEMPTHORNE for not only the tremendous energy that he has put forth over the year in moving this legislation along here in the Halls of Congress, and working both sides of the aisle as successfully as he has, but the tremendous energy he put forth to rally a Nation, to rally all of these national organizations, to focus them on a single piece of legislation and to bring them to support it. It is clearly a statement of a quality legislator at work to resolve this issue.

I ask my colleagues this evening to support this legislation. While I know we are in the final hours of this Congress, I think it is important to move this bill as far as we can this year. I hope the House could address it also. Clearly, to pass it through the Senate is a very real statement, not just for this Senator but for this Congress to begin to say to the American people and to the units of government that we believe are the most important, those that are the closest to the people, that we are going to stop handing down these kinds of Federal edicts unless we send money with them. We are going to attempt a method of measuring it and it is embodied within this legislation.

And I congratulate both Senator KEMPTHORNE and Chairman GLENN for their work on this issue to bring this to the floor.

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

The PRESIDING OFFICER. If the Senator will withhold the quorum call, the Senator from Illinois has requested the floor. Does the Senator insist on his quorum call?

Mr. CRAIG. I do not.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you, Mr. President. I thank the Senator from Idaho.

I would like to point out that the substance of my amendment is to require information, and it is an important amendment that I care deeply about. I also care deeply about the issue in the underlying legislation. Again, as I said earlier, I was one of the people on this side of the aisle who came to this Senate concerned about the impact of Federal decisions on State and local government.

My legislation called for the disclosure aspect of this bill. It was not as broad as the current legislation worked out by the committee, but it was in that direction. So I recognize how important this issue is to State and local governments. I support that.

I support the legislation and I want it to get passed. It is in that vein, Mr. President, that I would like to propose or suggest to my colleagues the following: I would be willing to withdraw my intention, or withhold my intention to

file the Age Discrimination Employment Act as an amendment, assuming no other amendments are accepted or pending on this bill. That is to say, if there is a unanimous consent agreement achieved that allows this bill to go forward without any amendment at all, then I will withhold and not persist in attempting to filing the Age Discrimination Employment Act. I would not want to see the unfunded mandate bill imperiled in any way, even though this is a very important issue.

I point out further that, again, it is a difficult call for me to make at this time. This legislation has the support—and I would like to put this in the RECORD—of the Fire Department Safety Officers Association; the Fraternal Order of Police; the International Association of Fire Fighters; the International Association of Chiefs of Police; the International Brotherhood of Police Officers; the International Society of Fire Service Instructors; the International Union of Police Forces; AFL-CIO; the National Association of Police Organizations; the National Sheriffs Association; the National Troopers Coalition; AFSCME, the American Federation of State and County Municipal Employees; the National Public Employee Labor Relations Association; the New York State Association of Chiefs of Police; City of Chicago Department of Police, along with the National League of Cities; the U.S. Conference of Mayors; the National Association of Counties; and the National Conference of State Legislatures.

As you can imagine, this legislation would be consistent with the whole notion of giving State and local governments the capacity to make decisions with regard to local issues. That is all this legislation would do.

I think it would be something that this body would support if given an opportunity to do so. However, the sponsors, as you can see from the little meeting occurring on the floor, there is a sense that any amendment on this bill imperils the entire bill.

As a result, again, in the event that we fail to reach a unanimous consent agreement regarding a bill, without amendment, in the event that fails, I will present my amendment, and it is my intention to present it if we cannot achieve a unanimous consent agreement. On the other hand, if a unanimous consent agreement is achieved, then I will withdraw this amendment and wait until the next session to submit it as freestanding legislation.

But I have to tell you that I am greatly disappointed. This was something that were it not for the vagaries of the Senate rules that allows one individual to hold up what would otherwise be in the public interest or in the interest of the other Members of this body, this legislation would have passed by now. I regret being in this position, and I would not want any misconceptions to arise that there was any reticence on this side of the aisle, or by this Senator, to the passage of the underlying legislation.

I yield to my colleague.

Mr. SIMON. Just so there is no misunderstanding, I will object to any unanimous consent agreement to no amendments. I respect my colleague from Illinois for what she has said. I have two amendments that are genuinely—with the exception of, I believe, one Senator—noncontroversial, that the administration can accept. I hope we can get it worked out. I am going to insist on my right to offer an amendment.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, I think we all know we are in, hopefully, the last 24 hours of this session. It does not take but one Senator to block anything. Sometimes it is frustrating, particularly if it is blocking something you have an interest in.

I have just visited with the distinguished majority leader and suggested maybe there would be a way. We have two major pieces of legislation—unfunded mandates and congressional coverage. We have interests on both sides who want to offer amendments. It seems to me that there may be some way that we could reach an agreement between now and tomorrow morning where each of those bills could be passed without amendment. They are both very important. I think we have Members on this side who may have amendments on congressional coverage, and if unfunded mandates is going to have a turkey shoot, I assume we will have people over here who want to add a few amendments to unfunded mandates.

I must say, having met with a group this afternoon, along with Senator KEMPTHORNE, who feels very strongly about unfunded mandates—and these were mayors and counties' and Governors' representatives, a bipartisan group—they feel very strongly about it, and they very much applaud the efforts of Senator KEMPTHORNE and Senator GLENN. It is not a partisan issue. It affects every county, every city, every Governor in America, and a lot of people are beginning to understand what unfunded mandates really mean.

So it would be my hope—and we on the Republican side are always accused of blocking legislation. We are making a proposal now that we think has great merit. We would have to do our work on our side, and there would be work done on the other side. But we can just say, OK, let us pass congressional coverage without amendment and unfunded mandates without an amendment. Unfunded mandates have to go back to the House. They are going out some time late tomorrow night, or early Sunday morning, or Saturday morning. So there is an opportunity here that may slip away on both these issues until sometime next year.

So I want to thank both Senator KEMPTHORNE and Senator GLENN for their efforts to bring a bipartisan bill to the floor. I think we should act on it before we leave. But everybody knows if there are going to be 12 amendments—and that is the last count I had—on the other side on unfunded mandates, you can forget it, it is not going to happen. I assume the Senator from Idaho or the Senator from Ohio put in the RECORD the letter from the President, along with a letter from other groups I have referred to, indicating the importance of this and the President himself indicating that it is important to proceed on this legislation without amendment.

So if we can be helpful on this side and work out such an arrangement, we are prepared to do that. But if people are going to insist on their amendments, I assume we will do that on this side—and I do not see anything wrong with that; it happens every year about this time—then I assume unfunded mandates will not pass this year, and congressional coverage will not pass this year.

So there is an opportunity to pass them both, and do it very quickly, before we complete our business either tomorrow night, Saturday, or Sunday of this week.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY] is recognized.

Mr. KERRY. I do not know if the majority leader is seeking recognition.

Mr. MITCHELL. No.

Mr. KERRY. Mr. President, I was not here for the whole statement of the distinguished minority leader but enough of it to understand what the proposal is with respect to the possibilities of moving forward.

I want to make it very clear to the colleagues who are proposing to adopt the unfunded mandate bill as it is that there are many of us who share a very commonly felt, broadly felt feeling in the country—that unfunded mandates are unacceptable. I accept that. And I want an unfunded mandate bill to pass. I would like that to happen. But it is unfair to suddenly hold this bill up in the closing hours of the Senate debate to not necessarily be subject to some refinement. I mean, after all, it was friends on the other side of the aisle who, on health care, talked about this huge piece of legislation that needed refinement. So we worked at it. There were countless other bills that came up where we needed refinement.

There are problems, definitionally, in some of the articles, some of the sections of this bill.

For instance, I do not believe that my colleagues on the other side, or any

of those—even Senator GLENN here, who I respect greatly and I know wants to pass a good unfunded bill, I do not think he wants to tear apart every aspect of Federal-State partnership with respect to funding for programs where we may decide that we want to have a 20 percent contribution by the States or a 30 percent contribution or a 50 percent contribution.

The language, as it is defined currently in the bill, would in fact in many people's judgment make it dubious as to whether or not that would continue. So you would, in effect, wipe out all current relationships between the Federal Government and the State where we can mandate that there be a match. I do not think we want to do that. I do not think my friends intend to do that.

If they do not intend to do that, for instance, on water treatment facilities, are we about to say here in the U.S. Senate tonight in the span of just a few hours that the entire relationship of the sixties, seventies, and eighties, continuing to the present, where the Federal Government says we are willing to put up a few dollars, but we think the States ought to also put up a few dollars, are we about to say that is just wiped out?

I do not think that is what my colleagues want to do. I think we want to be permissive enough to suggest that we ought to understand the costs. I absolutely agree with that.

The days of the Federal Government suggesting that we ought to pass something and requiring the States to participate, and nobody even knows what the cost is are over. They ought to be over.

So I am not here to slow this down. I am absolutely not here to stop it. We should not pass a lot of the kinds of unfunded mandates that we pass. We should not mandate States to do X, Y, and Z where there is no partnership from the Federal Government, and all we are doing is suggesting that they pick up the entire cost and there is no mechanism or even judgment as to how much that would be and the mayors and the Governors are left holding the bag. I do not want that to continue. My colleagues do not want that to continue.

Now, I am convinced, in the same spirit with which we approach a lot of legislation around here, that in the next hours those of us who want to meet in sort of a commonality of spirit here to try to pass something ought to be able to find some amendments that are acceptable. I would like to see this passed. I do not want the Federal Government continuing to irresponsibly press on to the States a whole set of mandates that have no sense of what they cost, no end game, no basis that is rational or fiscally responsible, or otherwise.

But I do not also want to end forever the ability of the Federal Government to demand responsible activity by the States in which we are also willing to participate with a sufficient level of match.

I think there are a number of areas in this legislation as it is currently designed which would prohibit that. I do not think it is intended. I hope it is not intended.

So if we were to get together in the next hours—my suggestion is we try to do that—I am sure we could work out an acceptable number of amendments and hopefully pass the other legislation which apparently is being offered up as a quid pro quo. I will not personally be put in a position where the quid pro quo of the other bill that most of us want and think is a good idea is going to become the hostage taker of a piece of legislation that is not ready to be passed.

I know my colleagues on the other side of the aisle understand that, as well as any people here, because we have heard those arguments an awful lot on this floor over the course of the last months.

So I think if we get to work and take a look at these amendments, we ought to hopefully be able to come to some rational agreement and reach a compromise.

The PRESIDING OFFICER (Mr. HARKIN). The majority leader.

Mr. MITCHELL. Mr. President, I was not aware of the remarks of the distinguished minority leader, but I have just been told approximately what he proposed, which he had discussed with me a few minutes before that privately.

I favor the congressional compliance bill. I favor the unfunded mandates bill. I also favor the lobbying disclosure and gift reform bill. Now we have three reform measures that are pending here. I hope we can pass all three.

We have been told in the last 2 days that the objection to the lobbying disclosure and gift reform bill was the provision which affected grassroots lobbying organizations and membership issues.

So we have proposed this evening to simply drop those provisions from the bill. That is what our colleagues say is an objection, and that is what they have said is the objection over and over again. Well, we do not agree with their characterization of the issues but we accept the fact that we cannot pass the bill with that provision in there. So even though a majority of the Senate favors it, then we ought to pass it without those provisions in there.

My hope is that we can pass all three measures. Let us make this a reform session of the Senate. Let us pass congressional compliance. Let us pass unfunded mandates. Let us pass lobbying disclosure and gift reform.

Now, all of this discussion is not going to get us anywhere until we get started on the bill. I attempted to bring up earlier this evening the congressional compliance bill. Objection was made by a Republican colleague, and we could not do that.

So I made a motion to proceed to the unfunded mandates bill. Why do we not now adopt the motion to proceed and start on the bill? If we are ever going to pass it, we have to start on it. In the meantime, perhaps we can get an agreement from our colleagues, since they have said over and over again their objection to the lobbying disclosure and gifts reform bill are those provisions which deal with grassroots lobbying and membership issues. Since they have said over and over again that is not a smokescreen to obscure other provisions, time and time again it was said here when some on our side, myself included, suggested that that was a smokescreen to obscure other issues; no, no, we were told that is not a smokescreen.

Well, we accept the fact that we cannot pass the bill with those provisions in it. So let us take them out, as our Republican colleagues have suggested, and if that is in fact the reason for the opposition, as our colleagues have said it is, let us pass that bill.

So why do we not do all three, and as a way to get started, why do we not now adopt the motion to proceed to the unfunded mandates bill and get on the bill? Senators will then want to talk about it. Debate it. If the Senator wants to offer an amendment, the Senator has a chance to do that while we are trying to work this thing out and get all the bills passed.

Mr. President, I ask my colleagues to let us proceed now. I have made a motion to proceed to the bill. I hope we can simply adopt it right here and now. Then we will be on the bill.

Mr. WELLSTONE. Mr. President, I would very much like to proceed, but I would like to have the majority leader call for the yeas and nays on the motion to proceed.

The PRESIDING OFFICER. Does the majority leader yield for that purpose?

Mr. MITCHELL. If the Senator wants a vote, then we have to give Senators notice of that.

So, Mr. President, what I suggest is that we have a vote on the motion to proceed at 9:30, which is 20 minutes, and it will give Senators a chance to be notified and to come back before the vote, since I believe not all Senators are present on the floor. That way we can proceed to the bill.

So I will present the request.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that at 9:30 this evening the Senate vote on the motion to proceed to consideration of the unfunded mandates bill.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Mr. President, reserving the right to object, I think all of us want to move ahead as the leader has

expressed. I think there is some concern about some of our Members who may well be farther away than the 20-minute time factor he has suggested. I would suggest some greater flexibility. I am told it will be important before we can agree on a time certain for a vote.

Mr. MITCHELL. Mr. President, I understand it is a 20-minute vote. So that gives people 40 minutes to get here. We have been told that our colleagues want to proceed, and I know the distinguished junior Senator from Idaho has been anxious to proceed on this. So what would the Senator like; 30 minutes?

We cannot act on the bill until we proceed to it. I am trying to get us to proceed to it.

Mr. CRAIG. I say to the leader, I appreciate his expression earlier about the lobbying reform legislation. I must suggest to him, as I think he knows, that that legislation, in the form that was very acceptable to the Senate and that this Member voted for, passed the Senate by a very large vote some months ago until it was changed significantly by the House.

And so, I am one who welcomes that opportunity.

I would suggest that the argument of the smoke screen does not serve this side at all; that we were concerned truly about the grassroots provisions that were put in in the House and in the conference. And if we can do that and move these other two pieces of legislation, I think we could solve that.

I am told that a time of 9:45 would accommodate a good many more Senators than the 9:30 time.

Mr. MITCHELL. Mr. President, I just want to say, this is the last night before the stated target date for adjournment. I do not know what Senators are thinking, when every 5 or 10 minutes over the last few days I have had a Senator—Democrat and Republican —come up to me and say, "Now, we want to get out of here Friday night."

We have not had late nights. Every night, I have tried very hard to accommodate everyone. Now here we are, the next to the last night, and we are told that Senators are not here, cannot be here for a vote. And yet, at the same time, we are hearing, "Oh, we have to pass this bill; we have to take this bill up."

Well, a Senator can object to any vote other than at 9:45, so we have no choice.

Mr. President, I ask unanimous consent that the vote on the motion to proceed to the unfunded mandate bill be at 9:45 this evening.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

Mr. MITCHELL. Mr. President, a Senator here has requested the yeas and nays, as he has a right to do.

So I request the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Is there a sufficient second?

Mr. MITCHELL. Mr. President, I have now been notified by the distinguished Senator from Idaho that he is prepared to accede to my original request of 9:30, and I appreciate that. Five minutes have elapsed since I made that initial request, so why do I not now ask that the vote be at 9:35. We want to keep as many people as we can happy around here.

Mr. CRAIG. Mr. President, reserving the right to object, I appreciate the leader's accommodation here. The signals got crossed here; 9:35, as he proposed in his unanimous consent request, is acceptable to our side.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. I will not object.

The PRESIDING OFFICER. Hearing none, the vote will occur at 9:35.

Mr. MITCHELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I would like to say to my colleagues on the other side, if we could get together now and perhaps try to work through some of these amendments, it might save us a lot of time.

For my part, I want to make it clear: I do not intend to talk a long time or tie these amendments up. I am willing to have 51 votes decide what we do.

But I would like to see if we cannot reach some agreement. We may save the Senate a lot of time.

Ms. MOSELEY-BRAUN. Mr. President, I would just want to associate myself with the remarks of the Senator from Massachusetts. I think that, in the interest of the process, it would be very helpful if we could get together and try to work through some of these proposed amendments. It does now appear that we will proceed to the legislation and we will, therefore, have amendments to it.

So I again associate myself with the remarks of the Senator from Massachusetts and look forward to working with my colleagues in the time between now and the vote.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I would like to acknowledge what the junior Senator from Illinois stated earlier in her suggestion that she would withdraw her amendment based on certain conditions. I think that is in the spirit of what we are trying to accomplish. I know that all the State and local partners will appreciate that gesture.

I would just ask that she consider the modification, being that she said no amendments. But there are some managers' amendments just to correct some of the provisions of this. So that it would be no amendments, other than the managers' amendments.

Ms. MOSELEY-BRAUN. Again, I would like to visit with the Senator from Idaho and have a discussion in this regard.

Mr. KEMPTHORNE. Also, Mr. President, I say to the Senator from Massachusetts, I would like to respond to a point that was raised, if I may.

Mr. President, I would like to respond to my friend from Massachusetts concerning a couple of points that he made. He said, for example, if we have an existing system that is currently a matching format, 20 percent is offered by the State or local government; 80 percent is paid for by the Federal Government, that under this new provision that would no longer exist, that it would require 100 percent funding.

We need to be aware that the process, as it is laid out, it is not retroactive. So an existing—in this case—80 to 20 split would continue until such time as that legislation may be up for reauthorization.

At the time that it is up for reauthorization, then CBO would do a complete analysis of the mandate, come up with the cost of that mandate. The germane committee would include in its legislation the cost that has been identified by the Congressional Budget Office. It would also identify the funding source.

But if the committee determined that it felt it was still equitable to maintain an 80 to 20 split, it could so. That legislation would come to the floor of the Senate. Because it does not comply with providing 100 percent of the funds, then a point of order is proper. A point of order would be raised saying this is not in compliance with provisions of S. 993.

But the committee chairman, members of the committee, at that point on the floor of the Senate on that bill, that specific bill, would say to our colleagues, "We believe that an 80 to 20 split is appropriate." They would make their arguments. There would be debate. Then a vote would be called on that point of order and a majority would rule.

If the majority of the Senate said that we ought to continue the 80 to 20 split, so be it—majority rule.

I cannot think of anything that is more fair, more tailored. But, finally, we are operating with numbers that mean something and we are no longer just saying to our State and local partners, "Well, we do not know what it is going to cost you, but your going to pay it."

So, on a case by case, I say to my friend from Massachusetts, using the point of order that is now contained in this legislation, we can have those sorts of debates.

I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, let me say, I appreciate the comments of my friend.

What I would like to do is sit down and discuss this. I think his intent has been well described and I do not question what he has set out as the intent.

I think the language that was set out raises sufficient questions as to whether or not what the Senator described would happen. And maybe I can sit down with him and we will go through it.

I assure him there is no larger agenda here, there is no push in trying to delay this if we can arrive at an agreement or understanding so that we are both clear that the mutual interests are protected, the prospective capacity of legislating an appropriate Federal-State partnership with a match, and also the interest of guaranteeing that the U.S. Congress is responsible for the kind of mandate and the level of contribution that it is requiring.

I just want to make sure—that language, as I currently read it, raises some problems—I would like to make sure those problems are not there. I appreciate what the Senator is saying.

Again, points of order, I think, are subject normally to 60 votes, not a majority vote. So you wind up with a majoritarian—supermajority, rather than a simple majority, which is one of the complications of the current construct under which we are legislating in the U.S. Congress. So, again, that is also a concern.

So, let us try——

Mr. KEMPTHORNE. Will the Senator yield?

Mr. KERRY. I will be happy to yield.

Mr. KEMPTHORNE. This legislation does provide for a majority vote, not for 60-vote margin. That was done deliberately so a majority would rule on that type of point of order.

Mr. KERRY. I appreciate the Senator's answer on that. I think what is advisable here—I will have the language of the three amendments momentarily—if we can discuss those we can either agree to disagree or perhaps agree that they might be acceptable. And, hopefully, we can proceed forward.

I would like to see the unfunded mandate legislation passed. I assure my colleagues, if we can work through this reasonably, there is certainly going to be no delay from the Senator from Massachusetts.

Mr. KEMPTHORNE. I thank the Senator from Massachusetts very much.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I would like to say a few words about this bill until we vote. Or if anyone else wants to be recognized, I am happy to yield. But I would like to say a few words.

I am a cosponsor of this bill because I think it is so very important that Congress take one step in the right direction to say to the State and local governments in our country, we are no longer going to pass laws that create regulations that are going to cause you to have to raise taxes in your State or at your local government level.

I cannot walk through an airport in my State, or through a restaurant, that a mayor or city councilman does not stop me and say: Senator, we just cannot take—fill in the blank—regulation anymore. Some cities are telling me they are spending 20 percent of their entire budgets on unfunded mandates from the Federal Government.

Of course their local taxpayers are saying, why are we increasing taxes? Why can't you balance your budget in the city of Odessa or Midland or Lubbock? Of course they are balancing their budget, but they have an unfunded mandate they cannot do anything about, and it is causing the city of Abilene to have to put a clay liner in their landfill. They already have a clay liner in their landfill in the city of Abilene, but they are having to spend $1 million to put in another clay liner.

Then I talked to the city of San Antonio where they are having to spend $1 million to test the surface water runoff. Then I talked to another city that is having to allocate money now, for covering up their landfill when they are finished using it 10 years from now.

The fact of the matter is the environmental mandates and regulations are being used to such a degree that it is causing a great hardship on the cities of this country. When I just multiply what I am hearing in Texas for the rest of America, I know it is time for Congress to do something. I commend my colleague, the junior Senator from Idaho, for taking this first step and for really getting on top of this. He is a former mayor. In fact the cosponsors of this bill are former mayor, DIRK KEMPTHORNE; a former Governor, JUDD GREGG; a formerly State Treasurer, KAY BAILEY HUTCHISON; a former State Senator, CAROL MOSELEY-BRAUN—people who have dealt with the Federal Government from another vantage point and that is State and local government. We know what these unfunded mandates are doing to our States and our local governments.

What are our State and local governments? They are the taxpayers of America. But it is not a Federal income tax they are paying, it is a local property tax or State sales tax. Yet our Governors and our mayors and our county judges are having to bear the brunt of the wrath of the taxpayers when it was not their fault. It was an unfunded Federal mandate that caused the clayliners in the landfills and the water runoff legislation that we are passing here. And we have to give them relief.

That is what Senator KEMPTHORNE's bill is going to do. I hope in these last few hours that we will take the responsibility—let us take the responsibility for the local taxpayers of America and say enough is enough. Because I really believe if the Senators know what that unfunded mandate is going to cost we will pass a lot fewer laws and regulations through here that are going to hurt our State and local governments. And that is the point.

If we just had the information we can make a rational decision. I think we will be more responsible in our actions. But to say we do not want the information, to say we do not care how much it costs, is just not rational. It is not responsible. And it is abdicating our responsibility.

The Heritage Foundation estimates the indirect costs of Federal regulation added to the direct cost of compliance equals $900 billion. That is $900 billion on the taxpayers of America in addition to the $1 trillion that is now taken in, in Federal income taxes. It doubles the Federal income tax payment that citizens are paying for other Federal laws that we just do not take responsibility to say we are doing.

So I appreciate what Senator KEMPTHORNE is doing, and Senator GLENN has joined forces with him. This is a very important bill. We should not delay it. If we can have it go into effect early next year, perhaps some of these cities that are struggling with 20 percent budget increases will be able to say maybe there is relief on the way.

I commend Senator KEMPTHORNE, I commend Senator GLENN and the cosponsors of this bill. I just hope very much the Senate will proceed to this very important bill. We could cut the overall tax burden on the people of this country 50 percent, if we can just get control of this situation.

Mayors from across the Nation are in an uproar because the financial burdens of environmental mandates on towns and cities resulting from Federal environmental laws and regulations may soon be intolerable. According to a 1992 survey of the National Council of State Legislatures, there are at least 172 major, unfunded Federal mandates on the books.

The Heritage Foundation estimates that the indirect cost of Federal regulation added to the direct cost of compliance equals at least $900 billion. That puts the cost of Federal regulation on par with the $1 trillion in Federal income taxes paid each year.

There are major shortcomings in the way Congress and the executive branch make decisions on environmental protection:

Environmental issues are addressed in a vacuum, without examining the

impacts mandates have on local government costs, personal incomes, private property rights, and the economy in general.

Mandates often respond to preconceived rather than real risks and benefits. For example, in order to meet requirements of the Safe Drinking Water Act, residents of Plano, TX, are paying to have their water tested for a chemical banned 20 years ago that was used to grow pineapples. Pineapples were never grown in Plano, why do they have to test this chemical?

Federal funding for its mandates has decreased, leaving communities with the responsibility of raising tax revenues to meet the requirements.

By EPA's own admission, its share of total environmental spending its expected to decrease from 18 percent in 1981 to 8 percent in the year 2000. Correspondingly, in 1981 local governments paid 76 percent of environmental costs, but will be responsible for 87 percent in 2000.

Texas cities will spend more than $25 billion on Federal environmental mandates during the 1990's. An estimated $7 billion over just the next 5 years will be spent to meet Federal clean water standards alone. That is money being taken away from schools, health care, housing, law enforcement, and fire protection that hard-working, tax-paying citizens want and need.

Federal mandates are enacted with a "one size fits all" mentality. Here are only a few of the many examples brought to my attention during my trips throughout the State:

LUBBOCK

The city of Lubbock, with a population of 190,000, is located in an arid area. It receives less than 20 inches of rain a year. Here are two examples of the problems they are having:

Subtitle D regulations, governing landfills, require landfills to have, among other things, clay liners to protect from ground water contamination. Because it is an arid area, there is little threat of ground water contamination due to rains which might cause landfill leaching. Over the next 8 months, it is going to cost Lubbock $500,000 for a clay liner for one cell in the landfill. It is being paid for by an increase in garbage rates.

The Clean Water Act requires municipalities with a population of 100,000 or more to obtain National Pollutant Discharge Elimination System [NPDES] permits. Due to staff limitations, and the real need to conduct other city business, to meet the deadline for submitting the permit application, Lubbock had to spend $750,000 to contract an outside consultant to prepare the voluminous documentation required for a permit application. Once the permit is issued, they can expect additional compliance costs of between $500,000 and $900,000.

BROWNWOOD

In April 1990 and again in December 1991, the city of Brownwood experienced floods. Brownwood is in the area where it is only expected to flood once every 100 years. The EPA, under its effluent discharge regulations, requires storm water treatment plants to make plans to upgrade when they reach 75 percent of capacity, and be under construction to upgrade when plants reach 95 percent of capacity. Because of the back-to-back floods, Brownwood exceeded 95 percent of plant capacity for 3 months in a row. That's how the EPA makes its determination that additional construction is necessary—exceeding 95 percent of capacity for 3 months in a row, regardless of natural disasters, such as floods.

Brownwood is being required to spend $8.1 million to accomplish this. This is on top of the $2.5 million spent in 1982 and the $3.6 million spent in 1986 to upgrade the plant. Brownwood is still paying debt service on the 1982 and 1986 construction.

On subtitle D landfill regulations, Brownwood is required to be bonded for $300,000 per landfill cell for a 30-year period.

Over the next 5 years, the citizens of Brownwood will spend $7.2 million to comply with landfill regulations. To accomplish this, landfill use rates will increase 28 percent this year, an additional 28 percent in 1994, and another 10 percent in 1995. Sewer charges will increase 17 percent this year and another 17 percent next year.

Brownwood city officials estimate that 37.5 percent of the budget for the water department, the sewer department, and the landfill is directly related to unfunded Federal mandates.

Brownwood has a population of 18,300.

ABILENE

Abilene is spending $1 million for a clay liner for their landfill. Abilene has clay soil and no problem with leaching.

COLLEGE STATION

College Station is being required to set aside $500,000 per year for 13 years to assure that the landfill will be covered when it is no longer in use.

ODESSA

In Odessa, 18 percent of the $65.7 million 1994 budget is allocated to pay for unfunded State and Federal mandated projects. Perhaps one of the most costly items is the $1.2 million that the city must spend to install a clay liner and monitoring wells at the municipal landfill in order to comply with tough environmental regulations.

SAN ANTONIO

In order to meet its EPA mandated water requirements, San Antonio tacked $1.99 per month onto every household water bill and hundreds per month onto every commercial water bill. To affect the increase, the city council of San Antonio had to pass a bill, which it appropriately titled, "The Federal Storm Water Fee."

Of the 10 most costly unfunded mandates, 8 deal with environmental matters. This is what these mandates cost some selected Texas cities:

Town	Cost	Population
Amarillo	$27,092,500	157,615
Bryan	984,284	55,002
Plano	6,642,015	149,188
Nacogdoches	1,257,564	30,872
Waco	2,894,039	107,000
Lubbock	11,199,789	186,206
Brownsville	1,633,435	102,000
Corpus Christi	5,674,303	273,677
Grand Prairie	4,263,036	102,557
San Marcos	1,266,133	28,173

These towns are put in a position of paying for unfunded Federal mandates while sacrificing the things they want and need most: Local police and fire protection, schools and the like.

States and municipalities must be given the flexibility to ensure good environmental quality through rational, logical, and affordable approaches. There must be a way to address legitimate environmental concerns without bankrupting our towns and cities. S. 993 goes a long way toward doing that.

I want to applaud the Senator from Idaho for his diligence in getting this bill to the Senate floor and I urge my colleagues to vote for it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I thank the Senator from Texas, Senator HUTCHISON, for her comments. We are very fortunate to have her perspective from the State government, to be here in the U.S. Senate, helping us with these types of issues. She has been one of the prime movers, also, on bringing about the end to unfunded Federal mandates. So I thank her for her leadership. Again, we are fortunate to have her insight and perspective to help us deal properly with our partners, the State and local officials.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I would like to ask the Senator from Texas—not at all other than out of curiosity, following through on the last statement—I wonder if the Senator from Texas would tell me, I am rather stupefied by the notion that this bill is going to save the taxpayers of the country more than 50 percent of their tax burden. Is there some analysis that articulates that? Can the Senator share with me how much money we are actually going to save with this and why? That may raise a few more alarm bells that we thought existed in this bill.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I was referring to a Heritage Foundation report that estimates that the indirect costs of Federal regulation added to the direct cost of compliance, equals $900 billion. The intake of our income taxes is about $1 trillion. So it is about the same.

Not necessarily will we not have any more regulations to cut it back to 50 percent. But I certainly think, if we had the information on what it is costing us in indirect costs to comply with Federal regulations, it is going to help us put this in perspective.

Let me just reemphasize a few examples. In College Station, they are being required now to set aside $500,000 per year for 13 years to assure that the landfill will be covered, when it is no longer in use—which is 13 years from now.

When I am in College Station, TX, they tell me that they cannot afford to add this much to their local sewage treatment garbage fees.

Mr. KERRY. If I could interrupt the Senator? I share that feeling and I understand what the Senator is saying.

I share that and understand what the Senator is saying. I do not dispute the existence of those kinds of regulations and burdens. I am just trying to understand how the specific figure of savings is arrived at, because clearly there is no way to predict with specificity what the Congress is going to wind up rejecting or accepting. It is exactly hard to say what your savings is going to be, is what I am getting at.

Mrs. HUTCHISON. Mr. President, I think the Senator from Massachusetts is absolutely right. We do not know how much of that $900 billion will actually be saved, but we can certainly take one step in the right direction by having the information about the added costs, because if you add up the costs of the added regulation for landfills, or the added regulation for water runoff it does, indeed, begin to approach the amount that we are also paying in income tax. When someone is paying their tax bill, they do not differentiate on what the total taken out of their paychecks or their property tax bills are going to be. So we may not save $900 billion.

But I think we are going to start in the right direction toward having an accountability about all of these hidden taxes that we are causing to the local taxpayer that we are not really getting credit for right now. So the point of the Senator from Massachusetts is well taken. We cannot say for sure that it will save $900 billion, but I do think that we will be able to cut back on these hidden taxes and help the taxpayers of this country, and this is certainly a step in the right direction to do that.

Mr. KERRY. Mr. President, I appreciate the answer of the Senator from Texas, which I think clarifies it a little bit. I think we have to realize that we ought to be understanding a lot better and entering an entire new age of responsibility in the relationship between the Federal Government and States. There is no question about that.

I agree with the Senator from Texas; passing this would significantly increase the level of responsibility that we are exercising in what we demand of others who are going to pay and of what the amount that they are going to pay is going to be. There has really been a rather remarkable disconnection between the level of bureaucracy and regulation that is required to implement many of the things that we look for.

So we take these very good intentions and turn them into absolutely horrendous bureaucratic nightmares that wind up giving a bad name, not just to Government itself, obviously, but to the good intentions which I think most people on both sides of the aisle would support.

Again, I think the basic thrust of this legislation is obviously very good and very strong. But I just want to understand exactly what the implications are going to be. And within a very few minutes, I will have the language available so I can sit down with the appropriate people to be able to pursue that.

I thank the Senator from Texas for the clarification.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, how much time do we have left before the vote?

The PRESIDING OFFICER. We have 30 seconds left.

Mr. GLENN. In that case, I will resist the temptation to speak.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, a few of my colleagues have taken the time. I ask unanimous consent that I be allowed 3 minutes to speak on this subject.

Mr. BRADLEY. Reserving the right to object, will this be the last 3 minutes?

Mr. THURMOND. As far as I am concerned.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator is recognized for 3 minutes.

Mr. THURMOND. Mr. President, I want to commend the able Senator from Idaho for the stand he has taken on this matter, and also the able junior Senator from Texas for the stand she has taken, and all those who have taken that position.

After all, I wonder sometimes if we really follow the Constitution in our dealings. When this Constitution was written, the idea was to make the States the main agencies of Government. As time has passed, we are shifting more and more power to the Federal level.

Article I, section 8, and the 26 amendments adopted since the adoption of the Constitution mainly comprise authority of the Federal Government under this Constitution. All other powers are reserved to the States. Unless a power has been specifically delegated to the Federal Government, it is reserved to the States.

It certainly is not right for the Federal Government to place mandates and demands on the States. They have no authority under the Constitution to do it, and I certainly hope this bill will pass.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed to S. 993.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Colorado [Mr. CAMPBELL], the Senator from Arizona [Mr. DECONCINI], the Senator from California [Mrs. FEINSTEIN], the Senator from Hawaii [Mr. INOUYE], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Rhode Island [Mr. PELL], and the Senator from Arkansas [Mr. PRYOR], are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER], the Senator from Alaska [Mr. STEVENS], and the Senator from Wyoming [Mr. WALLOP], are neccessarily absent.

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

The result was announced—yeas 88, nays 0, as follows:

[Rollcall Vote No. 324 Leg.]

YEAS—88

Akaka	Ford	McConnell
Baucus	Glenn	Metzenbaum
Bennett	Gorton	Mikulski
Bingaman	Graham	Mitchell
Bond	Gramm	Moseley-Braun
Boxer	Grassley	Moynihan
Bradley	Gregg	Murkowski
Breaux	Harkin	Murray
Brown	Hatch	Nickles
Bryan	Hatfield	Nunn
Bumpers	Heflin	Packwood
Burns	Helms	Pressler
Byrd	Hollings	Reid
Chafee	Hutchison	Riegle
Coats	Jeffords	Robb
Cochran	Johnston	Rockefeller
Cohen	Kassebaum	Roth
Conrad	Kempthorne	Sarbanes
Coverdell	Kerrey	Sasser
Craig	Kerry	Shelby
D'Amato	Kohl	Simon
Danforth	Lautenberg	Simpson
Daschle	Leahy	Smith
Dodd	Levin	Specter
Dole	Lieberman	Thurmond
Domenici	Lott	Warner
Dorgan	Lugar	Wellstone
Exon	Mack	Wofford
Faircloth	Mathews	
Feingold	McCain	

NOT VOTING—12

Biden	Durenberger	Pell
Boren	Feinstein	Pryor
Campbell	Inouye	Stevens
DeConcini	Kennedy	Wallop

So the motion was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

FEDERAL MANDATE ACCOUNTABILITY AND REFORM ACT

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 993) to end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulation,

The Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with an amendment to the title; the title was amended so as to read "To strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates of State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; to better assess both costs and benefits of Federal legislation and regulations on State, local and tribal governments; and for other purposes."; and an amendment to strike out all after the enacting clause, and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Mandate Accountability and Reform Act of 1994".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to strengthen the partnership between the Federal Government and States, local governments, and tribal governments;

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on States, local governments, and tribal governments without adequate Federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities;

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting States, local governments, tribal governments, and the private sector by—

(A) providing for the development of information about the nature and size of mandates in proposed legislation; and

(B) establishing a mechanism to bring such information to the attention of the Senate before the Senate votes on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instances;

(5) to establish a point-of-order vote on the consideration in the Senate of legislation containing significant Federal mandates; and

(6) to assist Federal agencies in their consideration of proposed regulations affecting States, local governments, and tribal governments, by—

(A) requiring that Federal agencies develop a process to enable the elected and other officials of States, local governments, and tribal governments to provide input when Federal agencies are developing regulations; and

(B) requiring that Federal agencies prepare and consider better estimates of the budgetary impact of regulations containing Federal mandates upon States, local governments, and tribal governments before adopting such regulations, and ensuring that small governments are given special consideration in that process.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) FEDERAL INTERGOVERNMENTAL MANDATE.—The term "Federal intergovernmental mandate" means—

(A) any provision in a bill or joint resolution before Congress or in a proposed or final Federal regulation that—

(i) would impose a duty upon States, local governments, or tribal governments that is enforceable by administrative, civil, or criminal penalty or by injunction (other than a condition of Federal assistance or a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B)); or

(ii) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that would be provided to States, local governments, or tribal governments for the purpose of complying with any such previously imposed duty; or

(B) any provision in a bill or joint resolution before Congress or in a proposed or final Federal regulation that relates to a then-existing Federal program under which $500,000,000 or more is provided annually to States, local governments, and tribal governments under entitlement authority (as defined in section 3(9) of the Congressional Budget Act of 1974 (2 U.S.C. 622(9))), if—

(i)(I) the bill or joint resolution or regulation would increase the stringency of conditions of assistance to States, local governments, or tribal governments under the program; or

(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding to States, local governments, or tribal governments under the program; and

(ii) the States, local governments, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the bill or joint resolution or regulation.

(2) FEDERAL PRIVATE SECTOR MANDATE.—The term "Federal private sector mandate" means any provision in a bill or joint resolution before Congress that—

(A) would impose a duty upon the private sector that is enforceable by administrative, civil, or criminal penalty or by injunction (other than a condition of Federal assistance or a duty arising from participation in a voluntary Federal program); or

(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purpose of complying with any such duty.

(3) FEDERAL MANDATE.—The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (1) and (2).

(4) DIRECT COSTS.—

(A) FOR A FEDERAL INTERGOVERNMENTAL MANDATE.—In the case of a Federal intergovernmental mandate, the term "direct costs" means the aggregate estimated amounts that all States, local governments, and tribal governments would be required to spend in order to comply with the Federal intergovernmental mandate, or, in the case of a bill or joint resolution referred to in paragraph (1)(A)(ii), the amount of Federal financial assistance eliminated or reduced.

(B) FOR A FEDERAL PRIVATE SECTOR MANDATE.—In the case of a Federal private sector mandate, the term "direct costs" means the aggregate amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate.

(C) NOT INCLUDED.—The term "direct costs" does not include—

(i) estimated amounts that the States, local governments, and tribal governments (in the case of a Federal intergovernmental mandate), or the private sector (in the case of a Federal private sector mandate), would spend—

(I) to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations adopted before the adoption of the Federal mandate; or

(II) to continue to carry out State, local governmental, and tribal governmental programs, or private-sector business or other activities established at the time of adoption of the Federal mandate; or

(ii) expenditures to the extent that they will be offset by any direct savings to be enjoyed by the States, local governments, and tribal governments, or by the private sector, as a result of—

(I) their compliance with the Federal mandate; or

(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate.

(D) ASSUMPTION.—Direct costs shall be determined on the assumption that States, local governments, tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations.

(5) AMOUNT OF AUTHORIZATION OF APPROPRIATIONS FOR FEDERAL FINANCIAL ASSISTANCE.—The term "amount" with respect to an authorization of appropriations for Federal financial assistance means—

(A) the amount of budget authority (as defined in section 3(2)(A) of the Congressional Budget Act of 1974 (2 U.S.C. 622(2)(A))) of any Federal grant assistance; and

(B) the subsidy amount (as defined as "cost" in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(a))) of any Federal program providing loan guarantees or direct loans.

(6) PRIVATE SECTOR.—The term "private sector" means individuals, partnerships, associations, corporations, business trusts, or legal representatives, organized groups of individuals, and educational and other nonprofit institutions.

(7) OTHER DEFINITIONS.—

(A) AGENCY.—The term "agency" has the meaning stated in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies, as defined by section 3502(10) of title 44, United States Code.

(B) DIRECTOR.—The term "Director" means the Director of the Congressional Budget Office.

(C) LOCAL GOVERNMENT.—The term "local government" has the same meaning as in section 6501(6) of title 31, United States Code.

(D) REGULATION OR RULE.—The term "regulation" or "rule" has the meaning of "rule" as defined in section 601(2) of title 5, United States Code.

(E) SMALL GOVERNMENT.—The term "small government" means any small governmental jurisdiction as defined in section 601(5) of title 5, United States Code, and any tribal government.

(F) STATE.—The term "State" has the same meaning as in section 6501(9) of title 31, United States Code.

SEC. 4. EXCLUSIONS.

This Act shall not apply to any provision in a bill or joint resolution before Congress and any provision in a proposed or final Federal regulation that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the United States Government;

(4) provides for emergency assistance or relief at the request of any State, local government, or tribal government or any official of any of them;

(5) is necessary for the national security or the ratification or implementation of international treaty obligations; or

(6) the President designates as emergency legislation and that the Congress so designates in statute.

SEC. 5. AGENCY ASSISTANCE.

Each agency shall provide to the Director of the Congressional Budget Office such information and assistance as he may reasonably request to assist him in performing his responsibilities under this Act.

TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

SEC. 101. DUTIES OF CONGRESSIONAL COMMITTEES.

(a) COMMITTEE REPORT.—

(1) REGARDING FEDERAL MANDATES.—

(A) IN GENERAL.—When a committee of authorization of the House of Representatives or the Senate reports a bill or joint resolution of public character that includes any Federal mandate, the committee shall issue a report to accompany the bill or joint resolution containing the information required by subparagraphs (B) and (C).

(B) REPORTS ON FEDERAL MANDATES.—Each report required by subparagraph (A) shall contain—

(i) an identification and description, prepared in consultation with the Director, of any Federal mandates in the bill or joint resolution, including the expected direct costs to States, local governments, and tribal governments, and to the private sector, required to comply with the Federal mandates; and

(ii) a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal mandates (including the enhancement of health and safety and the protection of the natural environment).

(C) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report required by subparagraph (A) shall also contain—

(i)(I) a statement of the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable for activities of States, local governments, or tribal governments subject to the Federal intergovernmental mandates; and

(II) a statement of whether the committee intends that the Federal intergovernmental mandates be partly or entirely unfunded, and if so, the reasons for that intention;

(ii) any existing sources of Federal assistance in addition to those identified in clause (i) that may assist States, local governments, and tribal governments in meeting the direct costs of the Federal intergovernmental mandates; and

(iii) an identification of one or more of the following: reductions in authorization of existing appropriations, a reduction in direct spending, or an increase in receipts (consistent with the amount identified clause (i)(I)).

(2) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the House of Representatives or the Senate reports a bill or joint resolution of public character, the committee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on the extent to which the bill or joint resolution preempts any State, local, or tribal law, and, if so, an explanation of the reasons for such preemption.

(b) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of authorization of the House of Representatives or the Senate reports a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director and shall identify to the Director any Federal mandates contained in the bill or resolution.

(c) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

(1) IN GENERAL.—Upon receiving a statement (including any supplemental statement) from the Director pursuant to section 102(c), a committee of the House of Representatives or the Senate shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available soon enough to be included in the printed report.

(2) IF NOT INCLUDED.—If the statement is not published in the report, or if the bill or joint resolution to which the statement relates is expected to be considered by the House of Representatives or the Senate before the report is published, the committee shall cause the statement, or a summary thereof, to be published in the Congressional Record in advance of floor consideration of the bill or joint resolution.

SEC. 102. DUTIES OF THE DIRECTOR.

(a) STUDIES.—

(1) PROPOSED LEGISLATION.—As early as practicable in each new Congress, any committee of the House of Representatives or the Senate which anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on States, local governments, or tribal governments, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall request that the Director initiate a study of the proposed legislation in order to develop information that may be useful in analyzing the costs of any Federal mandates that may be included in the proposed legislation.

(2) CONSIDERATIONS.—In conducting the study under paragraph (1), the Director shall—

(A) solicit and consider information or comments from elected officials (including their designated representatives) of States, local governments, tribal governments, designated representatives of the private sector, and such other persons as may provide helpful information or comments;

(B) consider establishing advisory panels of elected officials (including their designated representatives) of States, local governments, tribal governments, designated representatives of the private sector, and other persons if the Director determines, in the Director's discretion, that such advisory panels would be helpful in performing the Director's responsibilities under this section; and

(C) consult with the relevant committees of the House of Representatives and of the Senate.

(b) CONSULTATION.—The Director shall, at the request of any committee of the House of Representatives or of the Senate, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have—

(1) a significant budgetary impact on State, local, or tribal governments; or

(2) a significant financial impact on the private sector.

(c) STATEMENTS ON NONAPPROPRIATIONS BILLS AND JOINT RESOLUTIONS.—

(1) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the House of Representatives or of the Senate, the Director shall prepare and submit to the committee a statement as follows:

(A) DIRECT COSTS AT OR BELOW THRESHOLD.—If the Director estimates that the direct costs of all Federal intergovernmental mandates in the bill or joint resolution will not equal or exceed $50,000,000 (adjusted annually for inflation by the Consumer Price Index) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state and shall briefly explain the basis of the estimate.

(B) DIRECT COSTS ABOVE THRESHOLD.—

(i) IN GENERAL.—If the Director estimates that the direct costs of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted annually for inflation by the Consumer Price Index) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(ii) ESTIMATES.—The estimate required by clause (i) shall include—

(I) estimates (and brief explanations of the basis of the estimates) of—

(aa) the total amount of direct costs of complying with the Federal intergovernmental mandates in the bill or joint resolution; and

(bb) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by States, local governments, or tribal governments for activities subject to the Federal intergovernmental mandates;

(II) estimates, if and to the extent that the Director determines that accurate estimates are reasonably feasible, of—

(aa) future direct costs of Federal intergovernmental mandates to the extent that they significantly differ from or extend beyond the 5-year time period referred to in clause (i); and

(bb) any disproportionate budgetary effects of Federal intergovernmental mandates and of any Federal financial assistance in the bill or joint resolution upon any particular regions of the country or particular States, local governments, tribal governments, or urban or rural or other types of communities; and

(III) any amounts appropriated in the prior fiscal year to fund the activities subject to the Federal intergovernmental mandate.

(2) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the House of Representatives or of the Senate, the Director shall prepare and submit to the committee a statement as follows:

(A) DIRECT COSTS AT OR BELOW THRESHOLD.—If the Director estimates that the direct costs of all Federal private sector mandates in the bill or joint resolution will not equal or exceed $200,000,000 (adjusted annually for inflation by the Consumer Price Index) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective

or in any of the 4 fiscal years following such fiscal year, the Director shall so state and shall briefly explain the basis of the estimate.

(B) DIRECT COSTS ABOVE THRESHOLD.—

(i) IN GENERAL.—If the Director estimates that the direct costs of all Federal private sector mandates in the bill or joint resolution will equal or exceed $200,000,000 (adjusted annually for inflation by the Consumer Price Index) any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state and shall briefly explain the basis of the estimate.

(ii) ESTIMATES.—Estimates required by this subparagraph shall include—

(I) estimates (and a brief explanation of the basis of the estimates) of—

(aa) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

(bb) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by the private sector for activities subject to the Federal private sector mandates;

(II) estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

(aa) future costs of Federal private sector mandates to the extent that they differ significantly from or extend beyond the 5-year time period referred to in clause (i);

(bb) any disproportionate financial effects of Federal private sector mandates and of any Federal financial assistance in the bill or joint resolution upon particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities; and

(cc) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of American goods and services; and

(III) any amounts appropriated in the prior fiscal year to fund activities subject to the Federal private sector mandate.

(C) FAILURE TO MAKE ESTIMATE.—If the Director determines that it is not reasonably feasible for him to make a reasonable estimate that would be required by subparagraphs (A) and (B) with respect to Federal private sector mandates, the Director shall not make the estimate, but shall report in his statement that the reasonable estimate cannot be reasonably made and shall include the reasons for that determination in the statement.

(3) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If the Director has prepared a statement that includes the determination described in paragraph (1)(B)(i) for a bill or joint resolution, and if that bill or joint resolution is passed in an amended form (including if passed by one House as an amendment in the nature of a substitute for the language of a bill or joint resolution from the other House) or is reported by a committee of conference in an amended form, the committee of conference shall ensure, to the greatest extent practicable, that the Director prepare a supplemental statement for the bill or joint resolution. The requirements of section 103 shall not apply to the publication of any supplemental statement prepared under this subsection.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Congressional Budget Office to carry out the provisions of this Act $6,000,000, for each of the fiscal years 1995, 1996, 1997, and 1998.

(e) TECHNICAL AMENDMENT.—Section 403 of the Congressional Budget Act of 1974 is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) in paragraph (3) by striking "paragraphs (1) and (2)" and inserting "paragraph (1)";

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(2) by striking "(a)"; and

(3) by striking subsections (b) and (c).

SEC. 103. POINT OF ORDER IN THE SENATE.

(a) IN GENERAL.—It shall not be in order in the Senate to consider any bill or joint resolution that is reported by any committee of authorization of the Senate unless, based upon a ruling of the presiding Officer—

(1) the committee has published a statement of the Director in accordance with section 101(c) prior to such consideration; and

(2) in the case of a bill or joint resolution containing Federal intergovernmental mandates, either—

(A) the direct costs of all Federal intergovernmental mandates in the bill or joint resolution are estimated not to equal or exceed $50,000,000 (adjusted annually for inflation by the Consumer Price Index) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, or

(B)(i) the amount of the increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by States, local governments, or tribal governments for activities subject to the Federal intergovernmental mandates is at least equal to the estimated amount of direct costs of the Federal intergovernmental mandates; and

(ii) the committee of jurisdiction has identified in the bill or joint resolution one or more of the following: a reduction in authorization of existing appropriations, a reduction in direct spending, or an increase in receipts (consistent with the amount identified in clause (i)).

(b) WAIVER.—The point of order under subsection (a) may be waived in the Senate by a majority vote of the Members voting (provided that a quorum is present) or by the unanimous consent of the Senate.

(c) AMENDMENT TO RAISE AUTHORIZATION LEVEL.—Notwithstanding the terms of subsection (a), it shall not be out of order pursuant to this section to consider a bill or joint resolution to which an amendment is proposed and agreed to that would raise the amount of authorization of appropriations to a level sufficient to satisfy the requirements of subsection (a)(2)(B)(i) and that would amend an identification referred to in subsection (a)(2)(B)(ii) to satisfy the requirements of that subsection, nor shall it be out of order to consider such an amendment.

SEC. 104. EXERCISE OF RULEMAKING POWERS.

The provisions of sections 101, 102, 103, and 105 are enacted by Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of such House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of each House.

SEC. 105. EFFECTIVE DATE.

This title shall apply to bills and joint resolutions reported by committee on or after October 1, 1995.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

SEC. 201. REGULATORY PROCESS.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law, assess the effects of Federal regulations on States, local governments, and tribal governments (other than to the extent that such regulations incorporate requirements specifically set forth in legislation), including specifically the availability of resources to carry out any Federal intergovernmental mandates in those regulations, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving statutory and regulatory objectives.

(b) STATE, LOCAL GOVERNMENT, AND TRIBAL GOVERNMENT INPUT.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officials (including their designated representatives) and other representatives of States, local governments, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates. Such a process shall be consistent with all applicable laws.

(c) AGENCY PLAN.—

(1) IN GENERAL.—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(A) provide notice of the contemplated requirements to potentially affected small governments, if any;

(B) enable officials of affected small governments to provide input pursuant to subsection (b); and

(C) inform, educate, and advise small governments on compliance with the requirements.

(2) AUTHORIZATION.—There are hereby authorized to be appropriated to each agency to carry out the provisions of this section, and for no other purpose, such sums as are necessary.

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Before promulgating any final rule that includes any Federal intergovernmental mandates that may result in the expenditure by States, local governments, or tribal governments, in the aggregate, of $100,000,000 or more (adjusted annually for inflation by the Consumer Price Index) in any 1 year, and before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any such rule, the agency shall prepare a written statement containing—

(1) estimates by the agency, including the underlying analysis, of the anticipated costs to States, local governments, and tribal governments of complying with the Federal intergovernmental mandates, and of the extent to which such costs may be paid with funds provided by the Federal Government or otherwise paid through Federal financial assistance;

(2) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future costs of Federal intergovernmental mandates; and

(B) any disproportionate budgetary effects of the Federal intergovernmental mandates upon any particular regions of the country or particular States, local governments, tribal governments, urban or rural or other types of communities;

(3) a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal intergovernmental mandates (such as the enhancement of health and safety and the protection of the natural environment); and

(4)(A) a description of the extent of any input to the agency from elected representatives (including their designated representatives) of the

affected States, local governments, and tribal governments and of other affected parties;

(B) a summary of the comments and concerns that were presented by States, local governments, or tribal governments either orally or in writing to the agency;

(C) a summary of the agency's evaluation of those comments and concerns; and

(D) the agency's position supporting the need to issue the regulation containing the Federal intergovernmental mandates (considering, among other things, the extent to which costs may or may not be paid with funds provided by the Federal Government).

(b) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(c) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required by subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall collect from agencies the statements prepared under section 202 and periodically forward copies of them to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

SEC. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXIBILITY.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with Federal agencies, shall establish pilot programs in at least 2 agencies to test innovative, and more flexible regulatory approaches that—

(1) reduce reporting and compliance burdens on small governments; and

(2) meet overall statutory goals and objectives.

(b) PROGRAM FOCUS.—The pilot programs shall focus on rules in effect or proposed rules, or a combination thereof.

TITLE III—BASELINE STUDY

SEC. 301. BASELINE STUDY OF COSTS AND BENEFITS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director of the Bureau of the Census, in consultation with the Director, shall begin a study to examine the measurement and definition issues involved in calculating the total costs and benefits to States, local governments, and tribal governments of compliance with Federal law.

(b) CONSIDERATIONS.—The study required by this section shall consider—

(1) the feasibility of measuring indirect costs and benefits as well as direct costs and benefits of the Federal, State, local, and tribal relationship; and

(2) how to measure both the direct and indirect benefits of Federal financial assistance and tax benefits to States, local governments and tribal governments.

(c) AUTHORIZATION.—There are authorized to be appropriated to the Bureau of the Census to carry out the purposes of this title, and for no other purpose, $1,000,000 for each of the fiscal years 1995 and 1996.

TITLE IV—JUDICIAL REVIEW; SUNSET

SEC. 401. JUDICIAL REVIEW.

Any statement or report prepared under this Act, and any compliance or noncompliance with the provisions of this Act, and any determination concerning the applicability of the provisions of this Act shall not be subject to judicial review. The provisions of this Act shall not create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action. No ruling or determination under this Act shall be considered by any court in determining the intent of Congress or for any other purpose.

SEC. 402. SUNSET.

Title II shall expire September 30, 1998. Title I shall expire on October 1 of the fiscal year for which the fiscal year appropriation to the Congressional Budget Office is not adequate to carry out the requirements of title I, or September 30, 1998, whichever occurs earlier. The requirements of section 101(a)(2) are exempt from the terms of this section.

Amend the title so as to read: "To strengthen the partnership between the Federal Government and State, local, and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; to better assess both costs and benefits of Federal legislation and regulations on State, local, and tribal governments; and for other purposes.".

Several Senators addressed the Chair.

AMENDMENT NO. 2621

(Purpose: To authorize the establishment of the National African American Museum within the Smithsonian Institution)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself, Mr. MCCAIN, and Ms. MOSELEY-BRAUN, proposes an amendment numbered 2621.

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

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. I ask that the clerk finish reading it.

The PRESIDING OFFICER. The clerk will resume the reading of the amendment.

Mr. HELMS. Mr. President, we cannot hear in here.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Illinois asked unanimous consent to dispense with further reading of the amendment.

Is there objection to that unanimous consent request?

Mr. GRAMM. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will resume the reading of the amendment.

The legislative clerk resumed reading as follows:

At the end of the pending amendment, insert the following:

DIVISION 2—NATIONAL AFRICAN AMERICAN MUSEUM ACT

SECTION 1. SHORT TITLE.

This division may be cited as the "National African American Museum Act".

SEC. 2. FINDINGS.

(a) FINDINGS.—The Congress finds that—

(1) the presentation and preservation of African American life, art, history, and culture within the National Park System and other Federal entities are inadequate;

(2) the inadequate presentation and preservation of African American life, art, history, and culture seriously restrict the ability of the people of the United States, particularly African Americans, to understand themselves and their past;

(3) African American life, art, history, and culture include the varied experiences of Africans in slavery and freedom and the continued struggles for full recognition of citizenship and treatment with human dignity;

(4) in enacting Public Law 99-511, the Congress encouraged support for the establishment of a commemorative structure within the National Park System, or on other Federal lands, dedicated to the promotion of understanding, knowledge, opportunity, and equality for all people;

(5) the establishment of a national museum and the conducting of interpretive and educational programs, dedicated to the heritage and culture of African Americans, will help to inspire and educate the people of the United States regarding the cultural legacy of African Americans and the contributions made by African Americans to the society of the United States; and

(6) the Smithsonian Institution operates 15 museums and galleries, a zoological park, and 5 major research facilities, none of which is a national institution devoted solely to African American life, art, history, or culture.

SEC. 3. ESTABLISHMENT OF THE NATIONAL AFRICAN AMERICAN MUSEUM.

(a) ESTABLISHMENT.—There is established within the Smithsonian Institution a Museum, which shall be known as the "National African American Museum".

(b) PURPOSE.—The purpose of the Museum is to provide—

(1) a center for scholarship relating to African American life, art, history, and culture;

(2) a location for permanent and temporary exhibits documenting African American life, art, history, and culture;

(3) a location for the collection and study of artifacts and documents relating to African American life, art, history, and culture;

(4) a location for public education programs relating to African American life, art, history, and culture; and

(5) a location for training of museum professionals and others in the arts, humanities, and sciences regarding museum practices related to African American life, art, history, and culture.

SEC. 4. LOCATION AND CONSTRUCTION OF THE NATIONAL AFRICAN AMERICAN MUSEUM.

The Board of Regents is authorized to plan, design, reconstruct, and renovate the Arts and Industries Building of the Smithsonian Institution to house the Museum.

SEC. 5. BOARD OF TRUSTEES OF MUSEUM.

(a) ESTABLISHMENT.—There is established in the Smithsonian Institution the Board of Trustees of the National African American Museum.

(b) COMPOSITION AND APPOINTMENT.—The Board of Trustees shall be composed of 23 members as follows:

(1) The Secretary of the Smithsonian Institution.

(2) An Assistant Secretary of the Smithsonian Institution, designated by the Board of Regents.

(3) Twenty-one individuals of diverse disciplines and geographical residence who are committed to the advancement of knowledge

of African American art, history, and culture appointed by the Board of Regents, of whom 9 members shall be from among individuals nominated by African American museums, historically black colleges and universities, and cultural or other organizations.

(c) TERMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), members of the Board of Trustees shall be appointed for terms of 3 years. Members of the Board of Trustees may be reappointed.

(2) STAGGERED TERMS.—As designated by the Board of Regents at the time of initial appointments under paragraph (3) of subsection (b), the terms of 7 members shall expire at the end of 1 year, the terms of 7 members shall expire at the end of 2 years, and the terms of 7 members shall expire at the end of 3 years.

(d) VACANCIES.—A vacancy on the Board of Trustees shall not affect its powers and shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of the term.

(e) NONCOMPENSATION.—Except as provided in subsection (f), members of the Board of Trustees shall serve without pay.

(f) EXPENSES.—Members of the Board of Trustees shall receive per diem, travel, and transportation expenses for each day, including traveltime, during which they are engaged in the performance of the duties of the Board of Trustees in accordance with section 5703 of title 5, United States Code, with respect to employees serving intermittently in the Government service.

(g) CHAIRPERSON.—The Board of Trustees shall elect a chairperson by a majority vote of the members of the Board of Trustees.

(h) MEETINGS.—The Board of Trustees shall meet at the call of the chairperson or upon the written request of a majority of its members, but shall meet not less than 2 times each year.

(i) QUORUM.—A majority of the Board of Trustees shall constitute a quorum for purposes of conducting business, but a lesser number may receive information on behalf of the Board of Trustees.

(j) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Board of Trustees may accept for the Board of Trustees voluntary services provided by a member of the Board of Trustees.

SEC. 6. DUTIES OF THE BOARD OF TRUSTEES OF THE MUSEUM.

(a) IN GENERAL.—The Board of Trustees shall—

(1) recommend annual budgets for the Museum;

(2) consistent with the general policy established by the Board of Regents, have the sole authority to—

(A) loan, exchange, sell, or otherwise dispose of any part of the collections of the Museum, but only if the funds generated by such disposition are used for additions to the collections of the Museum or for additions to the endowment of the Museum;

(B) subject to the availability of funds and the provisions of annual budgets of the Museum, purchase, accept, borrow, or otherwise acquire artifacts and other property for addition to the collections of the Museum;

(C) establish policy with respect to the utilization of the collections of the Museum; and

(D) establish policy regarding programming, education, exhibitions, and research, with respect to the life and culture of African Americans, the role of African Americans in the history of the United States, and the contributions of African Americans to society;

(3) consistent with the general policy established by the Board of Regents, have authority to—

(A) provide for restoration, preservation, and maintenance of the collections of the Museum;

(B) solicit funds for the Museum and determine the purposes to which those funds shall be used;

(C) approve expenditures from the endowment of the Museum, or of income generated from the endowment, for any purpose of the Museum; and

(D) consult with, advise, and support the Director in the operation of the Museum;

(4) establish programs in cooperation with other African American museums, historically black colleges and universities, historical societies, educational institutions, cultural and other organizations for the education and promotion of understanding regarding African American life, art, history, and culture;

(5) support the efforts of other African American museums, historically black colleges and universities, and cultural and other organizations to educate and promote understanding regarding African American life, art, history, and culture, including—

(A) development of cooperative programs and exhibitions;

(B) identification, management, and care of collections;

(C) participation in the training of museum professionals; and

(D) creating opportunities for—

(i) research fellowships; and

(ii) professional and student internships;

(6) adopt bylaws to carry out the functions of the Board of Trustees; and

(7) report annually to the Board of Regents on the acquisition, disposition, and display of African American objects and artifacts and on other appropriate matters.

SEC. 7. DIRECTOR AND STAFF.

(a) IN GENERAL.—The Secretary of the Smithsonian Institution, in consultation with the Board of Trustees, shall appoint a Director who shall manage the Museum.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Secretary of the Smithsonian Institution may—

(1) appoint the Director and 5 employees of the Museum, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(2) fix the pay of the Director and such 5 employees, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

SEC. 8. DEFINITIONS.

For purposes of this Act:

(1) The term "Board of Regents" means the Board of Regents of the Smithsonian Institution.

(2) The term "Board of Trustees" means the Board of Trustees of the National African American Museum established in section 5(a).

(3) The term "Museum" means the National African American Museum established under section 3(a).

(4) The term "Arts and Industries Building" means the building located on the Mall at 900 Jefferson Drive, S.W. in Washington, the District of Columbia.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary only for costs directly relating to the operation and maintenance of the Museum.

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from Illinois,

Mr. SIMON. Mr. President, I am offering this amendment in behalf of Senator MCCAIN, Senator MOSELEY-BRAUN, and myself.

This is an amendment that is supported by Smithsonian. They have $475,000 that has been set aside for planning for this from 1994 appropriations. They have assured the Appropriations Committee that in the next 5 years it will take no additional funding. They are going to use existing space and existing budget.

Now, why do we have an African-American museum?

There are two American groups that have had very distinctive histories. One is the American Indians, native Americans, and Smithsonian does have a museum for native Americans, and it is universally applauded.

They believe and I believe, and the Rules Committee, which unanimously supported this—and I might add this passed the United States Senate here 2 years ago. I do not think there was a vote against it. I cannot recall. It was by voice vote.

But it was stopped in the House by someone who felt we were not doing enough.

I think Smithsonian makes sense in their request. The funds are there for the planning. I think we ought to go ahead.

This is something that is universally applauded, with the exception of my friend, and he is my friend, from North Carolina, Senator JESSE HELMS, who strongly opposes it.

Today, the Washington Post had an editorial endorsing it along with many others. But that is the sum and substance of this.

I yield the floor to my colleague from Illinois who will offer an amendment in the nature of a substitute.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 2623 TO AMENDMENT NO. 2621

(Purpose: To authorize the establishment of the National African American Museum within the Smithsonian Institution)

Ms. MOSELEY-BRAUN. Mr. President, I send to the desk an amendment in the nature of a substitute.

The PRESIDING OFFICER. The clerk will report the substitute.

The bill clerk read as follows:

The Senator from Illinois [Ms. MOSELEY-BRAUN] proposes an amendment numbered 2623 to Amendment No. 2621.

Ms. MOSELEY-BRAUN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all in the amendment and insert the following:

2—NATIONAL AFRICAN AMERICAN MUSEUM ACT

SECTION 1. SHORT TITLE.

This division may be cited as the "National African American Museum Act".

SEC. 2. FINDINGS.

(a) FINDINGS.—The Congress finds that—

(1) the presentation and preservation of African American life, art, history, and culture within the National Park System and other Federal entities are inadequate;

(2) the inadequate presentation and preservation of African American life, art, history, and culture seriously restrict the ability of the people of the United States, particularly African Americans, to understand themselves and their past;

(3) African American life, art, history, and culture include the varied experiences of Africans in slavery and freedom and the continued struggles for full recognition of citizenship and treatment with human dignity;

(4) in enacting Public Law 99-511, the Congress encouraged support for the establishment of a commemorative structure within the National Park System, or on other Federal lands, dedicated to the promotion of understanding, knowledge, opportunity, and equality for all people;

(5) the establishment of a national museum and the conducting of interpretive and educational programs, dedicated to the heritage and culture of African Americans, will help to inspire and educate the people of the United States regarding the cultural legacy of African Americans and the contributions made by African Americans to the society of the United States; and

(6) the Smithsonian Institution operates 15 museums and galleries, a zoological park, and 5 major research facilities, none of which is a national institution devoted solely to African American life, art, history, or culture.

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(2) a location for permanent and temporary exhibits documenting African American life, art, history, and culture;

(3) a location for the collection and study of artifacts and documents relating to African American life, art, history, and culture;

(4) a location for public education programs relating to African American life, art, history, and culture; and

(5) a location for training of museum professionals and others in the arts, humanities, and sciences regarding museum practices related to African American life, art, history, and culture.

SEC. 4. LOCATION AND CONSTRUCTION OF THE NATIONAL AFRICAN AMERICAN MUSEUM.

The Board of Regents is authorized to plan, design, reconstruct, and renovate the Arts and Industries Building of the Smithsonian Institution to house the Museum.

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(a) ESTABLISHMENT.—There is established in the Smithsonian Institution the Board of Trustees of the National African American Museum.

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(1) The Secretary of the Smithsonian Institution.

(2) An Assistant Secretary of the Smithsonian Institution, designated by the Board of Regents.

(3) Twenty-one individuals of diverse disciplines and geographical residence who are committed to the advancement of knowledge of African American art, history, and culture appointed by the Board of Regents, of whom 11 members shall be from among individuals nominated by African American museums, historically black colleges and universities, and cultural or other organizations.

(c) TERMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), members of the Board of Trustees shall be appointed for terms of 3 years. Members of the Board of Trustees may be reappointed.

(2) STAGGERED TERMS.—As designated by the Board of Regents at the time of initial appointments under paragraph (3) of subsection (b), the terms of 7 members shall expire at the end of 1 year, the terms of 7 members shall expire at the end of 2 years, and the terms of 7 members shall expire at the end of 3 years.

(d) VACANCIES.—A vacancy on the Board of Trustees shall not affect its powers and shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of the term.

(e) NONCOMPENSATION.—Except as provided in subsection (f), members of the Board of Trustees shall serve without pay.

(f) EXPENSES.—Members of the Board of Trustees shall receive per diem, travel, and transportation expenses for each day, including traveltime, during which they are engaged in the performance of the duties of the Board of Trustees in accordance with section 5703 of title 5, United States Code, with respect to employees serving intermittently in the Government service.

(g) CHAIRPERSON.—The Board of Trustees shall elect a chairperson by a majority vote of the members of the Board of Trustees.

(h) MEETINGS.—The Board of Trustees shall meet at the call of the chairperson or upon the written request of a majority of its members, but shall meet not less than 2 times each year.

(i) QUORUM.—A majority of the Board of Trustees shall constitute a quorum for purposes of conducting business, but a lesser number may receive information on behalf of the Board of Trustees.

(j) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Board of Trustees may accept for the Board of Trustees voluntary services provided by a member of the Board of Trustees.

SEC. 6. DUTIES OF THE BOARD OF TRUSTEES OF THE MUSEUM.

(a) IN GENERAL.—The Board of Trustees shall—

(1) recommend annual budgets for the Museum;

(2) consistent with the general policy established by the Board of Regents, have the sole authority to—

(A) loan, exchange, sell, or otherwise dispose of any part of the collections of the Museum, but only if the funds generated by such disposition are used for additions to the collections of the Museum or for additions to the endowment of the Museum;

(B) subject to the availability of funds and the provisions of annual budgets of the Museum, purchase, accept, borrow, or otherwise acquire artifacts and other property for addition to the collections of the Museum;

(C) establish policy with respect to the utilization of the collections of the Museum; and

(D) establish policy regarding programming, education, exhibitions, and research, with respect to the life and culture of African Americans, the role of African Americans in the history of the United States, and the contributions of African Americans to society;

(3) consistent with the general policy established by the Board of Regents, have authority to—

(A) provide for restoration, preservation, and maintenance of the collections of the Museum;

(B) solicit funds for the Museum and determine the purposes to which those funds shall be used;

(C) approve expenditures from the endowment of the Museum, or of income generated from the endowment, for any purpose of the Museum; and

(D) consult with, advise, and support the Director in the operation of the Museum;

(4) establish programs in cooperation with other African American museums, historically black colleges and universities, historical societies, educational institutions, cultural and other organizations for the education and promotion of understanding regarding African American life, art, history, and culture;

(5) support the efforts of other African American museums, historically black colleges and universities, and cultural and other organizations to educate and promote understanding regarding African American life, art, history, and culture, including—

(A) development of cooperative programs and exhibitions;

(B) identification, management, and care of collections;

(C) participation in the training of museum professionals; and

(D) creating opportunities for—

(i) research fellowships; and

(ii) professional and student internships;

(6) adopt bylaws to carry out the functions of the Board of Trustees; and

(7) report annually to the Board of Regents on the acquisition, disposition, and display of African American objects and artifacts and on other appropriate matters.

SEC. 7. DIRECTOR AND STAFF.

(a) IN GENERAL.—The Secretary of the Smithsonian Institution, in consultation with the Board of Trustees, shall appoint a Director who shall manage the Museum.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Secretary of the Smithsonian Institution may—

(1) appoint the Director and 5 employees of the Museum, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(2) fix the pay of the Director, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

SEC. 8. DEFINITIONS.

For purposes of this Act:

(1) The term "Board of Regents" means the Board of Regents of the Smithsonian Institution.

(2) The term "Board of Trustees" means the Board of Trustees of the National African American Museum established in section 5(a).

(3) The term "Museum" means the National African American Museum established under section 3(a).

(4) The term "Arts and Industries Building" means the building located on the Mall at 900 Jefferson Drive, S.W. in Washington, the District of Columbia.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary only for costs directly relating to the operation and maintenance of the Museum.

Ms. MOSELEY-BRAUN. Mr. President, I rise in support of the objective of the amendment of the distinguished Senator from Illinois.

This is a project that has been around for at least 2 years. It has been the subject of a great deal of discussion and planning and certainly fills a need in terms of our capacity to communicate a rich and diverse cultural history of our country.

I urge my colleagues' support for this amendment.

I yield back the remainder of my time to the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois still has the floor.

Mr. McCAIN addressed the Chair.

Mr. KERRY. Point of order.

The PRESIDING OFFICER. Is the Senator seeking recognition?

Mr. McCAIN. I am seeking recognition.

The PRESIDING OFFICER. The Senator from Arizona had sought recognition.

The Senator from Arizona.

Mr. McCAIN. Mr. President, I urge the Chair and urge my colleagues to proceed with this very simple piece of legislation. It is something, in my view, that reflects credit on this entire body.

I believe this is an important issue. I would not want anyone to believe that any individual in this body would be opposed to this very simple, much needed, and frankly inexpensive piece of legislation which will serve, I think, a very important purpose for the millions of people who come here every year to receive the kind of understanding and appreciation of the background of African Americans in this country.

I applaud my friend from Illinois for attempting this, and I hope we will not seek further objection.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there any further debate on the amendment?

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

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

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

AMENDMENT NO. 2624

(Purpose: To strike the 1993 tax increase on Social Security benefits)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] proposes an amendment numbered 2624.

At the appropriate place, insert:

SEC. . REPEAL OF 1993 TAX INCREASE ON SOCIAL SECURITY BENEFITS.

(a) IN GENERAL.—Section 13215 of the Revenue Reconciliation Act of 1993 (relating to tax on social security and tier 1 railroad retirement benefit) is hereby repealed.

(b) APPLICATION OF INTERNAL REVENUE CODE.—The Internal Revenue Code of 1986 shall be applied and administered as if the provisions of, and the amendments made by, section 13215 of the Revenue Reconciliation Act of 1993 had not been enacted.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning after December 31, 1993.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, parliamentary inquiry. Is that amendment in order at this point?

The PRESIDING OFFICER. The amendment is in order as an amendment to the underlying text of the bill.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, the argument for this amendment is very, very simple. We have had a yearlong debate about whether the Clinton tax bill raised taxes on working Americans, whether it raised taxes on middle-class Americans. People on this side of the aisle have said that it does, because it taxes people making $34,000 a year on 85 percent of their Social Security benefits. What we would like to do is to make an honest man out of the President by repealing that tax and therefore I have submitted it and I would be happy to vote on it.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Is there further debate on the amendment?

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

Mr. FORD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue calling the roll.

The legislative clerk continued with the call of the roll.

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

Mr. FORD. Mr. President, I object.

The PRESIDING OFFICER. An objection is heard.

The clerk will continue calling the roll.

The legislative clerk continued with the call of the roll.

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

Mr. FORD. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to call the roll and we will have order as the clerk calls the roll so we can hear what is being requested of the Chair.

The legislative clerk continued with the call of the roll.

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

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

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

HONORING PRESTON TOWNLEY

Mr. DURENBERGER. Mr. President, I rise today to pay tribute to one of the most important contributors to the life of the State of Minnesota. Preston Townley, chief executive officer and president of the Conference Board, died suddenly last week at the age of 55.

Preston Townley had been a mainstay of two of the most important institutions in Minnesota—General Mills and the University of Minnesota. As a corporate executive, he earned the respect of the business community; as dean of the Carlson School of Management, he was a major force shaping the next generation of Minnesota business leaders.

He was equally successful in his most recent challenge. Six years ago, he signed on as leader of the Conference Board—and transformed it into a flourishing think tank.

He was a trusted member of the community and a dear friend. I ask my colleagues to join me in sending our warmest condolences to his widow, Marcia Townley, and the Townley family on this sad occasion.

I ask unanimous consent that an article from the Minneapolis Star Tribune about the late Preston Townley be

included in the RECORD at the conclusion of my remarks.

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

FORMER GENERAL MILLS EXECUTIVE PRESTON TOWNLEY DIES AT AGE 55

(By Anne O'Connor)

Preston (Pete) Townley used to tell his daughter that it's better to be really good at a few things than to be average at a lot of things.

Townley took his own advice: He was anything but average.

He rose through the ranks at General Mills to become a highly respected executive. He left that position and went to the University of Minnesota, where, as dean of the Carlson School of Management, he was responsible for getting one of the largest donations to the institution.

He left the university six years ago for New York City, where he took over the Conference Board, a 72-year-old nonprofit think tank, and turned it from a stumbling organization into a flourishing one.

"He was a brilliant man," said his daughter, Alison, of New York City. "He did a lot for Minneapolis. He raised millions for the University of Minnesota. He just dedicated his life to the community."

Townley, 55, chief executive officer and president of the Conference Board, died suddenly Friday in Amelia Island, Fla., while he was playing tennis. Family members said they are unsure of the cause of death.

Townley was born in Minneapolis and graduated Harvard University with bachelor's and master's degrees in business administration.

His daughter said it was his strong sense of community that brought him back to the Twin Cities.

He started at General Mills in 1964 and worked in positions ranging from assistant to the vice president of advertising to executive president of the consumer foods division.

While at the university, Townley persuaded Curt Garlson to donate $25 million—then got the business school named for him.

After leaving the university in September 1988 he went to work at the Conference Board, which has offices in New York, Washington, D.C., and Brussels, Belgium. Its 3,000 members and benefactors are a who's who in business, including American Express, Dow Chemical, Honeywell, Monsanto, PepsiCo and 3M.

When Townley took over the organization, it was sagging financially and the research that it was producing was out of touch with its customers, said Austin Sullivan, who worked with Townley at General Mills.

"There were huge staff problems. They were in the middle of lawsuits," Sullivan said. "He got it back on solid financial shape in a year and a half."

Townley expanded the idea of councils, groups that meet two or three times a year to discuss their specific industries.

"It's a great opportunity to talk shop with people that do what you do. He understood that this was a unique value for conference members. The councils were so valuable to people that that was one of the ways that Pete got the Conference Board back on its feet." Sullivan said.

Townley is survived by his wife, Marcia, and two sons, Michael, of New York City, and Patrick, of Minneapolis. Services will be announced later.

TITLE IV, H.R. 6

Mr. MATHEWS. Mr. President, I rise today to comment on findings contained in title IV of H.R. 6, the Improving America's Schools Act of 1994, which the Senate approved yesterday. The methodology used to make these findings deserve the question: Is it fact or fiction?

The finding is found in section 4002 and states that the "* * * average age for the first use of smokeless tobacco is under the age of 10." Mr. President, I am all too aware, as a Senator from a State where tobacco is a vital part of the economic life of many people, that being critical of tobacco products is fashionable. Anti-tobacco groups are doing all they can to infringe on adult choice with respect to tobacco products. No one, Mr. President, including this Senator from Tennessee, the Congress, or the tobacco industry, wants those under the age of 18 to purchase or use tobacco products. But statements like the one found in section 4002 are designed to mislead and encourage regulation of adult choice.

What is the source of this finding on the age of initiation? While no source is given in the conference report, it likely comes from a 1992 HHS inspector general report entitled "Spit Tobacco and Youth" which reports that "the average age of initiative of our 1992 users was 9.5 years old." Mr. President, the problems with this report are so numerous that I must question the rationale for its use in the congressional finding. First, the inspector general's survey collected information from only 54 reported users of smokeless tobacco. I think everyone must agree that this is an exceptionally small sample upon which to base any conclusions. Furthermore, the survey participants were—in the words of the inspector general's report—"selected judg mental." This means that the participants had to fit a preconceived profile: under 21 at the time of the survey; claimed to have initiated use of smokeless tobacco before age 18; claimed to have used smokeless tobacco on a regular basis for 2 years or more; claimed to have used smokeless tobacco nearly every day during the last year of use. How credible is a survey and its findings if bias is built into the methodology? Are we to believe that such a survey has application to the general population of smokeless tobacco users? Moreover, is it reasonable to legislate on concocted studies? Again, I have to ask is it fact or fiction?

Mr. President, every State has enacted legislation that restricts the sale of tobacco products to persons over the age of 18. Failure to enforce the minimum age on the sale of tobacco products subjects States to forfeiture of Federal funds under legislation that was passed in 1992 with the support of the tobacco industry. These are facts, Mr. President.

The fact of the matter is that according to a recent HHS report, use of smokeless tobacco by males under 18 is low, decreasing and very close to HHS's target or goal for the year 2000. The 1992 Healthy People 2000 Review, which provisions of H.R. 6 are designed to implement, reflects that the reported use of smokeless tobacco products—defined as use on at least one occasion in the last 30 days—by 12- 17-year-old males decreased from 6.6 percent of that group in 1988 to 5.3 percent in 1991. Moreover, a National Institute on Drug Abuse survey published in October 1993 reported that use of smokeless tobacco by 12-17-year-old males had further declined in 1992 to 4.8 percent, which is very close to the 4.0 percent target for the year 2000 set in the Healthy People 2000 Review. Furthermore, the reported usage of smokeless tobacco by the total 12-17 year old population—male and female—was 2.6 percent in 1992 according to the NIDA survey.

Mr. President, the 1992 Healthy People 2000 Review was compiled by the National Center for Health Statistics—Center for Disease Control and Prevention—and submitted by HHS Secretary Shalala to the President and Congress as required by law. These are the findings that should have been included in H.R. 6. I thank the chair.

IS CONGRESS IRRESPONSIBLE? YOU BE THE JUDGE ABOUT THAT

Mr. HELMS. Mr. President, before we contemplate today's bad news about the Federal debt, let us have a little pop quiz: How many million dollars would you say are in a trillion dollars? And when you have arrived at an answer, just remember that Congress has run up a Federal debt exceeding $4½ trillion.

To be exact, as of the close of business yesterday, Wednesday, October 5, the Federal debt stood—down to the penny—at $4,692,972,690,839.51 meaning that every man, woman, and child in America owes $18,000.67 computed on a per capital basis.

Mr. President, to answer the pop quiz question—how many million in a trillion?—there are a million million dollars in a trillion, for which you can thank the U.S. Congress which owes more than $4½ trillion.

REGARDING THE CITIZENSHIP OF MARY BOISVENUE

Mr. COATS. Mr. President, I rise today to both recognize and honor Mary Boisvenue, a proud new American from my home State of Indiana who understands that it is never too late to do something as important as becoming a citizen of the United States of America.

Mary's parents arrived at Ellis Island in 1924, from Riese, Italy, a town 20 miles south of Venice. They then

moved to Windsor, Ontario, Canada, where they settled down to raise a family. Mary was born in June 1929.

Mary's mother died shortly after she was born; her father died in 1934. Raised by her oldest brother, and four other brothers and sisters, she quickly learned that she would have to work hard. Like other immigrant families they were poor, but unlike the others, this family without parents had to survive on their own.

In the fifties, Mary moved to America with her new husband, Rudy, and for almost a decade she helped him through college, and struggled to raise a family and make ends meet.

Finally, after a lifetime of hard work, a family of five children and eight grandchildren, Mary decided to do something for herself.

Last month, she passed the test given by the Immigration and Naturalization Service to people applying for citizenship.

Later this month she, and other new Americans, will be sworn in as citizens of the United States in a ceremony in Indianapolis.

Mr. President, this ceremony is important—for Mary Boisvenue, and for us.

It is important because it reminds us that the spirit of opportunity and freedom continues to survive.

It is important because it reminds us of the contributions of millions of immigrants, from all over the globe, who have chosen to make this land their own.

And, Mr. President, it reminds us that it is people like Mary Boisvenue who have made our country great.

Mr. President, I join my fellow Americans and Hoosiers in congratulating Mary Boisvenue on a job well done.

I am particularly honored to commend her as I have had the opportunity to observe first hand the kind of character she has instilled in her family. Her son, Mike, has been an invaluable member of my staff, serving the U.S. Senate with talent, hard work, integrity, and good cheer.

We are proud of all she has done for herself, for her family, and for our country. And proud that she may now enjoy all the rights and privileges America has to offer.

TRIBUTE TO SENATOR DONALD W. RIEGLE, JR.

Mr. HEFLIN. Mr. President, when Senator DON RIEGLE announced his retirement from the Senate effective at the end of the 103d Congress, it came as a great shock to me and all Members of this body. He has certainly been one of our most dedicated and colorful Members, having one of the most unconventional political careers of any Member of Congress. Over the years, he has emerged as a tenacious leader on trade and banking issues, as well as a forceful advocate for his constituents and the interests of his State of Michigan.

In watching Senator RIEGLE in action over the years, it strikes me that we on this side of the aisle are fortunate that he switched to our camp 20 years ago. We often forget that DON began his career as a Republican, beating an incumbent Democratic Congressman in 1966. He was a freshman in the same class as former President George Bush, and quickly became a fierce critic of the Vietnam War. He ultimately won his Senate seat in 1976 as a Democrat, and has remained an energetic, loyal, and fierce partisan ever since.

As we all know, it is somewhat of an understatement to say that the senior Senator from Michigan fights passionately for those issues in which he believes. At the same time, he has fought just as bitterly against those he has opposed. Indeed, he has been one of the most persistent critics of Republican economic and foreign policies. He was a leader in the fight against the North American Free Trade Agreement.

There will definitely be a void left by the retirement of Senator RIEGLE, for this body and for the people of Michigan. He is a hard worker, an intelligent and energetic debater, and a skilled legislator: it will be hard, if not impossible, to ever really replace him. I salute him for all his years of service.

TRIBUTE TO SENATOR JOHN C. DANFORTH

Mr. HEFLIN. Mr. President, this body has truly been enhanced by the work and presence of Senator JOHN C. DANFORTH since 1977. His service here has been a case study in honesty, integrity, and political courage.

JOHN C. DANFORTH has sponsored numerous legislative measures important to the Nation. Among these are laws encouraging long-term economic growth; strengthening America's world trade policies; improving the protections accorded under existing civil rights laws; increasing the development of affordable housing; and enhancing transportation safety. His service to his home State of Missouri and as a U.S. Senator has set a high standard of effectiveness and accountability of Government.

The accolades given to JOHN C. DANFORTH over the course of his distinguished career in the Senate have come from many points along the political and ideological spectrum. The newsmagazine U.S. News and World Report singled him out as an example of excellence in government; The Washington Post's David Broder identified him as a conspicuous example of hard work, commitment to principle, and overall effectiveness; and the National Journal described him as one of the 31 outstanding Members of Congress. Of course, many of his friends here in the Senate refer to him affectionately as "Saint JOHN." He is an ordained clergyman of the Episcopal Church, and in many ways has been looked to as the conscience of the Senate.

JACK is the only Republican in the history of the State of Missouri to be elected to three terms as a U.S. Senator. His last election marked the record in Missouri Senate races for the number of counties carried in a statewide race.

As a principal author of the 1991 Civil Rights Act, JACK's leadership was crucial to the passage and enactment of one of the Nation's most important statutes for fairness in hiring, promotion, and other employment practices.

JACK DANFORTH has been an important Member of this body for nearly 18 years, and will be sorely missed by his colleagues and constituents. I commend and congratulate him for his many accomplishments as a public servant and wish him all the best for a bright future.

TRIBUTE TO SENATOR HARLAN MATHEWS

Mr. HEFLIN. Mr. President, during his brief tenure in this body, our friend HARLAN MATHEWS has distinguished himself in many ways—particularly as a frequent presiding officer. As we all know, presiding is no easy task, but I've been impressed by his willingness to assume the chair and by his knowledge of parliamentary procedure.

HARLAN is one of the most good-natured and down-to-earth Members of the Senate with whom I have ever served. He has strong ties to my home State, having been born in Alabama and having attended Jacksonville State University there. We live in the same apartment building and it has been a pleasure to travel some with he and his wife Patty. It has been a pleasure getting to know them over the last couple of years.

I must say that while I respect HARLAN's decision not to run for the Senate this year, I am greatly saddened by his retirement. The Senate and the Nation need people like him, people who display the highest standards of honesty and integrity. I know that this body, the people of Tennessee, and the Nation would have benefitted greatly from his continued service. I commend him and wish him all the best for a bright future.

TRIBUTE TO SENATOR DAVID BOREN

Mr. HEFLIN. Mr. President, I rise today to pay tribute to a great public servant. Senator DAVID BOREN's retirement from the U.S. Senate will leave a tremendous void in the institution.

DAVID's service in this body has been one that will be remembered for many years to come. DAVID will soon take

over as president of the University of Oklahoma, where he will influence and shape the lives of our youth. As he says, "If we get everything else right but fail to provide the education and nurturing needed by the next generation, we will lose our place as a great nation and our strength as a society." With people like DAVID controlling the education of our young people, the United States will be assured of its position as a great nation, and our society will remain strong.

DAVID leaves many lasting legacies. From his commitment to service and education, to his dedication to the grassroots revitalization of our country through community involvement, DAVID's presence is felt in much of what makes this country great.

DAVID distinguished himself through his service on intelligence matters. He was chairman of the Senate Select Committee on Intelligence, and served with me on the House-Senate Iran/Contra Committee.

DAVID also distinguished himself through his financial prowess. As a member of the Finance Committee and the Joint Committee on Taxation, DAVID has had a hand in crafting Federal budgets. As we all know, he has been our foremost expert and leader on the campaign finance reform issue.

DAVID has also been committed to our agricultural community through his service on the Committee on Agriculture, Nutrition, and Forestry. I have had the pleasure of serving with DAVID on this committee. His thoughts and ideas have always contributed to the important work of the committee.

As sorry as I am to see DAVID go, I am happy that he will be shaping the young minds of America. I had the pleasure of coming into the Senate with DAVID, and I have been honored to serve with him these 15 years. I wish him the best as president of the University of Oklahoma, and I look forward to serving with him until the end of this Congress.

TRIBUTE TO SENATOR DAVID DURENBERGER

Mr. HEFLIN. Mr. President, I want to take a moment to salute our friend and colleague, Senator DAVID DURENBERGER, who announced that he will be retiring from the Senate at the end of the 103d Congress. DAVE and I came to the Senate together in 1979, and he has always been warm, friendly, and pleasant to work with.

He has been an effective leader on a wide range of issues, including health care reform and financial management. I dare say that there are few of us in this body who understand health care and doctors better than DAVE DURENBERGER. His is a unique perspective, because his State of Minnesota has been a progressive innovator in the health care field. It was one of the States that experimented early on with Health Maintenance Organizations and other reforms that are getting close attention today.

DAVE's has often been a moderate, reasoned voice within his party on important legislation. He has served the people of Minnesota and the Nation well, and has been a true Senate leader and shining light within the Republican Party. He will be missed when the next Congress convenes in January 1995. I congratulate and commend him for his many years of public service.

TRIBUTE TO SENATOR MALCOLM WALLOP

Mr. HEFLIN. Mr. President, I want to commend and congratulate retiring Wyoming Senator MALCOLM WALLOP, who has been a proven leader in foreign and defense policy during his tenure in this body. I came to know MALCOLM very well during our service together on the Select Committee on Ethics in the 1980's.

I am told that MALCOLM is a descendant of 19th century Englishmen who went to Wyoming to ranch and breed horses. He does, in many ways, resemble the early adventurers and explorers who tamed remote corners of the continent. He is proud of his heritage, which has given him a keen interest in world affairs.

MALCOLM WALLOP always took a hard line against communism, even before President Reagan talked of the "Evil Empire." He has been one of the Senate's strongest and most outspoken supporters of the strategic defense initiative and other weapons systems that helped to hasten the collapse of expansionist communism. We was also a key leader in the passage of the 1992 energy bill, having become the ranking Republican on the Energy and Natural Resources Committee the year before.

MALCOLM WALLOP has been an important leader in the Senate for nearly 18 years, and he will be missed by his friends here and his constituents in Wyoming when Congress convenes early next year. It has been a pleasure to serve with him, and I wish him all the best for a bright future.

TRIBUTE TO SENATOR DENNIS DECONCINI

Mr. HEFLIN. Mr. President, the 104th Congress and the State of Arizona face a void next year in light of the retirement from the Senate of our friend, Senator DENNIS DECONCINI.

I have had the pleasure of working with DENNIS on many issues over the years, including the balanced budget amendment legislation and other Judiciary Committee matters. He has served this year as a forceful chairman of the Intelligence Committee.

Like I have been myself in the past, DENNIS has been called a swing vote on key legislation before the Judiciary Committee and the Senate. His instincts on many issues are conservative. He takes the time to examine issues thoroughly and sometimes makes his decisions based on details that the rest of us might not have considered. We saw an example of DENNIS' analytical approach to tough legislation when he provided a crucial and courageous vote in support of the deficit reduction package last August.

I think this approach on the part of Senator DECONCINI is an asset that has served him and the Senate well over the years. It suggests a judicious approach to important issues that come before us that often helps to cool the passions that seem to guide us so much of the time.

He has always put the interests and well-being of his constituents at the top of his agenda. He has worked diligently for his State, and Arizonans have always had a friend in DENNIS DECONCINI. Never one to actively seek the spotlight or promote himself in the media, he has done much of his work quietly on committee, just as have other moderate Democrats from his region of the country. Those of us who know how hard he works also know that he has never been given the proper credit he deserves as a true Senate leader.

I think the way DENNIS has run his Senate offices is reflective of the kind of person he is and the kind of loyalty he inspires. His staff members speak very highly of him and obviously have a great deal of affection for him, not only as a boss, but as a friend. There is little turnover among his staff and he is good about promoting from within. DENNIS also has a proven record of hiring women and minorities for important policy positions like legislative director.

I am proud to commend Senator DECONCINI for his many years of distinguished years of service to Arizona and to the Nation as a U.S. Senator.

TRIBUTE TO SENATOR HOWARD METZENBAUM

Mr. HEFLIN. Mr. President, as was the case with virtually all of my colleagues in this body, I greeted the recent retirement announcement by our friend from Ohio, Senator METZENBAUM, with a variety of emotions and sentiments. For those of us who have known and served with him over the years, he has come to symbolize many of the ideals upon which the Senate was founded. Whether we agreed with him or not—and like most, I have had my share of disagreements with him—there was never a doubt that he always approached issues armed with the courage of his convictions and the dictates of his conscience.

For that reason, there will be a void in the Senate when the 104th Congress

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convenes that will be hard—if not impossible—to fill.

At the same time, who can begrudge him wanting to spend more time with his wife Shirley and their wonderful family? The Senate places demands on its Members that cannot be viewed as family friendly, and sometimes when attempting to balance these often competing demands, it comes down to a decision about priorities. Senator METZENBAUM has chosen to make his family his priority at this stage in his life, and for that, we applaud him.

If anyone has ever earned his retirement, it is Senator METZENBAUM, who has served this body with distinction for 18 years. I have had the pleasure of serving with him on the Judiciary Committee for a number of years. He has been a loud and clear voice for those in our society who often have had to struggle to find a voice—working families, the middle class, minorities, laborers, and women. He has performed as a true champion of the rights of all Americans, regardless of their status or position in society. He does his homework, he knows his facts, and he stands his ground. He has always adhered to the principle, "Always let your conscience be your guide."

Many congressional staffers and members of the public were probably surprised to learn that Senator METZENBAUM is only in his third Senate term. He is one of those who has become such an integral part of the daily business of the Chamber and is so closely identified with the Senate that it is hard to imagine a time when he was not here. But indeed, he has only been here since 1977. And I say only because we have Members like Senators THURMOND, KENNEDY, and BYRD who do make him and many of us seem like new kids on the block.

Senator METZENBAUM touched upon something in his retirement announcement that is instructive. He said, "I know that the Members of this body have the wisdom, talent, and experience to accomplish more than we now do. We seem somehow to fall short of our considerable potential, and as a result have a less positive impact than might otherwise be possible. We do not look beyond one day's news cycle. We find ourselves ducking tough choices, postponing the inevitable, passing the buck, and pointing fingers."

Mr. President, I have also noticed, over the last several years or so, an increasing tendency on the part of the Senate to avoid open, direct debate on some of the most critical issues facing our Nation. Avoidance of difficult issues only violates the trust that is supposed to exist between the governed and their Government. Senator HOWARD METZENBAUM has consistently worked to ensure and preserve that trust.

I wish Senator METZENBAUM and his wife Shirley a happy and healthy retirement filled with lots of relaxation and visits from their grandchildren. He has served his constituents and indeed all Americans well, and will be sorely missed when he officially retires in January 1995.

TRIBUTE TO CONGRESSMAN JAMIE WHITTEN

Mr. HEFLIN. Mr. President, I want to take a moment to salute an exceptional man who has had a highly distinguished career as a legislator. The retirement of Congressman JAMIE WHITTEN of Mississippi after 53 years in the House will mark the end of an era in politics.

JAMIE was elected to the House in 1941, and has served with 11 Presidents in his career as a lawmaker. He is the last sitting legislator to have seen FDR give his famous "Day of Infamy" speech in 1941. He has the longest tenure in the history of the House of Representatives. He has served for nearly a quarter of the entire history of the House.

Nevertheless, JAMIE WHITTEN always said, "It is not how long you serve, it is how well you serve," and he has served his district and country very well. Throughout JAMIE's long career, he has been deeply committed to serving the people of the First District of Mississippi. His dedication to his constituents is one of his lasting legacies.

Another one of JAMIE's lasting legacies is his commitment to America's farmers through his involvement in agricultural issues. JAMIE took over the Appropriations Agricultural Subcommittee in 1949. He used this post to control national agricultural policy for three decades until he was made chairman of the committee in 1979.

Throughout his five decades of service, JAMIE has distinguished himself through his longevity and his leadership. During his 27 terms, JAMIE has witnessed many major world events. From Pearl Harbor to the Persian Gulf war, JAMIE has steadfastly served through it all.

I have had the pleasure of serving in Congress with JAMIE for the relatively short 16 years that I have been on Capitol Hill. I have worked with him on a number of projects. Now, as JAMIE goes into a well-earned retirement, I want to wish him well in his future undertakings. Capitol Hill will not be the same without him.

TRIBUTE TO WALTER J. "JOE" STEWART

Mr. HEFLIN. Mr. President, the Senate, and indeed the entire 103d Congress, has lost a great friend with the retirement of Walter J. "Joe" Stewart.

Joe Stewart was elected and sworn in as Secretary of the Senate for the 100th Congress on January 6, 1987. Previously, he was the secretary to the majority from 1979–81 and secretary to the minority from January to August 1981 when he was elected as vice president of government affairs of Sonat, Inc.

Joe was born in Waycross, GA, but grew up in Jacksonville, FL. He attended George Washington University and received his law degree from American University. He passed the District of Columbia bar in 1963. He chaired the developmental committee of the American University Law School for 5 years and was named a distinguished alumnus in 1986.

As Secretary of the Senate, Joe had a multitude of responsibilities. He served as the principal administrative and financial officer of the Senate. He was also responsible for the entire Senate floor staff such as the Parliamentarian, the legislative clerk, the journal clerk, and the bill clerk. His jurisdiction also included the Office of Printing Services, the Senate Historical Office, the Office of Captioning Services, and the Office of Conservation and Preservation. He was in charge of the Senate library, the document room, and the stationery room.

Joe also is an ex officio member of the Federal Election Commission and presently works with four other commissions around Capitol Hill including the U.S. Senate Commission on the Bicentennial and the Senate Commission on Art.

Joe leaves many legacies as Secretary of the Senate. His most lasting legacy is his overriding interest in U.S. Capitol preservation efforts. He worked closely with the House and Senate leadership to develop the U.S. Capitol Preservation Commission and presently serves as executive secretary of the advisory board of the Preservation Commission.

Joe Stewart's dedication to service is something that he will always be remembered for by the Members of this body. He is a great American and has served this institution well. He served with distinction and dignity. I have had the pleasure of knowing Joe Stewart since I came to the Senate in January 1979. It is strange not to have him around here anymore. I wish him the best in all of his future endeavors.

CONGRATULATIONS TO WALTER B. SLOCOMBE

Mr. PRYOR. Mr. President, I rise today to congratulate Mr. Walter B. Slocombe, who was recently confirmed by the Senate to be Under Secretary of Defense for Policy. Mr. Slocombe brings a wealth of experience and public service to this position.

Mr. President, this is an historic period for the Department of Defense. The instability and uncertainty of the post cold war world is presenting new challenges to our Nation's military at a time of internal downsizing and budget cuts. Given this environment, I was

very pleased to vote in support of an individual with Mr. Slocombe's credentials.

Walter Slocombe has spent a great deal of his career working on defense policy. From November 1979 to January 1981, he was Deputy Under Secretary of Defense for Policy Planning, serving concurrently as Director of the Department of Defense SALT Task Force. In 1969 and 1970, Mr. Slocombe was a member of the Program Analysis Office of the National Security Council staff, focusing on long term security policy planning and intelligence issues.

A graduate of the Woodrow Wilson School of Public and International Affairs at Princeton, and Harvard Law School, Mr. Slocombe is the author of numerous papers on both defense policy and tax law. He has also served as an advisor or consultant to a number of our Nation's most prestigious think tanks, including RAND and the Center for Strategic and International Studies.

Mr. President, I am pleased that Walter Slocombe is bringing his energy and keen intellect to the Department of Defense. I know my colleagues join me in both congratulating him, and wishing him good luck in this important position.

TRIBUTE TO COL. TRUMAN W. CRAWFORD, USMC, DIRECTOR, U.S. MARINE CORPS DRUM AND BUGLE CORPS

Mr. NUNN. Mr. President, the Senate Armed Services Committee reported to the Senate and the Senate has approved the nomination of a very unique military officer—Truman W. Crawford—to the rank of Colonel in the U.S. Marine Corps.

Truman Crawford is currently director of the U.S. Marine Corps Drum and Bugle Corps—The Commandant's Own—which has played for audiences around the globe.

Colonel Crawford has been a Marine for 27 years. He preceded this with a highly successful career in the Air Force. During his service, he has been known for his exceptional credibility, unwavering integrity, and strong leadership—all of which allow him to direct one of the finest military musical organizations anywhere.

Musically, Colonel Crawford has earned the reputation of being one of the Nation's premier musical instructors, arrangers, and adjudicators. He has been compared to John Philip Sousa and has received numerous presidential promotions and awards for his talent.

I have enjoyed listening to the U.S. Marine Corps Drum and Bugle Corps for many years. Mr. President, the Drum and Bugle Corps not only puts out a remarkable sound but the members perform this music while meeting the highest standards of close order drill and marching at standards unique to the Marine Corps. Each time I listen, I feel great pride for the Marine Corps and a tremendous sense of patriotism. Colonel Crawford has captured the spirit of the United States within his music, and I would like to thank him for it. And I want to commend the Commandant of the Marine Corps, General Mundy, and President Clinton for making this promotion and recognition possible.

Mr. President, I know my colleagues on the Armed Services Committee and in the Senate join me in congratulating Colonel Crawford on his promotion and for his service to our Nation. We extend our best wishes to him and his family for continued success.

I ask unanimous consent that his official biography be included in the RECORD.

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

[From The Public Affairs Office, Marine Barracks, Washington, DC.]

COLONEL TRUMAN W. CRAWFORD, DIRECTOR, U.S. MARINE DRUM AND BUGLE CORPS

Colonel Truman W. Crawford is presently serving as Commanding Officer and Director of the 80-member U.S. Marine Drum and Bugle Corps, home based at the historic Marine Barracks, Washington, D.C. Prior to assuming command of "The Commandant's Own," Col. Crawford served as musical arranger and instructor of these elite Marine musicians.

Born April 1, 1934 in Endicott, New York, Col. Crawford began his musical career at the age of eight, playing the fife in a colonial fife and drum corps. Later years found him studying all of the brass and percussion instruments, while majoring in music education and studying privately with noted music educators. It was while he was in high school that he was first introduced to the drum and bugle corps. He immediately launched his career in that facet of music not only as a performer, but subsequently is an arranger, scoring arrangements for local units at the age of 17.

During his senior year in high school he witnessed a performance of the U.S. Air Force Drum and Bugle Corps from Washington, D.C. Shortly after graduation he auditioned for, and was accepted into the unit in February 1953, as an instrumentalist. In just two short years he was appointed Musical Director of the Drum Corps, and in 1957, at the age of 23, had risen to the rank of master sergeant, non-commissioned officer in charge of the entire unit.

During his 10-year career in the U.S. Air Force, he traveled extensively with the Drum Corps throughout the United States and abroad, completing six tours of Europe and Great Britain, as well as two tours of the Far East. Throughout his tour he spent considerable time studying privately with noted arrangers and conductors, taking every opportunity to enhance his own musical career.

In 1963 Col. Crawford left the U.S. Air Force to pursue a career in private enterprise, specifically a music store catering needs of civilian bands and drum and bugle corps from throughout the United States and Canada. From 1963 through 1967 he enjoyed a distinguished career, and was recognized as one of the premier musical instructors, arrangers and adjudicators in the entire nation. In 1965, every major Drum and Bugle Corps title holder in the United States and Canada was instructed by, or performed music arranged by Col. Crawford.

Colonel Crawford initiated his third career in March 1967, having been selected by the Commandant of the Marine Corps for special assignment as the arranger/instructor of "The Commandant's Own," The U.S. Marine Drum and Bugle Corps. Entering the Marine Corps as a staff sergeant, he quickly rose to the rank of master sergeant prior to his subsequent commissioning as warrant officer in December 1973. Crawford was awarded a Presidential appointment to the rank of captain in April 1977. In August 1982, he was awarded his second Presidential appointment to major. On March 1, 1989 Col. Crawford was awarded the Navy Commendation Medal for his exemplary performance as Director of "The Commandant's Own". He was awarded the Meritorious Service Medal in October 1982, in recognition of his exceptional record of meritorious service in his continuing role as Commanding Officer and Director of this world-renowned military musicl organization.

Col. Crawford is married to the former Lucille E. Ellis of Johnson City, New York. They have four sons: Robert, David, Truman Jr. and Canaan, as well as two daughters: Cynthia and Lisa. The Crawford's presently reside in Stafford, Va.

NATIONAL SERVICE AND CITIZENS FINANCIAL GROUP, INC.

Mr. PELL. Mr. President, as the 103d Congress comes to a close, I would like to stress once again the importance of this session's national service legislation. As one who has been a longtime advocate of national service, I am pleased, indeed, that Congress has finally authorized a large-scale program of service which includes an educational reward. Citizens who participate in national service programs often accomplish immeasurable good for the people and neighborhoods they serve, as well as gain a better understanding of their connection to the community at large, the benefits of which can be reaped for years to come. After many years of discussion, I am excited to see that there is now a great deal of national attention focused on the community service concept.

I would like to highlight one particular example of this new commitment to service from my State of Rhode Island. Citizens Financial Group, based in Providence, began a program last year called the Citizens Corporate Service Sabbatical. Each year two full-time employees will take 3-month paid leaves of absence to perform direct, hands-on community service. Since the company considers the opportunity to serve an honor, the sabbaticals will be highly competitive, thus assuring dedicated volunteers. The program is also structured so that employees will not have to make any career sacrifices in order to perform community service. They will be guaranteed the same salary and level of responsibility upon their return.

This program, to my mind, is a wonderful example of how the private sector should view service, and how businesses can encourage and accommodate their employees' participation in service programs. I commend Citizens Financial Group for their effort in this regard and I would ask that a description of the Citizens Corporate Service Sabbatical program immediately follow my remarks in the RECORD.

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

CITIZENS CORPORATE SERVICE SABBATICAL

DESCRIPTION

The Citizens Corporate Service Sabbatical is a three-month paid leave available to qualified employees who apply to perform community service. The company seeks to reward eligible employees and the opportunity to provide direct, hands-on community service with opportunities for client contact at places such as AIDS hospices, shelters for battered and abused women, homeless shelters, food banks/kitchens, housing rehabilitation agencies, youth counseling centers, and the like.

What the Sabbatical IS NOT is traditional corporate volunteerism that emphasizes board membership, planning, development, and fund raising, although each is valued and important and Citizens will continue to encourage and support those kinds of activities by our employees.

Two sabbaticals will be granted annually and they will be available to employees of Citizens Financial Group, Citizens Bank of Rhode Island, Citizens Bank of Connecticut, Citizens Bank of Massachusetts, and Citizens Mortgage Corporation. Since Citizens considers the opportunity to perform community service an honor, the sabbaticals will be highly competitive. To ensure that the sabbatical does not cause a professional or career sacrifice to employees, those employees selected for the Corporate Service Sabbatical are guaranteed their same salary and level of responsibility upon completion of the sabbatical.

ELIGIBILITY

The sabbatical is available to any full time employee of Citizens Financial Group or its subsidiaries who has at least five years of service.

APPLYING

To apply for a Citizens Corporate Service Sabbatical, qualified employees must submit a one-page essay describing the kind of service they would provide to the community, their view of what they might accomplish and what their service would mean to Citizens, where they would provide their service, and why they want to devote three months of the year to community service. Applicants should NOT seek out agencies here they would perform their service, but instead describe the kind of service they wish to perform.

SELECTION

A selection panel with representation from the holding company, the banks and the mortgage company will be formed to review all applications. The panel will be comprised of the Director of Corporate Affairs (chairman), President of CBRI, President of CBM, President of CMC, Corporate Director of Community Relations, a VP of Human Resources (Ellen Sheil), and the heads of Retail Banking and Corporate Banking in Rhode Island and Massachusetts.

The panel will forward the names of three finalists to the chairman of Citizens Financial Group, who will interview each finalist before choosing the recipient of the sabbatical.

SABBATICAL REQUIREMENTS

Employees awarded sabbaticals will be assigned a community service program that fits the goals of their application. Employees are required to work a standard full time schedule at their community service appointment and be supervised regularly by agency personnel. At the conclusion of their sabbatical, employees will be asked to critique their specific service opportunity. Agency directors, in turn, will be asked to provide Citizens with a review of the Citizens employee's contribution to their program.

POST-SABBATICAL REQUIREMENTS.

On returning to Citizens after completion of their sabbaticals, employees will be asked to serve for one year as members of the internal Corporate Contribution/Sponsorship Committee in their state. The committees include the CFG chairman and CEO, respective bank presidents, and the directors of Corporate Affairs, Community Relations, and the Public Relations.

THE STATE VISIT OF SOUTH AFRICAN PRESIDENT NELSON MANDELA

Mr. PELL. Mr. President, it was my distinct pleasure to welcome Nelson Mandela back to the Foreign Relations Committee, this time as President of South Africa. When President Mandela was last with us on July 1, 1993, he came to our Committee as president of one of the most prominent opposition parties in Africa. Today I, along with my Senate and House colleagues had the honor of welcoming him as President of one of the most powerful countries in Africa. South Africans have definitively ended apartheid by holding their first multiracial elections and electing our distinguished guest as President to lead a government of national unity. Freedom and democracy have triumphed in South Africa.

In addition to visiting the Foreign Relations Committee today, President Mandela addressed a Joint Session of Congress and spoke with me and my colleagues at a luncheon. Our discussions were fruitful. I applaud the steps he has taken to ensure reconciliation in South Africa by bringing members from a wide spectrum of the opposition into the government. I remain hopeful that this endeavor and the economic reconstruction of South Africa will progress further this year.

In his speech this morning, President Mandela declared himself deeply moved by the commitment of the people of the United States to stay the course with South Africans as they strengthen democracy and attempt to banish poverty and deprivation in their land. The United States government—as well as its individual citizens have lent their support to South Africa. Last spring, the Clinton administration doubled its assistance package to South Africa; an augmentation that I supported. And with the new democratic climate and relative decline in violence there is a new willingness by United States investors to return to South Africa. Twenty-two United States companies returned to South Africa during 1993–1994. President Mandela told me this afternoon that the environment for investment in South Africa is ideal. In 1994, money has been flowing into, rather than out of, the country because internal and external investors have confidence in the political stability of the country—a political stability which the people of South Africa have guaranteed.

It was through economics that the United States did its part to help end apartheid. This time, through trade and expansion of the ties once cut, the United States can help the people of South Africa on their path to reconciliation and reconstruction. Let us follow President Mandela's call to join them as they walk along that road.

THE FOREIGN RELATIONS COMMITTEE'S ACTIVITIES IN THE 103D CONGRESS AND ITS AGENDA FOR THE 104TH CONGRESS

Mr. PELL. Mr. President, the last 2 years have been a period of rapid change, marked by profound dislocation for millions as people and governments struggled to adapt to the post-cold-war era. The effort to achieve a framework for a new world order has proved more difficult than anticipated.

Multilateral instructions constructed during the cold war have suffered their own crises of confidence as a result of accelerated demands on their resources. These demands have ranged from the proliferation of humanitarian disasters, such as in Rwanda and in the former Yugoslavia, to other crises affecting international stability, such as the development of nuclear weapons by North Korea. Rejuvenating these institutions and developing new means for coping with the world's problems, particularly in the environmental and social area, have proved onerous, their difficulty exacerbated by a dearth of financial resources and consensus among developed nations.

Today, I would like to report on the significant activities of the Foreign Relations Committee during the past 2 years of the 103d Congress and outline some of my objectives as chairman for the next session.

Foremost among the committee's concerns during this Congress were the need to ensure a stable framework for democracy in the successor states to the former Soviet Union and the need to contain direct threats to American security from the proliferation of weapons of mass destruction.

SECURING STABILITY IN EUROPE AND THE NIS

During the previous Congress, many of the committee's activities focused

on the immediate effects of the breakup of the Soviet Union and the end of the cold war. For example, the committee enacted the Freedom Support Act, the legislative framework for the entire U.S. assistance program to the former Soviet Union. The process of securing democracy in the successor states of the former Soviet Union and in Eastern Europe remains the greatest challenge for American diplomacy in the remainder of this century and has been the focus of much of the committee's attention during the 103d Congress.

In the 103d Congress the committee, through hearings and legislation, took a longer-term view of the breakup of the Soviet Union. First, the committee supported the normalization of the U.S. relationship with the countries of the former Soviet Union by enacting the Friendship Act in November 1993. That act reflected the fact that the Soviet Union has dissolved and repealed provisions of cold war law that were no longer relevant. The committee was actively engaged in oversight of the assistance program created by the Freedom Support Act, issuing a staff report and conducting numerous hearings on the status of the aid program and the future of U.S. relations with the New Independent States.

I am pleased that the Clinton administration has given a high priority to our relationship with the New Independent States. The Vancouver summit was a great success in reaching a meeting of minds on mutual economic and political goals and on security issues. In January 1994, the presidents of the Ukraine, Russia, and the United States reached an agreement to destroy nuclear weapons and control the export of nuclear technology—a major achievement. The Washington summit between President Yeltsin and President Clinton which focused on trade and investment further solidified the American-Russian partnership.

The task of building a lasting framework for peace in Europe, however, will not be complete unless questions concerning NATO's role and membership are resolved. The committee is involved in the ongoing discussion about NATO issues. In January 1994 the NATO summit adopted the Clinton administration's Partnership for Peace proposal, opening the way for all of our friends in Europe, and the New Independent States, to engage in a productive association with NATO. Soon after the summit, Senator BIDEN'S Subcommittee on European Affairs held joint hearings with Senator LEVIN'S Armed Services Subcommittee on Coalition Defense and Reinforcing Forces and the future of NATO that included a through examination of Partnership for Peace. In the next Congress, NATO, its future, and America's role in Europe will continue to be a priority issue for committee consideration.

The importance of retaining an effective security framework in Europe is driven home each day by reports of intra- and inter-state conflict in Eastern Europe and the New Independent States. Tension is high in all the successor states to the Soviet Union and violence continues in Azerbaijan, Armenia, Tajikistan, and Georgia. The intractability of these conflicts and the potential for U.S. involvement is readily apparent in the former Yugoslavia where a contingent of American peacekeepers has taken up position in Macedonia.

While activities in the rest of Europe focused on consolidating new post-cold-war relationships, in Bosnia the international community's goal has been to end the fighting and suffering and to bring to justice those responsible for war crimes. The Foreign Relations Committee has been actively involved in monitoring the Yugoslav situation through close contact with officials from former Yugoslavia, the United Nations, Europe, and the U.S. administration. Several member and staff trips to the troubled region, including inside Bosnia, helped to further inform the committee.

In one of its more important efforts, the committee has been active in efforts to establish a War Crimes Tribunal for the former Yugoslavia. With the full support and urging of the committee, the Clinton administration played a leading role at the United Nations in the creation of the Tribunal, which is scheduled to issue its first indictments later this year. Eventually the Tribunal's jurisdiction may be extended to reviewing genocidal crimes in Rwanda, establishing a precedent and hopefully acting as a deterrent.

CONTROLLING THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

The demise of the former Soviet Union has dramatically changed the strategic environment faced by the United States. Nevertheless, as the former Soviet Union has become less of a challenge in the arms control area, other challenges to our national interests have emerged. In particular, the proliferation of chemical, biological, and nuclear materials remains an acute problem central to our national security.

Last year, on the basis of several reports and our own investigations, Senator SIMON and I concluded that the Arms Control And Disarmament Agency was sorely in need of strengthening and revitalization if it were to be equal to the promise of 1961 when it was created.

Fortunately, President Clinton and Secretary of State Christopher agreed and the administration came to support legislation we offered, the Arms Control and Nonproliferation Act of 1994, which was approved by the Committee on Foreign Relations and the Senate. It was enacted earlier this year and should serve to get the Arms Control and Disarmament Agency back on track and in the forefront of those seeking strong and effective arms control.

Also in this Congress, with committee leadership, a major step forward in the area of nuclear nonproliferation was taken with enactment of the Omnibus Nuclear Proliferation Control Act. This legislation, authored by the Senator from Ohio [Mr. GLENN], incorporated an amendment which I developed, together with the Senator from North Carolina [Mr. HELMS]. This legislation targets persons and firms that contribute to the efforts by any individual, group or any nonnuclear-weapons State to acquire unsafeguarded weapons-grade uranium or plutonium or to use, develop, produce, stockpile, or otherwise acquire a nuclear device. This legislation also sets forth new sanctions to be applied against any nation giving the wherewithal for a nuclear device to a nonnuclear-weapons State.

This year, the committee held several hearings to explore the administration's proposal that the 1972 Anti-Ballistic Missile Treaty be changed to permit the development and deployment of a Theater High Altitude Air Defense System [THAAD]. The committee will be assessing this new concept further in the next session and reaching judgments as to the implications of the proposal for the ABM Treaty, the likely benefits and risks for U.S. national security and potential costs in a time of shrinking defense budgets.

In addition, also this year, the committee held a series of hearings on the Chemical Weapons Convention, signed by the Bush administration in January 1993, and strongly endorsed by the Clinton administration. As this session of the Congress comes to a close, we anticipate receipt of a report on the intelligence aspects of the convention from the Select Committee on Intelligence and on the military implications from the Senate Armed Services Committee. We also will receive and assess a report from the executive branch on its efforts to ensure Russia's compliance with chemical weapons commitments, as well as obligations under the Biological Weapons Convention ratified in 1975.

I wish that I could report to you that we would be able to complete action this year on the Chemical Weapons Convention, which has the most complex and intrusive verification provisions of any treaty yet agreed to in the arms control field. This convention requires the most careful study and assessment to make sure that the Senate's judgment is correct. I anticipate that we will develop a mutually acceptable resolution of ratification for consideration by the committee and the full Senate early next year. That

resolution will take into account the advice of both the Intelligence and Armed Services Committees and the best judgment on certain key issues from the executive branch.

Mr. President, next year could be a very exciting period in the field of arms control. In April, the nations of the world will meet to consider whether to extend the Nuclear Nonproliferation Treaty—a critically important undertaking which has been central to efforts to prevent the spread of nuclear weapons throughout the world. The Clinton administration is properly seeking an indefinite extension of this Treaty.

The Clinton administration is attempting to negotiate a comprehensive ban on nuclear explosions. Success in this endeavor would be a fitting end to the long saga of efforts to curb and end nuclear explosions begun when President Kennedy negotiated with the Soviet Union and Great Britain the Limited Test Ban Treaty of 1963. I would hope that it is possible to achieve a complete ban on nuclear explosions, with no exceptions, that would be of indefinite duration. Now that the cold war is a receding memory, we have an unprecedented opportunity to step away from that unfortunate reliance on nuclear weapons that was a centerpiece of this protracted period of continued confrontation.

RESOLVING REGIONAL CONFLICTS

While areas of continued tension deserve great attention, it is equally important to acknowledge movement toward resolving some of the world's conflicts.

One of the most dramatic developments that occurred during the 103d Congress was the rapid advancement of the Middle East peace process. Within 4 days of the surprise announcement of the conclusion of an agreement between Israel and the Palestine Liberation Organization [PLO], Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasir Arafat were shaking hands on the While House lawn. That ceremony—as moving as any I've ever witnessed—captivated the world and changed the entire political landscape in the Middle East.

The Israel-PLO agreement broke the gridlock in the bilateral talks between Israel and its neighbors, as evidenced by the subsequent agreement by Prime Minister Rabin and King Hussein to end the formal state of war between Israel and Jordan, and by the indications of serious progress in Secretary Christopher's shuttle diplomacy between Tel Aviv and Damascus. It present trends in the peace process continue, the Middle East will be a priority issue for the Committee in the coming session of Congress.

While harboring no illusions about the difficulty of the issues that remain to be resolved, the committee moved quickly to consolidate gains made in the peace process. Just a few short weeks after the signing of the Israel-PLO agreement, the committee approved the Middle East Peace Facilitation Act, which was enacted into law as a short-term measure to enable the administration to help both Israel and the PLO. In the following months, after committee-led consultations among a broad, bipartisan group of Senators, the Middle East Peace Facilitation Act was refined, extended, and enacted into law as a section of the biannual State Department authorizing legislation. The Act, authored by Senator HELMS and myself, ensures that the PLO will abide by commitments to end terrorism and revise its charter, and provides the administration with sufficient flexibility to deal with the PLO well into the coming year. In doing so, the committee in my opinion has helped significantly to advance the prospects for the successful implementation of the Israel-PLO agreement.

The Committee also built upon efforts begun in prior years to enhance the safety and security of Israel, a cornerstone of U.S. policy in the middle East. The committee strongly supported maintaining current levels of U.S. assistance to our Camp David partners, Egypt and Israel, and approved several legislative provisions drafted by committee members, subsequently enacted into law, to hasten the dismantlement of the Arab League boycott of Israel. While there has been substantial progress in reducing compliance by Arab states with the boycott, in the next session the committee will seek additional means to encourage outright termination of the boycott.

Elsewhere in the Middle East, the committee remained active in the development of post-Persian Gulf War policy towards Iraq, including drafting a law to establish a blueprint for U.S. policy to counter a potentially resurgent Iraq. The committee also continued its efforts begun during the last Congress on the Iraqi Kurds, including sending two staff missions to Iraqi Kurdistan to retrieve Iraqi Secret Police files captured by the Kurds during their 1991 uprising against Saddam Hussein. The committee staff brought back an additional 5 tons of documents to add to the 14 tons already in the United States, all of which are now being prepared for use in a genocide case against the Iraqi government. The committee looks forward to working with the U.S. administration and other outside parties to initiate such a case in the coming year.

In the South Asia region, the committee focused on promoting democratic development, improving the human rights situation, and halting the spread of nuclear weapons and delivery systems, addressing these issues in hearings, legislation, and in meetings with distinguished visitors from the region. As part of an ongoing effort to raise the profile of South Asia issues in U.S. foreign policy, the committee was pleased to oversee the first-ever Senate confirmation of an assistant Secretary of State for South Asian Affairs.

From the newly democratic South Africa, the Foreign Relations Committee received both Nelson Mandela and former President de Klerk in 1993 and was delighted to welcome President Mandela at the end of this session. After performing a crucial function in the 1986 initial passage of sanctions against South Africa, the Foreign Relations Committee was pleased these last 2 years to watch the fruition of its efforts. By passing S. 1493, the South African Democratic Transition Act, the committee acted swiftly last summer to lift sanctions at the behest of the newly empowered majority of the country. This rapid response allowed for the timely lifting of State and local sanctions against South Africa and pave the way for U.S. businesses to explore new business and investment opportunities in South Africa. In addition, the committee supported this spring's expanded foreign aid package for South Africa and plans to continue to assist the administration in ensuring that this program reaches the most needy while increasing economic opportunities internally and externally.

In response to the crisis in Somalia and Rwanda, the Foreign Relations Committee played an active role, holding a series of hearings involving administration, United Nations and Non-Governmental Organization experts to look at how to keep the U.S. role in Somalia constructive. The committee played an important oversight role with the administration on Somalia and continued to inform the administration of its concerns as the United States phased its final mission out this fall.

In early reaction to the horrific events in Rwanda, the committee severely condemned the mass killings, initiating and passing S. Res. 207 in April 1994. This legislation urged that the international community consider immediate multilateral action to ensure the safety of innocent civilians. In May and July, experts in peacekeeping and humanitarian interventions were called to testify before the committee on workable solutions to the tragedy. When the Central African crisis evolved into a humanitarian disaster of unprecedented proportions, the committee supported the President's request for emergency funding for disaster assistance and refugee relief. The committee will continue to monitor the crisis in Central Africa very closely. Under the leadership of Senator SIMON, chairman of the Subcommittee

on African Affairs, the committee successfully complete action on the African Conflict Resolution Act, a bipartisan bill that will strengthen the capacities of African states to mediate their conflicts. Chapter VIII of the U.N. Charter envisioned a broad role for regional organizations in conflict resolution. Although the United States cannot be the world's policeman, we can strengthen the role of regional international organizations in resolving conflicts.

Closer to home, the committee has been deeply engaged in efforts to restore the democratically elected government to power in Haiti. We held critical hearings and briefings on our policy earlier in the year that contributed to a change in American policy which will culminate later this month in the restoration of President Aristide's government. With the deployment of United States troops in Haiti, the committee will continue to closely monitor the United States mission and our efforts to facilitate the transition to the Aristide government, assist in the creation of a new police force, the professionalization of the military and the economic development of this impoverished nation. President Clinton is to be commended for successfully negotiating an agreement to restore President Aristide to power while minimizing the initial risks to U.S. forces.

Also of great interest to the future of American relations in Latin America is the American trade embargo on Cuba. I believe that a comprehensive review of United States policy toward Cuba is long overdue. To that end I am holding hearings later this week and will work to broaden discussion of this topic in our next session. I believe that a gradual lifting of the embargo could give us leverage over a Cuban Government fearful of the openness brought by closer relations with the United States.

In another region, the danger of an imminent conflagration was avoided after President Clinton enlisted former President Carter to negotiate directly with North Korean President Kim Il Sung. The committee has been deeply engaged in monitoring North Korean nuclear developments since the Bush administration. Open hearings and frequent closed door briefings have kept Members intimately apprised of the issue. A solution has not yet been found. I believe that negotiations with the North Koreans will be difficult and attenuated, particularly since Kim Il Sung's death. But clearly, negotiations by President Clinton's able Ambassador Robert Galucci, for the moment, prove the wisdom of Winston Churchill's adage that "jaw, jaw" is preferable to "war, war." A Cold War "peace dividend" can only be banked if there is peace.

STRENGTHENING MULTILATERAL INSTITUTIONS

The committee has been busy working to strengthen international institutions to advance peace and prosperity. Without a doubt, this has been the most contentious, yet most critical, subject of our deliberations. The legitimacy of multilateral approaches to resolving world problems has been brought into severe question as a result of the debacle in Somalia and the frustration over the ongoing conflict in the former Yugoslavia. On the eve of its 50th anniversary, the United Nations and its specialized agencies are being buffeted by intense criticism. One of the greatest challenges for the Congress and the administration in the next session is constructive reform of international institutions.

A detailed staff report of U.N. peacekeeping operations was prepared earlier this session, containing recommendations similar to those later acted on in the administration's long awaited Presidential decision directive on peacekeeping. As a result of pressure from the committee, especially Senator PRESSLER, action was finally taken by the United Nations to establish an Inspector General. Additional reforms with U.S. support are now underway in the United Nations office responsible for peacekeeping. In cooperation with the Armed Services Committee, we have been working with the administration to develop an effective means to ensure congressional oversight of peacekeeping operations. In this regard, the Clinton administration has been extremely cooperative.

STRENGTHENING INTERNATIONAL HUMAN RIGHTS

Another challenge has been to strengthen international respect for human rights. I have already mentioned the War Crimes Tribunal for the former Yugoslavia. The committee also reported favorably to the full Senate the Convention Against Racial Discrimination and the Convention To Eliminate All Forms of Discrimination Against Women. The convention to eliminate race discrimination was ratified by the Senate earlier this year while the convention to eliminate discrimination against women should be ratified shortly. Both conventions are extremely important to ensuring universal guarantees of human rights protection. In addition, I am pleased that the Clinton administration has agreed to review the issue of ratification of two protocols to the 1949 Geneva Convention.

Protocol I is the leading codification of the rules of international armed conflict for the protection of civilians. It addresses such important abuses as direct attacks on civilians, indiscriminate shelling, siege warfare, starvation of civilians as a weapon of war, and interference with the delivery of humanitarian assistance. Protocol II codifies fundamental provisions of the rules of war governing noninternational armed conflicts. Both of these protocols have taken on intense new importance as a result of the proliferation of ethnic conflict.

American concern about human rights conditions in other countries has long been attacked by our foes as efforts to impose "American values." International human rights treaties are extraordinarily important in demonstrating that the debate is not over imposing our values but whether or not States are living up to universally accepted values. I believe such agreements will in the future been seen as the firm cornerstone of the new world order.

STRENGTHENING THE INTERNATIONAL ECONOMY

The economic basis for world order is being laid by the new international trading agreements. With the end of the cold war and the expansion of international trade and investment, international economic issues have taken on greater importance in U.S. foreign policy. The committee held hearings on the North American Free-Trade Agreement and the World Trade Organization reviewing the foreign policy implications of those important trade agreements. In the upcoming Congress, the committee will examine how the United States should proceed with future trade agreements working towards the long-term goal of creating a free-trade area throughout the Western Hemisphere.

The committee also held hearings on and reported favorably bilateral tax treaties with Russia, the Netherlands, Mexico, Barbados, Israel, the Czech Republic and the Slovak Republic. These treaties will help Americans avoid double taxation and will facilitate international business. The committee and the Senate also approved bilateral investment treaties with Romania, Moldova, Kyrgyzstan, Kazakhstan, Ecuador, Bulgaria, Armenia, and Argentina. Next year the committee plans to take up seven new tax treaties and several new bilateral investment treaties.

STRENGTHENING AMERICAN FOREIGN POLICY CAPABILITIES

The committee also disposed of its regular legislative responsibilities. Under the leadership of Senator KERRY, we enacted authorizations for the State Department, USIA, and the Board for International Broadcasting. That legislation contained a number of important provisions that will benefit the operation of the U.S. Government and the taxpayer.

First, the authorization provided the legislative basis for the administration's reorganization of the Department of State to meet the many new challenges that face our Nation in the post-cold war era. Most notably, the legislation established the new position of Under Secretary of State for Global Affairs with broad responsibility for transnational issues. It also contained a number of provisions of streamline the Department's bureaucracy.

In addition, the legislation consolidated U.S. Government non-military

international broadcasting. The consolidated broadcasting will reduce duplication in programming and engineering services resulting in significant savings for U.S. taxpayers. Equally important, it should result in more efficient use of our scarce resources to provide broadcasting where it is most needed. A continuing critical issue for the committee is reorienting the instruments of American foreign policy to handle more effectively post-cold war crises.

Of special note in the authorization legislation was the bipartisan initiative led by Senator KERRY to lift our trade embargo on Vietnam. The expression of support by the Senate, 62–38, I believe, was instrumental in convincing the administration to end this barrier to American business and to more productive relations with Vietnam. I believe that a more extensive American presence in Vietnam will ultimately resolve remaining issues concerning POW/MIA's and will also encourage Vietnam's democratization. I would hope that full diplomatic relations with Vietnam will be established during the next Congress.

During this Congress, the committee began, under the leadership of Senator SARBANES, the difficult process of rewriting the Foreign Assistance Act of 1961. Extensive hearings were held during 103d Congress and an original draft bill, the Peace, Prosperity and Democracy Act of 1994, was prepared. This draft restructures, streamlines, and reorients the foreign assistance program to necessities of the post-cold war world. Building on it, the committee intends to take up foreign aid reform early in the next Congress. In addition to rewriting the statutes that govern the bilateral aid program, the committee looks forward to reviewing the Bretton Woods institutions as they complete their 50-year anniversary.

STRENGTHENING PROTECTION OF THE ENVIRONMENT

We also continued to strengthen and broaden the framework of international environmental law. In 1993, the Senate granted its advice and consent to ratification of the Copenhagen amendment to the Montreal Protocol. The amendment further strengthens international efforts to protect the ozone layer by adding new ozone-depleting substances to be controlled.

The committee reported several treaties designed to strengthen international efforts to conserve and manage the world's fisheries. As recent articles have indicated, this is a major challenge facing the United States and other nations that rely on the ocean for its living resources.

Last year, the committee and Senate approved the protocol to the International Convention for the Conservation of Atlantic Tunas. The protocol will put the Convention on a more sound financial footing, and through that we hope strengthen the organization's ability to contribute to the sound management of Atlantic tunas.

More recently, the committee approved the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. I am hopeful that this agreement will strengthen implementation of the many conservation and management agreements to which the United States is a party, including, for example, the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, and the Convention for the Conservation of Salmon in the North Atlantic Ocean.

Recently, the committee ordered reported the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, commonly referred to as the Donut Hole Convention. The convention addresses a very serious problem facing U.S. fishermen in the Pacific Northwest and Alaska: depletion of the central Bering Sea stock of Aleutian pollock. The convention also highlights the general problem of uncontrolled fishing on the high seas, particularly for stocks that straddle the high seas and our country's exclusive economic zone. The committee benefited from the intense interest and expertise of Senator MURKOWSKI on these issues.

I expect marine issues to be a major concern for the committee in the 104th Congress as well. I would note that both the Reflagging Convention and the Donut Hole Convention build upon the foundation established by the U.N. Convention on the Law of the Sea. As my colleagues know, I have a very strong interest in the Law of the Sea Convention. I was extremely pleased when the United States recently signed an agreement in New York that resolves U.S. concerns with the Law of the Sea Convention. I expect that the convention and the agreement will be transmitted shortly to the Senate for its advice and consent. I intend to make action on the convention one of my highest priorities in the coming Congress.

In addition, I anticipate that negotiations currently underway on the U.N. Convention on Highly Migratory and Straddling Fish Stocks will be transmitted to the Senate for its advice and consent next year. This convention is intended to provide a framework for the effective management of stocks that migrate the exclusive economic zones [EEZ] of two or more countries as well as fish stocks that straddle a country's EEZ and the high seas. As a coastal state with major fisheries the United States has a strong interest in the outcome of these negotiations.

Finally, during the 103d Congress the committee approved the nominations of 268 ambassadors and executive branch officials, as well as 1,704 well deserved promotions in the Foreign Service.

I wish to thank all members of the committee for their cooperation and commend their industry. Our successes are due to their hard work and assistance. I thank in particular Senator HELMS, the ranking minority member, for his help during the course of this Congress. In the coming Congress I look forward to his kind support. Our agenda is already full.

THE BAHAIS

Mr. PELL. Mr. President, earlier this year, the Congress passed legislation calling attention to the plight of the Bahai community in Iran. Senate Concurrent Resolution 31, introduced by Senators DODD, LIEBERMAN, KASSEBAUM, MCCAIN, myself and others was passed unanimously by both the House and Senate. In taking this step the Congress chose for the sixth time since 1982 to express its concern about the Government of Iran's persecution of the Bahais.

The Bahais are the largest minority faith in Iran. The Iranian Government, however, refuses to acknowledge that the Bahais represent a legitimate sect of Islam. Simply because the Bahais choose to practice their faith, the Government of Iran has branded them heretics and has officially sanctioned their mistreatment, harassment, and outright persecution.

Today, Mr. President, I wish to reaffirm my strong opposition to Iran's unconscionable treatment of the Bahais. I wish also to inform my colleagues that President Clinton, in a recent letter to the Senate co-sponsors of Senate Concurrent Resolution 31 expressed his deep concern about the persecution of the Bahais. In one of the strongest statements to emerge from a U.S. administration concerning the Bahais in Iran, President Clinton stated that, "We must continue to be vigilant in calling attention to the plight of the Bahais." The President added that, "We will continue to urge the leadership of Iran to improve its treatment of religious minorities and to do more to protect the basic human and civil rights of its citizens."

Mr. President, I ask unanimous consent that the full texts of Senate Concurrent Resolution 31, a letter to the President from the Senate cosponsors of that resolution, and the President's reply all be included in the RECORD at this point.

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

U.S. SENATE,
Washington, DC, July 21, 1994.

The PRESIDENT
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The purpose of this letter is to commend to your attention recent legislative action on Senate Concurrent

Resolution 31, a measure we introduced last year that calls on Iran to end its persecution of the Baha'i community. This legislation, which gained 52 Senate cosponsors and passed the Senate by a unanimous vote in November, was adopted by the House of Representatives by a 414–0 vote on April 19th.

We are pleased that the Congress has chosen, for the sixth time since 1982, to convey its deep sense of concern over the officially-sponsored repression that has been directed against Baha'is since the Iranian Revolution. While this repression has been less violent in recent years, we remain concerned that the Baha'is—Iran's largest religious minority—continue to be singled out for persecution based on their religious beliefs. Indeed, this policy was made explicit in an official Iranian Government document that was revealed last year.

We know that you are committed to the cause of human freedom and civil liberties in Iran and that you are determined to take actions which serve to promote these important goals. To this end we urge the administration to continue its leadership and diplomatic efforts on the issue of the Baha'is and to continue to speak out in support of the cause of tolerance and freedom in Iran through the Voice of America and other appropriate public channels.

We welcome all you have done on behalf of the Baha'i community of Iran and we look forward to continuing to work with you in the future on this very important issue.

Sincerely,

JOSEPH I. LIEBERMAN,
CHRISTOPHER J. DODD,
NANCY LANDON KASSEBAUM,
CLAIBORNE PELL,
JOHN MCCAIN.

THE WHITE HOUSE,
Washington, August 23, 1994.

DEAR MR. CHAIRMAN: Thank you for writing to me about the recent efforts of the Congress to call attention to the persecution of Baha'is by the Government of Iran. I am deeply concerned about the situation that faces the Baha'is, as well as other religious minorities, in Iran. My Administration will continue to work to create an international consensus to influence Iran to change its behavior on human rights.

Senate Concurrent Resolution 31 is a useful reminder that we must continue to be vigilant in calling attention to the plight of the Baha'is. I can assure you that we will continue to urge the leadership of Iran to improve its treatment of religious minorities and to do more to protect the basic human and civil rights of its citizens.

Sincerely,

BILL CLINTON.

Hon. CLAIBORNE PELL,
U.S. Senate, Washington, DC.

S. CON. RES. 225

Whereas in 1982, 1984, 1988, 1990, and 1992, the Congress, by concurrent resolution, declared that it holds the Government of Iran responsible for upholding the rights of all its nationals, including members of the Baha'i Faith, Iran's largest religious minority;

Whereas in such resolutions and in numerous other appeals, the Congress condemned the Government of Iran's religious persecution of the Baha'i community, including the execution of more than 200 Baha'is, the imprisonment of additional thousands, and other repressive and discriminatory actions against Baha'is based solely upon their religious beliefs;

Whereas in 1992, the Government of Iran summarily executed a leading member of the Baha'i community, arrested and imprisoned several other Baha'is, condemned two Baha'i prisoners to death on account of their religion, and confiscated individual Baha'is' homes and personal properties in several cities;

Whereas the Government of Iran continues to deny the Baha'i community the right to organize, to elect its leaders, to hold community property for worship or assembly, to operate religious schools and to conduct other normal religious community activities; and

Whereas on February 22, 1993, the United Nations Commission on Human Rights published a formerly confidential Iranian government document constituting a blueprint for the destruction of the Baha'i community, which document reveals that these repressive actions are the result of a deliberate policy designed and approved by the highest officials of the Government of Iran: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) continues to hold the Government of Iran responsible for upholding the rights of all its nationals, including members of the Baha'i community, in a manner consistent with Iran's obligations under the Universal Declaration of Human Rights and other international agreements guaranteeing the civil and political rights of its citizens;

(2) condemns the repressive anti-Baha'i policy adopted by the Government of Iran, as set forth in a confidential official document which explicitly states that Baha'i shall be denied access to education and employment, and that the government's policy is to deal with Baha'is "in such a way that their progress and development are blocked";

(3) expresses concern that individual Baha'is continue to suffer from severely repressive and discriminatory government actions, solely on account of their religion; and that the Baha'i community continues to be denied legal recognition and the basic rights to organize, elect its leaders, educate its youth, and conduct the normal activities of a law-abiding religious community;

(4) urges the Government of Iran to extend to the Baha'i community the rights guaranteed by the Universal Declaration of Human Rights and the international covenants on human rights, including the freedom of thought, conscience, and religion, and equal protection of the law; and

(5) calls upon the President to continue—

(A) to emphasize that the United States regards the human rights practices of the government of Iran, particularly its treatment of the Baha'i community and other religious minorities, as a significant factor in the development of the United States Government's relations with the Government of Iran;

(B) to urge the Government of Iran to emancipate the Baha'i community by granting those rights guaranteed by the Universal Declaration of Human Rights and the international covenants on human rights; and

(C) to encourage other governments to continue to appeal to the Government of Iran, and to cooperate with other governments and international organizations, including the United Nations and its agencies, in efforts to protect the religious rights of the Baha'is and other minorities through joint appeals to the Government of Iran and through other appropriate actions.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

REGARDING THE RETIREMENT OF SENATOR HOWARD METZENBAUM

Mr. PELL. Mr. President, very soon the 103d Congress will end. And while we look forward to the new faces and ideas that will be part of it, we must also say goodbye to colleagues with whom we have worked closely for many years. And so I would like to bid adieu to a Senator who I have worked with, learned from and sat next to for 18 years in the Senator Labor and Human Resources Committee—Senator HOWARD METZENBAUM—who is retiring after 18 years in the Senate.

Mr. President, few Senators have ever been more passionate spokespeople for their causes than the Senator from Ohio, and his fire and determination will be a great loss to the Senate. And while Senator METZENBAUM and I have occasionally disagreed—whether on a particular bill or on legislative strategy—I have always admired his outspoken honesty and his resolve to see every matter through.

Nuala and I value the warm friendship we have had with HOWARD and his lovely wife Shirley over the years, and we wish them both a future filled with the very best of health and happiness. We hope that life after the Senate is as full and productive—or as quiet and relaxing—as the Metzenbaums want.

I might also add that Senator METZENBAUM has been fortunate to have—throughout his tenure in the Senate—a very fine and dedicated staff. His current staff is no exception, and I want to wish them well and express my hope that they will use their talents on behalf of some other worthy Senator in future Congresses.

THE REPUBLIC OF CHINA'S 83D ANNIVERSARY AND THE UNITED NATIONS

Mr. D'AMATO. Mr. President, congratulations to President Lee Teng-hui and Foreign Minister Fredrick Chien of the Republic of China on Taiwan as they celebrate the tenth of October, the 83d anniversary of the founding of their nation. I wish Taiwan the best of luck in all its future endeavors and especially in its bid to re-enter the United Nations. The Republic of China richly deserved U.N. membership.

Throughout its history, the Republic of China on Taiwan, has been playing an active international role, despite its lack of U.N. membership. In the early 1970's the Republic of China was active in the International Monetary Fund [IMF], the World Bank, the Asian Development Bank, and the International Council of Scientific Unions. Also, the ROC has stepped up its technical aid to needy countries, a program which the ROC started in the 1980's. At the moment, the ROC has more than 43 teams of technical experts working in 31 countries. In addition, to increase its overseas aid program, the ROC has established a $1.2 billion International

Economic Cooperation and Development Fund to help developing countries promote economic and industrial growth. Already, more than $250 million has been given to Panama, Costa Rica, and the Philippines and additional funds will be made available for projects in the Pacific, Latin America, Eastern Europe and Africa. By 1998, the ROC expects to spend $400 million a year on foreign aid, roughly a quarter of 1 percent of its GNP.

There is no question that the ROC is committed to playing an even larger international role, if allowed to participate in the United Nations. I believe that now is the time for all nations to look at the Republic of China's contributions of international aid and I believe that the Republic of China on Taiwan deserves to be invited back to the United Nations.

In closing I wish to take this opportunity to say my personal goodbye to Ambassador Mou-shih Ding, who has returned to Taipei to assume the post of Secretary-General of ROC's National Security Council. I look forward to working closely with Ambassador Ding's successor, Ambassador Bonjamin Li.

TURKEY'S RELEVANCE IN WORLD ORDER

Mr. COCHRAN. Mr. President, I would like to call my colleague's attention to a recent column by Turkish Ambassador Nuzhet Kandemir which appeared in the Washington Times.

The relationship between the United States and Turkey is one of the most important bilateral relationships in the world. Turkey was a valuable ally and NATO partner when the free world was united in resisting Soviet expansionism, and Turkey's importance has not diminished in the changing and uncertain world we face today. On the contrary, friendship between our two countries may be more important today than it was in the bipolar world we leave behind.

Turkey is located where Europe, Asia, the former Soviet Republics in the Caucasus and the Middle East converge. To the extent that the United States has vital interests at stake in each of these regions, a friendly and stable Turkey is essential to the protection of those interests.

Ambassador Kandemir provides valuable insights into Turkey's perspective in this transitional era. As with any friend, we might not always agree with Turkey, but its views are always relevant to our foreign policy deliberations. I commend his column to the attention of the Senate and ask unanimous consent that Ambassador Kandemir's column be inserted in the RECORD.

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

TURKEY'S RELEVANCE IN WORLD ORDER

Five years after the end of the Cold War and three years after the end of Operation Desert Storm, the international community continues to struggle with the myriad problems confronting it; identifying new priorities, resolving regional conflicts, dealing with humanitarian disasters, stabilizing the international economic system, allocating foreign assistance, and halting the proliferation of weapons of mass destruction and the spread of terrorism and violent Islamic fundamentalism. This is particularly true of two areas of critical interest to Turkey and the United States—Southern Europe and the Middle East.

Turkey is more relevant to the important interests of the United States and Turkey's other friends in the international community than it was during the less complex, but no less threatening, Cold War. Turkey straddles both Southern Europe and the Middle East and is a position to exert a positive influence on events in each. This is the reality with which Turkey's friends and critics should assess the prospects for regional peace and stability, or conversely, the danger of a destabilized Turkey.

Turkey wants to make it clear that in an era in which a shrinking U.S. foreign aid and an emphasis on domestic matters calls for more self-reliance by America's friends, Turkey remains prepared to shoulder its share of the burden. Further, my government can assure the U.S. that there are no fundamental differences in our respective foreign policies on the key issues of peacekeeping, human rights, economic stabilization, and humanitarian assistance.

I would like to clarify certain issues that have led to misinformation that could tarnish the relations between the United States and Turkey.

First, on the controversial issue of human rights, the Turkish government introduced an additional package of democratic reforms in 1994 that will further ensure there are no possible abuses of the rights of Turkish citizens of Kurdish origin.

Second, on the issue of terrorism, my government is engaged in a conflict with the Kurdistan Workers Party (PKK), an organization often misportrayed as a band of romantic nationalists, representing all Kurds. This is the same PKK singled out in the U.S. State Department's most recent report on terrorism. Turkey is engaged in a conflict with the PKK, not "the Kurds," and makes no apologies for attempting to safeguard democracy for all elements of Turkish society.

Just as recent acts of terrorism in London, Panama and Buenos Aires demonstrate the intent of some to derail peace in the Middle East, it was the PKK that blew up all initiatives by my government to resolve the conflict. Within the democratic process, Turkey has always maintained a constructive dialogue with those segments of society who reject violence and dismemberment of the Turkish state.

Finally, my government's stance has been clear from the outset on the recently concluded debate on U.S. foreign aid. Recently, we announced that Turkey would not accept the 10 percent portion of assistance linked to the administration's report on Cyprus and human rights. Still, my government, though puzzled and dismayed, wants to get past the misinformation and emotion of the debate and focus on Turkey's future. Looking ahead, it is important for U.S. decision-makers and taxpayers to recognize that foreign assistance advances the causes of regional peace, economic stability and growth. Turkey provides peacekeeping forces in Europe and Africa and grants humanitarian assistance in Europe, Africa and the Middle East. Assistance to Turkey and the country's economic stability has a direct impact on developments in Southern Europe and the Middle East.

In this regard, my government implemented a series of domestic economic reforms that led to a new accord with the International Monetary Fund, created jobs for all Turkish citizens, and enabled Turkey to re-establish itself as an emerging market. These reforms will allow Turkey to serve as an engine of economic growth in the region in cooperation with several nations, including Israel.

However, I trust that decisionmakers will recognize that a measure of the economic instability afflicting Turkey today is a result of its unwavering support for sanctions against Iraq since 1991. This support terminated trade with one of Turkey's largest trading partners—an action comparable to the United States ending trade with Canada. During this time, foreign aid was reduced dramatically, resulting in a shortfall that had an obvious impact on Turkey, but did not undercut our commitment as a reliable partner.

In the spirit of future cooperation, there could soon be an opportunity in the United Nations to rescue a significant economic asset for the international community, the Turkey-Iraq pipeline, which was shut down as part of the sanctions. Turkey hopes that a U.N. resolution will soon be approved to flush the pipeline; it would prevent further damage to that asset and provide revenue that would fund humanitarian assistance to all Iraqis, but would not violate any U.N. sanctions regime. The passage of a new resolution would also illustrate the ability of Turkey and the international community to negotiate a solution to delicate diplomatic and economic problems.

Turkey is struggling with the difficult tasks of defining its diplomatic, security and economic roles in the new world order, as well as combating terrorism and the expansion of violent Islamic fundamentalism. Turkey welcomes its friendship with the United States. Turkey also would welcome a balanced examination of the facts as the United States copes with instability in Europe and the former Soviet Union, monitors future events in Turkey and considers the unpalatable alternatives to a stable, friendly Turkey.

APPOINTMENT OF NOMINEES TO THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Mr. DURENBERGER. Mr. President, I rise today to discuss briefly the nominations the President has sent to us for confirmation to the Board of the new Corporation for National and Community Service.

I have some serious concerns about some of the nominees, concerns I have expressed directly to the administration. In particular, I believe the President left out some very important perspectives in making these appointments. And, I believe there are several nominees whose perspectives would be more appropriately considered by the Corporation's Board—in the course of

its work—rather than directly represented on that Board.

As members of this body know only too well, my commitment to this law and the programs it authorizes stems largely from my own personal experiences and from the leadership on community service and service learning that has come from my own State of Minnesota.

Mr. President, I've said many times before that I came to this issue several years ago with a much narrower vision of what we've traditionally called "volunteerism."

My vision was limited by my own experience as a community volunteer, as president of the South St. Paul Jaycees, as president of the Burroughs Elementary School PTA, as an active participant in the Citizens League, as a leader in youth sports activities, county and regional park agencies, and a mile long list of other community projects and community organizations—all beginning many years before I even thought of running for public office.

My vision was also defined as "volunteerism" by my years as a director of volunteers, the National Center for Voluntary Action, and by my work in the 1970's on the National Study Commission on Volunteering in America.

I did my own "volunteering" out of a strong sense of public service and civic duty. And, I still believe that promoting what President Bush called a thousand points of light is an important part of what promoting national and community service is all about.

But, from people like Jim Kielsmeier at the National Youth Leadership Council, Mary Jo Richardson at the Minnesota Department of Education, and a lot of teachers and students in Minnesota, I've also learned that integrating community service into the school curriculum, often known as "service learning, must be an essential element in preparing our children for a lifetime of good citizenship. It is also a critical aspect of education reform.

I'm especially indebted to my Minnesota mentors on this subject—individuals like Dan Conrad, a teacher at Hopkins High School and one of the Nation's leading experts on service learning—and Wayne Meisel and Reatha Clark King, two of the four Minnesotans who were appointed several years ago by President Bush to the first Commission on National and Community Service.

And, finally, I've learned a great deal from Minnesotans like Larry Fonnest of the Minnesota Conservation Corps that service corps and other forms of stipended service can be an effective education alternative for students who are not well-suited for more traditional forms of schooling based only on textbooks used in the classroom.

This growing awareness of the links between community service and education is one reason I became the first Republican to cosponsor the National and Community Service Act when it was introduced in 1989.

And, it was a major factor in my decision to become the lead Republican cosponsor of President Clinton's national service proposal, as well as the Wofford-Durenberger Service Learning Act of 1993.

I mention all of this personal history—and what I've learned about national and community service from Minnesotans—as a back drop for expressing the very serious concerns I've had about at least some of the President's nominees now before us. I should also note that my general approach as a Senator over the past 16 years has been to give considerable deference to whomever the President nominates to positions of responsibility like the Board of this new corporation.

Absent real evidence of incompetence or ethical or legal improprieties, I have generally supported the nominations of all four Republican and Democratic Presidents with whom I have served.

But I leave the Senate this month. If 16 years means anything, I must say I don't want endorsing the status quo to be my last act. Let me say first, Mr. President, that a Board that oversees and manages the operation of a program that is supposed to serve young people, should without question reflect two critical things—a personal commitment to service and the views of young people, themselves. That clearly was the intent of Congress in writing the law. But, I'm sorry to say that taken as a whole, this slate of nominee falls short on both those counts.

In Minnesota we have what one might call a service ethic that begins at a very early age, at a point when young people have the opportunity to develop a sense of responsibility, citizenship, and leadership that can last a lifetime.

In order to reinforce that service ethic on a national level, I believe that the membership of this Corporation Board should reflect the interests of youth, both in terms of age and service experience, as well as a variety of perspectives. Unfortunately, Corporation Board with a few exceptions, is exactly what this board looks like.

The relevant statutory language requires, and I quote:

> There shall be in the Corporation a board of directors that shall be composed of 15 members, including an individual between the ages of 16 and 25 who has served in a school based or community-based service learning program or was a participant or a supervisor in a program.

The statute continues:

> To the maximum extent practicable, the President shall appoint members, who have extensive experience in volunteer or service activities, which may include programs funded under more than one of the national service laws and in State government; who represent a broad range of viewpoints; who are experts in the delivery of human, educational, environmental or public safety services; so that the Board shall be diverse according to age, ethnicity, gender and disability characteristics and so that no more than 50 percent of the appointed members of Board, plus one additional appointed member, are from the same political party.

Mr. President, I have carefully examined the biographies of President Clinton's nominees. And, while most have impressive backgrounds that clearly show a commitment to service, some do not meet the requirements set forth in the statute as I believe they should be interpreted.

In addition, there are no current or retired local government officials; no one living, volunteering or teaching service in a nonurban setting, much like the small rural towns that all of our Presidents have come from; no native Americans; no service deliveries.

The list does include one very qualified young woman—age 19—who fulfills the youth slot. However, she is the only young person, the next youngest person is 29. The average age of this group of nominees is 51 years.

Let me acknowledge, Mr. President, that it's my understanding that four other nominees will be brought before us later on this or perhaps even next session. That group includes a 38- and a 40-year-old who, when added to the others, bring the average age of the group down to 50. I'm particularly disappointed at the lack of youth representation on this Board in light of the many young people the President has hired and appointed to lead in other parts of his administration. Nobody has a greater stake in addressing all the challenges we face as a nation than our children and our youth. As a nation that thrives on tough challenges, we can't afford to leave this tremendous resource untapped.

It seems to me that the National and Community Service Board should at the very least, include the same healthy representation of young people that is so prevalent in this administration.

Again, a number of these nominees are well qualified. I'm extremely pleased that one of those individuals is Reatha Clark King—a long-time educator and current president of the General Mills Foundation. As I noted earlier, Reatha Clark King was appointed to the board of the Corporation's predecessor. She is an outstanding asset to the youth and community service movement in Minnesota and throughout the entire country.

Mr. President, I will not be around in future years to comment on or impact the work of the Corporation. While it is not my intent to hold up the ability of the Board to begin its business, I hope that President Clinton will take my comments and recommendations seriously. I care very deeply about this program and believe that it has the potential to achieve some truly remarkable things.

But, realizing that potential depends in large part on the ability of the Board to define the Corporation's mission, set priorities and work toward a realistic and focused course for the future.

Part of that course includes defining what this program is and is not. And, I continue to strongly believe that national service should not become a huge new program to pay for college. I'm also concerned that national stipended service will get a disproportionate share of the Corporation's attention and that too little value continues to be placed on non-stipended service and service learning.

The law itself, Mr. President, includes strong links between community service and education, better known as service learning. And, the law provides flexibility for those at the State and local level to carry out the program as they see fit and allows for a stipended service program that won't grow faster than its support system. The Corporation needs to make sure that these aspects of its law—backed up by strong support in Congress—get their fair share of attention and financial resources.

Let me say finally, Mr. President, that I continue to be pleased that Eli Segal was selected to head the Corporation. He has earned this opportunity. From the very beginning, he has demonstrated a very healthy willingness to compromise and to include the views of others without losing sight of where he is headed.

I especially appreciate the numerous opportunities he has given me to provide input and advice as the Corporation begins its work. I can only hope that the new Corporation's board will take advantage of his leadership, experience and thoughtfulness in carrying out its important and challenging responsibilities.

I ask unanimous consent to include in the RECORD at this point a letter to Mr. Segal and his response in reliance on which I recommend confirmation of these candidates.

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

U.S. SENATE, COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC, Oct. 4, 1994.

Mr. Eli Segal
Chief Executive Officer, The Corporation for National and Community Service, Washington, DC.

DEAR ELI: During the past couple of weeks we have discussed my concerns regarding the slate the President has nominated to serve on the Board of Directors of the new Corporation for National and Community Service. And, as you know, I am now prepared to allow the proposed list of nominees to go forward with the following stipulations.

First, I request that future appointments to the Board include individuals who at a minimum, fulfill the statutory requisites for service. The particular section I have in mind states that: "the President shall appoint members who have extensive experience in volunteer or service activities, which may include programs funded under more than one of the national service laws and in state government; who represent a broad range of view-points; who are experts in the delivery of human, educational, environmental or public safety services * * *".

Second, it is my understanding that the current nominees and the four in progress, will be appointed to terms lasting one, two or three years. Based on our conversation about a number of the nominees, I request that the President appoint the individuals about whom I have expressed concerns regarding statutory qualifications to one-year terms.

Third, I request that when the terms of the one-year board members expire, you will actively work to increase the diversity of the Board. Most urgent is the need to appoint more young people with current or recent service experience. I also strongly believe the board would benefit from stronger representation from rural America and from state or local government.

As my own service in the United States Senate now draws to a close, I want to again affirm my strong support for the Corporation, for its enabling legislation, and for the inspiration and leadership you have personally given to this exciting new initiative.

With a clear focus on service and its links to education—and with the direct and active involvement of young people themselves—I'm confident that our common goals for the Corporation can and will be realized.

Sincerely,

DAVE DURENBERGER,
U.S. Senator.

CORPORATION FOR NATIONAL SERVICE,
Washington, DC, Oct. 5, 1994.

Hon. DAVID DURENBERGER,
U.S. Senate,
Washington, DC.

DEAR SENATOR DURENBERGER: Thank you for yesterday's letter. I have enjoyed our recent conversations and am appreciative of your abiding interest in national service. As you know, we share many beliefs about the evolution of the Board of the Corporation for National and Community Service. In particular, we will pay increased attention to the statutory guidance you have quoted, regarding service experience.

I also concur that future vacancies on the Board should be filled with an eye toward further expansion of the diversity of backgrounds and experiences available to that body. I share your belief that this goal would be advanced by reflecting the involvement of young people and rural residents in service, and I will actively work toward that result. One of the President's nominees offers the state government experience you have also called for in your letter, and we would try in the future to bring the additional perspective of mayors to bear on our work. And regarding your central desire that national service be informed by the views of young people, who will be the largest age cohort in AmeriCorps, you will be pleased to know that we have energized our youth advisory board, and I am regularly meeting with our young program staff, the gain the benefit of their experiences and insights.

We will achieve your objectives with respect to the individuals about whom you have expressed concerns.

We look forward to your continuing counsel in the years ahead; without your commitment and guidance, national service would never have become a reality, and we hope you will stay close to your dream as AmeriCorps and our other community service programs grow. This coming year offers particularly exciting opportunities, as we can focus on building the links between service and education that you have so eloquently championed during your distinguished career in public life.

Sincerely,

ELI J. SEGAL,
Chief Executive Officer.

HUD SECTION 8 PROGRAM

Mr. BRYAN. Mr. President, I rise to address the Senate on some of the problems with the Department of Housing and Urban Development's Section 8 project-based assisted housing program.

The section 8 program was established in 1974 to help low-income families obtain safe, decent, and sanitary housing. The program has two components: tenant-based rental assistance and project-based rental assistance. Section 8 certificates and vouchers are referred to as "tenant-based" assistance; the other types of assistance such as new construction and substantial rehabilitation are known as "project-based" assistance.

According to HUD's inspector general, over 20,000 properties are currently receiving section 8 project-based assistance. These properties serve approximately 1.5 million low-income families. HUD has provided approximately $131 billion budget authority to support its section 8 project-based subsidy programs over the past 20 years. Many section 8 projects are also FHA insured.

HUD's inspector general issued a report in April 1993 on the results of an audit conducted from 1991–1993 on 28 troubled multifamily housing projects under the jurisdiction of six HUD field offices. The audit determined that the physical condition of 23 projects, or 82 percent, was unsatisfactory or below average. It is inexcusable that a disturbing number of projects are experiencing deterioration and neglect by their owners. Tenants, with their rent subsidies tied to these projects, are essentially trapped in deplorable living conditions.

Unfortunately, two of these troubled projects are in southern Nevada. Sierra Nevada Arms Apartments in Las Vegas and Carey Arms Apartments in North Las Vegas received about $2.8 million in Federal subsidies last year. In particular, Sierra Nevada Arms received about 86 percent of rental income from the Federal Government. To say that the Federal Government should be concerned about the investment in this property is an understatement.

Sierra Nevada Arms Apartments is a 353-unit complex consisting of 82 two-story buildings. Currently, 113 units are vacant. A two-bedroom unit in this apartment complex rents for $468 a month. The rent for a two-bedroom

unit in a well-maintained unsubsidized property in the same neighborhood is $600 a month.

According to a General Accounting Office [GAO] report released in July, HUD's Las Vegas field office considers Sierra Nevada Arms to be the worst project the office manages. GAO reports that field office inspections have revealed many vacant units stripped of kitchen appliances, bathroom fixtures, air conditioning and heating units, and electrical fixtures.

GAO's own site inspection revealed interior units with soiled, stained, and torn carpet and linoleum; inoperative appliances, smoke alarms, air conditioning and heating systems; damaged kitchen cabinets with loose and missing drawers; severely damaged bathroom vanity tops and commodes; missing closet doors; torn and missing window screens; filthy walls; leaking toilets, bathtubs and sinks; and roach, rat and mice infestation. GAO's inspection of the project's exterior revealed faulty sprinkler systems with numerous leaks causing flooding throughout the grounds. They also found that many vacant units were missing door, windows, and screens. The laundry room was filthy and in poor condition, with extensive graffiti and garbage strewn throughout.

In June, the Senate Banking, Housing, and Urban Affairs Committee favorably reported the Housing Choice and Community Investment Act of 1994. This bill included significant reforms of the section 8 problem.

The bill would have allowed HUD to reuse section 8 project-based assistance, recaptured when housing assistance payments contracts are terminated, to relocate tenants currently living in distressed properties. The bill provided HUD with the choice of relocating tenants using either certificates or vouchers or providing alternative section 8 project-based housing. This protects tenants who might be displaced if HUD terminates the section 8 housing assistance payments contract for a property.

The bill would have authorized the Secretary of Housing and Urban Development to levy civil money penalties against owners—including general partners of a partnership owner—and managing agents who violate provisions of a section 8 project-based contract. Violations include failing to provide decent, safe, and sanitary housing and knowingly submitting false statements for housing assistance. Payments of the penalty were prohibited from coming out of project income. Unfortunately, in the crush of the end of the legislative session, this bill did not reach the Senate floor.

These reforms are so important that I pledge to work vigorously in the next Congress, to introduce and pass legislation to compel owners of troubled section 8 projects to improve conditions and to give HUD the tools to ensure that its subsidized housing is maintained according to housing quality standards.

However, this is just one step in a process to deal with troubled projects. Much more needs to be done. In addition to providing HUD with the tools to discipline owners of troubled projects, HUD must carry out its monitoring responsibilities so that projects do not advance to this level of deterioration. HUD's inspector general said in July that HUD suffers from some major systemic weaknesses that significantly impact its ability to turn around these troubled projects and improve its management and oversight of section 8-assisted multifamily housing stock. Prior inspector general reports have questioned HUD's capacity to manage and monitor its huge portfolio of insured and assisted multifamily properties. This must be corrected so that tenants can live in safe and decent housing and the Federal Government recovers misspent funds.

We need to reverse this trend in the section 8 program of piecemeal response to deplorable conditions and waste. We need a comprehensive plan to improve the section 8 program and I will continue to work toward that end.

THE SITUATION IN NORTHERN IRELAND

Mr. BRADLEY. Mr. President, it has been over a month since the IRA answered the challenge posed by the Downing Street Declaration and announced "a complete cessation of military operations." Since then, discussions among the parties to the conflict have continued, and representatives of Northern Ireland's divided community have visited the United States. Now that the political process is well underway, it makes sense to step back and place these developments in context. In this way, we can better understand how we in the United States can help foster the process leading to reconciliation and peace.

I believe that a viable peace process must be based on four principles: rejection of violence, respect for human and civil rights, encouragement of political negotiations, and support for economic development. While there has been progress in each of these areas, more is needed to support the fragile political process now underway.

The IRA's August 31 announcement is a challenge to all parties to halt the violence and give negotiations a chance. The IRA did not have a monopoly on violence, and the IRA alone cannot end it. Indeed, over the past year, more victims have been killed by loyalist paramilitaries than by the IRA.

These loyalist paramilitaries must now halt their violence. This will require courageous political leadership in the Unionist community. As Irish Foreign Minister Dick Spring stated in his address before the United Nations General Assembly, "We hope that responsible political leaders in the Unionist community will make their voices strongly heard on this issue, as many have done already, and that a complete cessation of violence will ensue on the loyalist side also."

The peace process will not propser without respect for human and civil rights. The people of Northern Ireland have been subject to emergency regulations restricting their rights to counsel and jury trials. These have inevitably resulted in miscarriages of justice.

We all know of Paul Hill, whose story is told in the movie, "In the Name of the Father." I have also been following the case of the "Ballymurphy Seven," in which seven young men were charged for a crime on the basis of confessions taken while the boys were being held incommunicado, a practice ruled illegal last month by the European Commission for Human Rights.

Human rights must be accompanied by civil rights. While anti-Catholic discrimination in employment and other areas of life has been reduced, it has not been eliminated. Catholic unemployment rates are still double those of Protestants, stoking resentment and widening cleavages in society.

As long as all the people of Northern Ireland lack legal safeguards and full civil rights, these kinds of issues will arise to undermine the process of reconciliation that must underlie the peace process.

Reconciliation is even more important now because, for the first time in decades, there is a peace process to support.

John Hume took the first courageous step to launch the process when he entered into dialogue with Gerry Adams. Indeed, John Hume is the hero behind the current hopes. Espousing a message of nonviolence, reconciliation, and economic development, he has opposed the forces of terror on both sides of the sectarian divide. He has worked tirelessly to build bridges and take the gun out of Northern Ireland's politics.

When Adams asked to come to the United States, I believed that granting him a visa would advance the cause of peace that Hume had launched, so I supported his request in a letter to President Clinton. The President's decision to admit Adams became a central part of this administration's constructive involvement in fostering this fragile peace process.

The divided community of Northern Ireland does not exist in a vacuum. Without cooperation from the governments of the Irish Republic and the United Kingdom, the political process would be stillborn. In the Downing Street Declaration, the Irish and British Governments provided the framework for building on the Hume-Adams opening. They are now working on a

Joint Framework Document setting out their views on the substance of an accommodation which can be used to stimulate the process, without trying to impose a solution. That is for the divided people of Northern Ireland to determine for themselves.

Now that they have come this far, all the parties must negotiate creatively, and in good faith, to develop a vision for the future and a blueprint to implement that vision.

Now that politics is replacing violence as idiom for politics in Northern Ireland, it is time to turn to the task of economic reconstruction. Peace brings opportunity, and once it is clear that negotiations have replaced violence as the currency of political discourse, there will be there is no shortage of business people in New Jersey and elsewhere ready to invest, not out of sentiment, but for sound business reasons.

The administration is moving ahead to work with the inhabitants of Northern Ireland to lay the economic underpinning for peace. John Hume came to Washington with a number of creative ideas for involving American business in the development of Northern Ireland and the border counties of the Irish Republic. I hope the administration will respond creatively to Hume's proposals and look for innovative ways, within our tight budget, to respond to his ideas.

Economic development is doubly important because it is an integrating force. Economic development requires and creates cooperation among all the people of Northern Ireland, and across the Border, regardless of religion or communal ties. As Hume wrote in the September 23, 1994, Washington Post, "reconstruction goes hand in hand with reconciliation."

The road to reconciliation is paved with security, human and civil rights, political negotiation, and economic development. The people of Northern Ireland, along with the governments of the United Kingdom and Ireland, have taken the courageous first steps down this road. They deserve our full support—governmental and private—as they choose peace.

JAPAN'S REFUSAL TO MEET REICHSBANKNOTES OBLIGATIONS

Mr. HELMS. Mr. President, earlier this year, Mr. Ye-Shin Lin, an American citizen and the U.S. representative for the Taiwanese Reichsbanknotes Creditors Association, gave me a compelling account of the Japanese Government's continued refusal to redeem notes that Japan issued to residents of Taiwan in 1924, during the period of Japanese rule.

I wrote to the Japanese Ambassador to the United States, Mr. Takakazu Kuriyama, on June 3 about this matter; I inquired as to how the Japanese Government intended to meet its financial obligations to these people—some of whom are American citizens.

Knowing the Japanese—especially Japanese diplomats—to be very mannerly and respectful, I am surprised that, to date, I have received no reply to my letter. I do hope that this is just an oversight.

However, Mr. President, based on these circumstances, I am inclined to assume that the Japanese Government is unwilling to acknowledge the existence of this outstanding Reichsbanknotes issue. This is puzzling because the Japanese Government had previously acknowledged its obligation to redeem these Reichsbanknotes; this was in August 1965, when the Japanese retired similar notes held by citizens of South Korea.

It has been my experience that the Japanese people consider the fulfillment of their commitments a matter of honor. That is why I cannot understand Tokyo's indifference toward this 60-year old unmet obligation. I raise this issue today in the hope that the Japanese Government will recognize its responsibilities and resolve the unpaid Reichsbanknotes issue expeditiously.

Mr. President, I ask unanimous consent that the text of my letter to Ambassador Kuriyama be printed in the RECORD at the conclusion of my remarks.

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

U.S. SENATE, COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, June 3, 1994.

His Excellency TAKAKAZU KURIYAMA,
Embassy of Japan, Massachusetts Avenue, NW., Washington, DC.

DEAR MR. AMBASSADOR: There is an issue of great significance to many people in both the United States and Taiwan relating to a matter of unmet obligations for reparations by the Japanese government. I am confident that this is an oversight by your government because it is my experience that the Japanese people, hence their government, regard commitments to be a matter of honor.

Let me identify a specific case: Mr. Ye-Shin Lin, an American citizen and the U.S. representative for the Taiwanese Reichsbanknote Creditors Association, has provided me with a compelling account of the government of Japan's continued refusal to redeem notes issued by Japan to residents of Korea and Taiwan in 1924 during the period of Japanese rule. I am astonished that the government of Japan is not making every effort to meet its legal responsibility to repay these people.

Mr. Lin has provided me with many examples in which Taiwanese citizens were forced to accept Reichsbanknotes as payment. In numerous instances, Japanese colonial police and military police in Taiwan were mobliized to force the Taiwanese to sell their farm lands and other properties to raise cash to buy the Reichsbanknotes in question.

Further, Mr. Lin states that Japanese Government enterprises—including the Taiwan Sugar Company and the Taiwan Tobacco and Wine Monopoly Bureau—paid a portion of employee salaries to their employers by the transfer of Reichsbanknotes.

In each instance, the Japanese government promised to retire these Reichbanknotes within ten years—a promise that was ultimately kept to the South Korean note leaders in 1965 but which has yet to be consummated to the Taiwanese holders.

My admiration for the people of Taiwan is no secret. Therefore, I wish to inquire of you any information that the government of Japan might provide regarding this 60-year-old dispute and how your government intends to meet its obligations to these people. This information will be helpful in determining whether a hearing before the Senate Foreign Relations Committee will be necessary and appropriate.

Sincerely,

JESSE HELMS.

OFFICE OF GOVERNMENT ETHICS

Mr. COHEN. Mr. Chairman, I am pleased that today the Senate will pass a very important piece of legislation—the reauthorization of the Office of Government Ethics [OGE]. The subject of this legislation—ethics in government—brings to mind a quote by John Caldwell Calhoun:

> The very essence of a free government consists in considering offices as public trusts, bestowed for the good of the country, and not for the benefit of an individual or party.

That is the way in which we expect our government officials to conduct themselves. Government service is a privilege and with that privilege comes tremendous responsibilities. Public servants in all three branches of government have an important obligation to the citizens who have put their faith and trust in them. We expect our government officials to abide by a certain code of conduct and to adhere to high ethical standards so that our citizens will have confidence in the integrity of their government.

Unfortunately, however, many Americans are disenchanted with their elected officials. As a result, the need for strict ethical standards, and vigilant oversight of compliance with our ethics laws, is as great as ever. Almost daily headlines purport allegations of unethical or inappropriate conduct by government officials in one form or another. These stories further erode the public's confidence in the integrity of their government officials which is already at one of the lowest points in our recent history.

Senator LEVIN and I have long been proponents of strong ethics laws. We serve as the chairman and the ranking minority member on the subcommittee on Oversight of Government Management which has jurisdiction over ethics matters within the executive branch. Senator LEVIN and I have made many changes to strengthen the ethics laws since the Ethics in Government Act of 1978, which created OGE, was passed. We also authored the independent counsel provisions of the Ethics in Government Act which provides for the

appointment of an independent counsel to investigate allegations of criminal activities by top level executive branch officials. We worked together to strengthen the revolving door laws and, more recently, Senator LEVIN and I worked to develop legislation to strengthen our lobbying disclosure laws. Moreover, Senator LEVIN and I have consistently sought to aid OGE in its mission of providing overall direction to the executive branch in developing policies to prevent conflicts of interest and ensure ethical conduct by executive branch officers and employees.

Each executive branch agency has primary responsibility for the administration of its ethics program. Strong leadership must, therefore, start at the top of every agency. Agency heads must demonstrate their firm commitment to high ethical standards and send a clear message that ethics violations will not be tolerated.

The reauthorization bill we are about to pass, which I introduced with Senator LEVIN last year, would reauthorize OGE for 8 years. This is a slightly longer reauthorization than we have sought in previous years. as in the past, we want to avoid the need to reauthorize OGE in the midst of a Presidential election, or during the first year of a Presidential term when a large potion of OGE's resources are devoted to the nominee clearance process.

The bill would also, for the first time, grant OGE gift acceptance authority to address the problem that arises when Federal Government facilities are not adequate either in terms of size or equipment resources to accommodate OGE's ethics education and training programs which are held around the country. This authority is intended to enable OGE to accept the use of certain non-federal facilities, such as an auditorium that might be offered by a State or local government or a university, which may be better suited for OGE's needs.

As I have often noted in the past, the Office of Government Ethics is a small office with large responsibilities. Over the years, we have imposed more responsibilities on OGE and we haven't always provided the necessary staff or resources to carry out those responsibilities. Specifically, I would note the additional functions OGE had to perform when it became an independent agency in 1989 and in complying with the Ethics Reform Act of 1989. While OGE's budget has increased rather significantly since we last reauthorized OGE in 1988, OGE still has a lean budget with which to operate when you consider the critically important responsibilities the agency has. That said, in light of looming budget deficits, OGE, like all agencies will undoubtedly be called upon to meet its responsibilities in the most cost-effective manner possible. The bill also contains a number of technical changes to the ethics laws.

Restoring the public's trust and confidence in the integrity of their government is not an easy task. I commend Senator LEVIN for his continued efforts to ensure strict ethical standards in government and for getting this important legislation before the full Senate for consideration. I urge the House of Representatives to move expeditiously to pass its version of the reauthorization bill so that we may complete action on this measure in these final days of the 103d Congress.

A TRIBUTE TO MAJ. GEN. HARRY W. JENKINS, JR., USMC, ON HIS RETIREMENT

Mr. NUNN. Mr. President, I would like to congratulate an outstanding military officer, Maj. Gen. Harry W. Jenkins, Jr., on his retirement from active duty. General Jenkins served for over 34 years with distinction in the Marine Corps. General Jenkins graduated from San Jose State College in 1960, whereupon he was commissioned as a Marine Corps second lieutenant. To cap off his fine career, General Jenkins has served as the first Director, Expeditionary Warfare in the staff of the Chief of Naval Operations.

Congress established this office in an effort to focus additional attention within the Navy Department on important expeditionary warfare areas that take on additional significance in the new world we face today. General Jenkins was chosen to fill the important role of establishing this office because of his extensive qualifications in leading the landing forces in Operations Desert Shield-Desert Storm. His unique qualifications were exactly those needed to set this office and its operations on the right course. The Armed Services Committee has relied heavily on General Jenkins' advice on matters pertaining to expeditionary warfare and the changes that the Navy Department should be making to enhance its capabilities in this area.

General Jenkins has received numerous awards and decorations, including the Legion of Merit, Bronze Star Medal with Combat V and three gold stars, and the Defense Meritorious Service Medal.

I want to thank General Jenkins for his outstanding career of dedicated service to the Marine Corps and the Nation. I know my colleagues join me in wishing all the best to General Jenkins, his wife, Sue, their daughter, Anne Elizabeth, and their son, Thomas Jonathan.

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

[From Headquarters Marine Corps, Division of Public Affairs]

MAJ. GEN. HARRY W. JENKINS JR., USMC

Major General Harry W. Jenkins Jr., is currently serving as the Director, Expeditionary Warfare Division (N85), on the staff of the Chief of Naval Operations, Washington, D.C.

General Jenkins was born on November 29, 1938 in Oakland, California. Upon graduation from San Jose State College with a B.A. degree in June 1960, he was commissioned a second lieutenant in the Marine Corps. He also holds an M.S. degree from the University of Wisconsin (1972).

After completing The Basic School at Quantico, Va., in January 1961, he served as a weapons platoon commander with the 1st Battalion, 5th Marines at Camp Pendleton, Calif., and then as a weapons platoon commander and rifle platoon commander with the 1st Battalion, 9th Marines, 3d Marine Division on Okinawa. He was promoted to first lieutenant in January 1962.

He transferred back to the U.S. in March 1962, and was assigned to Marine Barracks, San Francisco Naval Shipyard, San Francisco, Calif., where he served as the barracks Executive Officer until December 1964. From January 1965 to February 1967, he was assigned to the Marine Corps Mountain Warfare Training Center, Bridgeport, Calif., serving as a Senior Instructor in Mountain Operations, in the survival School and as the Assistant Operations Officer of the Training Center. He was promoted to captain in June 1965.

In February 1967, General Jenkins returned to Quantico for duty at the Officer Candidate School, and then was a student at the Amphibious Warfare School. Upon graduation in January 1968, he was transferred to the Republic of Vietnam, where he served as the Commanding Officer, Company M, 3d Battalion, 26th Marines, and later served as the Operations Officer and Executive Officer of the battalion. Promoted to major in November 1968, he was then assigned as the Civil Affairs Officer for the 1st Marine Division in January 1969.

Returning from overseas in April 1969, he was assigned to the NROTC Unit, University of Wisconsin, where he was the Marine Officer Instructor until June 1972. Following that tour, General Jenkins was ordered to Headquarters Marine Corps, Washington, D.C., where he served in the Officer Assignment Branch, and later in the Office of the Commandant as the Plans Officer in the Special Projects Directorate.

In August 1975, he returned to Quantico as a student at the Marine Corps Command and Staff College. Following graduation in June 1976, he returned to the 3d Marine Division as the Regimental Operations Officer of the 9th Marines. While overseas, he was promoted to lieutenant colonel in July 1977.

General Jenkins was next assigned to the Office of the Assistant Secretary of Defense (Public Affairs) in August 1977. There he served in the National Military Command Center and as a special plans officer in the Directorate for Community Relations.

From August 1979 until June 1980, he attended the Naval War College, Newport, R.I. Upon graduation he was reassigned to Headquarters Marine Corps where he served in the Officer Assignment Branch as the Ground Lieutenant Colonel Monitor, the head of the Ground Officer Assignment Section and as the Head of the Officer Assignment Branch, respectively. He was promoted to colonel in July 1982.

During August 1983, General Jenkins was assigned to the 2d Marine Division, Camp Lejeune, N.C., where he served as the Division G-3 until May 1984, and then as the Commanding Officer of the 2d Marine Regiment. He served in this capacity until June

1986, when he assumed the position as the Chief of Staff for the Division. While serving in this capacity, he was selected for promotion to brigadier general in December 1986. He was assigned duty as the Legislative Assistant to the Commandant of the Marine Corps on Oct. 5, 1987, and was advanced to brigadier general on Oct. 1, 1987. General Jenkins was assigned additional duties as the Director of Public Affairs on May 18, 1988. On Aug. 22, 1989, he was assigned as Commanding General, 4th Marine Expeditionary Brigade/Commanding General, Landing Force Training Command, Atlantic/Deputy Commander, Marine Strike Force Atlantic, NAB, Little Creek, Va. General Jenkins was promoted to major general on Aug. 1, 1990. Following that tour, General Jenkins returned to Headquarters Marine Corps on July 15, 1991, where he served as the Assistant Chief of Staff, Command, Control, Communications, Computer and Intelligence (C4I)/Director of Intelligence. In October 1992, he was chosen for the position of Director, Expeditionary Warfare Division (N85) on the staff of the Chief of Naval Operations at the Pentagon. He served in both assignments until April 16, 1993, when he relinquished the duty as Assistant Chief of Staff, C4I/Director of Intelligence.

General Jenkins' decorations include: the Legion of Merit; Bronze Star Medal with Combat "V" and three gold stars; the Defense Meritorious Service Medal; Navy Commendation Medal with Combat "V"; Combat Action Ribbon; Presidential Unit Citation with two bronze stars; Navy Unit Commendation; Meritorious Unit Commendation; National Defense Service Medal with one bronze star; Vietnam Service Medal with one silver star; Southwest Asia Service Medal with two bronze stars; Sea Service Deployment Ribbon with one bronze star; Arctic Service Ribbon; Republic of Vietnam Cross of Gallantry with bronze star; Republic of Vietnam Meritorious Unit Citation (Gallantry Cross Color); Republic of Vietnam Meritorious Unit Citation, (Civil Actions Color 1st Class); the Vietnam Campaign Medal; and the Kuwait Liberation Medal.

Major General Jenkins and his wife, the former Sue Gilbert of Richlands Virginia, have a daughter, Anne Elizabeth, and a son, Thomas Jonathan.

Mr. FORD. Mr. President, since receiving new C–130H aircraft, the Kentucky Air National Guard has been involved in every major world contingency where tactical airlift was required.

Kentucky's Guard was in the air within 72 hours of being called on to assist in Rwanda. Our crews logged 303.2 flying hours, flew 147 sorties, carried 652.5 tons of cargo, and transported 604 passengers.

It is my understanding that the Kentucky Air Guard is being considered for the Air Force Outstanding Unit Award. I believe the attached list of achievements will make them top contenders.

Mr. President, let me close by saying the achievements of the Kentucky Air National Guard should make every American confident that equipment, like the C–130H's, is being used effectively by highly qualified, competent crews.

I ask unanimous consent that the following be included in the RECORD following my remarks.

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

The 123d Airlift Wing capped one of the most impressive periods in its history with the acceptance of two highly acclaimed national awards. The 1993 National Guard Association of the United States Distinguished Flying Plaque recognizes the 123d Airlift Wing as one of the top five outstanding Air National Guard flying units. Additionally, the unit earned the 1993 National Guard Bureau's Curtis N. "Rusty" Metcalf Trophy, presented to the Tactical/Strategic Airlift or Air Refueling flying unit which demonstrated the highest standards of mission accomplishment over a sustained period.

The 123 AW earned an overall excellent rating during a 9th Air Force Stan/Eval inspection. Every measurable category was rated excellent which is exceptional considering the units extensive real world tasking. Five wing crew members were recognized as "exceptionally qualified."

The 123 AW epitomized the quality of the Total Force by its extraordinary performance in regional contingencies and humanitarian relief efforts throughout the world. Once aircrew conversion training to the H model aircraft was well on its way to completion, the unit aggressively volunteered its services to whatever missions were required of C–130 aircraft. When Hurricane Andrew devastated southern Florida the 123d answered the call. A 123 AW C–130H was credited as being the first cargo aircraft on the scene at devastated Homestead AFB, Florida, transporting critically needed security police to secure the area. This was then followed by numerous sorties manned by volunteers to help begin the recovery process.

When the world situation in Africa and Eastern Europe turned critical 123d volunteers again stepped up to the line. At first, individuals from the combat control team and aircrew members, supplementing short handed units answered the call to Operation Restore Hope (Somalia). Shortly thereafter the unit responded to tasking sending both aircraft, flying and support personnel to the Horn of Africa to aid in the critical and dangerous humanitarian operation. 123d citizen soldiers, dubbed by the regional media in Kentuckiana "the Guardians of Hope" provided 150 sorties over 263 flying hours and transported 720 tons of supplies and 1144 passengers to the effort, while members of the wing's combat control team operated runways at several austere locations. Additionally, the 123d Services Flight, operating out of Cairo West, Egypt, managed contract commercial hotels, food service and laundry; established and operated MWR activities; provided mortuary support for the region; and aided in the drawdown of personnel and operations for the installation . . . supporting an average of 500 people rotating through the site daily. The unit was commended for their exceptional service.

As the world's geopolitical attention switched to Eastern Europe the 123 AW took focus on Operation Provide Promise where the unit's all volunteer force, many arriving directly from Africa flew humanitarian missions into Bosnia-Herzegovina February through April and again from July through the end of September 1993. In December 1993 the unit returned and continued to fly missions through May of 1994. 123d AW aircraft amassed 1082 sorties over 2220 hours and delivered 2215 tons of food and supplies. Lieutenant Colonel Rick Ash, a flight commander and traditional guardsman became the first Air National Guard commander of the reactivated Delta Squadron, part of the 435th Airlift Wing, Rein Mein AB Germany, where he served with great distinction.

In July 1994, given only 72 hours to respond, the 123 AW quickly answered the call to Operation Provide Hope in Rwanda. Operating from Mombasa, Kenya, unit personnel and aircraft flew 147 sorties and over 303.2 hours including 652.5 tons of relief supplies and transported 604 passengers to the beleaguered Rwandan refugees.

The 123 AW also participated in many other unique deployments and exercises. The wing supported six rotations for Phoenix Oak where missions into Central and South America tested aircrews, war readiness capability in a real world setting. During these deployments the wing provided 223 sorties, almost 500 hours and transported 920 tons of supplies and 720 passengers. Security Police participated in Phoenix Ace—an exercise designed to test the unit's air base ground defense capabilities—and were noted by instructors as "the best squad seen to date." Additionally, Civil Engineers received many favorable comments for work performed for the U.S. Border Patrol and on active Air Force installations.

The unit was able to meet the challenge of the heavy deployment schedule and maintain its combat readiness status in spite of having to ground its C–130H fleet in June and July of 1993 after detecting a manufacturing defect in 38 of its 48 engines. Maintenance technicians analyzed the problems, and removed the engines in minimum time while maintaining a 73.7 mission capable rate for the year. The rate has steadily risen to an average of 81.7% for 1994 which is well above the ANG goal. This is exceptional considering that the unit has exceeded 1,000 hours over the programmed flying time for the last two years without increasing maintenance manning.

Wing members established an "around the clock command post", coordinated shifts and personnel, and supported community agencies when the city was paralyzed with an 18-inch snowfall and below zero temperatures. Both full-time and traditional guardsmen, in a volunteer status, transported medical personnel to hospitals, assisted law enforcement agencies, and responded to hundreds of calls from citizens in dire need of assistance.

The 123 AW's humanitarian efforts extended into the local community as well. The wing's Annual Bean Soup Feast and Open House netted nearly $8,000.00, with the proceeds being donated to children's programs in the region. In addition, the wing collected $3,700.00 for Easter Seals and raised $35,000.00 for numerous charities through the Combined Federal Campaign. The 205th Combat Communications Squadron collected food, money, and clothing to provide family Christmas gifts through the Salvation Army's "Angel Tree" program. The 205 CCS also became involved in the Jefferson County public schools Community Board Education Program. Together with the local school system the 205 CCS provided a myriad of services to the county's mentally disabled enrolled in the program.

The 123 AW's exemplary record of achievements is reflected in numerous group and individual awards. The 123d Mission Support Squadron captured the Outstanding ANG Social Actions Office of the Year and the FY 92 Zero BMT Elimination's Rate Award. The 123d Mission Support Flight garnered the Outstanding ANG Base-Level Information management organization Award. The 123 AW earned it's third championship win in the 30th Annual ANG Bowling Tournament.

Individual recognition included the Outstanding ANG Field Grade Officer Information Manager.

The unit has flown over 88,000 hours and almost 20 years, through three aircraft conversions, with only one command controlled Class A mishap for a rate of 1.12 percent. This is remarkable considering the perilous conditions in which the unit has operated during the past two years—free of any command controlled mishaps.

The 123 AW achieved a rare honor for an air guard unit when it was selected by the state department to serve as "hermano" or brother unit to Chile. The program promotes an international exchange of flying techniques and training between the units.

Since becoming operational in the C-130H, September 1992, the 123d had logged 64% of its total flying hours in "real world" missions. Fifty-two percent of those missions, 34% of the total missions have been flown outside the continental United States.

The 123 AW is proud of its distinctive accomplishments, many of which have been achieved at the focal point of national and world attention. Volunteers from the 123d have been willing to forsake their own comforts and conveniences to aid the desperate needs of others. They have sought out the most demanding missions, accomplished them superbly, and asked for more. The members of the 123d Airlift Wing stand in the forefront of airlift operations. The unit is truly deserving of the Air Force Outstanding Unit Award.

THE 40TH ANNIVERSARY OF KCTS

Mrs. MURRAY. Mr. President, I am pleased today to commemorate the 40th anniversary of KCTS, Community Television Service—channel 9, which serves the people of the greater Puget Sound region in the State of Washington. As television is increasingly blamed for the ills of our society, KCTS has consistently set an example for programing which is intelligent, entertaining, and socially responsible.

Examples of the many fine programs produced by KCTS abound, but let me take this opportunity to highlight just a few:

First and foremost, in the interest of educating as well as entertaining our children, KCTS not only carries PBS staples such as "Sesame Street" and "Mister Rogers' Neighborhood," but also broadcasts popular new programs like "Bill Nye the Science Guy" and "Where in the World is Carmen Sandiego?" But KCTS goes one step beyond simply putting its shows on the air; the station also provides training and curriculum projects for caregivers and teachers, so that they can build upon the lessons taught on the television programs, at home and in the classroom. KCTS has a firm grasp on the value of television, as well as the importance of activities away from it. The "Know-It-All-Club," for example, suggests fun, educational activities for kids who are home all day during school vacations, and actually encourages them to turn the TV off to go try them out.

For adults, KCTS programing is no less stimulating or useful. Examples include valuable series such as "Healing and the Mind," "Menopause: Living the Change," and "The Breast Care Test." Just as important as the specials themselves, however, were KCTS's extra efforts to make sure that its audiences were provided with additional information, so that they could directly benefit from each program. In this way, KCTS was able to facilitate participation in valuable breast cancer research being conducted at the Fred Hutchison Cancer Research Center, in conjunction with the broadcast of "The Breast Care Test." It is this sort of effort which distinguishes KCTS as a responsive, integral member of the Puget Sound area community.

The station and its employees have also proven to be dedicated public servants, whose work merits both thanks and recognition. From staff volunteer projects at a neighboring elementary school, to the Golden Apple Awards it sponsors for local teachers who set admirable examples for our children, to the production of the award-winning, nationally broadcast "Over" series, KCTS is genuinely involved in our community.

Earlier this year, when it appeared that Federal funding for public television may have been significantly reduced, that grateful community rallied to support its local station. My office alone received hundreds of letters expressing overwhelming support for KCTS. In the words of its viewers:

We are supporters of our local KCTS/9 in Seattle and find we view that more than all the others combined. Someone once said, "You are what you eat." I feel that applies also to our minds and hearts. A higher proportion of wholesome fare is made available on the public radio and television stations.—Belfair, WA

PBS offers innovative, creative, thoughtful programing not available on commercial TV. While the programing is at times admittedly provocative and controversial, it offers the intelligent viewer an opportunity to confront issues in a meaningful way, and to continue to learn about the modern world in which we live. There is simply no other TV programing which does this as well.—Bainbridge Island, WA

Public broadcasting should be funded at its current level or (better yet) more. I feel this is so important that I am writing this letter to you at 1 a.m. even though I am way behind on paperwork.—Issaquah, WA

I am writing to express our family's view that Congress should continue to support funding for public television and radio as an important national resource. Our children were helped in their early years by such programs as "Sesame Street," "The Electric Company," and "Mister Rogers." My son, a biologist who is a graduate of the Evergreen State College, was encouraged in part by the excellent nature programs we had watched on KCTS-9 over the years.—Federal Way, WA

KCTS has long been a part of the lives of families who live in the Puget Sound area. I and my family certainly benefited from the fine programing which KCTS provides every year, and the tradition has continued for each generation. Even the youngest members of my staff, my interns, expressed a touch of nostalgia for their KCTS childhoods. Their contribution to this commemoration should bring back memories for everyone:

ODE TO OUR PBS CHILDHOOD

This poem is brought to you by the number three,
As well as the letters A through Z.
We'll always remember Mr. Rogers' King and Queen,
And How Snuffleupagus couldn't be seen.
Zoom was always the "coolest" show,
And it taught us things every kid should know.
Rubber Duckie, you were the one,
Watching Ernie and Bert was so much fun.
While Zoomers and the Electric Co. gang can never be replaced,
Bill Nye the Science Guy does a great job in their space.
It's a pity that some of those shows are now gone,
But, like them, we too have moved on.
Now we watch the Frugal Gourmet,
and the Joy of Painting on Saturdays.
For public TV, you're always the best,
So we'll keep on watching KCTS.

My staff and I would like to thank KCTS for enriching our lives, and for all of the wonderful memories that it has provided for us and for our families. We congratulate them for 40 years of service to our community, and look forward to the next 40 with great anticipation.

CONSOER TOWNSEND CELEBRATES 75 YEAR ANNIVERSARY

Mr. SIMON. Mr. President, On October 18, Consoer Townsend, the largest Chicago-based consulting and engineering firm, is celebrating its 75th anniversary .

I would like to offer my congratulations to Consoer and its president and CEO Bob Fisher on this milestone. Mr. Fisher has been with Consoer Townsend for the past 22 years, the last 4 as president and CEO.

Consoer Townsend is responsible for many of Chicago's major transportation and environmentally related projects in the last 25 years, including the O'Hare International Airport, the Deep Tunnel project, and all interstate highways.

Employing over 500 people, Consoer Townsend is one of the Chicago's largest employee-owned firms, and one of the Nation's major players in environmental control projects.

It is my pleasure to recognize Bob Fisher and Consoer Townsend, on this 75th anniversary, for Consoer's role as a leading infrastructure consulting engineering firm.

AMERICAN-UKRAINIAN ADVISORY COMMITTEE

Mr. DECONCINI. I wish to invite my colleagues' attention to an important initiative launched by the Center for

Strategic and International Studies [CSIS], a world renowned policy research institute.

One year ago, on the strong recommendation of its distinguished counselor, Dr. Zbigniew Brzezinski, CSIS established the American-Ukrainian Advisory Committee, comprising 19 truly prominent Americans and Ukrainians, for the purpose of initiating a broader and deeper dialogue between the two nations and fostering a stronger, enduring relationship. Meeting twice a year, once in Washington and once in Kiev, the committee is addressing major security and economic issues and is communicating its policy recommendations to the highest levels of the American and Ukrainian Government.

The committee held its inaugural meeting in Washington last February and its second meeting in Kiev on September 24. The Kiev meeting produced a communique which provides a coherent strategic framework for the American-Ukrainian relationship as well as a sense of conceptual direction for Ukraine's place in Europe and in the world. The communique was issued at a pivotal juncture for Ukraine in its long and difficult tasks of consolidating its independent statehood, building democratic institutions, and establishing a genuine market economy that will benefit its citizens. The recommendations contained in the communique deserve serious consideration by the leadership of our two governments.

Mr. President, Ukraine's President Leonid Kuchma and our President Bill Clinton have welcomed the formation of the American-Ukrainian Advisory Committee. As Chairman of the Helsinki Commission and one who has had a longstanding interest in Ukraine and recognizes Ukraine's critical importance to peace and stability in Europe, I salute the Center for Strategic and International Studies, Dr. Brzezinski, who originated this initiative, and the members of the American-Ukrainian Advisory Committee for their significant contributions to the United States-Ukraine relationship.

I ask unanimous consent to insert into the RECORD the Kiev communique of the American-Ukrainian Advisory Committee as well as the membership list of the committee.

AMERICAN-UKRAINIAN ADVISORY COMMITTEE

The American-Ukrainian Advisory Committee, at its second plenary meeting in Kyiv, Ukraine, on 24 September 1994, reaffirms its conviction that a strong, stable, and secure Ukraine serves the interest of peace and stability in Europe and is a critical factor in the post-Communist transition. Since such a Ukraine will contribute to a peaceful and democratic redefinition of Russia, the Committee also notes with favor the recent indications of improvement in Ukrainian-Russian relations.

In order to further these important transformations and to help the consolidation of Ukraine's independent statehood, the Advisory Committee, in its deliberations:

1. Regards the territorial integrity of Ukraine, in its existing frontiers, as an important element of European peace and stability, and affirms its opposition to any concepts and actions which would entail a new division of Europe into spheres of influence.

2. Notes that in any discussion concerning the enlargement of European and North Atlantic economic and security institutions, the interests of Ukraine, as an integral part of Central and Eastern Europe, must be adequately addressed and Ukraine's progressive association with these institutions facilitated.

3. Favors the expansion of U.S.-Ukrainian cooperation in the training of military officers and in the civilian retraining of retiring Ukrainian officers; recommends joint American-Ukrainian military exercises as part of enhanced Ukrainian participation in NATO's Partnership for Peace program, and urges U.S. assistance to Ukraine for the implementation of PFP.

4. Advocates increased U.S. political support for Ukrainian cooperation with other countries of Central and Eastern Europe as a means to enhance the stability and prosperity of the region.

5. Applauds Ukraine's progress in the dismantling of nuclear weapons and Ukraine's intention to accede to the nuclear Non-Proliferation Treaty [NPT], and, in that context, urges the implementation of commitments made by the other parties of the Trilateral Accord, in particular those provisions regarding national security assurances.

6. Welcomes the recent G-7 initiatives which confirmed the importance of Ukrainian statehood and committed the industrialized global powers to assist Ukraine in its reform programs. It also welcomes the courageous decision of President Kuchma to take charge of economic policy.

7. Endorses Ukraine's request to convert $200 million of unused technical assistance to financial assistance. It calls upon the Ukrainian government to implement a coherent privatization program without which reform cannot succeed.

8. Urges the rapid removal of tax, monetary, and regulatory obstacles that stand in the way of the vibrant expansion of the Ukrainian economy.

9. Advocates the exploration, with Western assistance, of alternative energy sources.

10. Endorses the calling of a conference of donors, including Russia, on Ukraine's behalf.

AMERICAN-UKRAINIAN ADVISORY COMMITTEE

AMERICAN MEMBERS

William M. Agee, Chairman and CEO, Morrison-Knudsen Corp.

Mr. Dwayne O. Andreas, Chairman and CEO, Archer-Daniels Midland Co.

The Honorable Zbigniew Brzezinski, Counselor, The Center for Strategic and International Studies.

Hon. Richard R. Burt, Chairman, International Equity Partners.

Hon. Frank C. Carlucci, Chairman, Carlyle Group.

Mr. Malcolm S. Forbes, Jr., Chairman and CEO, Forbes Magazine.

Gen. John R. Gavin, Distinguished Visiting Policy Analyst, Ohio State University.

Mr. Michael H. Jordan, Chairman and CEO, Westinghouse Electric Corp.

Hon. Henry Kissinger, Chairman, Kissinger Associates.

Mr. George Soros, Chairman, Soros Foundations.

UKRAINIAN MEMBERS

Hon. Dr. Anton Denysovych Buteiko, People's Deputy, Parliament of Ukraine.

Hon. Volodymyr Borysovych Hrynyov, Co-chairman, Inter-Regional Reform Bloc & Presidential Advisor on Regional Issues.

Hon. Volodymyr Timofiyovych Lanoviy, People's Deputy, Parliament of Ukraine & Chairman of the Board, Market Reforms Center.

Hon. Kostyantyn Petrovych Morozov, Director, Ukrainian Statehood Research Center & Former Minister of Defense.

Hon. Dmytro Vasylyovych Pavlychko, Chairman, Ukraina Democratic Coalition.

Hon. Dr. Viktor Mykhaylovych Pynzenyk, People's Deputy, Parliament of Ukraine.

Hon. Roman Vasylyovych Shpek, Minister of Economics, Cabinet of Ministers.

Mr. Volodymyr Oleksandrovych Sumin, Chairman, Council of Entrepreneurs of Ukraine & President, Lawyers Association of Ukraine.

Hon. Borys Ivanovych Tarasyuk, Deputy Minister of Foreign Affairs.

TRIBUTE TO GEN. MERRILL A. MCPEAK, USAF, ON HIS RETIREMENT

Mr. NUNN. Mr. President, as the Air Force undergoes a change in its top military leadership, I want the Senate to recognize the outstanding service of Air Force Chief of Staff, Gen. Merrill A. McPeak upon his retirement from the Air Force after 37 years of devoted service to his country. As Air Force Chief of Staff, General McPeak was responsible for organizing, training, and equipping of a combined active duty, Guard, Reserve, and civilian force of over 850,000 people serving at over 1,300 locations in the United States and overseas.

General McPeak entered the Air Force through Reserve Officer Training Program in 1957. He graduated from San Diego State College and earned a masters degree from the George Washington University. He is a graduate of the Armed Forces Staff College, the National War College, and the Executive Development Program of the University of Michigan Graduate School of Business.

General McPeak has been a very successful pilot, as recognized by his 2 year tour as a solo pilot for the elite Air Force aerial demonstration team, the Thunderbirds. He also flew as an attack pilot and high-speed forward air controller in Vietnam. General McPeak has also been a successful leader. He has commanded Air Force units at all levels, including the 20th Tactical Fighter Wing, the 12th Air Force, and Pacific Air Forces.

He has been awarded numerous medals and decorations, including the Distinguished Service medal, the Silver Star, the Legion of Merit with oak leaf cluster, and the Distinguished Flying Cross with oak leaf cluster.

General McPeak has led the Air Force through very difficult times as we restructure the Defense Department and the military services to meet the new challenges and realities of the post-cold war world. As Air Force Chief

of Staff, General McPeak implemented a major reorganization of Air Force headquarters and subordinate command structures that reduced layering and resulted in a more responsive organization. It has also been under his direction that the Department of the Air Force has published its strategy statement, "Global Reach, Global Power," an outline of how the Air Force can contribute to dealing with the challenges the United States faces in the new world environment.

General McPeak has been a champion of the innovative composite wing concept. This arrangement allows aircraft and people to train together daily as an integrated combat force that will allow them to operate more effectively as part of a joint warfighting team.

In addition, General McPeak worked to preserve the rich heritage and tradition of key Air Force units. I was privileged to attend an Air Force dinner recently where General McPeak's efforts to underscore the legacy and heroism of Air Force personnel were readily apparent.

General McPeak was also instrumental in opening up lines of communication and contacts with Air Force counterparts in Russia and Eastern Europe. He recognized the tremendous value in exposing our former adversaries to our Nation's professional military, and to reducing tensions.

I want to take this opportunity to recognize General McPeak's selfless service and to thank him for his life of service to the U.S. Air Force and the Nation. We wish him, his wife, Elynor, and their family Godspeed and all the best in the future.

IONA SENIOR SERVICES

Mr. GLENN. Mr. President, as a member of the Senate Special Committee on Aging since 1977, I am well aware of the challenges presented by our aging population. Action is needed now to benefit older Americans and their families, and to plan ahead to ensure a better life for today's workers and their children and grandchildren.

Due to our spectacular increase in longevity during this century, the number and proportion of elderly people is increasing and the 85 and older group is growing fastest of all. A major policy issue related to this growing older population is how to provide the community-based support that will enable us to continue to live in our homes rather than institutions as we age and need health and social services. Most people prefer to remain in their own homes, and in most cases this is a less expensive alternative than nursing home care.

Here in our Nation's capital, we have an excellent example of what the future will bring and of how to provide for an aging population. Northwest Washington, DC, where nearly 20 percent of the population is already 60 and older and 2.5 percent is 85 or older, has a headstart on the national phenomenon of population aging. Many of these older people have chronic illnesses, live alone, have no one to help during an emergency, and some have no regular daily contact with other people.

Fortunately, IONA Senior Services makes it possible for many Washingtonians to continue to live with independence and dignity in their own homes. IONA, which stands for Independence, Opportunities, a Network for Aging, accomplishes this through a cooperative effort which ties in religious and community institutions, businesses, schools, apartment managers and the professional community. IONA is an excellent example of the importance of local, neighborhood-based programs in providing services which enable the elderly to remain in their homes and communities.

Recently, Elizabeth S. Fox, executive director of IONA Senior Services, told me the story of Mrs. Jones, who has lived in an apartment on Connecticut Avenue for 40 years. She is 87 years old and is seriously disabled by arthritis and osteoporosis. Bent double at the waist, she can maneuver slowly around her apartment and uses a mobile wheel chair to go out.

She has very limited use of her hands so that preparing meals and cleaning are extremely difficult. Mrs. Jones has no relatives in the area and many of her friends and former colleagues from a Federal Government job have died, but she loves conversation and has made friends with the staff and residents of the apartment building.

The apartment manager put Mrs. Jones in touch with IONA last year when she confessed she was worried about not being able to take good care of herself and her apartment and not having any savings left to pay for extra services like taxi cabs, delivery services, and cleaning help. She was afraid she would have to move to a nursing home, knowing that after all her savings were gone she would qualify for Medicaid which would pay indefinitely.

IONA Senior Services now provides or arranges for these services for Mrs. Jones: home-delivered meals 7 days a week, a weekly volunteer visitor, subsidized homemaker services twice a week, a daily volunteer telephone caller, twice yearly special cleaning and repair by high school students, and free transportation to medical appointments. In addition, a neighborhood coalition, organized under the leadership of an IONA community organizer, the apartment manager, and other local leaders, has established outreach and volunteer activities throughout the large apartment complex. Mrs. Jones is an inspiring speaker for the coalition. Mrs. Jones feels safe, less threatened by financial drain, and much, much happier.

IONA Senior Services estimates that the monthly cost of these services to Mrs. Jones is $365, not counting the enormous value of volunteer service. A portion of funds are provided through the U.S. Administration on Aging, Older Americans Act funds, the D.C. Office on Aging and the rest through private fundraising. If these services were not available to Mrs. Jones, it is likely she would end up in a nursing home at a cost of over $4,000 per month in Washington, DC. After a very few months in a nursing home, Mrs. Jones' care would be reimbursed under Medicaid, with the Federal and D.C. governments splitting the cost.

Mrs. Jones' story has a lot to teach us about policies and programs which will help our country cope with its growing older population. The Government alone cannot give Mrs. Jones the quality of life she deserves—or the quality of life that we would want for ourselves and our loved ones. Rather, the Federal Government needs partners to mobilize volunteers and neighborhood coalitions to be part of the solution.

IONA Senior Services is an outstanding example of this partnership. It is a community-based agency begun on a shoestring to respond to a need. After 20 years, it is on the verge of establishing a permanent comprehensive service center in Washington, DC which will be the hub of the cooperative network IONA has built over the last 20 years.

IONA's new center—Isabella's Center—has my enthusiastic support. I believe it will be a national model from which we can all benefit and it will help other communities that want to follow IONA in forging a dynamic approach to the challenges brought about by our aging population.

STATEMENT OF JACOB K. JAVITS GIFTED AND TALENTED EDUCATION PROGRAM

Mr. BRADLEY. Mr. President, I am very pleased that the conference report on the Improving America's Schools Act, which passed last night by an overwhelming margin, included a reauthorization of the Jacob K. Javits Gifted and Talented Students Education Act.

The Javits Program has had an extraordinary record of success, not only by ensuring that gifted and talented students receive the attention and challenging schoolwork they need but also by broadening the universe of students who are identified as talented beyond those who do well on standardized tests. Programs like the Apogee Program developed at the Education Information and Research Center in Sewell, NJ, or the Rutgers Program that received funding just this week, have developed new methods to identify gifted minority and low-income students who have traditionally been overlooked.

Some of the best Javits-funded programs have been so successful at reaching a broad range of students that their methods have been broadened to the entire school. I would cite in particular the work of Dr. Joseph Renzulli, whose National Research Center on the Gifted and Talented at the University of Connecticut is funded under this act, for developing curricula that can work for all students, not just those identified as gifted. Last year, the administration took this insight to heart in proposing a thorough revamping of the Javits Program, to focus on programs that would serve the whole school. While I agree with the Department of Education that these methods can serve all students, and should inspire and inform all classrooms, I would not want to lose the one initiative that focuses clearly on students with special gifts. With only about $10 million in appropriations each year, the funds cannot be spread across entire schools. Instead, other programs should continue to borrow from Javits to improve title 1 services, the Eisenhower Program, and even initiatives that receive no Federal funding. I believe the committees in both the House and the Senate took the right approach by maintaining the clear focus of Javits while requiring applicants to specify how their program can be adopted for all students.

I thank my colleagues Senators KENNEDY, PELL, and JEFFORDS, and Senator DODD in whose state the National Research Center is based, for their longstanding support of the Javits Program.

FISCAL YEAR 1995 LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION APPROPRIATIONS BILL

Mr. NUNN. Mr. President, I rise to discuss language included in the conference report accompanying the fiscal year 1995 Labor, Health and Human Services, and Education Appropriations Act. The report language addresses the use of extramural construction funds provided under the National Center for Research Resources [NCRR].

The mission of the NCRR is to develop and support critical technologies and shared resources for research. One of the projects cited by the Labor/HHS conference report as deserving NCRR consideration is the National Center for Primary Health, a project at the Morehouse School of Medicine in Atlanta.

The Morehouse School of Medicine is a unique medical institution. Morehouse has distinguished itself among medical schools nationally in its attention to reaching minorities and medically underserved populations. Morehouse also leads the Nation in the percentage of graduates entering primary health care fields.

The Center for Primary Health at Morehouse will serve as a national resource for sponsoring and conducting academic, clinical, and health services research. More specifically, the Center will serve to increase the number of primary care physicians and create a national health and social policy center. The Center will also augment outreach and community-based clinical networks and construct new collaborative linkages focused on medical education, health and social policy, and the dissemination of research.

Under the leadership of Dr. Louis Sullivan, the Morehouse School of Medicine already possesses the elements necessary to ensure that the National Center for Primary Health's objectives will be achieved. Morehouse has an outstanding program in medical education and a proven track record in the provision of primary health care services to disadvantaged populations. Morehouse also has long-standing relationships with private and public health related institutions, including the agencies of the U.S. Public Health Service and historically black colleges and universities. Finally, Morehouse is recognized for its excellent program of basic and applied research, particularly in research relating to the effect of the environment, economics, and social conditions on health. All of these factors identify Morehouse as a leader in the field of primary health care.

I thank Senators HARKIN and SPECTER for recognizing the contribution that the Morehouse School of Medicine has made in the area of primary health care. The inclusion of report language is testimony to the School's success and the respect that its achievements have elicited among the Nation's health professionals.

CONFERENCE REPORT ON LOBBYING REFORM BILL

Mr. MATHEWS. Mr. President, in May, Mr. President, when the Senate first considered the lobbyist gift ban bill I expressed my reservations about the bill (Congressional Record, May 4, 1994, page S5165). Yet, like the majority of our colleagues, I voted to send the bill to conference because we hoped it would return with our reservations rectified.

Since that time, Mr. President, I have had the opportunity to consider this issue more carefully. I took a look at my calendar for the last 10 months and found that had this proposal been law a number of Tennessee groups and associations would not be able to conduct business with their Congressional Delegation in their chosen manner. It is unusual that a week passes without an invitation from some Tennessee group to attend an early morning breakfast or a luncheon, less frequently dinner invitations are extended. And yes, the subject matter of these meetings is normally matters before Congress.

Many of these members I have known for years. The Tennessee Press Association comes to Washington once a year where all the Tennessee delegation sits around a dinner table and discusses matters of importance, this year the telecommunications legislation was the main subject. The Tennessee Humanities Council and the Allied Arts Council of Chattanooga at separate times had me to a breakfast to talk about Federal contribution to the arts in Tennessee. The Lower Mississippi Valley Flood Control Association invited me to a reception to discuss wetlands issues and erosion problems in West Tennessee. The Farm Bureau and State Farm Insurance have an annual breakfast for the whole delegation. Various insurance and health care associations in Tennessee visited my office to discuss health care reform. All of these groups were here to lobby, but I don't think anyone could perceive them to be the well-heeled, high-powered, Gucci-wearing lobbyist which the general public is being led to believe influence our voting.

Over the last several days, my office phones have been ringing off the hook with concerned constituents who believe that this bill is dangerously vague and that it would prohibit contacts such as this. Yesterday, a constituent from Hohenwald faxed me a plea to oppose S. 349 because he believes that "* * * in its present form, it's poorly written, badly motivated and would be a nightmare to enforce or to try and comply." Additionally, I received calls and letters from a myriad of national associations, but I believe this constituent best summed up the concerns which I shared with this body in May.

I believe now as I did in May: that the people of Tennessee aren't outraged about my having meals with people who discuss the businesses and communities and workers and interests of Tennessee.

I believe they expect me and my staff to meet with these people, a good majority of whom are Tennesseans, after all.

I believe they expect me to set standards of decorum about gifts and gratuities, not erect a wall of inaccess and impenetrability out of a preoccupation with propriety.

Most of all, I believe that the biggest part of my constituents' concern is in knowing exactly who I'm dealing with, who gives me what, and being able to determine whether my votes and my advocacy have been influenced. Along these lines, I have encouraged disclosure as a remedy to the perceived problems.

I make public my weekly schedule so that the people of Tennessee can make fair judgments about my votes because I tell them whom my duties bring me

into contact with. Additionally, my colleagues and I all fill out lengthy personal disclosures which are made available to the public.

I regret, Mr. President, that this measure has not returned from conference in a form that addresses this critical element. What's worse, the language of the conference report has made it more difficult for Tennesseans to know what this measure means for their contacts with me. Judging by calls to my office, too many Tennesseans now believe this measure prevents them from contacting their Senators and Congressmen at all.

Clearly, the intent of the original measure has backfired. We wanted to correct the impression of improper access. We wanted to banish uncertainty about boundaries governing contact with advocacy groups. Instead, we've multiplied the uncertainty.

Mr. President, we don't need more deliberation, because what we have before us won't benefit from deliberation. Let's stop trying to legislate propriety and stop trying to replace judgment with commandments. I firmly believe the people of Tennessee are capable of making this judgment.

NATIONAL BIBLE WEEK

Mr. NUNN. Mr. President, I rise today to call the attention of the Senate to the approach of National Bible Week November 20–27. That week is especially appropriate because it includes America's only nonsectarian religious holiday, Thanksgiving.

National Bible Week is sponsored by the Laymen's National Bible Association, an interfaith, nonsectarian organization of business and professional men and women formed for the sole purpose of encouraging Americans to appreciate our Nation's religious heritage. The association has no formal ties with any religious body, but enjoys the support of prominent Americans from all fields and from a wide range of denominations and faith groups, as well as secular groups.

While our people include adherents of most of the faith groups from around the world, the Bible is the primary sacred text of the majority of religious Americans. It has had a significant impact on our culture and our beliefs in equal justice and equal opportunity for all, and on the lives and thought of many of our wisest leaders.

This will be the 54th annual National Bible Week. Out of respect for the Constitution and the separation of church and state, the association has never sought a Presidential proclamation or a resolution from Congress. Over the years, many of our local, State, and national leaders have strongly supported National Bible Week, however. President Clinton, as Honorary Chairman, has issued a statement encouraging all Americans to read the Bible often and to make it an important part of their lives.

I am honored to serve as congressional co-chairman this year—Congressman JAMES INHOFE serves with me from the House. Governor Evan Bayh of Indiana is serving as chairman of the Governors and Mayor P.J. Morgan of Omaha is chairman of the mayors. Public service announcements and special observances in 7,500 communities mark National Bible Week.

Many Americans are concerned about violence, religious intolerance, and family breakdown, and feel there is a general erosion of our moral and ethical standards as a nation. The Bible reminds us of the challenges others have faced since ancient times, and of the ageless principles of courage, compassion, integrity, and steadfast faith that have guided and sustained them. I encourage my colleagues, and all Americans, to drink deeply from the fountain of its wisdom during National Bible Week in November.

TRIBUTE TO ADM. PAUL DAVID MILLER, USN, ON HIS RETIREMENT

Mr. NUNN. Mr. President, I want the Senate to recognize the retirement of a fine naval officer, Adm. Paul David Miller. Admiral Miller is retiring from the position of Supreme Allied Commander, Atlantic and Commander in Chief, U.S. Atlantic Command. This position has also made him responsible for the training of more than one million U.S. servicemen and women.

Admiral Miller has been an outstanding leader in steering a new course for the military services after the end of the cold war. His foresight in thinking about the post-cold-war world in new ways led to such innovative ideas as the adaptive force package concept which is being employed in our recent operations in Haiti. He has been a leader in ensuring our military has the proper doctrine, training, and interagency approach essential for peacekeeping.

Admiral Miller entered the Navy through Officer Candidate School in 1964. He graduated from Florida State University and earned a masters degree from the University of Georgia. He is a graduate of the Naval War College and the Harvard Business School executive management program. I am sure that Admiral Miller's education was no small contributor to his successful naval career. Admiral Miller has received numerous awards and decorations, including the Distinguished Service Medal, Defense Superior Service Medal, and the Legion of Merit.

Admiral Miller served at sea aboard U.S.S. *Parsons* as operations officer, and aboard U.S.S. *McCloy* and U.S.S. *Luce* as commanding officer. He was Commander, Cruiser Destroyer Group III, and Commander, U.S. 7th Fleet. Admiral Miller served in Washington as administrative assistant to the Vice Chief of Naval Operations, executive assistant to the Secretary of the Navy, and Deputy Chief of Naval Operations for Naval Warfare. Admiral Miller brought tremendous operational and staff experience to the challenges of reorganizing and reorienting the new USA Command.

As Commander, USACOM, Admiral Miller has served as the unified commander for Operation Uphold Democracy, the first real-world test of the adaptive force package concept. Admiral Miller was an innovator in other ways:

He established the Joint Training and Simulation Center to improve future training of joint task forces by permitting joint task force staffs and subordinate commanders to exercise comprehensively before actual deployments.

He formulated doctrine for integrating capabilities of multiple government agencies in an interagency action group. This doctrine proved effective in dealing with counterdrug operations and handling Haitian and Cuban migration problems.

He improved force effectiveness by having his command leverage new technology. For example, under his direction, the Department has improved support for warfighting commanders in chief by standardizing Tomahawk cruise missile targeting procedures and, thereby, improved strike accuracy. He also advanced the use of unmanned aerial vehicles [UAVs] through development of structure, procedures, and exercises to exploit UAV capabilities.

I am sure that I speak for the entire Senate in thanking Admiral Miller for his life of outstanding service to the Nation. We wish him, his wife, Becky, and their two sons, Chris and Colby, Godspeed and all the best for the future.

TRIBUTE TO DR. J. ROY ROWLAND, A REPRESENTATIVE IN CONGRESS

Mr. COVERDELL. Mr. President. I rise today to honor a very distinguished colleague of mine from Georgia in the U.S. House of Representatives, Dr. J. ROY ROWLAND. The people of Georgia have been aware of ROY's dedication to his work as a physician for more than 40 years and as a elected official for 18 years. I have had the distinct pleasure of working with ROY in the Georgia State Legislature and again here in Congress.

I know ROY to be a physician of great knowledge and compassion, and a legislator of unequalled vigor and character. During his tenure in Washington, ROY has championed the causes of veterans' affairs, the environment, fiscal responsibility and health care among others. But it is for his efforts

on health care during this, his last year in the House, that will be his legacy to the people of Georgia and the United States.

ROY has worked tirelessly on health care since his graduation from medical school in 1952, and he made major inroads in the health care reform debate. The debate will be renewed next year and ROY's effort will be the building block for a health care bill that suits all Americans.

I have always admired ROY's ethics and principles as a legislator. A doctor is asked to take the Hippocratic oath and live by the standard set forth by Hippocrates, the father of medicine, to "follow a system of regimen, which according to his ability and judgment, he considers for the benefit of his patients, and abstain from whatever is deleterious and mischievous." ROY ROWLAND applied that standard not only to his medical practice but also to his role as a legislator. Although we will miss his voice in Congress, I know he will continue to fight for his beliefs and the people of Georgia as he returns to our State.

NANNY TAX—PROTECTION FOR FARMERS

Mr. MCCONNELL. Mr. President, I wanted to take a moment to discuss the so-called nanny-tax legislation now before us.

You may recall that the nanny-tax issue received national attention when it was discovered that President Clinton's nominee for Attorney General, Zoe Baird, had failed to properly file the necessary paperwork and pay adequate Social Security, Medicare, and unemployment taxes for a domestic worker in her employ.

While I am pleased that the Congress was able to make life a little easier for those citizens who employ household domestic help, I have to wonder a bit about our priorities. I understand why it was important to adjust the archaic income threshold from $50 a quarter to $1,000 a year. I appreciate the fact that it will relieve all those who hire maids, housekeepers, and nannies of needless paperwork and administrative burdens.

But I still find it faintly amusing that Congress decided to favor this particular group of people first with legislative relief from bureaucratic tax laws. Of all the groups in America who are crying out for help with time-consuming, irrational—not to mention expensive—tax requirements, we have decided to put the employers of nannies, maids, and housekeepers at the top of our list.

Of course, you don't necessarily have to be rich to employ domestic help; in fact, many financially disadvantaged families rely on such services because the parents absolutely must work. But in considering this legislation, I am reminded of many other deserving individuals and groups who desperately need relief from the tangle of tax and reporting requirements foisted upon them by their Federal Government.

So let me urge my colleagues, as they cast their votes on this bill, to make this the start of a careful reassessment of our tax laws and their consequences on all American citizens.

In particular, I hope we can focus some effort in the next Congress on the employment-related tax burden that is placed on America's farmers. As fewer and fewer people earn a livelihood from farming, there is an increasing need for seasonal help to harvest crops. This is true in Kentucky, where farmers rely on large numbers of seasonal workers to plant, pick, and process a variety of crops, including tobacco. Some of these workers are migrants; others are local college students in need of a summer job.

Nevertheless, the tremendous paperwork and expense involved in hiring seasonal workers is making this option more and more difficult for small farmers in my State. In the long run, this will mean a loss of farm productivity, higher prices for food, and fewer jobs for those who depend on seasonal employment for income.

To put it in a context related to the legislation before us, if we cannot easily use seasonal labor in the agriculture sector, then the food served by the housekeepers and maids now protected under this legislation would soon become prohibitively expensive.

It simply does not make sense that those who employ maids and nannies should be given what amounts to a $850 annual tax exclusion, while farmers must comply with a much lower earnings threshold of $150 per year. In the next Congress, I intend to work with my colleagues to ensure that farmers receive the same kind of tax relief accorded by this legislation to that group of Americans who employ nannies and maids and housekeepers. Until that time, this legislation can be considered only a partial victory for tax fairness and simplification.

The respected chairman of the Senate Finance Committee said earlier that we have decriminalized baby sitting. I share that view, but we need to decriminalize the use of seasonal labor in farming as well.

Mr. President, you may recall that the position of Secretary of Agriculture is currently vacant. Wouldn't it be ironic if the President's nominee was a farmer who had inadvertently neglected to file the proper paperwork and taxes for temporary farm labor? Perhaps that would be a blessing in disguise. My guess is that farmers would finally get the necessary attention they deserve.

Mr. President, I yield the floor.

PROGRAM

Mr. MITCHELL. Mr. President, there will be no further rollcall votes this evening. The next vote will occur at 11:05 a.m. tomorrow, unless an agreement to the contrary is reached. But in any event, there will be no vote prior to 11:05 a.m. tomorrow morning. I thank my colleagues for their patience and cooperation. I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair. Mr. President, we are now in the morning hour?

The PRESIDING OFFICER. We are in morning business, with Senators permitted to speak 10 minutes therein.

NATIONAL AFRICAN-AMERICAN MUSEUM

Mr. HELMS. Mr. President, first off, the Washington Post, which some people call the 'Washington Compost,' had another editorial this morning, saying: "Another Congressional Casualty?" And I find something inaccurate about the editorial.

Mr. LEVIN. Will the Senator from North Carolina yield for a unanimous-consent request?

Mr. HELMS. Of course. Certainly.

PRINTING OF CONCURRENT RESOLUTION

Mr. LEVIN. Mr. President, I ask unanimous consent that a concurrent resolution be printed in the RECORD at the appropriate point. It is a concurrent resolution which I am introducing on behalf of myself, Senators COHEN, MITCHELL, and WELLSTONE. It would eliminate the provisions which were objected to in the bill that was debated earlier today on lobbying activities and make other corrections to address some of the concerns which were raised—in fact, address all of the major concerns which were raised today. And even though we did not think they were necessary to be changed, we did not have the votes and so this concurrent resolution would in fact make the changes which have been requested, we hope address the concerns, and allow us then to proceed to adopt that conference report on lobbying reform and gifts disclosure. My unanimous-consent request, however, is that it simply be printed in the RECORD and that a copy be kept at the desk so that people can read this concurrent resolution tonight and tomorrow morning.

(The text of the concurrent resolution is printed in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. LEVIN. I thank my friend from North Carolina.

Mr. HELMS. The Senator is quite welcome. Now I imagine the chair will allow me to have 10 minutes.

The PRESIDING OFFICER. The Senator is correct. The Senator from North Carolina is recognized.

NATIONAL AFRICAN-AMERICAN MUSEUM

Mr. HELMS. Mr. President, I have been in the news business for much of my life, and I have written many editorials. I certainly know an ad homonym attack when I see one, but this morning's Washington Post editorial was laughable. I am trying to find at least one statement in it that is factual. But before I get to the specific errors in the editorial—and I bring it up so that Senators will not be misled about this issue—let me make a general statement with respect to the Simon amendment.

With a $4.6 trillion Federal debt, Congress is now being asked by the Senator from Illinois to give an unlimited—I repeat, an unlimited—authorization for an unlimited number of years for a new museum where the Smithsonian, by the way, does not have sufficient funds to maintain the exhibits it currently has.

Now, Smithsonian has refused to provide us with any estimate as to how much this museum, its operations, its activities, and its staff will cost the American taxpayers. The Smithsonian refuses to tell us how many employees the museum will have, or what their salaries will be, and who will pay these salaries.

Now back to the Washington Post editorial. It falsely portrays a provision added to the Simon bill by the Senator from West Virginia [Mr. BYRD]. The editorial reads: "an amendment by Senator ROBERT BYRD makes clear that the new museum cannot ask for public money for at least 5 years."

That is ridiculous. The Simon amendment, Simon bill, makes no such stipulation. In fact, Mr. BYRD's amendment says the opposite. It provides that "there are authorized to be appropriated such sums—of the taxpayers money—as may be necessary" for operating and maintaining the museum. And that shows you the accuracy, or the inaccuracy, of the Washington Post.

The Washington Post editorial then lamented that certain collections of African-American artifacts will, the editors contend, not be lost should the taxpayers not fund this proposed museum. But these collections can be received by other Smithsonian museums already in existence, including the Anacostia Museum of African-American History and Culture. The proposed museum duplicates, do you not see, other museums and other exhibits currently in the Smithsonian.

By the way, Mr. President, the Post did not mention how this museum will utilize tax dollars to take exhibits on the road and to promote itself in the media and to provide training for African-American museum professionals. But the Smithsonian refuses to tell anybody how much this will cost.

Then there is the certainty that once the Congress approves this museum and the President has signed the bill, which he surely will, we will be approached by other minority groups wanting museums for themselves, and we will be in a position where we cannot say no. So everybody will win except the taxpayers who will have to foot the bill for all of this.

Now, getting back to the Post editorial. It attacks this Senator for what it calls "dark hints" that the Nation of Islam will also want a museum. I have flatout, never said or even hinted such a thing. It is not so and the editorial writer knew it when he wrote it. It is an ad homonym attack.

I do question however whether Hispanics and other minorities will justifiably want museums, and I believe that to be true. In fact a Smithsonian report has already recommended a museum especially for Hispanic-Americans.

Now, Mr. President, let me say again, once we approve this museum, open ended in terms of financing, we will be called upon by other minority groups—and they will be justified in doing so—to provide museums for their particular groups. We cannot say no to them, not justifiably. And I repeat that everybody is going to win on this proposition except the taxpayers and future generations who are already going to have to assume the burden of a Federal debt of more than $4.6 trillion run up by this Congress after having done just such things as the Senator from Illinois has proposed.

Mr. President, I will reserve further comments until the next time this amendment becomes the pending business in the Senate. And I wish to say that if the Senate goes ahead and considers this amendment, then I have at least 15 amendments that I am going to expect to be considered by the Senate and voted on.

So I yield the floor, and I thank the Chair.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I shall not take 10 minutes here. I would like to enter into the RECORD a letter sent by the Smithsonian to Senator HELMS in response to 29 questions, I believe it is, that he had. But let me just point out in answer to the first question in response to what the Senator said,

> it would result in no increase to the institution's operating budget.

They underline that.

> Regardless, over the next 5 fiscal years, no additional requests for Federal funds will be made to support the establishment of the museum. Actual costs for the establishment of the museum are not available until we can proceed with detailed planning for the museum. However, as is directed by the legislation, any and all funds used for the establishment of the museum will derive from non-Federal sources.

We are talking about Smithsonian planning and going out and getting private funding to establish an African-American museum so that all of us can understand our heritage a little more, and that includes obviously African-Americans who can look at their heritage and have some pride in that heritage as well as the rest of us having some pride in that heritage.

I ask unanimous consent to enter this in the RECORD.

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

SMITHSONIAN INSTITUTION,
Washington, DC, Sept. 29, 1994.

Hon. JESSE HELMS,
Committee on Rules and Administration, U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: This is in response to your letter of September 19, 1994, in which you requested additional information regarding H.R. 877, the National African American Museum Act, which is pending before the Senate. I am pleased to provide the following responses to the 29 questions enumerated in your letter.

1. Question.—Please provide a copy of the proposed budget for the National African American museum for each of the first five years after enactment, including but not limited to costs for its establishment, operation, maintenance and activities. Please indicate the total estimated amount of federal funds involved and funds expected to be contributed by private sources.

Answer.—The Smithsonian Institution presently has approximately $475,000 in its base budget for general planning money which has already been appropriated and will be used for the initial planning stage for the museum. The goal of this planning process would be to identify non-Federal sources of funds which can be raised to support the programs of the museum. Additionally, some funds presently expended by the Institution in support of African American programming and collections could be shifted to support the development of the museum, but would result in no increase to the Institution's operating budget. Regardless, over the next five fiscal years, no additional requests for Federal funds will be made to support the establishment of the museum. Actual costs for the establishment of the museum are not available until we can proceed with detailed planning for the museum. However, as is directed by the legislation, any and all funds used for the establishment of the museum will derive from non-federal sources.

2. Question.—You have indicated that no federal funds beyond the $475,000 for general planning money already set aside by the Smithsonian will be used "to support the establishment of the museum." How much of this $475,000 is federal funds?

Answer.—Approximately $475,000 in base resources is available in support of the museum project, $266,000 is Federal funds.

3. Question.—How much in federal funds do you project that the museum will spend for each of the next five fiscal years for all other aspects of the museum—e.g., its maintenance, operation, programs and other costs.

Answer.—It is the intention of the Smithsonian Institution to develop a strategy which will rely on non-Federal sources of funds to support the establishment of the museum. The museum will use the $266,000 in Federal funds for other aspects of the museum and make efficient use of centralized Smithsonian services and staff with unique expertise.

4. Question.—Vice President Gore in his "Reinventing Government" report called for

government agencies to "consolidate", "streamline", and "reduce number of offices." Is the proposed creation of another Smithsonian museum consistent with the Vice President's recommendation?

Answer.—The loss of essential employees as a result of the recent buy-outs has forced the Institution to consider a variety of strategies geared towards consolidation and streamlining. The National African American Museum could enable us to achieve these goals.

5. Question.—Please provide a complete listing of museums currently associated with or proposed by the Smithsonian which have "unique" funding relationships (e.g., private funds donated for building of the particular museum, artifacts donated to a particular museum with the expectation of the Smithsonian establishing a museum, museums established with private funds with the understanding that the Smithsonian would provide maintenance and operation.)

Answer.—The following museums are currently associated with the Smithsonian Institution: Anacostia Museum, Archives of American Art, Cooper-Hewitt Museum, Freer Museum, Hirshhorn Museum and Sculpture Garden, National Air and Space Museum, National Museum of African Art, National Museum of American Art, National Museum of the American Indian, National Museum of American History, National Museum of Natural History, the National Portrait Gallery, the Sackler Gallery and the National Zoological Park. The National African American Museum has been proposed and endorsed by the Regents. All of our museums are funded by the public and by private donors. They all acquire collections as gifts or purchases.

6. Question.—In the mission statement for the proposed National African American museum, the Smithsonian states that the museum will also "disseminate information, encourage scholarship and train African American museum professionals." How much in federal funding do you estimate will be spent annually on these programs?

Answer.—The Smithsonian has a long history of training museum professionals through its internship and fellowship programs. African Americans seeking training will be encouraged to apply to these existing programs.

7. Question.—In the mission statement for the proposed museum, the Smithsonian also states that the museum "will actively travel exhibitions and public programs." What is your estimate of the amount to be spent annually for such travel activities?

Answer.—The Smithsonian has historically traveled exhibitions through the Smithsonian Institution Traveling Exhibition Service (SITES). SITES staff also assist museum professionals in program planning. The museum will take advantage of this resource. Funds for traveling exhibitions are raised.

The museum will also work with the Smithsonian Associates program to take programs to other communities.

8. Question.—Will the travel referred to in question 7 be limited to the United States, or do you contemplate international travel as well?

Answer.—While the majority of the Museum's work will be in the United States; libraries, archives, and museums throughout the world have collections which relate to the African American experience.

9. Question.—In this same mission statement, the Smithsonian proposes that the African American museum will assume the "responsibility" to "provide the scholarly community and the general public physical and intellectual access to the collections through exhibitions, media, publications, programs, symposia, library, and archival materials." What is your estimate of the annual cost to the taxpayers of these activities?

Answer.—The activities described are intrinsic to the mission and goals of all museums. The scope of work is determined by a museum's budget and staff size. Program planning when authorized, will indicate the incremental growth needed if the museum is to achieve these goals.

10. Question.—In the mission statement, I note that "through an aggressive acquisitions program, based on pledges already made, the collections will grow . . ." Please provide a list of all such pledges.

Answer.—The museum has not acquired formal "pledge" letters. We have engaged in a collections identification effort and we have a potential donor list of approximately 3,000. Though some potential donors have requested confidentiality, please find attached some letters of intent.

11. Question.—Can the aforementioned pledged items be acquired for other Smithsonian museums, including the Anacostia Museum, the American History Museum and the African Art Museum. Or have these pledges been made conditioned on the creation of a separate National African American museum?

Answer.—The staff of the National African American Museum project have only approached potential donors who have contacted our offices, or those who have been referred to us by other collectors. Most are aware of other Smithsonian Museums and indeed they are familiar with museums in their regions, but they would like to place their collections in a National African American Museum at the Smithsonian.

12. Question.—Is it correct that in the mission statement, the Smithsonian indicates that the African American museum will be a place for assemblage of materials relating to "history and culture of African American."

Answer.—It is correct that the African American Museum will be a place for assemblage of materials relating to history and culture of African Americans.

13. Question.—Is it correct that the Smithsonian advertises the Anacostia museum as "A Smithsonian Museum of African American History and Culture?"

Answer.—The Smithsonian describes the Anacostia Museum as a "Museum of African American History and Culture" which deals with the geographic area of Washington, D.C. and the Upper South.

14. Question.—If there already exists a Smithsonian "Museum of African American History and Culture," why is another one needed.

Answer.—The National African American Museum has a broader mission. It will also work collaboratively with the Anacostia Museum.

15. Question.—A Smithsonian shuttle bus carries the sign, "Take a Journey into History: Free Shuttle Service to the Anacostia Museum, A Smithsonian Museum of African American History and Culture." How long has this shuttle service been in operation?

Answer.—For ten years, the Anacostia Museum requested federal funds for the acquisition of a shuttle bus because visitors to the Smithsonian museums on the Mall were having difficulty getting to Anacostia. The shuttle service has been in operation for 2½ years.

16. Question.—Please supply a) the average number of visitors using this shuttle service on any given day; b) the average number of total visitors visiting the Anacostia museum on any given day; c) the total number of visitors who have used the shuttle service for each month the service has been in operation.

Answer.—The Anacostia Museum has broadened the use of the bus in order to facilitate access to their site. It picks up school groups, senior citizens and community groups who cannot afford transportation. Mall use is most successful during the Folklife Festival and well publicized Mall events. In 1993, 47,542 visitors visited the Anacostia Museum. As of the end of August 1994, 29,244 visitors visited the Anacostia Museum.

17. Question.—In response to question #5 in my letter of June 8, 1994, you note that "At present, 4 full-time permanent Federal employees are involved in the African American museum project. In addition, 4 temporary employees are involved in planning activities." Regarding these employees: a) how long have the full-time permanent Federal employees been involved with the African American museum project? b) how long have the temporary employees been involved with the African American museum? c) what is the total of federal funds spent on compensation for these individuals? And, d) what is the total of privately-donated funds, if any, used for this purpose?

Answer.—a) The 4 current full-time permanent Federal employees have been involved with the National African American Museum project since March 1992, July 1992, January 1994, and March 1994 respectively. b) Temporary employees have been involved with the National African American Museum project since its inception. The current full-time permanent Federal employees all started out as temporary employees. c) For fiscal year 1994 the total projected compensation for the full-time permanent Federal employees is $266,000.00. d) No privately donated funds have been used for employee compensation.

18. Question.—In as precise detail as possible, what have these employees accomplished while working towards the establishment of the National African American Museum?

Since 1991, the National African American Museum Project (NAAMP) staff members have traveled around the country—to New York, Vermont, Georgia, California, Virginia, South Carolina, Colorado, Illinois, Ohio, Tennessee, Florida, Minnesota, and West Virginia—meeting with collectors and artists. About 100,000 objects and documents have been identified, including: personal and professional papers, diaries, nineteenth and twentieth century studio portraits, art works, first edition books, playbills and broadsides, costumes, furniture, folk art, textiles, musical instruments, ceramics, images and documents from the Civil Rights Movement, as well as film, video, and audio recordings, and professional film and recording artists' collections. The staff maintains a correspondence with these collectors, continually updating them as to the project's status, as well as a computerized collection database and research files.

NAAMP has come to be seen as a resource center for matters relating to African American culture and history. Since 1992, more than 2000 people, from the United States and abroad, have called for information about research material, collections, and other African American institutions. The staff provide information and make appropriate referrals.

In February 1993, NAAMP established a series of public programs, including lectures,

book readings, and films, which continue with in conjunction with the new exhibition (see below). Orator, NAAMP's quarterly newsletter, began publication in March 1993, providing information about the museum project, collectors we've identified, hints for preserving collections, and African American museum events around the country. NAAMP staff write, assign and edit articles, locate photographs and illustrations, update timely information, negotiate with printers and designers, and distribute the newsletter (in-house). Newsletter readership has grown from 2500 to 15,000 in less than two years.

On August 15, 1994, NAAMP opened its first exhibition, Imagining Families: Images and Voices. Though the staff is small, the exhibition was produced in a mere seven months. NAAMP staff conceptualized and wrote the exhibition script, contacted the artists, arranged for shipment of materials, supervised the exhibit designer and laborers, wrote and produced the catalogues and brochures, and devised educational and public programs to accompany the exhibition. Imagining Families has received enthusiastic response from both the press and the public.

NAAMP has completed most of the content planning for the proposed museum. In 1992, NAAMP began a series of task forces—composed of museum professionals, educators, and community representatives, from across the country. Working with the staff, the committees define the museum's research, collecting, and exhibition objectives in the ares of media, art history, history, performing arts, diaspora issues, biography, and the literary arts. Meetings were also held to discuss collections management, education and interpretation, research, administration and budget, marketing and development, and facilities planning. The staff continues to collaborate with the task force members; one result of this collaboration—the development of an expansive mission statement for the future museum.

19. Question.—What is the total projected number of employee positions the National African American Museum will be required by the Smithsonian to have during the first five years of the museum's operation?

Answer.—The types of projects which will need to be undertaken during the next five years will be identified by program planning. We anticipate hiring temporary and or contractual staff with specialized skills on a short-term basis.

20. Question.—Please identify as precisely as possible projected salary levels (in individual annual dollar amounts) for positions the National African American Museum will have during its first five years of operation.

Answer.—We cannot identify positions and salaries until the planning process reveals the task which we will have to undertake.

21. Question.—Please identify the amount of federal funding for salaries which can be reasonably expected during each of the museum's first five years of operation.

Answer.—Programming planning will reveal the amount of trust and federal salaries needed for the first five years of the museum operation. The staff is prepared to fund-raise for private monies and employees with specialized skills might be detailed to the museum to assist with planning efforts.

22. Question.—In your letter of June 8th you refer, on several occasions, to current African-American programming and collections. Please identify all such current African-American programming and collections.

Answer.—The National African-American Museum Project has recently produced "Imagining Families: Images and Voices," a photographic exhibition featuring 15 artists and how they interpret the relationship that exists between themselves, their families and the broader American society. The works that compose "Imagining Families" represent a sample of what could possibly be included in the proposed Museum's collections. In concert with "Imagining Families," installed in the south gallery of the Arts and Industries Building, Smithsonian Institution, we have developed a series of educational and public programs to enhance the public's understanding of the exhibition's over-arching themes. (See Attachment 22–A).

The National Museum of American History, American Art, the Portrait Gallery, the Air and Space Museum, Cooper-Hewitt, and Hirshhorn especially include African Americans and other ethnic Americans in their interpretations of history and art.

23. Question.—Will all current African-American programming and collections be consolidated in the proposed African-American museum? If not, what collections and programs will be housed or handled separately?

Answer.—The Institution currently anticipates that the National African-American Museum will collaborate and share resources with all of its other museums.

24. Question.—Will the National African-American Museum be subject to the same oversight by the Board of Regents as are all other museums and activities of the Smithsonian?

Answer.—The National African-American Museum will be subject to the same oversight by the Board of Regents as are all other museums and activities of the Smithsonian.

25. Question.—I sense that you misunderstood question #8 in my letter of June 8th. Let me restate it: The Smithsonian report (issued in May of this year, entitled, "Willful Neglect: The Smithsonian Institution and U.S. Latinos") recommended, among other actions, the establishment of one or more museums portraying the achievements of Americans of Hispanic descent. What are the Smithsonian's plans in regard to meeting this group's goals—especially in the sense of establishing a separate museum?

Answer.—The Smithsonian is engaged in a study that will provide a variety of strategies to address the issues raised in "Willful Neglect: The Smithsonian Institution and U.S. Latinos." The Regents are not currently entertaining a proposal to establish "one or more museums portraying the achievements of Americans of Hispanic descent."

26. Question.—In your response of June 8th, you made only partial response to question #11. Let me restate that question: How will the Smithsonian deal with requests by other groups—e.g., the Nation of Islam, or other "black separatist" groups, or members or adherents to such groups, who may desire to participate in the museum's planning, operation, programs or activities? What problems will you encounter when these groups seek to use the museum to honor any of its leaders?

Answer.—The National African American Museum is committed to telling the whole story of African American History. That story includes the issues of public and private citizens of all ethnicities. The current planning which resulted in the mission statement quoted herein was developed with the cooperation of scholars throughout the country advocating broad and diverse positions. Groups will not control the content of the museum's programs and exhibitions. The Smithsonian Institution will have the final say on any and all programs.

27. Question.—Will the Smithsonian permit any taxpayer funds, allocated to this museum, to go directly or indirectly to the Nation of Islam or any other "black separatist" group?

Answer.—Taxpayer funds will be used to develop balanced exhibitions and programs. There are no plans for the Smithsonian to fund any groups for any purpose.

28. Question.—In the 102nd Congress, your proposal for a National African American Museum was approved by the U.S. Senate, but then killed by the U.S. House of Representatives. In your judgement, why did the House kill this legislation?

Answer.—The National African American Museum legislation stalled in the Public Works Committee because some members advocated the construction of a new facility as opposed to use of the Arts and Industries Building. There was however, agreement that there should be a National African American Museum.

29. Question.—Please provide a copy of the Smithsonian budgets for 1993 and 1994, including budgets for each museum under the purview of the Smithsonian, and the total amount of federal funds involved in each.

Answer.—Please see attachments.

Senator Helms, I am hopeful that this information will helpful to you.

Sincerely,

CONSTANCE B. NEWMAN,
Under Secretary.

Mr. SIMON. We are not talking about Federal dollars here. We are talking about whether or not we want to go ahead and have a museum that Smithsonian says we should have. I believe in their judgment on this. I think they are right. I hope we do the right thing.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from North Carolina.

Mr. HELMS. I do not believe I used all my time. Let me ask the Chair to do me the favor of having the clerk to read the lines 10 through 12 on page 11 of Senator SIMON's bill.

The PRESIDING OFFICER. The clerk will read that portion of the amendment.

Mr. SIMON. I understand that is standard.

Mr. HELMS. Mr. President, I believe I have the floor.

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

Will the Senator repeat the section of the bill he would like read?

Mr. HELMS. Pardon me.

The PRESIDING OFFICER. Will the Senator repeat the section of the bill he would like read?

Mr. HELMS. Lines 10, 11, and 12 on page 11.

The PRESIDING OFFICER. The clerk is informing the Chair that he is unable to find the section designated by the Senator from North Carolina.

Mr. HELMS. I acknowledge that I am in fact reading from Senator SIMON's bill rather than the amendment. So the lines in the bill would not necessarily match those in the amendment. Let me read the last 3 lines of the Senator's amendment:

There are authorized to be appropriated such sums as may be necessary only per

costs directly relating to the operation and maintenance of the museum.

Senators know what that means.

Such sums as may be necessary only for costs directly relating to the operation and maintenance of the museum.

I have a proposal for Senator SIMON. I will read it into the RECORD and then pass the proposed modification of his amendment to him and maybe we can do business. I propose that he add this to his amendment:

Notwithstanding any other provision of law, no funds not previously appropriated shall be available for the operation of, maintenance of, activities of, programs of, or the salaries and expenses of the personnel of the National African American Museum.

I do not expect him to answer now. But I will pass this proposal to him. We can talk about it tomorrow.

Mr. President, I yield the floor.

Mr. SIMON. Mr. President, since I did not use all of the time, let me respond very briefly. Obviously, they are going to use the money they have now to cover their entire operation, and they are not asking for any additional sums. The amendment offered by the Senator, as I heard it, would apparently preclude that.

If my colleague from North Carolina will yield so I may respond, if we were to knock out those last three lines, I assume you would be a supporter of this amendment. I ask my friend from North Carolina.

Mr. HELMS. Mr. President, I will say to the Senator that you would be going some way toward working out the problem by accepting my modification to assure that only private funds will be used to operate this museum. But I am not in a position to say right now at 3 minutes past 11 that this one modification will make the amendment totally satisfactory. But it will go some way.

The modification I proposed will permit the museum to use previously appropriated funds. But, after that, only private funds shall be used.

Mr. SIMON. They have $475,000 already appropriated, and I think they should use that for planning—for planning how they finance it. We are not asking that the Smithsonian get additional funds for the operation of the museum.

Mr. HELMS. If the Senator will yield—is the Senator trying to dispose of my proposed modification?

Mr. SIMON. It sounded like the modification went beyond that. But maybe we can work something out. I would love to work something out and have a Helms-Simon amendment tomorrow joined by Senator CAROL MOSELEY-BRAUN.

Mr. HELMS. Mr. President, if that happens, a lot of people will faint. Well, in any case, as to the Washington Post editorial, it is something akin to being flogged with a wet noodle to have the Washington Post criticize me, particularly when they do not know how to get the facts straight.

I thank the Chair. I yield the floor.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, thank you. Thank you very much.

I would just encourage the Senator from North Carolina and my senior Senator from Illinois to get together. We can all get together and work on this. I think that there would be joy in the hearts of people to see a Simon-Helms-Moseley-Braun amendment as opposed to fainting. I would encourage the Senator from North Carolina to work with the Senators from Illinois in behalf of a consensus on this bill. It is an important piece of legislation. I would like very much—I think this Chamber would like very much—to have an amenable resolution of it.

I yield the floor.

Mr. SMITH. What is the order—much business?

The PRESIDING OFFICER. The Chair will say to the Senator that the Senate is in morning business with Senators permitted to speak for up to 10 minutes each.

Mr. SMITH. I ask to be recognized under morning business.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH. I thank the Chair.

(The remarks of Mr. SMITH pertaining to the introduction of S. 2533 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SOCIAL SECURITY DOMESTIC EMPLOYMENT REFORM ACT OF 1994—CONFERENCE REPORT

Mr. MOYNIHAN. Mr. President, I submit a report of the committee of conference on H.R. 4278 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4278) to make improvements in the old-age, survivors, and disability insurance program under title II of the Social Security Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 6, 1994.)

Mr. MOYNIHAN. Mr. President, I am pleased to bring to the floor today the conference report on H.R. 4278, the Social Security Domestic Employment Reform Act of 1994. Earlier today the House voted to approve the report by a recorded vote of 423 to 0.

Let me begin by thanking the distinguished ranking minority member of the Finance Committee, Senator PACKWOOD, for his assistance in bringing this bill to enactment.

Indeed, I would be remiss if I failed to note that there has been remarkable support for this legislation on both sides of the aisle. Senators will recall that on May 12 of this year H.R. 4278 was passed by the House of Representatives by a recorded vote of 420 to 0. It passed the Senate on May 25 by unanimous consent.

This conference agreement, which the House and Senate conferees concluded just late yesterday, updates and increases the $50 wage threshold used since 1951 to determine whether an employer must pay Social Security taxes on wages paid to domestic employees.

It repeals the current requirements for quarterly filing of domestic employment taxes. Henceforth, employers will be able to file annual reports of the domestic wages they have paid during the year at the same time they file their personal income tax returns.

Finally, this legislation exempts from Social Security taxes the wages paid to domestic workers under the age of 18, with the exception of a young worker whose principal employment is domestic service. Thus it completely exempts wages paid to the teenager who is the occasional babysitter or who mows the neighbor's lawn.

As events of the last 2 years have shown, these changes are long overdue. The Department of the Treasury estimates that fewer than one-quarter of employers report the wages they pay to their domestic employees. This widespread problem of noncompliance in payment of Social Security taxes for domestic employees was brought to the attention of the public by the unhappy experience of several nominees for high government office.

But the most unfortunate effect of the current law is the fact that many thousands of domestic workers have not been receiving the Social Security wage credits they have rightfully earned. This is a most serious denial of fairness that cannot go untended.

The $50-per-quarter threshold for domestic employees was adopted in 1950, some 44 years ago. At a hearing by the Committee on Finance on July 21, 1993, every witness who appeared supported

increasing the threshold and simplifying the wage reporting requirements. Among those testifying was Robert J. Myers, Chief Actuary of the Social Security Administration for 23 years, who told the committee that legislation to this effect would greatly improve coverage compliance for domestic workers. The committee heard similar testimony from the Department of the Treasury.

Under the conference report, beginning in 1995 the threshold will increase to $1,000. In subsequent years the threshold will be adjusted for growth in wages, with increases occurring in $100 increments.

In addition, the conference report simplifies the way employers can pay the taxes they owe on wages they pay to domestic employees. Currently, these employers must sit down every 3 months, figure their payroll taxes, and write a check to the IRS for the amount due. Under the conference report, for 3 years—1995, 1996, and 1997—employers will be able to pay the payroll taxes they owe on wages paid to their domestic employees at the end of the year, when they file their personal income tax returns. In subsequent years, employers will be allowed either to increase the rate of withholding from their own salaries to cover their anticipated payroll tax liability on wages paid to domestic employees or to make quarterly estimated tax payments.

The conference report includes other improvements in the Social Security program.

It prohibits payment of Social Security benefits to individuals who are found to be not guilty of an offense by reason of insanity, but who are, as a result of such a verdict, confined in a public institution. This extends to these individuals the same rule that applies to Social Security beneficiaries who are confined in correctional facilities after having been convicted of a felony offense.

There are also two provisions concerning overpayments. One will help prevent them from happening in the first place, and the second will allow the Social Security Administration to use additional procedures to recover overpayments after they have been made.

More specifically, nursing homes will be asked to help prevent overpayments that sometime occur when Supplemental Security Income recipients are first admitted by requiring the nursing home to report the admission of these recipients within 2 weeks of the date of admission. Under the law, a SSI recipient's benefit is reduced to $30 per month while in a nursing home, because the cost of care is being paid by Medicaid.

The conference report also strengthens SSA's ability to recover overpayments by giving the agency the same authority to use certain debt collection tools that are currently used by other Federal agencies. Under this provision, the Social Security Administration will be able to recover debts owed by former Social Security beneficiaries by withholding other Federal payments to which the debtor is entitled, by reporting delinquent debtors to credit reporting agencies, and by hiring private debt collection agencies to recover outstanding obligations.

The conference report assures the solvency of the disability insurance program by allocating a greater portion of Social Security taxes to the Disability Insurance Trust Fund. This reallocation was necessitated by the recent growth in the disability rolls, a phenomenon which is not yet fully understood. The conferees agreed to require the Commissioner of Social Security to conduct a study of the rising costs of the disability program and to report to the Congress by October 1, 1995, on the findings of the study and any recommendations for legislative changes.

Mr. President, passage of this legislation is long overdue. I ask that my colleagues join me in supporting the conference report on H.R. 4278.

Mr. President, I ask unanimous consent that the conference report be agreed to; that the motion to reconsider be laid on the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

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

So the conference report was agreed to.

Mr. MOYNIHAN. Mr. President, may I say, indeed, at long last, after 44 years, we have decriminalized babysitting.

JOBS THROUGH TRADE EXPANSION ACT OF 1994—CONFERENCE REPORT

Mr. SARBANES. Mr. President, I submit a report of the committee of conference on H.R. 4950 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4950) to extend the authorities of the Overseas Private Investment Corporation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 4, 1994.)

Mr. SARBANES. Mr. President, I want to thank my colleagues on both sides of the aisle for allowing us to take up and pass this conference report. H.R. 4950, the Jobs Through Trade Expansion Act of 1994, is a bill we can all support, although it has taken a good deal of work to steer it through the procedural hurdles that have faced us over the last few days. I think the fact that we have managed to get to this point in a very short time is a testament to the broadly recognized importance and value of this piece of legislation.

Let me explain briefly what this bill would do. First, and perhaps most urgently, it would extend the operating authority of the Overseas Private Investment Corporation for another 2 years. As many of you know, OPIC is one of the most cost-effective instruments for promoting private investment in developing countries and transitional economies. Attracting foreign business investment is one of the highest priorities of countries like South Africa and the New Independent States of the former Soviet Union, and OPIC is a key player in that area. OPIC's authority to issue insurance and guarantees expired on September 30, however, and without this legislation they would not be able to continue their much-needed mission.

A second major provision of this conference report authorizes appropriations for the Trade and Development Agency. By funding feasibility studies and other development-related activities that would involve the use of U.S. exports, the TDA simultaneously promotes economic development and the export of U.S. goods and services to developing countries It is estimated that the TDA returns to the U.S. economy $25 for every dollar disbursed. In carrying out its mission the TDA has received a well-deserved reputation for effectiveness and success.

Title III of the conference report reauthorizes export promotion programs within the International Trade Administration of the U.S. Department of Commerce, while title IV establishes new mechanisms for the promotion of U.S. environmental technologies. Such mechanisms will not only promote U.S. jobs by expanding U.S. exports, but also will assist foreign countries in protecting and cleaning up their natural environments, which of course benefits all of us.

Finally, the conference report directs the United States Agency for International Development [USAID], in conjunction with the Department of Commerce's Patent and Trademark Office and other Federal agencies, to establish a program of training and technical assistance in intellectual property protection. This would be yet another program that benefits the United States while contributing to international economic development.

Mr. President, I want to underscore the importance of this legislation and once again to thank my colleagues for their assistance in seeing it through to final passage. I would particularly like to commend my colleague in the House, Republican SAM GEJDENSON, for all his hard work inputting this package together. The bill he introduced on the House side was broader in scope than the measure we were able to move through the Senate, and I am pleased that we were able to accept many of the House provisions in conference.

Mr. President, I ask unanimous consent that the conference report be agreed to; that the motion to reconsider be laid on the table; and that statement thereon appear in the RECORD at the appropriate place as though read.

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

So the conference report was agreed to.

Mr. MCCAIN. Mr. President, I rise today to offer my strong support for the amendment offered by Senator SIMON to establish a National African-American Museum within the Smithsonian. The amendment before us today represents the culmination of many years of hard work on the part of many people both in and out of Congress. I am very proud to have the opportunity to be a part of this important effort.

Throughout our Nation's history African-Americans have made enormous contributions to every aspect of American life. While African-Americans have made vast contributions to our society, many of those contributions have gone unrecognized or ignored.

Today, we have a unique opportunity to correct this injustice and properly acknowledge and celebrate the vast contributions of African-Americans who have made contributions to our Nation's military, politics, law, religion, education, and many other areas which have a bearing on our daily lives. With the enactment of this legislation, we have an opportunity today to fully recognize the many contributions of African-Americans to our Nation. I urge my colleagues not to let this opportunity pass.

Some may argue that this museum will highlight the differences among the people of our Nation harming our efforts to create a more harmonious society. Mr. President, we are one Nation made up of many parts. The diversity of our Nation is its strength. The history of the African-American is the history of America. The two are inseparable. Through the establishment of this museum we are celebrating our Nation's history as a melting pot of different peoples. This museum will ensure the preservation of an important aspect of American history.

I believe this is an extremely worthy effort. Nevertheless, I share my colleagues concerns about the cost of this or any other Federal legislation. Our $4 trillion deficit demands that we exercise prudent fiscal judgment in all of our legislation.

Mr. President, I believe that the effort we are pursuing today not only meets the goal of recognizing the achievements of a people whose contributions to our society are immeasurable but it also meets our goal of fiscal responsibility.

It should be noted that it is the intention of the sponsors of the legislation, it supporters outside of Congress and the Smithsonian to seek private donations to fund as much of the museum's activities as possible. In fact, the legislation restricts the use of appropriated funds to operation and maintenance only. There is strong public support for this museum and we must draw upon this support to make the museum a reality.

Opponents of this legislation have argued that if most of the activities of the museum will be privately funded, then why is it necessary to authorize any Federal funding for the museum. These arguments are misleading and false.

Mr. President, no museum within the Smithsonian is wholly operated by private donations. While proponents of this bill intend to do everything possible to raise private funds for the museum, it should not be forced to meet a higher standard than any other museum on the mall. Such arguments are at best are spurious and at worst harken back an inequality which African-Americans have been fighting against for hundreds of years.

In one form or another this bill has been reported by the rules committee twice, passed the Senate once and the House once. Throughout this process there has been little or no opposition to the bill. It has 30 cosponsors and enjoys broad bipartisan support.

The truth is that this museum is not controversial and this bill should be passed immediately. Those who truly have cost in mind should realize that the longer we stall this bill the more expensive it will be to establish the museum later. As we delay passage of this bill, the museum will lose valuable collections and costs will increase. More importantly, we as a nation will continue to lose our history which is irreplaceable.

Dr. Carter G. Woodson a noted African-American historian said "that History is being daily made, but it ceases to be history unless it is recorded and passed on to coming generations." This museum will ensure the words of Dr. Woodson were not pointless.

Museums play an important role in educating our society. This museum will serve to better educate all Americans as to the diversity and richness of our history. Lately, there has been an increased focus on race relations.

Racism is a concern of every member of this body. I sincerely believe that racism exists in an atmosphere where people are unaware of the contributions that others have made to our society. While I am not so naive as to believe that this museum will end racism, I believe it offers us a great opportunity to help dispel one of its root causes—ignorance.

Mr. President, I don't claim that this legislation will resolve the problems facing the African-American community in our Nation. But if we cannot enact legislation to establish a simple museum, how can we ever be expected to resolve the difficult and more contentious issues which beset minority communities throughout our Nation. I urge my colleagues to join me in supporting this legislation.

MORE THAN MANDATES ARE UNFUNDED

Mr. LAUTENBERG. Mr. President, there has been a lot of talk about unfunded mandates here in the Congress and throughout the country. It's a serious problem and I have cosponsored legislation designed to address it.

But more than mandates are unfunded in this country. Pension funds for public employees, especially those who so successfully serve State and local governments, are certainly underfunded and may become unfunded if we fail to deal with this problem.

A Wall Street Journal article of April 6, 1994 quantified the problem: "State and local pension plans across the country are more than $125 billion short of the money they will need to meet their pension promises." The article goes on to suggest that various States are adopting various strategies to deal with the problem through tax increases or benefit cuts or some combination of the two. Neither of those are very desirable options but they are better than the alternative: "In some dilatory States, the underfunding problem may worsen," the article warns. The article then goes on, I'm afraid, to identify my own State as an offender, saying that "a prime example is New Jersey, where Gov. Christine Todd Whitman is hoping to save about $660 million through July 1995 by tinkering with retirement-plan funding."

My point, Mr. President, is that no State is doing an adequate job of protecting the pension interests of its employees. More than that, I do not believe the Federal government has done a good job of protecting the integrity of those State pension funds either. There is a national interest operating here and we have to step up to it. Just as we created ERISA to deal with the problem of private pension underfunding, we need to look at legislation to protect public employee pension rights through PERISA, the Public Employees Retirement Security Act.

We can't break the promise that has been made to the people who make government function. We can't allow dedicated public servants to risk financial ruin because their pensions aren't there when they are ready to retire. We can't endanger the fiscal stability of governments throughout this country by allowing unfunded pension liabilities to continue to mount.

So, Mr. President, I am going to urge my colleagues in the Congress and my friends in the administration to make this a high priority next year. Working together, we should evaluate both the scope of the problem and the viability of various proposals to fix it. This is a problem we can and should and must address.

UNITED STATES POLICY TOWARD HAITI

Mr. WELLSTONE. Mr. President, I rise to express my support for this resolution. I believe it provides responsible, thoughtful policy guidance to the administration, and effectively signals congressional authorization for the U.S. military effort there.

I have said consistently that I believe the administration should have sought prior congressional authorization for military action in Haiti. I believe President Clinton made a mistake in not seeking such an authorization, and that Federal law and the Constitution require it. This resolution notes that the President should have sought and welcomed congressional approval before deploying United States forces in Haiti. That is true. But now that we are there, and have made a firm commitment to restore President Aristide to power, we must support our congress and professional troops in this historic effort.

I believe the detailed report required of the administration regarding the mission and rules of engagement of our troops, and the human rights situation there, along with an analysis of aid being provided to Haiti by the United States and other western donors, will help us in setting standards for postregime United States policy there. The human rights and security situation must be monitored carefully during the frustration, and requiring that these reports be made will help us enormously in that effort.

I urge my colleagues to support the resolution.

HAITI

Mrs. BOXER. Mr. President, I intend to vote against the pending resolution concerning Operation Uphold Democracy. I believe strongly that any legislation approved by the Senate should include a date certain for military withdrawal. While I support many aspects of this resolution, I feel compelled to oppose it as a matter of principle.

I support our troops in Haiti and am extremely relieved that the operation to date has been so successful. However, the situation in Haiti remains a dangerous one, and every military analyst I have heard agrees that the longer our troops stay, the greater the likelihood that they will suffer casualties. I do not want that, and the people of California do not want it either.

I am also concerned about the growing financial cost of Operation Uphold Democracy. Some estimates of the total cost range as high as $1 billion. But with an open-ended troop commitment, we have no way of accurately calculating the total cost of the operation. If this occupation lasts month after month, costs could soar well into the billions.

I urge my colleagues to oppose the resolution.

EXPLANATION OF ABSENCE

Mr. SASSER. Mr. President, I would like to submit a statement to the Senate regarding the vote for which I was absent earlier today.

Unfortunately, I was unable to make the vote today because of long-standing commitments to meet with law enforcement officials in Tennessee.

I supported this legislation when it passed the Senate.

It is an important step in the reform of our system of lobbying. S. 349 would ban gifts to Members of Congress and their staffs and would require disclosure of lobbying activities.

It was clear, though, that cloture would not be achieved today. In addition, it was clear that even if it had been the debate would have been extended over most, if not all, of the available 30 hours.

I would have welcomed that opportunity to fully discuss the important questions that have been raised over the provisions which were added in the conference—particularly registration requirements. It is important that in efforts to revise lobbying activities we must also be mindful of the need to permit full expression of citizen opinion through a wide variety of grassroots organizations.

I am very proud of my record of attendance, which was the last time I checked just about 99 percent.

RESEARCH AND EDUCATION PROVISIONS IN H.R. 4217

Mr. LEAHY. In the absence of a conference report accompanying H.R. 4217, I would like to clarify the Senate's intent in regards to the agricultural research and education provisions in this legislation.

Sections 251 and 252 of the bill give the Secretary broad authority to reorganize the Department's research and education programs. The only limitation on the Secretary's authority is the mandated establishment of a new Cooperative State Research, Education, and Extension Service.

Section 252 instructs the Secretary to streamline the research program staff in order to minimize duplication and maximize coordination of State and Federal research and extension programs. The bill neither mandates a particular plan for streamlining staff nor places any limits on the Secretary's authority to proceed.

The Senate, in S. 1970 and the accompanying report language, made clear its expectation that the Secretary will streamline the research staff by creating a single program policy and coordination staff.

Nothing in the language of H.R. 4217 would prevent the Secretary from creating such a staff. In fact, section 252 clearly gives the Secretary that authority. Furthermore, the objectives described in section 252 closely mirror those found in the report language accompanying S. 1970 (p. 23–24).

As the Secretary moves forward to meet these objectives, the Senate expects that the Department will maintain strong local and State participation in priority setting and program development decisions.

EXPANDING THE BOUNDARIES OF THE RED ROCK CANYON NATIONAL CONSERVATION AREA

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 657, H.R. 3050, relating to Red Rock Canyon National Conservation Area, that the bill be read a third time, passed, the motion to reconsider laid upon the table, any statements to appear at the appropriate place in the RECORD as if read.

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

The bill (H.R. 3050) was ordered to a third reading, was read the third time, and passed.

NATIONALITY AND NATURALIZATION AMENDMENTS OF 1994 IMMIGRATION AND NATIONALITY TECHNICAL CORRECTIONS ACT OF 1994

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (H.R. 783) to amend title III of the Immigration and Nationality Act to make changes in the laws relating to nationality and naturalization.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 783) entitled "An Act to amend title III of the Immigration and Nationality Act to make changes in the laws relating to nationality and naturalization", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Immigration and Nationality Technical Corrections Act of 1994".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—NATIONALITY AND NATURALIZATION

Sec. 101. Equal treatment of women in conferring citizenship to children born abroad.

Sec. 102. Naturalization of children on application of citizen parent.

Sec. 103. Former citizens of United States regaining United States citizenship.

Sec. 104. Intent to reside permanently in the United States after naturalization.

Sec. 105. Terminology relating to expatriation.

Sec. 106. Administrative and judicial determinations relating to loss of citizenship.

Sec. 107. Cancellation of United States passports and consular reports of birth.

Sec. 108. Expanding waiver of the Government knowledge, United States history, and English language requirements for naturalization.

Sec. 109. Report on citizenship of certain legalized aliens.

TITLE II—TECHNICAL CORRECTIONS OF IMMIGRATION LAWS

Sec. 201. American Institute in Taiwan.

Sec. 202. G-4 special immigrants.

Sec. 203. Clarification of certain grounds for exclusion and deportation.

Sec. 204. United States citizens entering and departing on United States passports.

Sec. 205. Applications for visas.

Sec. 206. Family unity.

Sec. 207. Technical amendment regarding one-house veto.

Sec. 208. Authorization of appropriations for refugee assistance for fiscal years 1995, 1996, and 1997.

Sec. 209. Fines for unlawful bringing of aliens into the United States.

Sec. 210. Extension of visa waiver pilot program.

Sec. 211. Creation of probationary status for participant countries in the visa waiver pilot program.

Sec. 212. Technical changes to numerical limitations concerning certain special immigrants.

Sec. 213. Extension of telephone employment verification system.

Sec. 214. Extension of expanded definition of special immigrant for religious workers.

Sec. 215. Extension of off-campus work authorization for students.

Sec. 216. Eliminating obligation of carriers to detain stowaways.

Sec. 217. Completing use of visas provided under diversity transition program.

Sec. 218. Effect on preference date of application for labor certification.

Sec. 219. Other miscellaneous and technical corrections to immigration-related provisions.

TITLE I—NATIONALITY AND NATURALIZATION

SEC. 101. EQUAL TREATMENT OF WOMEN IN CONFERRING CITIZENSHIP TO CHILDREN BORN ABROAD.

(a) IN GENERAL.—Section 301 of the Immigration and Nationality Act (8 U.S.C. 1401) is amended—

(1) by striking the period at the end of paragraph (g) and inserting "; and", and

(2) by adding at the end the following new paragraph:

"(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.".

(b) WAIVER OF RETENTION REQUIREMENTS.—Any provision of law (including section 301(b) of the Immigration and Nationality Act (as in effect before October 10, 1978), and the provisos of section 201(g) of the Nationality Act of 1940) that provided for a person's loss of citizenship or nationality if the person failed to come to, or reside or be physically present in, the United States shall not apply in the case of a person claiming United States citizenship based on such person's descent from an individual described in section 301(h) of the Immigration and Nationality Act (as added by subsection (a)).

(c) RETROACTIVE APPLICATION.—(1) Except as provided in paragraph (2), the immigration and nationality laws of the United States shall be applied (to persons born before, on, or after the date of the enactment of this Act) as though the amendment made by subsection (a), and subsection (b), had been in effect as of the date of their birth, except that the retroactive application of the amendment and that subsection shall not affect the validity of citizenship of anyone who has obtained citizenship under section 1993 of the Revised Statutes (as in effect before the enactment of the Act of May 24, 1934 (48 Stat. 797)).

(2) The retroactive application of the amendment made by subsection (a), and subsection (b), shall not confer citizenship on, or affect the validity of any denaturalization, deportation, or exclusion action against, any person who is or was excludable from the United States under section 212(a)(3)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)) (or predecessor provision) or who was excluded from, or who would not have been eligible for admission to, the United States under the Displaced Persons Act of 1948 or under section 14 of the Refugee Relief Act of 1953.

(d) APPLICATION TO TRANSMISSION OF CITIZENSHIP.—This section, the amendments made by this section, and any retroactive application of such amendments shall not effect any residency or other retention requirements for citizenship as in effect before October 10, 1978, with respect to the transmission of citizenship.

SEC. 102. NATURALIZATION OF CHILDREN ON APPLICATION OF CITIZEN PARENT.

(a) IN GENERAL.—Section 322 of the Immigration and Nationality Act (8 U.S.C. 1433) is amended to read as follows:

"CHILD BORN OUTSIDE THE UNITED STATES; APPLICATION FOR CERTIFICATE OF CITIZENSHIP REQUIREMENTS

"SEC. 322. (a) A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General that the following conditions have been fulfilled:

"(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

"(2) The child is physically present in the United States pursuant to a lawful admission.

"(3) The child is under the age of 18 years and in the legal custody of the citizen parent.

"(4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).

"(5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years—

"(A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

"(B) a citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

"(b) Upon approval of the application (which may be filed abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

"(c) Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.".

(b) CONFORMING AMENDMENT.—Subsection (c) of section 341 of such Act (8 U.S.C. 1452) is repealed.

(c) CLERICAL AMENDMENT.—The item in the table of contents of such Act relating to section 322 is amended to read as follows:

"Sec. 322. Child born outside the United States; application for certificate of citizenship requirements.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act.

SEC. 103. FORMER CITIZENS OF UNITED STATES REGAINING UNITED STATES CITIZENSHIP.

(a) IN GENERAL.—Section 324 of the Immigration and Nationality Act (8 U.S.C. 1435) is amended by adding at the end the following new subsection:

"(d)(1) A person who was a citizen of the United States at birth and lost such citizenship for failure to meet the physical presence retention requirements under section 301(b) (as in effect before October 10, 1978), shall, from and after taking the oath of allegiance required by section 337 be a citizen of the United States and have the status of a citizen of the United States by birth, without filing an application for naturalization, and notwithstanding any of the other provisions of this title except the provisions of section 313. Nothing in this subsection or any other provision of law shall be construed as conferring United States citizenship retroactively upon such person during any period in which such person was not a citizen.

"(2) The provisions of paragraphs (2) and (3) of subsection (c) shall apply to a person regaining citizenship under paragraph (1) in the same manner as they apply under subsection (c)(1).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act.

SEC. 104. INTENT TO RESIDE PERMANENTLY IN THE UNITED STATES AFTER NATURALIZATION.

(a) IN GENERAL.—Section 338 of the Immigration and Nationality Act (8 U.S.C. 1449) is amended by striking "intends to reside permanently in the United States, except in cases falling within the provisions of section 324(a) of this title,".

(b) CONFORMING REPEAL.—Section 340(d) of such Act (8 U.S.C. 1451(d)) is repealed.

(c) CONFORMING REDESIGNATION.—Section 340 of such Act (8 U.S.C. 1451) is amended—

(1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), and (h), respectively; and

(2) in subsection (d) (as redesignated), by striking "subsections (c) or (d)" and inserting "subsection (c)".

(d) CONFORMING AMENDMENT.—Section 405 of the Immigration Act of 1990 is amended by striking subsection (b).

(e) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to persons admitted to citizenship on or after the date of enactment of this Act.

SEC. 105. TERMINOLOGY RELATING TO EXPATRIATION.

(a) IN GENERAL.—Section 351 of the Immigration and Nationality Act (8 U.S.C. 1483) is amended—

(1) in the heading, by striking "EXPATRIATION" and inserting "LOSS OF NATIONALITY";

(2) in subsection (a)—

(A) by striking "expatriate himself, or be expatriated" and inserting "lose United States nationality", and

(B) by striking "expatriation" and inserting "loss of nationality"; and

(3) in subsection (b), by striking "expatriated himself" and inserting "lost United States nationality".

(b) CLERICAL AMENDMENT.—The item in the table of contents of such Act relating to section 351 is amended to read as follows:

"Sec. 351. Restrictions on loss of nationality.".

SEC. 106. ADMINISTRATIVE AND JUDICIAL DETERMINATIONS RELATING TO LOSS OF CITIZENSHIP.

Section 358 of the Immigration and Nationality Act (8 U.S.C. 1501) is amended by adding at the end the following new sentence: "Approval by the Secretary of State of a certificate under this section shall constitute a final administrative determination of loss of United States nationality under this Act, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 360.".

SEC. 107. CANCELLATION OF UNITED STATES PASSPORTS AND CONSULAR REPORTS OF BIRTH.

(a) IN GENERAL.—Title III of the Immigration and Nationality Act is amended by adding at the end the following new section:

"CANCELLATION OF UNITED STATES PASSPORTS AND CONSULAR REPORTS OF BIRTH

"SEC. 361. (a) The Secretary of State is authorized to cancel any United States passport or Consular Report of Birth, or certified copy thereof, if it appears that such document was illegally, fraudulently, or erroneously obtained from, or was created through illegality or fraud practiced upon, the Secretary. The person for or to whom such document has been issued or made shall be given, at such person's last known address, written notice of the cancellation of such document, together with the procedures for seeking a prompt post-cancellation hearing. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

"(b) For purposes of this section, the term 'Consular Report of Birth' refers to the report, designated as a 'Report of Birth Abroad of a Citizen of the United States', issued by a consular officer to document a citizen born abroad.".

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 360 the following new item:

"Sec. 361. Cancellation of United States passports and Consular Reports of Birth.".

SEC. 108. EXPANDING WAIVER OF THE GOVERNMENT KNOWLEDGE, UNITED STATES HISTORY, AND ENGLISH LANGUAGE REQUIREMENTS FOR NATURALIZATION.

(a) IN GENERAL.—Section 312 of the Immigration and Nationality Act (8 U.S.C. 1423) is amended—

(1) by inserting "(a)" after "312.",

(2) by striking "this requirement" and all that follows through "That",

(3) by striking "this section" and inserting "this paragraph", and

(4) by adding at the end the following new subsection:

"(b)(1) The requirements of subsection (a) shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith.

"(2) The requirement of subsection (a)(1) shall not apply to any person who, on the date of the filing of the person's application for naturalization as provided in section 334, either—

"(A) is over fifty years of age and has been living in the United States for periods totalling at least twenty years subsequent to a lawful admission for permanent residence, or

"(B) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years subsequent to a lawful admission for permanent residence.

"(3) The Attorney General, pursuant to regulations, shall provide for special consideration, as determined by the Attorney General, concerning the requirement of subsection (a)(2) with respect to any person who, on the date of the filing of the person's application for naturalization as provided in section 334, is over sixty-five years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence.".

(b) CONFORMING AMENDMENTS.—Section 245A(b)(1)(D) of such Act (8 U.S.C. 1254a(b)(1)(D)) is amended by striking "312" each place it appears and inserting "312(a)".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to applications for naturalization filed on or after such date and to such applications pending on such date.

(d) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to carry out section 312(b)(3) of the Immigration and Nationality Act (as amended by subsection (a)).

SEC. 109. REPORT ON CITIZENSHIP OF CERTAIN LEGALIZED ALIENS.

Not later than June 30, 1996, the Commissioner of the Immigration and Naturalization Service shall prepare and submit to the Congress a report concerning the citizenship status of aliens legalized under section 245A and section 210 of the Immigration and Nationality Act. Such report shall include the following information by district office for each national origin group:

(1) The number of applications for citizenship filed.

(2) The number of applications approved.

(3) The number of applications denied.

(4) The number of applications pending.

TITLE II—TECHNICAL CORRECTIONS OF IMMIGRATION LAWS

SEC. 201. AMERICAN INSTITUTE IN TAIWAN.

Section 101(a)(27)(D) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(D)) is amended—

(1) by inserting "or of the American Institute in Taiwan," after "of the United States Government abroad,"; and

(2) by inserting "(or, in the case of the American Institute in Taiwan, the Director thereof)" after "Foreign Service establishment".

SEC. 202. G-4 SPECIAL IMMIGRANTS.

Section 101(a)(27)(I)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(I)(iii)) is amended by striking "(II)" and all that follows through "; or" and inserting the following: "(II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after the date of enactment of the Immigration and Nationality Technical Corrections Act of 1994, whichever is later; or".

SEC. 203. CLARIFICATION OF CERTAIN GROUNDS FOR EXCLUSION AND DEPORTATION.

(a) EXCLUSION GROUNDS.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(1) in subsection (a)(2)(A)(i)(I), by inserting "or an attempt or conspiracy to commit such a crime" after "offense)",

(2) in subsection (a)(2)(A)(i)(II), by inserting "or attempt" after "conspiracy", and

(3) in the last sentence of subsection (h), by inserting ", or an attempt or conspiracy to commit murder or a criminal act involving torture" after "torture".

(b) DEPORTATION GROUNDS.—Section 241(a) of such Act (8 U.S.C. 1251(a)) is amended—

(1) in paragraph (2)(C)—

(A) by striking "in violation of any law," and inserting ", or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry,", and

(B) by inserting "in violation of any law" after "Code)"; and

(2) in paragraph (3)(B), by inserting "an attempt or" before "a conspiracy" each place it appears in clauses (ii) and (iii).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to convictions occurring before, on, or after the date of the enactment of this Act.

SEC. 204. UNITED STATES CITIZENS ENTERING AND DEPARTING ON UNITED STATES PASSPORTS.

(a) IN GENERAL.—Section 215(b) of the Immigration and Nationality Act (8 U.S.C. 1185(b)) is amended by inserting "United States" after "valid".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to departures and entries (and attempts thereof) occurring on or after the date of enactment of this Act.

SEC. 205. APPLICATIONS FOR VISAS.

(a) IN GENERAL.—The second sentence of section 222(a) of the Immigration and Nationality Act (8 U.S.C. 1202(a)) is amended—

(1) by striking "the immigrant" and inserting "the alien", and

(2) by striking "present address" and all that follows through "exempt from exclusion under the immigration laws;".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to applications made on or after the date of the enactment of this Act.

SEC. 206. FAMILY UNITY.

(a) IN GENERAL.—Section 301(a) of the Immigration Act of 1990 is amended by inserting after

"May 5, 1988" the following: "(in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C)) or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A))".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be deemed to have become effective as of October 1, 1991.

SEC. 207. TECHNICAL AMENDMENT REGARDING ONE-HOUSE VETO.

Section 13(c) of the Act of September 11, 1957 (8 U.S.C. 1255b(c)) is amended—

(1) by striking the third sentence; and

(2) in the fourth sentence, by striking "If neither the Senate nor the House of Representatives passes such a resolution within the time above specified the" and inserting "The".

SEC. 208. AUTHORIZATION OF APPROPRIATIONS FOR REFUGEE ASSISTANCE FOR FISCAL YEARS 1995, 1996, AND 1997.

Section 414(a) of the Immigration and Nationality Act (8 U.S.C. 1524(a)) is amended by striking "fiscal year 1993 and fiscal year 1994" and inserting "fiscal year 1995, fiscal year 1996, and fiscal year 1997".

SEC. 209. FINES FOR UNLAWFUL BRINGING OF ALIENS INTO THE UNITED STATES.

(a) IN GENERAL.—Section 273 of the Immigration and Nationality Act (8 U.S.C. 1323) is amended—

(1) in subsections (b) and (d) by striking "the sum of $3000" and inserting "a fine of $3000" each place it appears;

(2) in the first sentence of subsection (b) by striking "a sum equal" and inserting "an amount equal";

(3) in the second sentence of subsection (d) by striking "a sum sufficient to cover such fine" and inserting "an amount sufficient to cover such fine";

(4) by striking "sum" and "sums" each place either appears and inserting "fine";

(5) in subsection (c) by striking "Such" and inserting "Except as provided in subsection (e), such"; and

(6) by adding at the end the following new subsection:

"(e) A fine under this section may be reduced, refunded, or waived under such regulations as the Attorney General shall prescribe in cases in which—

"(1) the carrier demonstrates that it had screened all passengers on the vessel or aircraft in accordance with procedures prescribes by the Attorney General, or

"(2) circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.".

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to aliens brought to the United States more than 60 days after the date of enactment of this Act.

SEC. 210. EXTENSION OF VISA WAIVER PILOT PROGRAM.

Section 217(f) of the Immigration and Nationality Act (8 U.S.C. 1187(f)) is amended by striking "ending" and all that follows through the period and inserting "ending on September 30, 1996".

SEC. 211. CREATION OF PROBATIONARY STATUS FOR PARTICIPANT COUNTRIES IN THE VISA WAIVER PROGRAM.

Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended—

(1) in subsection (a)(2)(B) by inserting before the period "or is designated as a pilot program country with probationary status under subsection (g)";

(2) by adding at the end the following new subsection:

"(g) PILOT PROGRAM COUNTRY WITH PROBATIONARY STATUS.—

"(1) IN GENERAL.—The Attorney General and the Secretary of State acting jointly may designate any country as a pilot program country with probationary status if it meets the requirements of paragraph (2).

"(2) QUALIFICATIONS.—A country may not be designated as a pilot program country with probationary status unless the following requirements are met:

"(A) NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of the country during the two previous full fiscal years was less than 3.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(B) NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS YEAR.—The number of refusals of nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was less than 3 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) LOW EXCLUSIONS AND VIOLATIONS RATE FOR PREVIOUS YEAR.—The sum of—

"(i) the total number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

"(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during the preceding fiscal year and who violated the terms of such admission,

was less than 1.5 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during the preceding fiscal year.

"(D) MACHINE READABLE PASSPORT PROGRAM.—The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

"(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS FOR PILOT PROGRAM COUNTRIES WITH PROBATIONARY STATUS.—The designation of a country as a pilot program country with probationary status shall terminate if either of the following occurs:

"(A) The sum of—

"(i) the total number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

"(ii) the total number of nationals of that country who were admitted as visitors during the preceding fiscal year and who violated the terms of such admission,

is more than 2.0 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during the preceding fiscal year.

"(B) The country is not designated as a pilot program country under subsection (c) within 3 fiscal years of its designation as a pilot program country with probationary status under this subsection.".

"(4) DESIGNATION OF PILOT PROGRAM COUNTRIES WITH PROBATIONARY STATUS AS PILOT PROGRAM COUNTRIES.—In the case of a country which was a pilot program country with probationary status in the preceding fiscal year, a country may be designated by the Attorney General and the Secretary of State, acting jointly, as a pilot program country under subsection (c) if—

"(A) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

"(B) the total number of nationals of that country who were admitted as nonimmigrant visitors during the preceding fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such preceding fiscal year."; and

(3) in subsection (c)(2) by striking "A country" and inserting "Except as provided in subsection (g)(4), a country".

SEC. 212. TECHNICAL CHANGES TO NUMERICAL LIMITATIONS CONCERNING CERTAIN SPECIAL IMMIGRANTS.

(a) PANAMA CANAL SPECIAL IMMIGRANTS.—Section 3201 of the Panama Canal Act of 1979 (Public Law 96-70) is amended by striking subsection (c).

(b) ARMED FORCES SPECIAL IMMIGRANTS.—Section 203(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(6)) is amended by striking subparagraph (C).

SEC. 213. EXTENSION OF TELEPHONE EMPLOYMENT VERIFICATION SYSTEM.

Section 274A(d)(4)(A) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)(4)(A)) is amended in the second sentence by striking "three" and inserting "five".

SEC. 214. EXTENSION OF EXPANDED DEFINITION OF SPECIAL IMMIGRANT FOR RELIGIOUS WORKERS.

Section 101(a)(27)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(C)(ii)) is amended—

(1) in subclause (II) by striking "1994," and inserting "1997,"; and

(2) in subclause (III) by striking "1994," and inserting "1997,".

SEC. 215. EXTENSION OF OFF-CAMPUS WORK AUTHORIZATION FOR STUDENTS.

(a) IN GENERAL.—Section 221 of the Immigration Act of 1990 (Pub. Law 101-649; 104 Stat. 4978) as amended by section 303(b)(1) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Pub. Law 102-232; 105 Stat. 1747) is amended—

(1) in the heading for subsection (a) by striking "3-YEAR" and inserting "5-YEAR";

(2) in subsection (a) by striking "3-year" and inserting "5-year"; and

(3) in subsection (b) by striking "1994," and inserting "1996,".

SEC. 216. ELIMINATING OBLIGATION OF CARRIERS TO DETAIN STOWAWAYS.

The first sentence of section 273(d) of the Immigration and Nationality Act (8 U.S.C. 1323(d)) is amended to read as follows: "The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside the United States who fails to deport any alien stowaway on the vessel or aircraft on which such stowaway arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which such stowaway arrived when required to do so by an immigration officer, shall pay to the Commissioner the sum of $3,000 for each alien stowaway, in respect of whom any such failure occurs.".

SEC. 217. COMPLETING USE OF VISAS PROVIDED UNDER DIVERSITY TRANSITION PROGRAM.

(a) EXTENSION OF DIVERSITY TRANSITION PROGRAM.—Section 132 of the Immigration Act of 1990 (Public Law 101-649) is amended—

(1) in subsection (a), by inserting before the period at the end of the first sentence the following: "and in fiscal year 1995 a number of immigrant visas equal to the number of such visas provided (but not made available) under this section in previous fiscal years"; and

(2) in the next to last sentence of subsection (c), by striking "or 1993" and inserting ", 1993, or 1994".

(b) ADMINISTRATION OF 1995 DIVERSITY TRANSITION PROGRAM.—

(1) ELIGIBILITY.—For the purpose of carrying out the extension of the diversity transition program under the amendments made by subsection (a), applications for natives of diversity transition countries submitted for fiscal year 1995 for diversity immigrants under section 203(c) of the Immigration and Nationality Act shall be considered applications for visas made available for fiscal year 1995 for the diversity transition program under section 132 of the Immigration Act of 1990. No application period for the fiscal year 1995 diversity transition program shall be established and no new applications may be accepted for visas made available under such program for fiscal year 1995. Applications for visas in excess of the minimum available to natives of the country specified in section 132(c) of the Immigration Act of 1990 shall be selected for qualified applicants within the several regions defined in section 203(c)(1)(F) of the Immigration and Nationality Act in proportion to the region's share of visas issued in the diversity transition program during fiscal years 1992 and 1993.

(2) NOTIFICATION.—Not later than 180 days after the date of enactment of this Act, notification of the extension of the diversity transition program for fiscal year 1995 and the provision of visa numbers shall be made to each eligible applicant under paragraph (1).

(3) REQUIREMENTS.—Notwithstanding any other provision of law, for the purpose of carrying out the extension of the diversity transition program under the amendments made by subsection (a), the requirement of section 132(b)(2) of the Immigration Act of 1990 shall not apply to applicants under such extension and the requirement of section 203(c)(2) of the Immigration and Nationality Act shall apply to such applicants.

SEC. 218. EFFECT ON PREFERENCE DATE OF APPLICATION FOR LABOR CERTIFICATION.

Section 161(c)(1) of the Immigration Act of 1990 (Public Law 101–649) is amended—

(1) by striking "or an application for labor certification before such date under section 212(a)(14)"; and

(2) in subparagraph (A)—

(A) by striking "or application"; and

(B) by striking ", or 60 days after the date of certification in the case of labor certifications filed in support of the petition under section 212(a)(14) of such Act before October 1, 1991, but not certified until after October 1, 1993".

SEC. 219. OTHER MISCELLANEOUS AND TECHNICAL CORRECTIONS TO IMMIGRATION-RELATED PROVISIONS.

(a) Section 101(a)(27)(J)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)(i)) is amended by striking "and has" and inserting "or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has".

(b)(1) The second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by inserting "(and each child of the alien)" after "the alien".

(2) The second sentence of section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)) is amended—

(A) by inserting "spouse" after "alien", and

(B) by inserting "of the alien (and the alien's children)" after "for classification".

(c) Section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)) is amended by striking "TARGETTED", "TARGETTED", and "targetted" each place each appears and inserting "TARGETED", "TARGETED", and "targeted", respectively.

(d) Section 210(d)(3) of the Immigration and Nationality Act (8 U.S.C. 1160(d)(3)) is amended by inserting "the" before "Service" the first place it appears.

(e) Section 212(d)(11) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(11)) is amended by striking "voluntary" and inserting "voluntarily".

(f) Section 258 of the Immigration and Nationality Act (8 U.S.C. 1288) is amended in subsection (d)(3)(B) by striking "subparagraph (A)" and inserting "subparagraph (A)(iii)".

(g) Section 241(c) of the Immigration and Nationality Act (8 U.S.C. 1251(c)) is amended by striking "or (3)(A) of subsection 241(a)" and inserting "and (3)(A) of subsection (a)".

(h) Section 242(h) of the Immigration and Nationality Act (8 U.S.C. 1252(h)) is amended by striking "Parole,," and inserting "Parole,".

(i) Section 242B(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1252b(c)(1)) is amended by striking the comma after "that".

(j) Section 244A(c)(2)(A)(iii)(III) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)(2)(A)(iii)(III)) is amended—

(1) by striking "Paragraphs" and inserting "paragraphs"; and

(2) by striking "or (3)(E)" and inserting "and (3)(E)".

(k) Section 245(h)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(B)) is amended by striking "or (3)(E)" and inserting "and (3)(E)".

(l)(1) Subparagraph (C) of section 245A(c)(7) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(7)), as added by Public Law 102–140, is amended—

(A) by indenting it 2 additional ems to the right; and

(B) by striking "subsection (B)" and inserting "subparagraph (B)".

(2) Section 610(b) of Public Law 102–140 is amended by striking "404(b)(2)(ii)" and "404(b)(2)(iii)" and inserting "404(b)(2)(A)(ii)" and "404(b)(2)(A)(iii)", respectively.

(m) Effective as of the date of the enactment of this Act, section 246(a) of the Immigration and Nationality Act (8 U.S.C. 1256(a)) is amended by striking the first 3 sentences.

(n) Section 262(c) of the Immigration and Nationality Act (8 U.S.C. 1302(c)) is amended by striking "subsection (a) and (b)" and inserting "subsections (a) and (b)".

(o) Section 272(a) of the Immigration and Nationality Act (8 U.S.C. 1322(a)) is amended by striking the comma after "so afflicted".

(p) The first sentence of section 273(b) of the Immigration and Nationality Act (8 U.S.C. 1323(b)) is amended by striking "collector of customs" and inserting "Commissioner".

(q) Section 274B(g)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1324b(g)(2)(C)) is amended by striking "an administrative law judge" and inserting "the Special Counsel".

(r) Section 274C(b) of the Immigration and Nationality Act (8 U.S.C. 1324c(b)) is amended by striking "title V" and all that follows through "3481)" and inserting "chapter 224 of title 18, United States Code".

(s) Section 280(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1330(b)(1)(C)) is amended by striking "maintainance" and inserting "maintenance".

(t) Effective as if included in the enactment of Public Law 102–395, subsection (r) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), as added by section 112 of such Public Law, is amended—

(1) in the subsection heading, by striking "Breached Bond/Detention Account" and inserting "BREACHED BOND/DETENTION FUND";

(2) in paragraph (1), by striking "(hereafter referred to as the Fund)" and inserting "(in this subsection referred to as the 'Fund')";

(3) in paragraph (2), by striking "the Immigration and Nationality Act of 1952, as amended," and inserting "this Act";

(4) in paragraphs (4) and (6), by striking "the Breached Bond/Detention" each place it appears;

(5) in paragraph (4), by striking "of this Act" and inserting "of Public Law 102–395"; and

(6) in paragraph (5), by striking "account" and inserting "Fund".

(u) Section 310(b)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1421(b)(5)(A)) is amended by striking "District Court" and inserting "district court".

(v) Effective December 12, 1991, section 313(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1424(a)(2)) is amended by striking "and" before "(F)" and inserting "or".

(w) Section 333(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1444(b)(1)) is amended by striking "249(a)" and inserting "249".

(x) Section 412(e)(7)(D) of the Immigration and Nationality Act (8 U.S.C. 1522(e)(7)(D)) is amended by striking "paragraph (1) or (2) of".

(y) Section 302(c) of the Immigration Act of 1990 is amended by striking "effect" and inserting "affect".

(z) Effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991—

(1) section 303(a)(7)(B)(i) of such Act is amended by striking "paragraph (1)(A)" and inserting "paragraph (1)(A)(i)";

(2) section 304(b)(2) of such Act is amended by striking "paragraph (1)(B)" and inserting "subsection (c)(1)(B)";

(3) paragraph (1) of section 305(j) of such Act is repealed (and section 407(d)(16)(C) of the Immigration Act of 1990 shall read as if such paragraph had not been enacted);

(4) paragraph (2) of section 306(b) of such Act is amended to read as follows:

"(2) Section 538(a) of the Immigration Act of 1990 is amended by striking the comma after 'Service'.";

(5) section 307(a)(6) of such Act is amended by striking "immigrants" the first place it appears and inserting "immigrant aliens";

(6) section 309(a)(3) of such Act is amended by striking "paragraph (1) and (2)" and inserting "paragraphs (1)(A) and (1)(B)";

(7) section 309(b)(6)(F) of such Act is amended by striking "210(a)(1)(B)(1)(B)" and inserting "210(a)(B)(1)(B)";

(8) section 309(b)(8) of such Act is amended by striking "274A(g)" and inserting "274A(h)"; and

(9) section 310 of such Act is amended—

(A) by adding "and" at the end of paragraph (1);

(B) by striking paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2) and by striking "309(c)" and inserting "309(b)".

(aa) Effective as if included in section 4 of Public Law 102–110, section 161(c)(3) of the Immigration Act of 1990 is amended—

(1) by striking "alien described in section 203(a)(3) or 203(a)(6) of such Act" and inserting "alien admitted for permanent residence as a preference immigrant under section 203(a)(3) or 203(a)(6) of such Act (as in effect before such date)"; and

(2) by striking "this section" and inserting "this title".

(bb) Section 599E(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167) is amended by striking "and subparagraphs" and inserting "or subparagraph".

(cc) Section 204(a)(1)(C) of the Immigration Reform and Control Act of 1986 is amended by striking "year 1993 the first place it appears" and inserting "years 1993".

(dd) Except as otherwise specifically provided in this section, the amendments made by this section shall be effective as if included in the enactment of the Immigration Act of 1990.

(ee)(1) Section 210A of the Immigration and Nationality Act (8 U.S.C. 1161) is repealed.

(2) The table of contents of the Immigration and Nationality Act is amended by striking the item relating to section 210A.

(ff) Section 122 of the Immigration Act of 1990 is amended by striking subsection (a).

(gg) The Copyright Royalty Tribunal Reform Act of 1993 (Public Law 103-198; 107 Stat. 2304) is amended by striking section 8.

Mr. FORD. Mr. President, I move the Senate concur in the amendment of the House with further amendments which I now send to the desk en bloc, on behalf of Senators SIMPSON, SIMON, and BROWN.

The motion was agreed to.

The amendment en bloc (Nos. 2626, 2627, 2628) are as follows:

AMENDMENT NO. 2626

(Purpose: To waive the foreign country residence requirement with respect to international medical graduates)

At the end of the matter proposed to be inserted by the House amendment, add the following:

SEC. ___. WAIVER OF FOREIGN COUNTRY RESIDENCE REQUIREMENT WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

(a) WAIVER.—Section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) is amended—

(1) in the first proviso by inserting "(or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent)" after "interested United States Government agency"; and

(2) by inserting after "public interest" the following: "except that in the case of a waiver requested by a State Department of Public Health, or its equivalent the waiver shall be subject to the requirements of section 214(k)".

(b) RESTRICTIONS ON WAIVER.—Section 214 of such Act (8 U.S.C. 1184) is amended by adding at the end the following:

"(k)(1) In the case of a request by an interested State agency for a waiver of the two-year foreign residence requirement under section 212(e) with respect to an alien described in clause (iii) of that section, the Attorney General shall not grant such waiver unless—

"(A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver;

"(B) the alien demonstrates a bona fide offer of full-time employment at a health facility and agrees to begin employment at such facility within 90 days of receiving such waiver and agrees to continue to work in accordance with paragraph (2) at the health care facility in which the alien is employed for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances such as the closure of the facility or hardship to the alien would justify a lesser period of time);

"(C) the alien agrees to practice medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

"(D) the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed twenty.

"(2)(A) Notwithstanding section 248(2) the Attorney General may change the status of an alien that qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(H)(i)(b).

"(B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the terms of a contract with a health facility shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States.

"(3) Notwithstanding any other provision of this subsection, the two-year foreign residence requirement under section 212(e) shall apply with respect to an alien described in clause (iii) of that section, who has not otherwise been accorded status under section 101(a)(27)(H), if at any time the alien practices medicine in an area other than an area described in paragraph (1)(C).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to aliens admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act, or acquiring such status after admission to the United States, before, on, or after the date of enactment of this Act and before June 1, 1996.

AMENDMENT NO. 2627

(Purpose: To ensure that the President of the Republic of China on Taiwan can enter the United States on certain occasions)

At the appropriate place in the bill, add the following new section—

"SEC. . VISAS FOR OFFICIALS OF TAIWAN.

"Whenever the president of Taiwan or any other high-level official of Taiwan shall apply to visit the United States for the purposes of discussions with United States federal or state government officials concerning:

(i) Trade or business with Taiwan that will reduce the U.S.-Taiwan trade deficit;

(ii) Prevention of nuclear proliferation;

(iii) Threats to the national security of the United States;

(iv) The protection of the global environment;

(v) The protection of endangered species; or

(iv) Regional humanitarian disasters.

The official shall be admitted to the United States, unless the official is otherwise excludable under the immigration laws of the United States.".

AMENDMENT 2628

(Purpose: To add provisions relating to the treatment of criminal aliens under the immigrational laws of the United States)

Proposed by Mr. FORD for Mr. SIMPSON.

At the end of the matter proposed to be inserted by the House amendment, add the following:

SEC. ___. EXPANSION OF DEFINITION OF AGGRAVATED FELONY.

(a) EXPANSION OF DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

"(A) murder;

"(B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);

"(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);

"(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $100,000;

"(E) an offense described in—

"(i) section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

"(ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or

"(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

"(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;

"(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

"(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

"(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

"(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations) for which a sentence of 5 years' imprisonment or more may be imposed;

"(K) an offense that—

"(i) relates to the owning, controlling, managing, or supervising of a prostitution business; or

"(ii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

"(L) an offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code; or

"(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents);

"(M) an offense that—

"(i) involves fraud or deceit in which the loss to the victim or victims exceeds $200,000; or

"(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds $200,000;

"(N) an offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

"(O) an offense described in section 1546(a) of title 18, United States Code (relating to document fraud) which constitutes trafficking in the documents described in such section for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

"(P) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 15 years or more; and

"(Q) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to convictions entered on or after the date of enactment of this Act.

SEC. ___. SUMMARY DEPORTATION.

(a) EXPEDITED PROCEDURES.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended—

(1) in subsection (b)(4)(D), by striking "the determination of deportability is supported by clear, convincing, and unequivocal evidence and"; and

(2) in subsection (b)(4)(E), by striking "entered" and inserting "adjudicated".

(b) TECHNICAL CORRECTION.—Section 106(d)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended by striking "242A(b)(5)" and inserting "242A(b)(4)".

SEC. ___. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

"(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A), if such an order has been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.

"(2) PROCEDURE.—

"(A) The United States Attorney shall file with the United States district court, and serve upon the defendant and the Service, prior to commencement of the trial or entry of a guilty plea a notice of intent to request judicial deportation.

"(B) Notwithstanding section 242B, the United States Attorney, with the concurrence of the Commissioner, shall file at least 30 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and identifying the crime or crimes which make the defendant deportable under section 241(a)(2)(A).

"(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from deportation under this Act, the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief. The court shall either grant or deny the relief sought.

"(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

"(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 242(b).

"(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

"(iv) The court may order the alien deported if the Attorney General demonstrates that the alien is deportable under this Act.

"(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDER OF DEPORTATION.—

"(A)(i) A judicial order of deportation or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

"(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 106.

"(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of deportation is based, the expiration of the period described in section 106(a)(1), or the final dismissal of an appeal from such conviction, the order of deportation shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

"(B) As soon as is practicable after entry of a judicial order of deportation, the Commissioner shall provide the defendant with written notice of the order of deportation, which shall designate the defendant's country of choice for deportation and any alternate country pursuant to section 243(a).

"(4) DENIAL OF JUDICIAL ORDER.—Denial without a decision on the merits of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).".

(b) TECHNICAL AMENDMENT.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking "The" and inserting "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. ___. CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.

No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)) shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

Mr. FORD. Mr. President, I ask unanimous consent that the amendments be agreed to en bloc and the motion to reconsider be laid upon the table.

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

The amendments en bloc (Nos. 2626, 2627, 2628) were agreed to.

CENSUS ADDRESS LIST IMPROVEMENT ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to immediate consideration of H.R. 5084, the Census Address List Improvement Act of 1994, just received from the House, the bill be read three times, passed, the motion to reconsider be laid upon the table, that any statements relating to this matter be in placed in the RECORD at the appropriate place as if read.

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

The bill (H.R. 5084) was ordered to a third reading, was read the third time, and passed.

Mr. LIEBERMAN. Mr. President, I support of H.R. 5084, the Census Address List Improvement Act of 1994. This bill amends title 13 to allow the Census Bureau to share its nameless address list with state and local governments in preparation for taking the decennial census. The bill provides safeguards for the privacy of the information and forbids any use by local official beyond census activities. It is endorsed by the Conference of Mayors, the League of Cities, and the administration. The House bill was jointly introduced by Representatives SAWYER and PETRI H.R. 5084 was scored by CBO as saving $33 million over 5 years. It should be noted that those savings do not include any savings in conducting the census. Were those included the savings would be much greater.

In preparing for the census the Bureau develops a list of all addresses in the U.S. to which census forms will be mailed. In the past, disputes over how many addresses or households were in a particular jurisdiction were settled by the Census Bureau. This left many jurisdictions believing they did not get a fair hearing. The problem was as common in major metropolitan cities like Detroit with million of households as well as small communities like Lincoln, Wisconsin with 254. Although the town clerk of Lincoln argued that it should be 275 not 254.

H.R. 5084 provides a mechanism for a local jurisdiction to appoint an individual to be sworn in by the Census Bureau as a "census liaison". That would give the local official the authority to look at the address list—without names—the Bureau intends to use for the Census and make any corrections. Local officials are provided only with information for their jurisdiction, or in the case of problems with the Census Bureau's boundaries, adjacent jurisdictions. The census liaison is subject to the same fines and penalties as Census Bureau employees for violating the confidentiality of the information.

H.R. 5084 requires the Chief Statistician of the United States to establish a procedure for adjudicating disputes between the Census Bureau and local jurisdictions. The only restriction the bill puts on this process is that it must be completed prior to the day the census is conducted. The Chief Statistician was chosen for this role to assure that a fair and unbiased hearing was given to all disputes, and that local jurisdictions be assured their case is heard by an impartial party not subject to the dispute. It is the intent of the drafters of this bill that Office of Management and Budget be the independent party to develop the process, and that the process take place outside the Department of Commerce. It is not our intent that the Chief Statistician be the arbitrator of these disputes nor is it our intent that the dispute resolution take place within the Office of Management and Budget.

The intent is not to impugn the integrity of the Department of Commerce. In fact, it is just the opposite. No matter how fair and reasoned a judgment the Department may make, its vested roll in the process will leave some with the impression that a fair hearing was not given. In structuring the bill we have given the Chief Statistician wide latitude to design a process which assures a fair hearing. We are confident in her ability to do just that.

H.R. 5084 will benefit both federal and local governments. The Census Bureau will save money both in preparing its list and, because of the improved quality of the list, in conducting the census. Local governments will have the opportunity to make sure the census is done correctly and that they receive credit for all of the households in their jurisdiction.

I urge my colleagues to support this bill for the benefit of the local jurisdictions within their state, and to assure the most accurate census possible.

CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1994

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (S. 2372) to reauthorize for 3 years the Commission on Civil Rights, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2372) entitled "An Act to reauthorize for three years the Commission on Civil Rights, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Amendments Act of 1994".

SEC. 2. AMENDMENT OF 1983 ACT.

That the portion of the United States Commission on Civil Rights Act of 1983 which follows the enacting clause is amended to read as follows:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Civil Rights Commission Act of 1983'.

"SEC. 2. ESTABLISHMENT OF COMMISSION.

"(a) Generally.—There is established the United States Commission on Civil Rights (hereinafter in this Act referred to as the 'Commission').

"(b) Membership.—The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) 4 members of the Commission shall be appointed by the President.

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms.—The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

"(d) Chairperson.—(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

"(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

"(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

"(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

"(e) REMOVAL OF MEMBERS.—The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

"(f) QUORUM.—5 members of the Commission constitute a quorum of the Commission.

"SEC. 3. DUTIES OF THE COMMISSION.

"(a) GENERALLY.—The Commission—

"(1) shall investigate allegations in writing under oath or affirmation relating to deprivations—

"(A) because of color, race, religion, sex, age, disability, or national origin; or

"(B) as a result of any pattern or practice of fraud;

of the right of citizens of the United States to vote and have votes counted; and

"(2) shall—

"(A) study and collect information relating to;

"(B) make appraisals of the laws and policies of the Federal Government with respect to;

"(C) serve as a national clearinghouse for information relating to; and

"(D) prepare public service announcements and advertising campaigns to discourage;

discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

"(b) LIMITATIONS ON INVESTIGATORY DUTIES.—Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

"(c) REPORTS.—

"(1) ANNUAL REPORT.—The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

"(2) OTHER REPORTS GENERALLY.—The Commission shall submit such other reports to the President and the Congress as the Commission, the Congress, or the President shall deem appropriate.

"(d) ADVISORY COMMITTEES.—The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District.

"(e) HEARINGS AND ANCILLARY MATTERS.—

"(1) POWER TO HOLD HEARINGS.—The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

"(2) POWER TO ISSUE SUBPOENAS.—The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

"(3) WITNESS FEES.—A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(4) DEPOSITIONS AND INTERROGATORIES.—The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

"(f) LIMITATION RELATING TO ABORTION.—Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

"SEC. 4. ADMINISTRATIVE PROVISIONS.

"(a) STAFF.—

"(1) DIRECTOR.—There shall be a full-time staff director for the Commission who shall—

"(A) serve as the administrative head of the Commission; and

"(B) be appointed by the President with the concurrence of a majority of the Commission.

"(2) OTHER PERSONNEL.—Within the limitation of its appropriations, the Commission may—

"(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

"(B) procure services, as authorized in section 3109 of title 5, United States Code, but at rates for individuals not in excess of the

daily equivalent paid for positions at the maximum rate for GS–15 of the General Schedule under section 5332 of title 5, United States Code.

"(b) COMPENSATION OF MEMBERS.—

"(1) GENERALLY.—Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, United States Code, prorated on an daily basis for time spent in the work of the Commission.

"(2) PERSONS OTHERWISE IN GOVERNMENT SERVICE.—Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such member's usual place of residence, under subchapter I of chapter 57 of title 5, United States Code.

"(c) VOLUNTARY OR UNCOMPENSATED PERSONNEL.—The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

"(d) RULES.—

"(1) GENERALLY.—The Commission may make such rules as are necessary to carry out the purposes of this Act.

"(2) CONTINUATION OF OLD RULES.—Except as inconsistent with this Act, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

"(e) COOPERATION.—All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

"SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated, to carry out this Act $9,500,000 for fiscal year 1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

"SEC. 6. TERMINATION.

"This Act shall terminate on September 30, 1995."

Amend the title so as to read: "An Act to amend the United States Commission on Civil Rights Act of 1983.".

AMENDMENT NO. 2629

(Purpose: To extend the reauthorization period for an additional year)

Mr. FORD. Mr. President, I move the Senate concur with the House amendments with a further amendment I now send to the desk on behalf of Senator SIMON.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. SIMON, proposes an amendment numbered 2629:

On page 10, line 12, strike "September 30, 1995" and insert "September 30, 1996".

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AUTHORIZATION TO MAKE APPOINTMENTS

Mr. FORD. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 276) providing that notwithstanding the sine die adjournment, the President of the Senate, the Senate President pro tempore, the majority and minority leaders, are authorized to make appointments to commissions, committees, boards or conferences.

Mr. FORD. This is a standard Senate resolution submitted and agreed to at the end of each session to authorize the making of appointments notwithstanding the sine die adjournment of the present session of the Congress.

The PRESIDING OFFICER. Is there further debate on the resolution?

Without objection the resolution is agreed to.

The resolution (S. Res. 276) was agreed to.

(The text of the resolution will be printed in a future edition of the RECORD.)

Mr. FORD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

INDIAN CHILD PROTECTION FAMILY VIOLENCE PREVENTION ACT

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of calendar No. 707, S. 2075, a bill to amend the Indian Child Protection Family Violence Prevention Act; that the committee substitute amendment be agreed to; that the bill, as amended, be passed and the motion to reconsider be laid upon the table; further, that any statements on the measure appear in the RECORD at the appropriate place as though read.

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

So the bill (S. 2075), as amended, was deemed read the third time and passed.

(The text of the bill will be printed in a future edition of the RECORD.)

OUTER CONTINENTAL SHELF LANDS ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3678, relating to use of sand and gravel on the Outer Continental Shelf, just received from the House; that the bill be read a third time, passed, the motion to reconsider be laid upon the table; that any statements appear at the appropriate place in the RECORD as if read.

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

So the bill (H.R. 3678) was deemed read the third time and passed.

UNITED NEGRO COLLEGE FUND WEEK

NATIONAL HEALTH INFO MANAGEMENT WEEK

NATIONAL MILITARY FAMILIES RECOGNITION DAY

NATIONAL MAMMOGRAPHY DAY

NATIONAL AMERICAN INDIAN HERITAGE MONTH

Mr. FORD. Mr. President, I ask unanimous consent that the Senate Judiciary Committee be discharged en bloc from further consideration of the following Senate joint resolutions: 181, 208, 209, 220, and from further consideration of House Joint Resolution 271; that the Senate proceed to the immediate consideration en bloc of the joint resolutions; that the joint resolutions be read three times and passed en bloc; that the preambles, where appropriate, be agreed to en bloc; and that the motions to reconsider be laid upon the table en bloc; further, that any statements on these measures appear in the RECORD at the appropriate place as though read.

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

So the joint resolutions (S.J. Res. 181, 208, 209, and 220 and H.J. Res. 271) were deemed read the third time and passed.

The preambles were agreed to.

(The text of the joint resolutions (S.J. Res. 181, 208, 209 and 220) will be printed in a future edition of the RECORD.)

NATIONAL SILVER HAIRED CONGRESS

Mr. FORD. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of Senate Concurrent Resolution 66, a concurrent resolution to recognize and encourage the convening of a National Silver Haired Congress; that the Senate proceed to its immediate consideration; that the resolution and preamble be agreed to, the motion to reconsider be laid upon the table en bloc; and that any statements thereon appear at the appropriate place as if read.

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

So the concurrent resolution (S. Con. Res. 66) was agreed to.

The preamble was agreed to.

(The text of the concurrent resolution will be printed in a future edition of the RECORD.)

Ms. MIKULSKI. Mr. President, I rise to thank you for support for Senate Concurrent Resolution 66, a resolution to establish a national silver-haired congress. I am grateful to all of the 42 cosponsors of this legislation for their support.

The national silver-haired congress is the vision of a truly inspirational group of seniors. Beginning back in 1973, a group of Missouri seniors got together and decided to get involved. They formed a silver-haired legislature. They modeled their legislature after their States legislature and reviewed pieces of legislation that affected seniors.

That was 1973. Today, nearly half the States have a silver-haired legislature. Seniors all over the country have set up mock State-legislatures. Some of the States which have silver-haired legislatures are Alabama, Arkansas, California, Georgia, Hawaii, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Rhode Island, Texas, Utah, Virginia, West Virginia, and Wyoming.

The silver-haired legislatures have helped in the passage of many programs: from consumer protection and crime prevention to health care, housing, and long term care.

Senate Concurrent Resolution 66 will create a national silver-haired congress based on the experience of the silver-haired legislatures in the States. A silver-haired congress will provide a national forum for aging issues—a forum patterned after the U.S. Congress. It will be completely staffed by older Americans, and serve to address a broad range of seniors issues. Like us, a silver-haired congress would be comprised of 100 Senators and 435 Representatives. But unlike us, all the members will serve without pay and convene in Washington at their own expense.

Older Americans across the country are anxious to volunteer themselves in an effort to provide nationwide visibility of aging issues and to promote intergenerational issues. A national silver-haired congress provides this wonderful opportunity. Many of you have probably met with silver-haired congress representatives from your State. They have been walking the Halls of Congress to ensure the passage of this legislation. I applaud their hard work and perseverance. We would not have 42 cosponsors in the Senate and it would not have already passed the House without them. I would also like to thank Wilhelmina Waldman, of my staff, for all of her work on this bill.

With no cost whatsoever to the American public, a national silver-haired congress will provide a national forum for issues of concern to older Americans. I think that this will be invaluable to us all.

TIMBER-DEPENDENT COMMUNITIES

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 4196, a bill to ensure that timber-dependent communities qualify for loans and grants from RDA, just received from the House; that the bill be read three times, passed and the motion to reconsider be laid upon the table; that any statement relating to the matter be placed in the RECORD at the appropriate place.

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

So the bill (H.R. 4196) was deemed read the third time and passed.

Mrs. MURRAY. Mr. President, I have spoken on the Senate floor many times about the great changes overtaking the management of Federal forests in the Pacific Northwest. These forests have been the subject of bitter debate for years and years. Management decisions have been imposed by every branch of Government, from the Federal Government to Congress to the U.S. Court of Appeals. Finally last year, the Clinton administration decided to end the conflict by proposing a comprehensive new strategy for forest management. This plan does not come without pain, or without additional controversy. But it does chart a course for bringing an end to conflict, and it is now in the process of implementation.

I made one central point then, and I'll reaffirm again it now. When government decides to change policy, it has an obligation to help people adjust to the change. In this case, it has meant providing stability, economic diversification incentives, retraining choices, and new forest management initiatives that will provide local governments, small businesses, and individuals with options for the future. When President Clinton announced his new forest management strategy, I committed to my constituents to doing everything I could to steer the accompanying economic package through Congress.

Today I join my colleagues from the Pacific Northwest, Senators HATFIELD and GORTON, in support of legislation that will put one of the important pieces in place. This bill is important to my State and region because it makes an existing program work better for people there.

One of the centerpieces of the Northwest Economic Adjustment Initiative is the Rural Development Administration. This agency administers many programs tailored specifically to foster small business growth and community development in small town America. There are three programs in particular—essential community facilities loans, business enterprise loans, and business enterprise grants—that have been targeted on the Pacific Northwest. Unfortunately, these programs are tailored in such a way that some communities fall through the cracks. Some towns, such as Aberdeen and Pt. Angeles on the Olympic Peninsula, are not eligible for funds under these programs because of arbitrary population standards.

This bill, H.R. 4196, repairs this flaw in the law. It does this by requiring special consideration of communities having populations of not more than 25,000. If this bill is enacted into law, Pt. Angeles and Aberdeen, as well as other towns in the region, will be eligible for grants and loans under the programs I mentioned above.

The Clinton administration has been working diligently since last year with the governors of Washington, Oregon, and California to identify existing programs, improvements to such programs, and other initiatives that communities can use to help chart an economic course for the future. As part of his economic diversification program, he proposed, and the Senate has approved, significant increases for RDA programs. But the joint Federal-state working group also identified changes that could make the program work better. Today we propose to make such a change.

I note here for the RECORD that I have introduced companion legislation, S. 2492, in the Senate. H.R. 4196 as passed by the other body contains only one change: It includes a 5-year sunset clause that keeps the proposed changes in effect only during the period the Northwest Economic Adjustment Initiative is in effect.

Under these amendments to the Rural Development Act, towns and counties in rural areas adjacent to national forests, and people within them, will have access to needed resources. These programs make sense: It puts resources in the hands of people who know what to do with them; it minimizes overhead; and focuses narrowly on the problem without a lot of red tape.

Mr. President, I would like to commend the excellent work of Senator LEAHY of Vermont, the chairman of the Agriculture Committee, and his staff in helping put this bill together. I would also like to thank Senator HATFIELD for his leadership and sensitivity in this time of challenge for our region. This is a good bill, and I urge all my colleagues to support its passage.

YEAR OF THE GIRL CHILD

Mr. FORD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from and the Senate proceed to the immediate consideration of S.J. Res. 188, a joint resolution

celebrating the Year of the Girl Child; that the joint resolution be read a third time and passed; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements appear at the appropriate place in the RECORD as if read.

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

So the joint resolution (S.J. Res. 188) was deemed read the third time and passed.

The preamble was agreed to.

UNLISTED TRADING PRIVILEGES ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 4535, the Unlisted Trading Privileges Act of 1994; that the Senate then proceed to its immediate consideration; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table; and that any statement appear in the RECORD as if read.

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

So the bill (H.R. 4535) was deemed read the third time and passed.

NURSING EDUCATION CONSOLIDATION AND REAUTHORIZATION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 623, S. 2433, a bill to amend the Public Health Service Act to consolidate and reauthorize nursing education programs under such title; that the committee substitute be agreed to; that the bill be read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as if read.

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

So the bill (S. 2433), as amended, was deemed read the third time and passed.

(The text of the bill will be printed in a future edition of the RECORD.)

QUINEBAUG AND SHETUCKET RIVERS VALLEY NATIONAL HERITAGE CORRIDOR ACT

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calender No. 511, H.R. 1348, relating to the National Heritage Corridor in the State of Connecticut.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1348) to establish the Quinebaug and Shetucket Rivers Valley National Heritage Corridor in the State of Connecticut, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

(The text of the amendment will be printed in a future edition of the RECORD.)

AMENDMENT NO. 2630

Mr. FORD. Mr. President, on behalf of Senators WALLOP, DODD, and LIEBERMAN, I send an amendment to the desk and I ask unanimous consent that the amendment be agreed to.

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

The amendment (No. 2630) was agreed to.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. FORD, Mr. President, I ask unanimous consent that the committee substitute, as amended, be agreed to; that the bill be read a third time, passed, the motion to reconsider be laid upon the table; and that any statements appear at the appropriate place in the RECORD as if read.

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

So the bill (H.R. 1348), as amended, was deemed read the third time and passed.

OFFICE OF GOVERNMENT ETHICS AUTHORIZATION ACT

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar 523, S. 1413, the Office of Government Ethics Authorization Act of 1994.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1413) to amend the Ethics in Government Act of 1978, as amended, and so forth, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2631

(Purpose: To propose a manager's substitute)

Mr. FORD. Mr. President, on behalf of Senators LEVIN and COHEN, I send a substitute amendment to the desk. I ask for its immediate consideration; that the amendment be agreed to and the motion to reconsider be laid upon the table; that the bill as thus amended be read three times, passed, and the motion to reconsider be laid upon the table; further, that any statements relating to this item be printed in the RECORD at the appropriate place as if read.

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

So the amendment (No. 2631) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Office of Government Ethics Authorization Act of 1994".

SEC. 2. GIFT ACCEPTANCE AUTHORITY.

Section 403 of the Ethics in Government Act of 1978 (5 U.S.C. App. 5) is amended by—

(1) inserting "(a)" before "Upon the request"; and

(2) adding at the end thereof the following:

"(b)(1) The Director is authorized to accept and utilize on behalf of the United States, any gift, donation, bequest, or devise of money, use of facilities, personal property, or services for the purpose of aiding or facilitating the work of the Office of Government Ethics.

"(2) No gift may be accepted—

"(A) that attaches conditions inconsistent with applicable laws or regulations; or

"(B) that is conditioned upon or will require the expenditure of appropriated funds that are not available to the Office of Government Ethics.

"(3) The Director shall establish written rules setting forth the criteria to be used in determining whether the acceptance of contributions of money, services, use of facilities, or personal property under this subsection would reflect unfavorably upon the ability of the Office of Government Ethics or any employee to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.".

SEC. 3. EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.

The text of section 405 of the Ethics in Government Act of 1978 (5 U.S.C. App. 5) is amended to read as follows: "There are authorized to be appropriated to carry out the provisions of this title and for no other purposes not to exceed $14,000,000 for fiscal year 1995 and for each of the next 7 fiscal years thereafter.

SEC. 4. ASSISTANCE FROM OTHER AGENCIES.

Section 403(a) of the Ethics in Government Act of 1978 (5 U.S.C. App. 5), as designated by section 2, is amended—

(1) in paragraph (1) by striking "under this Act; and" and inserting "of the Office of Government Ethics; and"; and

(2) in paragraph (2) by striking "duties." and inserting "duties under this Act or any other Act.".

SEC. 5. LIMITATION ON POSTEMPLOYMENT RESTRICTIONS.

Section 207(j) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(7) POLITICAL PARTIES AND CAMPAIGN COMMITTEES.—(A) Except as provided in subparagraph (B), the restrictions contained in subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.

"(B) Subparagraph (A) shall not apply to—

"(i) any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or

"(ii) a communication or appearance made by a person who is subject to the restrictions

contained in subsections (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than—

"(I) a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party; or

"(II) a person or entity who represents, aids, or advises only persons or entities described in subclause (I).

"(C) For purposes of this paragraph—

"(i) the term 'candidate' means any person who seeks nomination for election, or election, to Federal or State office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to Federal or State office;

"(ii) the term 'authorized committee' means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);

"(iii) the term 'national committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;

"(iv) the term 'national Federal campaign committee' means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

"(v) the term 'State committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level;

"(vi) the term 'political party' means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and

"(vii) the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

SEC. 6. REPEAL AND CONFORMING AMENDMENTS.

(a) REPEAL OF DISPLAY REQUIREMENT.—The Act entitled "An Act to provide for the display of the Code of Ethics for Government Service", approved July 3, 1980 (Public Law 96-303; 5 U.S.C. 7301 note) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) FDIA.—Section 12(f)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1822 (f)(3)) is amended by striking ", with the concurrence of the Office of Government Ethics,".

(2) ETHICS IN GOVERNMENT ACT OF 1978.—(A) The heading for section 401 of the Ethics in Government Act of 1978 is amended to read as follows:

"ESTABLISHMENT; APPOINTMENT OF DIRECTOR".

(B) Section 408 is amended by striking "March 31" and inserting "April 30".

SEC. 7. EFFECTIVE DATE.

This Act shall take effect on October 1, 1994, except section 5 shall take effect and apply to communications or appearances made on and after the date of enactment of this Act.

Mr. LEVIN. Mr. President, Senator Cohen and I, in our capacities as ranking minority member and chairman of the Subcommittee on Oversight of Government Management, which has jurisdiction over ethics matters in the executive branch, introduced S. 1413, a bill to reauthorize the Office of Government Ethics, back in August 1993. OGE's current authorization expires on September 30th of this year, so this bill is necessary to ensure that the agency can continue to perform its mission. We do that by reauthorizing OGE for 8 years, 2 years longer than its last reauthorization in 1988.

The Oversight Subcommittee held a hearing on S. 1413 in April 1994, with Stephen Potts, the Director of OGE, as the witness. The bill was then reported out by the Oversight Subcommittee and the full Governmental Affairs Committee with strong bipartisan support. Before describing the provisions of the bill in detail, let me first put this legislation in perspective.

OGE was created in 1978 as part of the Office of Personnel Management. Over the years, Congress has given OGE more authority and autonomy, making it a separate agency as of October 1, 1989. That's probably the biggest change since the last reauthorization. In addition, through Executive Order, President Bush and President Clinton have given OGE new responsibilities for guiding and implementing an effective ethics program throughout the executive branch.

In the process of developing this bill, the Oversight Subcommittee scrutinized OGE's budget, its personnel, and its accomplishments. Based on that effort, we are satisfied that OGE has improved in areas where weaknesses have been identified in the past and that it is on track in performing its duties in an effective, professional manner.

Let me discuss the specifics of S. 1413. The first issue presented is the appropriate time period for reauthorization. The bill calls for 8 years, which is what OGE itself proposed. The problem with reauthorizing for 6 years, like last time, is that it would place reauthorization in a presidential election year, and we wanted to avoid that as well as the year after, given the large number of nominations coming through the system at such times and OGE's job in helping to review them. Based on OGE's 15-year history, we are confident that this longer period of time is appropriate, since the bugs have been worked out in terms of the agency's structure and operations.

Another issue we address in the bill is whether there ought to be a cap on the authorization of appropriations for OGE. There used to be a cap on OGE's appropriations, but it was problem because the money wasn't sufficient to keep up with OGE's expanding responsibilities under the Ethics Reform Act and other legislation and Executive Orders. So, we raised the cap in 1990 and then removed it in 1992. In the course of developing this reauthorization bill, however, the committees of jurisdiction in the House—the Judiciary Committee and the Post Office and Civil Service Committee—both included caps in their bills. In deference to the House's position, we are now incorporating an annual cap of $14 million in S. 1413. We believe, after consulting with OGE, that this will be enough to allow the agency to perform its duties over the next 8 years.

S. 1413 also gives OGE gift acceptance authority for the first time. Under federal law, an agency can't accept gifts from non-federal sources without specific statutory authority. Many agencies have this authority, but up to now, OGE hasn't been one of them. OGE has asked for gift acceptance authority to assist it in its training mission. OGE regularly conducts multi-agency training sessions for federal employees around the country, and sometimes there is no federal facility nearby that is appropriate in terms of size and services. The gift acceptance authority in S. 1413 would allow OGE to accept donated non-federal facilities—such as an auditorium and related services such as projectionists and custodians—which might be offered by a state or local government or a university. Proper safeguards would protect against potential conflicts in the exercise of this authority.

The bill also includes several provisions that are essentially technical. It corrects a misleading heading in OGE's enabling statute which was not conformed when OGE was made an independent agency in 1989; moves the date of OGE's biennial report from the end of March to the end of April to give OGE more time to incorporate year-end statistics; strikes a 1980 requirement for the display of out-dated ethics posters in all federal buildings with 20 or more employees; and strikes out a reference to OGE in the Resolution Trust Completion Act that calls for OGE to consult on ethics standards for non-government employees who have contractual relationships with the government.

On this last point, let me explain that OGE's mission and expertise is the conduct of government employees, not private persons who may do business with the government. Under this bill, OGE will continue to consult with the FDIC on the ethics rules applicable to its employees.

Finally, the bill includes a provision to correct an unintended effect of the 1989 Ethics Reform Act with respect to the post-employment rules applicable

to executive and legislative branch employees. Under current law, senior executive and legislative branch employees (paid $108,000 or $102,000, respectively) are subject to 1-year cooling-off periods during which they cannot contact their former offices on behalf of another party. There are some enumerated exceptions to the current ban—for example, if a federal employee leaves to work for a state or local government or for an international organization like the United Nations, it is permissible for the employee to contact his or her former employer on behalf of the new boss. However, there is no exception for employees who leave to go work for a political campaign. So, if an administrative assistant or legislative director takes a leave of absence from a Senator's staff to work on the Senator's reelection campaign, the former staffer is prohibited from contacting the Senator or his or her staffers to discuss positions on particular issues on behalf of the campaign.

There is a broad bipartisan consensus that the current situation doesn't make sense and that including people who go to work on campaigns in the revolving-door rules was a mistake. In drafting the post-employment rules, no one had the campaign example in mind, and no one intended to prohibit campaign personnel from contacting their former offices. It does not implicate the kind of abuse we are worried about with respect to the revolving-door—that is, trading on Government information and access for private gain. Moreover, this law carries criminal sanctions, and while no one has been prosecuted so far, we need to correct the law to avoid any future prosecutions.

In 1991, there was a major effort to fix this problem by adding a new exception to the post-employment law for staff who leave government to work for campaigns. The Bush administration supported this legislation, and it passed the House as part of the honoraria reform bill. A companion amendment was circulated in the Senate, but the provision never became law because honoraria reform at that time got stalled.

This bill revives the effort to correct this problem, and it is closely based on the 1991 House version. It provides that executive and legislative branch employees who would otherwise be subject to the 1-year cooling-off period are not barred from communicating with their former offices on behalf of a candidate, political committee, or political party. It also includes a few qualifications to this exemption. First, it doesn't apply to FEC employees because their duties in overseeing the campaign process make such an exception for them inappropriate. Second, to guard against potential abuse of the exception or the appearance of impropriety when former employees represent multiple clients (e.g., when someone works for a consulting firm rather than directly for a campaign), the exception would apply only to individuals who work (i) solely for candidates, campaigns, or political parties, or (ii) the entities whose only clients are candidates, campaigns, or political parties.

This correction to the revolving-door rules applies to any communication or appearance that takes place on or after the date of enactment. So, an employee who left a government job within the last year—and who is still subject to the 1-year cooling-off period—can take advantage of this amendment with respect to future activities. Of course, the new rule also applies to anyone who leaves government after the date of enactment. Since we think the lack of an exception was a mistake from the start, we actually contemplated making it retroactive to January 1, 1991—when the Ethics Reform Act became effective—but the Justice Department generally opposes the retroactive repeal of criminal statutes. In deference to their wishes, we agreed to limit the retroactive effect of the provision, but that should not be interpreted to suggest we think past contacts on behalf of candidates or campaigns warrant criminal prosecution.

I hope the House will act quickly to reauthorize OGE and include the other important provisions contained in S. 1413.

So the bill (S. 1413), as amended, was passed.

(The text of the bill will be printed in a future edition of the RECORD.)

THE PAPERWORK REDUCTION ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of calendar No. 704, S. 560, the Paperwork Reduction Act; that the committee amendment be agreed to, the bill, as amended, be deemed read three times and passed, and the motion to reconsider be laid upon the table; further, that any statements appear in the RECORD as if read.

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

Mr. GLENN. Mr. President, it gives me great pleasure to rise before my colleagues today and urge their acceptance of bipartisan legislation to reauthorize the Paperwork Reduction Act. As chairman of the Governmental Affairs Committee, I am offering this bill as an amendment in the nature of a substitute to S. 560, the Paperwork Reduction Act of 1994.

I offer this amendment on behalf of myself and Senators NUNN, ROTH, LEVIN, SASSER, DORGAN, COHEN, LIEBERMAN, PRYOR, AKAKA, and BENNETT—all members of the Governmental Affairs Committee. The amendment was reported favorably by a unanimous vote of the committee on August 2, 1994.

This legislation is very important, and should be acted on now. We should not let this Congress end with the Paperwork Reduction Act still-unreathorized. The reauthorization and amendments of the legislation are needed for two simple reasons.

First, the Paperwork Reduction Act is vital to reducing Government paperwork burdens on the American public. Too often, individuals and businesses are burdened by having to fill out questionnaires and forms that simply are not needed to implement the laws of the land. Too much time and money is wasted in an effort to satisfy bureaucratic excess. The Paperwork Reduction Act of 1980 created a clearance process to control this Government appetite for information. The Paperwork Reduction Act of 1994 strengthens this process and will help the public break through the continuing waves of red-tape.

Second, the act is key to reducing the costs and improving the efficiency and effectiveness of government information activities. The Federal Government is now spending over $25 billion a year on information technology. The new age of computers and telecommunications provides many opportunities for improvements in Government operations. Unfortunately, as oversight by our Committee and others has shown, the government is simply wasting millions of dollars on poorly designed and often incompatible systems. This must stop. The Paperwork Reduction Act of 1980 took a first step on the road to reform when it created information resources management [IRM] policies to be overseen by OMB. The Paperwork Reduction Act of 1994 strengthens that mandate and establishes new requirements for agency IRM improvements.

In these and other ways, this legislation strengthens the Paperwork Reduction Act and reflects the concerns of a broad array of Senators, as is seen in the origin of the Committee substitute. It is a compromise between S. 560—introduced by Senator NUNN, for himself, Senators BUMPERS, ROTH, DANFORTH, and 22 other Senators; and S. 681—which I introduced, along with Senators LEVIN and AKAKA. We arrived at our bi-partisan, consensus compromise after a year-long consultative effort, including a committee hearing on May 19, 1994. The result is strongly endorsed by the administration and the General Accounting Office.

As my colleagues know, I have been working for several years to reauthorize this important law. Other members of the committee have, too—particularly, Senator NUNN, Senator ROTH, and Senator LEVIN. We are all very pleased with the compromise we now have. We offer the substitute as an amendment to S. 560 in recognition of

the support that bill has obtained, both in the Senate and the House. With that support, we hope our consensus legislation can now move quickly.

Reflecting our support for this amendment, I ask unanimous consent that the following Senators who cosponsored the amendment in committee, be included as original co-sponsors to S. 560: Senators GLENN, LEVIN, DORGAN, LIEBERMAN, PRYOR, AKAKA, and BENNETT.

With this amendment, we have the best of both S. 560 and S. 681:

We reauthorize the act for 5 years;

We overturn the Dole versus United Steelworkers Supreme Court decision, so that information disclosure requirements are covered by the OMB paperwork clearance process;

We require agencies to evaluate paperwork proposals and solicit public comment on them before the proposals go to OMB for review;

We create additional opportunities for the public to participate in paperwork clearance and other information management decisions;

We strengthen agency and OMB information resources management [IRM] requirements;

We establish information dissemination standards and require the development of a Government information locator service [GILS] to ensure improved public access to Government information; especially that maintained in electronic format; and

We make other improvements in the areas of Government statistics, records management, computer security, and the management of information technology.

These are important reforms—and I ask unanimous consent that a more detailed summary of the legislation be printed in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER without objection, it is so ordered.

(See exhibit 1.)

Mr. GLENN. Even with these reforms, reaching agreement on this legislation has involved considerable compromise. There has been give and take on both sides. The result, like most compromises, may well displease some. It may also not completely resolve conflicting views on many of the OMB paperwork and regulatory review controversies that have dogged congressional oversight of the Paperwork Reduction Act. But again, the committee substitute is a compromise that addresses many real issues and moves the Government forward toward the reduction of paperwork burdens on the public and improvements in the management of Federal information resources. I believe this is a very good compromise that can and should pass both the Senate and the House. I urge my colleagues to support the committee substitute.

EXHIBIT 1

SUMMARY OF GLENN-NUNN-ROTH GOVERNMENTAL AFFAIRS COMMITTEE SUBSTITUTE TO S. 560, THE PAPERWORK REDUCTION ACT OF 1994

The committee substitute to S. 560 would reauthorize appropriations for the Paperwork Reduction Act and amend the Act to strengthen its paperwork reduction and information resources management [IRM] purposes. Its most important provisions are:

1. Agency responsibilities—Detailed agency responsibilities for paperwork clearance (e.g., early agency evaluation and public comment) and IRM (e.g., coordinating systems planning with budget and financial management review).

2. Third-Party paperwork—Overturns the Supreme Court decision, Dole versus United Steelworkers, by including 3rd-party "disclosure" requirements in the definition of "collection of information," to ensure OMB paperwork review.

3. Burden—Adds detail to the definition and strengthens references to reducing burden in order to maintain the Act's primary focus on reducing paperwork burdens on the public.

4. 5 percent goal—Maintains the 5% annual paperwork reduction goal from current law.

5. Public disclosure—In addition to consolidating the Act's public disclosure requirements (i.e., for paperwork clearance, not regulatory review), adds a limitation to protect "whistleblowers" by withholding from public disclosure any communications from people about unauthorized "bootleg" paperwork, if they fear retaliation (e.g., from an agency).

6. Requests for OMB review—Allows public requests for an OMB determination of whether agency paperwork is covered by the Act and properly cleared.

7. Dissemination—Details OMB and agency information dissemination management responsibilities.

8. Information technology and IRM planning—Links IT/IRM decision-making to program performance and budgetary/financial management consistent with GAO "Best Practices" studies.

9. Years of authorization—5-year $8 million annual authorization.

The Committee substitute was offered at the Governmental Affairs Committee markup on August 2, 1994, by Chairman Glenn, on behalf of himself, and Senators Nunn, Roth, Levin, Sasser, Dorgan, Cohen, Lieberman, Pryor, Akaka, and Bennett. The committee voted unanimously to favorably report S. 560, as amended by the substitute.

Mr. ROTH. Mr. President, I rise in support of S. 560, the Paperwork Reduction Act of 1994. This legislation was reported out of the Committee on Governmental Affairs unanimously, reflecting the bipartisan efforts of Senators GLENN, NUNN, and myself. Senator NUNN and I were cosponsors of S. 560 while Senator GLENN had sponsored S. 681. While the two bills had many differences of substance, emphasis, and form, the major difference in my opinion concerned the 1990 Supreme Court decision in Dole versus United Steelworkers of America, which held that certain paperwork requirements were not within the jurisdiction of the Paperwork Reduction Act.

I am pleased that the reported legislation overturns the Dole case, so that all paperwork falls under the act and is thereby subject to review by the Office of Information and Regulatory Affairs. The legislation also authorizes appropriations for OIRA for 5 more years, strengthens OIRA and agency responsibilities for the reduction of paperwork burdens on the public, and improves policies for information resources management.

The paperwork burden produced by Government's enormous appetite for information is an ever increasing problem. The fact that the problem is growing does not mean that efforts under the Paperwork Reduction Act of 1980 have not been worthwhile. The problem would have been much worse without such efforts. The mechanism for reducing burdens cannot be faulted because Congress passes more laws that generate more paperwork.

The legislation before us recognizes that an information collection may be problematic not only because the collection has no public utility but also because the collector may already have access to the information and need not bother our citizenry with a request for the same information. I applaud the efforts of GAO to underscore this simple truth by highlighting the benefits of information resources management. This legislation effectuates the principle that information resources management and reduction of paperwork burdens are two sides of the same coin. While some may view the two aspects as competing for scarce OIRA resources, that view is mistaken. The two aspects are inextricably linked.

This legislation enjoys widespread support among the business community, both big and small, as well as among State and local government paperwork collections. They all will be pleased to see that this legislation strengthens the paperwork reduction aspects of the Act and that, in particular, it retains the direction to OIRA that it manage the paperwork burden on the public to achieve a 5 percent reduction.

Paperwork burdens, like other regulatory burdens, are a hidden tax on the American people—a tax without measure, a tax unrestricted by budgetary or constitutional imitations, but a tax no less real.

Unfortunately, there are some liberal interest groups who have never been happy with the Act and who are even less happy with this improved amendment. For the last 14 years, whenever such groups were displeased by the exercise of authority that the Act placed upon OIRA to deny clearance to a noncomplying information collection, they complained that OIRA's action was "substantive" in its effect and in violation, therefore, of section 3518(e) of the Act. That provision states that:

(n)othing in this chapter shall be interpreted as increasing or decreasing the authority of the President * * * with respect to the substantive policies and programs of departments, agencies, and offices * * *.

These liberal interest groups never seemed to notice the "or decreasing" language in section 3518(e). Thus they sought to transform a "savings clause" regarding the President's authority to oversee the departments and agencies of Government into a limitation on that authority. As both the Reagan and the Clinton regulatory review executive orders exemplify, Presidents have constitutional authority—and, I would add, a constitutional duty—to take care that administration policies are being properly implemented. It is that authority the Act leaves intact—neither increased nor decreased.

The reason I note this argument by liberal interest groups is that it has had a way of insinuating itself into Governmental Affairs Committee reports on the Paperwork Reduction Act, such as in 1990 and 1994. I take exception to its insinuation, as I believe others may as well. The authority given to OIRA under the Act is not mechanical but discretionary. All of the discretion given to OIRA in the words of the Act is actually given and is not contradicted or overridden by section 3518(e). The fact that OIRA exercises is discretion in a different way from what I might prefer does not mean that OIRA has violated the Act, acted outside its authority, or misinterpreted Committee intent, so long as OIRA has weighed the appropriate factors under the Act in reaching its judgment.

In reviewing an information collection under the Act, Sally Katzen of the Clinton administration and Wendy Gramm of the Reagan administration might well give different weight to the appropriate factors in reaching a judgment. That one or the other conclusion may be more agreeable does not make the less agreeable judgment inconsistent with the Act.

This legislation, it should always be remembered, is an overlay on the President's constitutional authority to oversee the departments and agencies of government. That the President has such authority is the key to the correct interpretation of this legislation.

Finally, I would like to underscore a point to which Senators GLENN, NUNN, and I gave considerable attention. This legislation is a rewrite of the 1980 Act. Its form is necessitated by the number of technical and other changes made. This form is in no way intended to start a new legislative history with the 1994 Act. Rather, this legislation is only a pro tanto modification intended to carry on the legislative history of the 1980 Act. The report, at page 17, makes this very same point. It is an important point, and it should be noted by anyone interested in the legislative history that guides the interpretation of the Paperwork Reduction Act.

In closing, I wish to commend my colleagues, Senator GLENN and Senator NUNN, for their co-operation and patience in fashioning legislation on a very complex subject. This legislation merits the support of every Member.

Mr. NUNN. Mr. President, I rise in strong support of the committee substitute for S. 560, the Paperwork Reduction Act of 1993, which I sponsored. I complement my good friend from Ohio [Mr. GLENN], the chairman of the Governmental Affairs Committee, for his skillful leadership and tenacity in making this possible. The agreement embodied in the committee substitute has garnered unanimous support within the committee, the support of the administration, and the support of the broad-based Paperwork Reduction Act Coalition as well that of elected officials, and many in the educational and non-profit communities.

The committee substitute is a skillful blending of S. 560, as introduced, and the chairman's bill S. 681. Both had the same basic objectives—to reauthorize appropriations for the Office of Information and Regulatory Affairs [OIRA] at OMB and to strengthen the Paperwork Reduction Act of 1980. Each bill, however, reflected substantially different perspectives on how the Paperwork Reduction Act should be strengthened. The committee substitute reflects the core of both bills.

We could not have successfully reached this point without the assistance of our Republican colleagues on the committee, led by my friend from Delaware [Mr. ROTH], whose steadfast assistance was invaluable. S. 560, the Nunn-Bumpers-Danforth Paperwork Reduction Act of 1993, enjoys strong bipartisan support with Members outside the membership of the Governmental Affairs Committee.

Given the importance of this issue to the small business community, S. 560, as introduced, has many original cosponsors from the ranks of the Committee on Small Business. My friend from Arkansas [Mr. BUMPERS], the chairman of the Small Business Committee, is the principal cosponsor of S. 560 on the Democratic side. Senator PRESSLER, the committee's ranking Republican member, was also among the original cosponsors of S. 560. In all, fully a quarter of the membership if the Senate cosponsored S. 560, as introduced. I believe that the committee substitute is equally worthy of their support.

Mr. President, as was described by my friend from Ohio [Mr. GLENN], the committee substitute includes the many valuable provisions of S. 681 relating to improving information resources management [IRM] by the Federal Government. The smart use of information by the government, and its potential to minimize the burdens placed on the public, is a core concept of the 1980 act. The IRM provisions of the committee substitute clearly build upon the foundation laid more than a decade ago by our former colleague from Florida, Lawton Chiles, the father of the Paperwork Reduction Act.

The committee substitute being considered today also reflects most of the provisions found in S. 560, as introduced. Taken together these provisions reaffirm the fundamental objective of the Paperwork Reduction Act—to minimize the Federal paperwork burdens imposed on individuals, businesses, especially small businesses, educational and non-profit institutions, and State and local governments.

Mr. President, let me highlight several provisions. The committee substitute adopts the provisions of S. 560 which emphasize the fundamental responsibilities of each Federal agency to minimize new paperwork burdens by thoroughly reviewing each proposed collection of information for need and practical utility, the act's fundamental standards. The committee substitute emphasizes the responsibility of each Federal agency to conduct this review itself, before submitting the proposed collection of information for public comment and clearance by OIRA.

The bill before us reflects the provisions of S. 560 that further enhance public participation in the review of paperwork burdens, when they are first being proposed or when an agency is seeking to obtain approval to continue to use an existing paperwork requirement. Strengthening public participation is at the core of the 1980 act.

The committee substitute reflects the provision of S. 560, as introduced, which requires the establishment of a Government-wide goal, and individual agency goals, for the reduction of paperwork burdens on the public. Given past experience, some question the effectiveness of such goals in producing net reductions in Government-wide paperwork burdens. The proponents believe that such agency goals, if taken seriously, can become an effective restraint on the cumulative growth of Government-sponsored paperwork burdens.

Mr. President, the bill before us also includes amendments to the 1980 act which further empower members of the public to help police Federal agency compliance with the act. I would like to describe two of these provisions, both of which are derived from provisions contained in S. 560, as introduced.

One provision would enable a member of the public to obtain a written determination from the OIRA Administrator regarding whether a Federally-sponsored paperwork requirement is in compliance with the act. If the agency paperwork requirement is found to be non-complaint, the Administrator is charged with taking appropriate remedial action. This provision is based upon a similar process added to the Office of Federal Procurement Policy Act in 1988.

The second provision encourages members of the public to identify paperwork requirements that have not been submitted for review and approval

pursuant to the act's requirements. Although the act's public protection provisions explicitly shield the public from the imposition of any formal agency penalty for failing to comply with such an unapproved, or "bootleg", paperwork requirement, individuals often feel compelled to comply. This is especially true when the individual has an on-going relationship with the agency and that relationship accords the agency substantial discretion that could be used to redefine their future dealings. Under the committee substitute, a member of the public can "blow the whistle" on such a bootleg paperwork requirement and be accorded the protection of anonymity.

Finally, Mr. President, I would like to highlight that the committee substitute clarifies the 1980 act to make explicit that it applies to Government-sponsored third-party paperwork burdens. These are recordkeeping, disclosure, or other paperwork burdens that one private party imposes on another private party at the direction of a Federal agency. In 1990, the U.S. Supreme Court decided that such Government-sponsored third-party paperwork burdens were not subject to the Paperwork Reduction Act. The Court's decision in Dole versus United Steelworkers of America created a potentially vast loophole. The public could be denied the act's protections on the basis of the manner in which a Federal agency chose to impose a paperwork burden, indirectly rather than directly. It is worthy of note that Lawton Chiles went to the trouble and expense of filing an amicus brief to the Supreme Court arguing that no such exemption for third-party paperwork burdens was intended. Given the plain words of the statute, the Court decided otherwise. The bill before us makes explicit the act's coverage of all Government-sponsored paperwork burdens. Once this bill is enacted, we can feel confident that this major loophole will be closed. But given more than a decade of experience under the act, it is prudent to remain vigilant to additional efforts to restrict the act's reach and public protections.

Mr. President, rather than taking any more of the Senate's time to discuss the provisions of the committee substitute and how they change the 1980 act, I would ask unanimous consent to insert in the RECORD some views regarding how the bill we are about to consider affects the Paperwork Reduction Act of 1980 and prior amendments to it.

The PRESIDING OFFICER. Without objection its so ordered.

(See exhibit 1.)

Mr. NUNN. Mr. President, the committee substitute, like S. 560, as introduced, enjoys strong support from the business community, especially the small business committee. It has the support of a broad Paperwork Reduction Act Coalition, representing virtually every segment of the business community. Participating in the coalition are the major national small business associations—the National Federation of Independent Business [NFIB], the Small Business Legislative Council [SBLC], and National Small Business United [NSBU] as well as the many specialized national small business association, like the American Subcontractors Association, that comprise the membership of SBLC or NSBU. Other participants represent manufacturers, aerospace and electronics firms, construction firms, providers of professional and technical services, retailers of various products and services and the wholesalers and distributors who support them. I would like to identify a few other organizations that comprise the coalition's membership: the Aerospace Industries Association [AI], the American Consulting Engineers Council [ACEC], the Associated Builders and Contractors [ABC], the Associated General Contractors of America [AGC], the Chemical Manufacturers Association [CMA], the Computer and Business Equipment Manufacturers Association [CBEMA], the Contract Service Association [CSA], the Electronic Industries Association [EIA], the Independent Bankers Association of America [IBAA], the International Communications Industries Association [ICIA], the National Association of Manufacturers, the National Association of Wholesalers and Distributors, the National Security Industrial Association [NSIA], the National Tooling and Machining Association [NTMA], the Printing Industries Association [PIA], and the Professional Services Council [PSC]. Leadership for the coalition is being provided by the Council on Regulatory and Information Management [C-RIM] and by the U.S. Chamber of Commerce. C-RIM is the new name for the Business Council on the Reduction of Paperwork, which has dedicated itself to paperwork reduction and regulatory reform issues for more than a half century.

The coalition also includes a number of professional associations and public interest groups that support strengthening the Paperwork Reduction Act of 1980. These include the Association of Records Managers and Administrators [ARMA] and Citizens for a Sound Economy [CDE], to name but two very active coalition members.

Mr. President, I ask unanimous consent to have printed in the RECORD following my remarks a listing of the organizations that comprise the Paperwork Reduction Act Coalition.

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

(See exhibit 2.)

Mr. NUNN. Mr. President, given the regulatory and paperwork burdens faced by State and local governments, legislation to strengthen the Paperwork Reduction Act is high on the agenda of the associations representing elected officials. The Governor of Florida, my friend Lawton Chiles, has worked hard on this issue within the National Governors Association. During its 1994 annual meeting, the National Governors Association adopted a resolution in support of S. 560.

Mr. President, in addition to the broad support I have just described, the committee substitute for S. 560 has won the support of the Clinton administration. This legislation will advance the administration's broad initiatives to improve the delivery of services to the public, while minimizing the paperwork burdens that Government imposes in fulfilling its functions. With its emphasis on information resources management and the smart use of technology to undertake Government activities while imposing the least burden, the committee substitute for S. 560 can be an effective tool for advancing the administration's reinventing Government initiatives. Having available to the President the tools provided by a strengthened Paperwork Reduction Act can only help advance the implementation of the recommendations of the Vice President's National Performance Review.

Mr. President, I again congratulate my good friend from Ohio [Mr. GLENN] for his leadership in getting us to this point. I urge my colleagues to join me in supporting passage of the committee amendment to S. 560, the Paperwork Reduction Act of 1994.

EXHIBIT 1

COMMENTS OF SENATOR NUNN ON S. 560, AS REPORTED BY THE COMMITTEE ON GOVERNMENT AFFAIRS

The Committee substitute for S. 560, the "Paperwork Reduction Act of 1994", reflects an agreement that combines provisions of S. 560, as introduced, with S. 681, the "Paperwork Reduction Reauthorization Act of 1993", introduced by Chairman Glenn. Both bills made numerous amendments to the Paperwork Reduction Act, often from a different perspective. Given the number of changes to be made, it was decided that the substitute text of S. 560 would be in the form of a complete substitute for text of Chapter 35, of title 44, United States Code, in which the Paperwork Reduction Act is codified. This raised substantial concerns about the report to accompany the reported text of S. 560 and whether the legislative history of the 1980 Act and subsequent Congressional action could be adequately preserved.

These concerns about preserving the Act's existing legislative history prompted a very detailed review of the Committee's proposed report in light of previous Committee actions. Detailed comments were provided on the draft report.

Committee reports are a "touchstone" for those who are charged with implementing statutes in consonance with Congressional intent, for future Congresses when engaging in oversight, and for the courts. Accordingly, I want to make several points regarding the Committee Report (S. Rpt. 103-392) accompanying the bill:

1. The Report's section on "Implementation of the Paperwork Reduction Act of 1980" is presented as an historical account of what

has happened as a result of the 1980 Act. I do not share this understanding of past events. There are factual inaccuracies, omissions, and interpretations of the Committee's past actions with which I do not agree. Taken together, they could well lead to a future interpretational result that would be contrary to my understanding of the intent underlying the Committee substitute for S. 560, as introduced.

For example, President Carter, not President Reagan, initiated linking the President's Constitutional authority to review regulations to the information clearance authority delegated by Congress by the Federal Reports Act and its successor, the Paperwork Reduction Act. The origins of the issues associated with this linkage did not begin with the Reagan Administration. Moreover, they were well known to the Committee during its work on the legislation that became the 1980 Act. Acknowledging the Committee's long understanding of this core relationship is necessary to recognizing my understanding that S. 560, as reported, is a reaffirmation of a complementary relationship between the President's authority to review regulations and the specific responsibilities assigned to the Director of OMB by Congress in the Paperwork Reduction Act.

Contrary to the impression left by the Report's recitation of past events, the Committee passed and reported a bill in 1984 to reauthorize appropriations and amend the 1980 Act. In my view, concerns over "regulatory review" was not the reason the full Senate was unable to act on that bill.

The Report's account also could be read to suggest that the Committee reached a position regarding the Supreme Court decision in *Dole* v. *U.S. Steelworkers* when it states that the "Committee's report accompanying its 1990 legislation . . . describes these contentious issues and reveals the accompanying divisions within the Committee." I believe it important to acknowledge that in 1990 the Committee chose not to deliberate upon a legislative response to the Dole decision. My recollection is that based on a bipartisan request from a majority of the Members of the Committee on Small Business deliberations on the appropriate response to the Dole decision were reserved for consideration by the full Senate. The Senate was unable to engage in that deliberation.

There are other examples which leave the impression that problems with the Act's implementation rest largely with OMB. I would maintain that concern with agencies efforts to evade or undermine the 1980 Act have been as important to the Committee's deliberations. The 1982 Justice Department Opinion and agency reactions to it, for example, were central to the Committee's deliberations and actions in 1983, 1984, and 1986.

2. A major objective of my effort to pass Paperwork Reduction Act legislation has been to clarify the Act to overcome the confusion caused by the Court's reasoning in *Dole* v. *United Steelworkers of America*. The bill makes clear, particularly in its amendments to the terms "collection of information" and "recordkeeping requirements" that the scope of the Act's provisions apply to all federally sponsored collections of information, including disclosure requirements which involve one private party providing information to a third party.

In the Section-by-Section Analysis of the amended definition for "collection of information", the Report states:

To the extent that the debate over the Dole decision has involved charges that overturning the decision would amount to legislatively authorizing substantive regulatory review, the Committee notes that the Act, as stated in section 3518(e) of current law, is not to be "interpreted as increasing or decreasing the authority . . . [of OMB] with respect to the substantive policies and programs of [agencies]".

This Committee notation comes in the context of discussing an amendment intended to overturn the Dole decision's impact on the scope of the Act's provisions. Plaintiffs in that case, as they have done as witnesses before the Committee on several occasions, make much of how the language of section 3518(e) limits the authority of the Director of OMB under the Paperwork Reduction Act. Their concern, as I interpret it, is more the scope of the Director's authority, than it is the scope of what the Act's provisions cover.

The above referenced Committee notation needs to quote section 3518(e) in its entirety. The provision is a savings provision rather than a limitation. Further, it is not applicable solely to the Director of OMB, but was designed not to impair the President's authority under the Constitution and other statutory law. This meaning is not affected by the Committee's amendments to overturn the Dole decision or interpretations of it. Section 3518(e) reads:

(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws. (Emphasis added)

Vital to an understanding of this savings provision is the clause "increasing or decreasing the authority of the President . . .". For example, the Paperwork Reduction Act should not be read to decrease the authority or prohibit the President from exercising authority he could otherwise assert or appropriately delegate to the Director of OMB under the Constitution or other laws.

3. The Section-by-Section Analysis for Section 3508 needs to make clear that the Director's standard of review contained in Section 3508 is unchanged and continues to apply to all collection of information clearance decisions, including all such decisions set forth in Section 3507(d). Under S. 560, as reported, Section 3507(d) continues to describe how the Director will apply this standard of review for collections of information specifically contained in proposed rules subject to notice and comment rulemaking. The same Section 3508 standard of review applies when the Director makes a determination pursuant to the use of term "unreasonable" in Section 3507(d)(4)(C). (See, S. Rpt. 96-930 at 49 and CONGRESSIONAL RECORD Dec. 15, 1980 at page S-16700, Kennedy Statement)

4. A final, additional comment relates to the Report's treatment of the relationship between the Act's objective to improve "information resources management" and the objective to reduce regulatory paperwork burdens on the public. I see these objectives as mutually reinforcing. These two objective have more in common than they are separate and distinct. The implementation of these two objectives of the 1980 Act are fundamentally linked and intertwined, and effective implementation should reflect this understanding. I believe that this point needs to be further emphasized.

A unequivocal recognition of fundamental linkage of these two objectives of the 1980 Act is, furthermore, complementary to ongoing Administration efforts to "reinvent" government and its delivery of services to the public through the implementation of the recommendations contained in the Report on the Vice President's National Performance Review. The extent to which the bill's annual goals of reducing the cumulative paperwork burden on the public are met will be a measure of performance in implementing these amendments to the Act.

The linkage between regulatory and information management reforms is what distinguishes the Paperwork Reduction Act from other such reforms. Better "information resources management" amounts to a strategy on how to be smart about the consideration and use of alternative information technologies in reducing the burdens of the regulatory process upon the private sector, state and local governments, and the public. The practical benefits of implementing this fundamental concept of linkage is at the heart of this bill's broad support.

EXHIBIT 2

THE PAPERWORK REDUCTION ACT COALITION

Aerospace Industries Association of America.
Air Transport Association of America.
Alliance of American Insurers.
American Consulting Engineers Council.
American Institute of Merchant Shipping.
American Iron and Steel Institute.
American Petroleum Institute.
American Subcontractors Association.
American Telephone & Telegraph.
Associated Builders & Contractors.
Associated Credit Bureaus.
Associated General Contractors of America.
Associated Records and Managers Association.
Association of Manufacturing Technology.
Automotive Parts and Accessories Association.
Biscuit and Cracker Manufacturers' Association.
Bristol Myers.
Chamber of Commerce of the United States of America.
Chemical Manufacturers Association.
Chemical Specialties Manufacturers Association.
Citizens Against Government Waste.
Citizens For A Sound Economy.
Computer and Business Equipment Manufacturers Association.
Contract Services Association of America.
Copper & Brass Fabricators Council.
Council on Regulatory and Information Management.
Dairy and Food Industries Supply Association.
Direct Selling Association.
Eastman Kodak Company.
Electronic Industries Association.
Financial Executives Institute.
Food Marketing Institute.
Gadsby & Hannah.
Gas Appliance Manufacturers Association.
General Electric.
Glaxo, Inc.
Greater Washington Board of Trade.
Hardwood Plywood and Veneer Association.
Independent Bankers Association of America.
International Business Machines.
International Communication Industries Association.
International Mass Retail Association.
Kitchen Cabinet Manufacturers Association.
Mail Advertising Service Association International.

McDermott, Will & Emery.
Motorola Government Electronics Group.
National Association of Homebuilders of the United States.
National Association of Manufacturers.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of the Remodeling Industry.
National Association of Wholesalers-Distributors.
National Federation of Independent Business.
National Food Processors Association.
National Food Brokers Association.
National Foundation for Consumer Credit.
National Glass Association.
National Restaurant Association.
National Roofing Contractors Association.
National Security Industrial Association.
National Small Business United.
National Society of Professional Engineers.
National Society of Public Accountants.
National Tooling and Machining Association.
Northrop Corporation.
Packaging Machinery Manufacturers Institute.
Painting and Decorating Contractors of America.
Printing Industries of America.
Professional Services Council.
Shipbuilders Council of America.
Small Business Legislative Council.
Society for Marketing Professional Services.
Sun Company, Inc.
Sunstrand Corporation.
Texaco.
United Technologies.
Wholesale Florist and Florist Suppliers of America.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Air Conditioning Contractors of America.
Alliance for Affordable Health Care.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Floorcovering Association.
American Gear Manufacturers Association.
American Machine Tool Distributors Association.
American Road & Transportation Builders Association.
American Society of Travel Agents, Inc.
American Sod Producers Association.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
American Wholesale Marketers Association.
AMT-The Association for Manufacturing Technology.
Apparel Retailers of America.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Recyclers Association.
Bowling Proprietors Association of America.
Building Service Contractors Association International.
Business Advertising Council.
Christian Booksellers Association.
Council of Fleet Specialists.
Direct Selling Association.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Helicopter Association International.
Independent Bakers Association.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Communications Industries Association.
International Formalwear Association.
International Television Association.
Machinery Dealers National Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
National Association for the Self-Employed.
National Association of Brick Distributors.
National Association of Catalog Showroom Merchandisers.
National Association of Home Builders.
National Association of Investment Companies.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors.
National Association of Retail Druggists.
National Association of RV Parks and Campgrounds.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Association of Truck Stop Operators.
National Association of Women Business Owners.
National Chimney Sweep Guild.
National Coffee Service Association.
National Electrical Contractors Association.
National Electrical Manufacturers Representatives Association.
National Fastener Distributors Association.
National Food Brokers Association.
National Grocers Association.
National Independent Flag Dealers Association.
National Knitwear Sportswear Association.
National Limousine Association.
National Lumber & Building Material Dealers Association.
National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association.
National Paperbox Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Venture Capital Association.
Opticians Association of America.
Organization for the Protection and Advancement of Small Telephone Companies.
Passenger Vessel Association.
Petroleum Marketers Association of America.
Power Transmission Representatives Association.
Printing Industries of America, Inc.
Professional Plant Growers Association.
Promotional Products Association International.
Retail Bakers of America.
Small Business Council of America, Inc.
SMC/Pennsylvania Small Business.
Society of American Florists.
The Council of Growing Companies.
United Bus Owners of America.

So the bill (S. 560), as amended, was deemed to have been read three times and passed.

(The text of the bill will be printed in a future edition of the RECORD.)

INTRASTATE TOW AND WRECKER TRUCK TRANSPORTATION TECHNICAL CORRECTION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar 706, H.R. 5123, the Intrastate Tow and Wrecker Truck Transportation Technical Corrections Act of 1994.

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (H.R. 5123) to make a technical correction to an Act preempting State economic regulation of motor carriers.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2632

(Purpose: To amend 49 U.S.C. 11501 with respect to preemption of State economic regulation of motor carriers)

Mr. FORD. Mr. President, on behalf of Senators FORD, MURRAY, BINGAMAN, GORTON, and HUTCHISON, I send an amendment to the desk and ask for its immediate consideration; that the amendment be agreed to and the motion to reconsider be laid upon the table; that the bill, as amended, be read three times, passed and the motion to reconsider be laid upon the table; further, that any statement relating to this item be printed in the RECORD at the appropriate place as if read.

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

So the amendment (No. 2632) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. TECHNICAL CORRECTION OF 1994 FFA AUTHORIZATION ACT.

(a) IN GENERAL.—Section 11501(h)(2) of title 49, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and insert in lieu thereof a semicolon; and

(3) by adding at the end the following:

"(C) does not apply to the transportation of garbage and refuse;

"(D) does not apply to the transportation for collection of recyclable materials that are a part of a residential curbside recycling program; and

"(E) does not restrict the regulatory authority of a State, political subdivision of a State, or political authority of 2 or more States before January 1, 1997, insofar as such authority relates to tow trucks or wreckers providing for-hire service.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1995.

Mr. FORD. Mr. President, today, the Senate is about to consider H.R. 5123, the Intrastate Tow and Wrecker Transportation Technical Corrections Act of 1994, which was passed by the House on September 29, 1994. My friend, Chairman RAHALL of the House Public Works Subcommittee on Surface Transportation worked hard to craft a limited technical correction to P.L. 103-305, the Federal Aviation Administration Authorization Act, which preempted state regulation of trucking as of January 1, 1995.

The amendment I am offering to H.R. 5123 is also a technical correction. It builds on Chairman RAHALL's bill, and also adds two clarifications. First, let me explain the difference in the tow truck provision. The House bill would enable states to regulate tow trucks and wreckers for-hire. My amendment would provide the status quo for such services, whether regulated by a state or local jurisdiction. In any event, the ability to regulate tow trucks and wreckers for-hire would expire on January 1, 1997.

The two technical clarifications relate to what I would consider "garbage". Under the FAA Act, the transportation of property by motor carrier can no longer be regulated by state and local jurisdictions. The definition of property apparently has created some work for a few lawyers. The concern is that "garbage" could be construed as property", and thus states and local jurisdictions would be unable to regulate garbage collections, and recyclable collections at residences.

I know we all know what "garbage" is, but unfortunately, sometimes the lawyers need absolute certainty. I should add that the lawyers from the ICC and DOT have been very helpful and agree that a common sense definition of garbage exists. Letters from both agencies suggest that no amendment is needed. Yet, other lawyers want more certainty. Well, to those lawyers, the amendment I am offering will help them understand that "garbage" is "garbage". Once you or I put it out on the curb for the garbageman, it is garbage—not "property". If the lawyers want it, its all theirs! While the FAA Act of 1994 does not restrict state or local authority to regulate the transportation of garbage, refuse or recyclable material collected at residences, the amendment lays to rest any uncertainty as to what is garbage and what is property.

Mr. BINGAMAN. Mr. President, let me ask Senator FORD a question concerning section 601 of the recently enacted Federal Aviation Authorization Act of 1994 (P.L. 103-305).

Mr. FORD. I would be delighted to engage in a colloquy with my friend from New Mexico. I know he has a number of concerns with the impact of section 601 on his State.

Mr. BINGAMAN. Section 601 states that no State or political subdivision can regulate the price, route or service of the transportation of property by motor carriers and private motor carriers. Is it the Senator's understanding that the term "property" does not include "garbage"?

Mr. FORD. Yes, the Senator is correct. In fact, I have made sure that all understand that States can continue to regulate the collection of garbage and refuse under the amendment I offered to H.R. 5123, the Intrastate Tow and Wrecker Truck Transportation Technical Corrections Act of 1994.

Mr. BINGAMAN. I wanted to make sure that the term "property" did not include, what in my State are commonly called "water haulers", companies that haul water from an oil or natural gas well. The water carried is worthless—it either is dumped into the well or into a disposal area.

Mr. FORD. Assuming that the water being transported is worthless, I would believe that it could be construed as garbage or refuse. In addition, I might point out that section 601 does not affect a State's right to regulate safety or the routing of hazardous materials.

Mr. BINGAMAN. I thank the Senator for discussing the provision.

Mr. GORTON. Mr. President, I am pleased to lend my support to this legislation which makes technical corrections to a bill enacted into law earlier this year. I especially appreciate Chairman FORD's willingness to work with me and other members of the Washington delegation in accepting a provision clarifying that States are not preempted from regulating the transportation for collection of recyclable materials that are a part of a residential curbside recycling program.

Washington State leads the Nation in efforts to encourage residential recycling and resource conservation as part of our overall waste management strategy. Programs throughout the State are up and running and achieving remarkable results. For instance, in Pierce County alone, over 100,000 households participate in programs that have achieved the diversion of 42 percent of the waste stream away from disposal and into recycling. Local programs rely on integrated financial incentives for garbage and recycling to keep costs for residential customers under control.

Mr. President, I think it is important to note that this provision simply clarifies existing law. It was never congressional intent to preempt the States ability to regulate curbside residential recycling and many experts have told me that we did not do so in enacting title VI of the FAA Act earlier this year. In fact, I have a letter dated September 30, 1994, from Henri F. Rush, the General Counsel of the Interstate Commerce Commission which states, "You have requested my opinion as to whether Title VI of the Federal Aviation Authorization Act of 1994 preempting State regulation in intrastate truck transportation can be interpreted as foreclosing a State or municipality from regulating curbside collection of recyclables in connection with the provision of curbside trash collection service. In my view it cannot." While I agree with Mr. Rush's views, due to the importance of recycling programs and to address any concerns that anyone may have with regard to Congressional intent, I am pleased that Chairman FORD saw fit to clarify this issue.

I have also heard from cities within my State over the issue of the regulation of tow trucks and wreckers. I also appreciate Chairman FORD's willingness to include a provision relating to this matter. This provision will give Congress time next year to examine the legitimate concerns raised by cities like Bellevue, WA, over issues of consumer protection and public safety as it relates to towing services.

So the bill (H.R. 5123), as amended, was passed.

(The text of the bill will be printed in a future edition of the RECORD.)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION TECHNOLOGY INVESTMENT ACT

Mr. FORD. Mr. President, I ask unanimous consent, the Senate proceed to the immediate consideration of calendar No. 605, S. 1881, the NASA Technology Investment Act of 1994; that the committee amendment be agreed to, the bill as amended be deemed read three times, passed, and the motion to reconsider be laid upon the table; further, that my statements appear in the RECORD as if read.

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

Mr. HOLLINGS. Mr. President, on August 11, 1994, S. 1881, the National Aeronautics and Space Administration [NASA] Technology Investment Act of 1994, was approved by the Committee on Commerce, Science, and Transportation. As chairman of the Commerce Committee, I support S. 1881 and its passage by the Senate.

This year, our Nation celebrated the 25th anniversary of the Apollo 11 mission to the Moon. Many technologies needed for that historic mission were subsequently "spun-off" and used for commercial products or processes. Today, with diminishing Federal dollars available to fund important national priorities, NASA can no longer afford the luxury of developing technologies solely for its own missions.

Continued Federal investment in aeronautics and space demands closer links with industry's technology requirements and greater returns to the U.S. economy.

S. 1881 provides the framework for NASA to work more closely with industry to identify and pursue the development of technologies but requires no increase in spending. It is a small but important step in reassessing our funding priorities in the post-cold war era. I urge my colleagues to join me in passing this bill.

Mr. ROCKEFELLER. Mr. President, the Senate is taking an important step forward today in approving a bill designed to produce more dividends for Americans from our investment in the Nation's space program. This represents the kind of change we need to make to strengthen our economy, generate jobs, and thrive as a society in the future. This legislation sends a very clear signal to NASA, and I urge its leadership and personnel to rise to the challenge.

As chairman of the Subcommittee on Science, Technology and Space, I am pleased to have the Senate consider this bill, S. 1881, the National Aeronautics and Space Administration [NASA] Technology Investment Act of 1994.

With Senator BURNS, I introduced S. 1881 on March 1, 1994. Working with NASA, industry, and our cosponsors, Senators MIKULSKI, PRYOR, INOUYE, LOTT, JEFFORDS, ROBB, GLENN, FEINSTEIN, and GORTON, S. 1881 was approved without objection by the Committee on Commerce, Science, and Transportation on August 11, 1994. The legislation before the Senate today is the reported version of S. 1881.

A great deal of thought and work was spent to develop this legislation, because of our interest in providing clearer direction to NASA on the priorities that reflect the public's needs. Certainly, I am hopeful that the people and industries of my own State will benefit from a space program that uses its tools and mission to serve the Nation more effectively.

The purpose of S. 1881 is to make NASA's existing investment in aeronautics and space as useful as possible to important commercial sectors in the United States, such as aircraft, communications satellites, remote sensing, and launch vehicles. With important national initiatives competing for scarce funding, continued Federal investment in NASA's aeronautics and space programs require more tangible contributions to economic priorities.

In developing this legislation, we were impressed with NASA's efforts to work more closely with industry to advance aeronautics in areas of high speed research and advanced subsonic technologies. Working with industry in these two areas to identify and develop high risk technologies may help U.S. airframe and engine manufacturers in existing markets and capture the future high speed civil transport market. However, the lion's share of NASA funding—about 90 percent—goes to its space programs, not aeronautics. S. 1881 would require NASA to work with industry to identify and develop high risk space technologies. As NASA developed technologies for its own missions, it would also advance technologies and equipment useful to industry.

Recognizing the important role that aeronautics research and technology plays in the competitiveness of U.S. industry, S. 1881 also requires an assessment of wind tunnel testing capabilities and a strategy for joint industry/government funding of new wind tunnel facilities. Our national wind tunnel facilities are aging and, with few exceptions, cannot be modified to simulate adequately the flight conditions that will be required for highly productive aircraft design and development.

Finally S. 1881 as reported includes amendments to the Commercial Space Launch Act of 1984 that (1) extend the authority of the Department of Transportation to cover commercial re-entry spacecraft and (2) incorporate the intent of S. 1145 to prohibit the launch of outer space advertisements. S. 1145 was introduced by Senator JEFFORDS and cosponsored by Senators AKAKA, BUMPERS, CONRAD, DORGAN, GLENN, KOHL, and WARNER.

S. 1881 calls for better use of existing dollars at NASA, not new spending. NASA, the administration, professional associations, and aerospace industries support this legislation, and I thank all of them for their counsel and input. I also thank Elizabeth Inadomi of the Senate Commerce Committee staff, who provided valuable assistance in developing this measure.

I urge my colleagues in the Senate to join me and pass this bill. I ask that the NASA Technology Investment Act of 1994, as reported, be reprinted in its entirety and accompany my statement for the RECORD.

Mr. BURNS. Mr. President, I am pleased to express my support for passage of the National Aeronautics and Space Administration Technology Investment Act of 1994. This bill is designed to encourage the National Aeronautics and Space Administration [NASA] to strengthen the link between their programs and economic growth and jobs for Americans, and in my case, Montanans.

The bill provides a framework for NASA to move in the direction of a more business-like approach with the aerospace industry. The bill does two basic things: gives NASA a direction for its role in technology investment and requires the United States to prepare a strategy for developing world class aeronautics testing facilities.

It is important to support our aerospace industry because of its key role in offsetting deficits in U.S. trade with other countries. One of the areas the industry lacks is adequate facilities to test new concepts.

My work with a company in Butte, MT, revealed to me that the United States does not have adequate wind tunnels and must rely on foreign wind tunnels for our Nation's future aeronautics testing. Our aerospace companies' reliance on these foreign wind tunnels could result in advances to other countries' aircraft competing directly with U.S. commercial aircraft.

The bill establishes a competitive, cost-sharing technology program for eligible companies. It is designed to work with existing Federal policy to encourage industry-led groups to develop new technologies on a more efficient basis.

I commend my good friend Senator ROCKEFELLER, chairman of the Science, Technology, and Space Subcommittee of the Commerce, Science, and Transportation Committee, for his leadership on this legislation.

I yield the floor.

So the bill (S. 1881) was deemed to have been read three times and passed.

(The text of the bill will be printed in a future edition of the RECORD.)

INDEPENDENT SAFETY BOARD ACT AMENDMENTS OF 1994—MESSAGE FROM THE HOUSE

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (H.R. 2440) to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1994, 1995, and 1996, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 2440) entitled "An Act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1994, 1995, and 1996, and for other purposes.", with the following amendment:

In lieu of the matter proposed by said amendment, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Safety Board Act Amendments of 1994".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 1118(a) of title 49, United States Code, is amended to read as follows:

"(a) IN GENERAL.—There is authorized to be appropriated for the purposes of this chapter $37,580,000 for fiscal year 1994, $44,000,000 for fiscal year 1995, and $45,100,000 for fiscal year 1996. Such sums shall remain available until expended.".

SEC. 3. APPLICABILITY OF CERTAIN REGULATIONS AND REQUIREMENTS TO THE OPERATION OF PUBLIC AIRCRAFT.

(a) DEFINITION OF PUBLIC AIRCRAFT.—Section 40102(a)(37) of title 49, United States Code, is amended by striking subparagraph (B) and inserting the following:

"(B) does not include a government-owned aircraft—

"(i) transporting property for commercial purposes; or

"(ii) transporting passengers other than—

"(I) transporting (for other than commercial purposes) crewmembers or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance of, a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management; or

"(II) transporting (for other than commercial purposes) persons aboard the aircraft if the aircraft is operated by the Armed Forces or an intelligence agency of the United States.

An aircraft described in the preceding sentence shall, notwithstanding any limitation relating to use of the aircraft for commercial purposes, be considered to be a public aircraft for the purposes of this part without regard to whether the aircraft is operated by a unit of government on behalf of another unit of government, pursuant to a cost reimbursement agreement between such units of government, if the unit of government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat.".

(b) AUTHORITY TO GRANT EXEMPTIONS.—

(1) IN GENERAL.—The Administrator of the Federal Aviation Administration may grant an exemption to any unit of Federal, State, or local government from any requirement of part A of subtitle VII of title 49, United States Code, that would otherwise be applicable to current or future aircraft of such unit of government as a result of the amendment made by subsection (a) of this section.

(2) REQUIREMENTS.—The Administrator may grant an exemption under paragraph (1) only if—

(A) the Administrator finds that granting the exemption is necessary to prevent an undue economic burden on the unit of government; and

(B) the Administrator certifies that the aviation safety program of the unit of government is effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government.

(c) INVESTIGATIVE AUTHORITY OF BOARD.—

(1) ACCIDENTS INVOLVING PUBLIC AIRCRAFT.—Section 1131(a)(1)(A) of title 49, United States Code, is amended by inserting before the semicolon at the end the following: "or an aircraft accident involving a public aircraft as defined by section 40102(a)(37) of this title other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States".

(2) DUTIES AND POWERS.—Section 1131 of title 49, United States Code, is amended—

(A) by redesignating subsection (d) as subsection (e); and

(B) by inserting after subsection (c) the following:

"(d) ACCIDENTS INVOLVING PUBLIC AIRCRAFT.—The Board, in furtherance of its investigative duties with respect to public aircraft accidents under subsection (a)(1)(A) of this section, shall have the same duties and powers as are specified for civil aircraft accidents under sections 1132(a), 1132(b), and 1134(b)(2) of this title.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on the 180th day following the date of the enactment of this Act.

SEC. 5. RELEASE OF RESERVATIONS AND RESTRICTIONS ON CERTAIN PROPERTY LOCATED IN RAPIDES PARISH, LOUISIANA.

(a) RELEASE.—Notwithstanding any other provision of law, and except as provided in subsections (b) and (d), the United States releases without consideration all reservations, restrictions, conditions, and limitations on the use, encumbrance, or conveyance of certain real property (together with any improvements thereon and easements appurtenant thereto) consisting of approximately 1,991.53 acres of land and located in Rapides Parish, Louisiana, the location of Esler Field, as identified in the deed of conveyance from the United States to the Parish of Rapides, Louisiana, dated January 23, 1958, to the extent such reservations, restrictions, conditions, and limitations are enforceable by the United States.

(b) EXCEPTIONS.—The United States reserves the right of reentry upon or use of the property described in subsection (a) for national defense purposes in time of war or other national emergency without charge. The release provided by subsection (a) does not apply to any conditions or assurances associated with (1) the continued nonexclusive use without charge of the airport and use of space at the airport, without charge, by the Louisiana National Guard, (2) the nonexclusive use of the airport by transient military aircraft without charge, or (3) the nonexclusive use of the airport by transient military aircraft without charge during periods of maneuvers.

(c) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to affect the disposition or ownership of oil, gas, or other mineral resources either in or under the surface of the real property described in subsection (a).

(d) FEDERAL AVIATION ADMINISTRATION.—

(1) NONAPPLICABILITY OF RELEASE TO GRANT AGREEMENTS.—The release described in subsection (a) does not apply to any conditions and assurances associated with existing airport grant agreements between the Rapides Parish Airport Authority/Esler Field and the Federal Aviation Administration.

(2) AGREEMENT.—Notwithstanding any other provisions of law, the Administrator of the Federal Aviation Administration shall enter into an agreement with the Airport Authority of Rapides Parish, Louisiana, to provide for the terms and conditions under which the real property described in subsection (a) may be used, leased, sold, or otherwise disposed. The agreement shall be concluded not later than 180 days after the date of the enactment of this Act.

(e) EFFECTIVE DATE.—This section shall take effect on the 180th day following the date of the enactment of this Act.

Mr. FORD. Mr. President, today, the Senate will consider the authorization of the programs of the National Transportation Safety Board (NTSB). The bill will provide a 3 year authorization for the NTSB and enable the agency to continue its work protecting the travelling public. With the recent aviation crashes, the NTSB once again has demonstrated its professionalism and dedication to protecting the travelling public.

Last Friday, this body confirmed a new chairman of the NTSB, Jim Hall. I know that Jim is looking forward to his stewardship and I wish him and the NTSB well. H.R. 2440 will send him and the NTSB a message—go out and continue your investigations, make those tough recommendations, and help us ensure a safer transportation system.

As many of my colleagues know, the NTSB is comprised of 5 members, who are responsible for investigating accidents and making recommendations on how to improve the transportation system. The NTSB's work is recognized around the world, and when a tragic accident occurs, the entire nation instantly becomes aware of the work of the NTSB. By the end of this year, the NTSB will need at least two new members. I would hope that the nominees are available for consideration by the Senate when the 104th Congress convenes.

I want to mention one final point with respect to H.R. 2440, concerning public aircraft. Much time has been spent reviewing how best to address the question of what constitutes a public aircraft. The provision in H.R. 2440 will exclude aircraft used for passenger transportation from the definition of public aircraft. Airplanes used for executive transport, such as transporting a Governor to meetings, would not be considered a "public aircraft". On the other hand, using aircraft for firefighting and law enforcement would continue to be considered "public aircraft."

Mr. HOLLINGS. Mr. President, with the passage of H.R. 2440, the Senate will reauthorize the programs of the National Transportation Safety Board [NTSB].

The Senate version of the bill, S. 1588, was reported by the Commerce Committee on November 17, 1993. The Senate considered S. 1588 on May 12, 1994. The House revised the bill with a number of non-controversial and technical changes.

We all have witnessed the work of the NTSB sifting through the wreckage of transportation accidents. Each of us has been affected by the NTSB, whether it is because of a train wreck in South Carolina, an aircraft accident in North Carolina, or some other tragic event.

Discussions with the NTSB and recommendations by the NTSB have led to safety improvements throughout the country and the world. I appreciate the hard work and dedication of the members and staff of the NTSB. What many of my colleagues may not know is that at the end of this year, the NTSB will lose the valuable services of John Lauber. He has served two terms and has been an NTSB member since 1985. I thank him for his many years of service on the Board.

I have some concerns about the future of the NTSB. At the end of this year, it is possible that the Board may have only two members. At a minimum, three members are needed for a

quorum, and absent a quorum, no recommendations can be made. The investigations into the two aviation accidents in Pittsburgh and Charlotte, for example, may be completed in the next 6 to 9 months, and we must ensure that the NTSB is able to complete these and other pending investigations. I know the Administration is seeking to fill these positions so that the vital work of the NTSB will continue.

Mr. GORTON. Mr. President, I am pleased to lend my support to legislation to reauthorize the National Transportation Safety Board. His agency provides invaluable expertise in their role as independent investigators in transportation accidents. Tragically, we have had to call on their skills too often this year but the public should be reassured by the dedication and the professionalism of the men and women of this important Federal agency.

In addition to providing the authorization for NTSB, I am pleased that language was included in this bill to address the issue of commercial purposes as it relates to public helicopters responding to emergency situations.

As we all know, the summer wildfires of 1994 had a drastic impact throughout the State of Washington. Local governments were frustrated that although fires were burning, all available resources could not be utilized. Emergency or not, it is presently prohibited for public agencies to reimburse one another for the use of helicopters.

The language in this bill will now give authority to local governments to respond immediately to emergency situations without having to cut through the bureaucratic redtape. In certain cases where an imminent threat is looming and private operators are not readily available, public agencies will be allowed to use each other's helicopters.

This language helps ensure that when an emergency breaks out, all aircraft—public and private—will be available to respond without delay.

I have worked with other members of the Washington delegation, representatives from Federal, State, and local public agencies, and the private sector on this issue and feel comfortable that the end result is balanced and fair. I feel this language adequately addresses the problems that public agencies have faced while at the same time protecting the interests of the private sector.

Mr. PRESSLER. Mr. President, the Senate is about to take final action on H.R. 2440, a measure to reauthorize the National Transportation Safety Board [NTSB] for 1994 through 1996. This bill contains a provision I authored. It is designed to advance the safety of public use aircraft. This bill is very important to promoting transportation safety. I urge its prompt approval.

Mr. President, this reauthorization bill has gone through several changes during this legislative session. It was originally approved by the House of Representatives last November. The Senate's alternative version, which included my public aircraft safety provision, was passed by the Senate in May 1994. Earlier this week, the House agreed to the Senate-passed version, with some additional provisions. Today, the Senate is ready to pass the measure and send it to the President. The final bill is a well-crafted product.

I would like to explain briefly my provision in this legislative measure. Its purpose is to advance the safety of travel on public aircraft; that is, aircraft used exclusively in the service of Federal, State, and local governments. Under current law, public use aircraft are not subject to Federal Aviation Act [FAA] safety regulations to the extent imposed on civil aircraft.

My provision would amend the definition of public use aircraft to mandate that FAA safety regulations, directives and orders issued for civil aircraft be made applicable to all government-owned, nonmilitary aircraft engaged in passenger transport.

Further, the Administrator would be allowed to waive FAA requirements for public aircraft provided an equivalent level of safety has been established by the governmental entity responsible for the aircraft. I am pleased the House incorporated some additional language with my exemption provision, providing specific criteria which the Administrator must consider in order to grant such an exemption. That should help the Administrator ensure that any exemption from this provision would not compromise safety.

Finally, my provision would grant the NTSB authority to investigate accidents involving all public, nonmilitary aircraft. This last point is very important because it will allow for an accurate data base to be established. In turn, it should enable us to assess more conclusively public aircraft safety standards and procedures.

Mr. President, I am pleased to report that Jim Hall, who became a member of the NTSB last year and was confirmed by the Senate last week to serve as NTSB Chairman, also recognizes the importance of expanding the NTSB's authority to investigate public use aircraft accidents. Upon enactment of this provision, Chairman Hall will face the challenge of ensuring that the NTSB carries out this new mandate and, in the long term, advances public use aircraft safety. I will do my part in working to ensure adequate congressional oversight in this area.

Mr. President, some additional background on my provision may be helpful. I first became aware of the regulatory exemptions for government-owned aircraft soon after last year's tragic plane crash that claimed the lives of Governor George Mickelson and seven other South Dakotans. While the exemption for public use aircraft from FAA safety regulations and directives had no bearing on the cause of that particular crash, such exemptions could greatly jeopardize the safety of passengers on public use aircraft. Therefore, I introduced legislation to remedy this potential problem.

My original legislation would have mandated that all FAA regulations issued for civil aircraft relating to airworthiness, and other safety related orders, be made applicable to all public, nonmilitary aircraft. I agreed to alter my original provision only after the FAA and several other Federal agencies raised operational concerns that merited consideration. While the resulting compromise is not as far reaching as I think it should be, it is an important step forward in advancing public use aircraft safety.

Mr. President, I also want to point out that the topic of public use aircraft is gaining increased public awareness. In fact, several news articles regarding this issue were printed recently. I ask unanimous consent that articles by David Eisnstadt from the October 2 and 3, 1994, issues of the Times Union be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. PRESSLER. I want to commend the journalist, David Eisenstadt, and the Hearst Newspapers, for recognizing the importance of this aviation issue. These articles provide a great deal of insightful information that merits the attention of all levels of government, from State and local governments to Congress and the administration. I urge my colleagues to read them and become more aware of the potential problems that could result without necessary regulatory action. Let's not wait for more aviation accidents and lost lives to spur necessary policy considerations. Again, I urge my colleagues to read the articles.

As ranking member of the Senate Aviation Subcommittee, I believe Congress is obligated to do its utmost to advance air travel safety wherever a problem exists. This measure narrows greatly the areas in which public use aircraft are exempted from FAA compliance. I urge my colleagues to support the bill.

EXHIBIT 1

UNREGULATED PILOTS TAKE THEIR TOLL

(By David Eisenstadt)

WASHINGTON.—As soon as they learned that a U.S. Energy Department airplane had slammed into a school warehouse near Billings, Mont., killing all eight people aboard, air traffic controllers across Montana suspected that they knew who was piloting the jet.

At 39, pilot Curt Schwarz had earned a reputation for flying dangerously. Pilots and mechanics gossiped that Schwarz gambled with takeoffs and landings and often sneered at basic airplane safety.

"He was always in a rush, trying to cut corners." said Bob Chopko, a colleague of Schwarz at the Energy Department.

For his last flight, the government pilot had falsified his medical certificate, one of the basic credentials of flying, and was relying on a co-pilot, 32-year-old Dan Arnold, who was not licensed to fly the sophisticated Cessna 550, according to documents on the 1992 crash.

Robert Machol, the FAA's former chief scientist who helped investigate the Billings crash, said of Schwarz, "This pilot, it was very clear, was reckless and stupid."

Schwarz was also not covered by many of the FAA's regulations for private and commercial pilots.

Two former National Transportation Safety Board officials—Ira Furman and Herb Bates—think its crazy for government airplanes to escape regulation.

"It's worth remembering that a government plane is just as capable of killing as any other plane," says Furman.

Bates expresses his agreement, "What you have is a large group of flying people who are truly not monitored. It costs so many people their lives," he says.

A Hearst analysis of the available information on government aircraft accidents since 1983—272—reveals a history marked by crashes involving reckless government pilots, poorly trained government pilots and others who were loosely supervised and monitored by managers who were not pilots and lacked other aviation experience.

The General Accounting Office, the investigatory arm of Congress, found a similar pattern in its 1986 examination of Alaska's state flying operation. The GAO, relying on special data provided them by the FAA, found that government aircraft in Alaska crashed more often than general aviation planes and helicopters.

"Our review disclosed no persuasive reason why (government) aircraft should not be expected to meet at least the minimum maintenance and crew standards expected of civil aircraft," the GAO reported to Congress.

In the Schwarz case, the pilot's failure to follow routine aviation maintenance and safety practices was blatant.

For example, he failed to undergo periodic "checkrides" with independent observers to assess his flying ability. He didn't verify that operating procedures on the airplane were safe. He didn't prepare a flight manifest listing his passengers and crew. And he didn't update his flight plan when he took off for his last leg that day.

"The pilot conducted unorthodox and nonstandard operating techniques and procedures," according to the Energy Department's crash study.

It's impossible to know whether Schwarz would have crashed his government plane if he and the aircraft had been subject to government safety rules.

However, Pamela Charles, a helicopter pilot, an FAA-certified mechanic and aviation executive, speculated that the chances were very good that Schwarz would not have been flying that day had he been subject to federal oversight. Her reasoning: FAA spot checks probably would have discovered the altered health certificate.

"If the FAA had known, he (Schwarz) would have been cited and may have had his certificate suspended," she said. "By virtue of having a review process, these things get caught."

Other cases raise similar questions about the scant oversight and few binding rules imposed on government aviation.

In 1982, the city manager of Portsmouth, Va., was flying to Baltimore to inspect the development of that city's harbor. The police pilot flying the Beech D-95A airplane was licensed but had not logged any time in airplanes in six months. Instead, he'd been flying helicopters.

The pilot overloaded the plane and, in rain and fog, crashed into an apartment building in Columbia, Md., about 20 miles from Baltimore. Five people died, including one person in the apartment building.

Had he been subject to federal aviation rules, the pilot would have broken regulations that require those carrying passengers to have flown recently. It also violates federal flying rules to exceed an airplane's carrying capacity.

"Even though this crash involved a pilot who was not fresh on airplane flying, he did nothing illegal because he was a public pilot," says former NTSB Chairman James Burnett.

In 1983, an Alaska Fish and Wildlife officer who would have been banned from flying at night by federal flying rules because he couldn't see well in the dark, took off after dusk. He crashed and died.

This pilot also would have broken the rule that forbids using an aircraft after sunset that's unequipped to fly at night.

A CRASH WAITING IN THE WINGS

(By David Eisenstadt)

WASHINGTON.—Aircraft pilots and mechanics don't mince words describing the airplane used to transport Gov. Mario M. Cuomo and other top state officials.

They call it the "death plane."

The aircraft—a 13-passenger Grumman G-1 built in 1966—was tagged with the name in 1988 when the pilot made a forced landing at an airport near Williamsport, Pa., after radio equipment began burning, filling the cabin with smoke. Cuomo, returning to Albany from the Democratic National Convention in Atlanta, was not hurt.

The plane made another emergency landing in 1990 with Lt. Gov. Stan Lundine aboard. When an instrument panel light began flashing to warn of an engine fire, the pilot quickly found a runway near Utica for an emergency landing. It turned out to be a false alarm.

These emergency findings illustrate the consequences of a bizarre anomaly in the elaborate American system of aviation safety: Aircraft and pilots for local, state and federal governments are exempt from almost all—54 of 63—key federal aviation safety regulations that apply to commercial and private aviation.

Cuomo and Lundine aren't the only state executives with white-knuckle tales about flying on state-owned aircraft.

In Graefenburg, Ky., in 1992, Gov. Brereton C. Jones and four others were injured when their state helicopters crashed in a ravine. The Sikorsky S-76A went down after an engine compartment door flew open, overheating the engine and causing the aircraft to stall.

Scouring the debris, National Transportation Safety Board, or NTSB, investigators discovered that two clamps on the left-side engine door had been left unsnapped. The investigators concluded that the governor's helicopter crashed partly because the state flight crew did not properly inspect the aircraft before takeoff.

In 1993, South Dakota Gov. George Mickelson and several other state officials were killed when their state airplane, a Mitsubishi MU-2, crashed into a grain silo during an emergency landing near Dubuque, Iowa. The plane crashed after a blade broke off a cracked propeller hub.

Crash investigators later discovered that the Federal Aviation Administration had been warned by the manufacturer and its own scientists about flaws in the MU-2's propeller system. The FAA did not react to those warnings, however, because it was unsure how frequently the problem occurred.

There's no way to determine if these episodes would have been avoided had the aviation operations of New York State, Kentucky and South Dakota been subject to federal safety rules.

However, these cases spotlight government aviation's unique status in the skies, creating a separate class of approximately 4,000 aircraft flying for local, state and federal governments across the country.

An examination by The Hearst Newspapers has found:

Government aircraft have higher crash rates than airplanes in commercial and general—or private—aviation. (See accompanying chart.)

Since 1983, at least 181 people have died in 272 crashes of government aircraft. Experts say the number of crashes is underreported and that many of them could have been avoided if the planes and pilots had been subjected to the same oversight that apply to private and commercial aviation.

In 1992, the year with the most recent data, more people died in government air crashes (51) than in commercial air travel (33), although there were about twice as many airliners and commuter jets flying many times the miles and passengers of government aviation.

Even the FAA, which enforces safety regulations on the aviation industry, is exempt. It has 53 aircraft and about 2,000 pilots.

The United States treats government aviation far more casually than countries such as Canada and the United Kingdom.

Government agencies fiercely oppose moves to bring them under safety rules that apply to commercial and general aviation.

The Hearst inquiry shows that government aviation has bucked the trend in aviation safety over the past decade: While commercial and private aircraft are crashing less, government aircraft are crashing more and killing more people than 10 years ago.

"The safest way to fly in government airplanes is not to fly in them," says Ira Furman, a former NTSB official who now is an independent aircraft accident investigator and aviation consultant based in Long Island.

The Hearst examination did not include military aircraft because the Defense Department has a comprehensive set of aviation safety regulations and accident investigation programs tailored to the difficulty, hazard and special requirements of flying military missions.

Sparse data conceal the safety problems of government aircraft.

For example, until 1989, local, state and federal authorities were not required to report crashes of government aircraft to federal aviation safety officials. Furthermore, there is no requirement that federal safety officials investigate crashes of government airplanes.

For example, federal aviation safety authorities will have no role in the investigation of the Aug. 27 crash in Peru of a federal Drug Enforcement Administration plane that killed five DEA agents. The DEA will handle its own investigation.

By contrast, federal law requires the NTSB to investigate any crash of a commercial aircraft or a private plane involving a death. (The International Civil Aviation Organization investigates crashes of flights that cross international boundaries.)

Former NTSB Chairman James Burnett believes that the actual number of crashes of government-owned airplanes is vastly understated. He estimates such crashes at "several hundred a year"—far higher than the 272 since 1983 tabulated by the NTSB at the request of The Hearst Newspapers.

At any time, Burnett says, the 4,000 largely unregulated government aircraft are an aviation disaster waiting to happen.

"One of these days, we will see a big accident as a result of (government aircraft)," Burnett warns.

Pamela Charles, a commercial helicopter pilot, FAA-certified mechanic and National Guard pilot, also suspects that the crash rate of government aircraft is far higher than official records show.

"There are lots of crashes that aren't reported, which means we don't know what's really happening out there," she says. "It's really quite scary—we're setting ourselves up for more and more accidents."

Unlike government aviation, commercial and private flying operations are subject to federal regulations covering three main categories: pilots and crews, operational safety, and maintenance and certification. Violators face penalties ranging from license revocation to fines reaching into six figures.

Arthur Wolk, a Philadelphia-based lawyer and pilot who specializes in aviation law calls the exemption for government-owned aircraft a blatant double standard.

"Our governments, flying the same airplanes with our money, act above the law; create a hazard and set a bad example," says Wolk.

Giffen Marr, a Bell Helicopter-Textron Inc. executive and former military test pilot, said the lack of regulations for government aircraft has created high-altitude anarchy.

"I just can't believe that we—as a large civilized nation—allow a portion of the aviation system to go uncontrolled," he said.

"You'd think governors and others who fly would be allowed the same protection as everybody else—but most people don't realize there are no requirements for these aircraft nor how much jeopardy they are in."

Richard Xifo, an aviation consultant based in Centreville, Va who has worked for the FAA, points out one of the weird consequences of the immunity granted government aircraft and pilots.

"The situation is so ludicrous that you don't even need a pilot's license to fly a government airplane," he said.

As FAA lawyer Gregory Walden wrote in a 1990 internal memo obtained through the Freedom of Information Act:

"A person without a pilot's certificate legally may operate a public aircraft, and without an airworthiness certificate, as far as the FAA is concerned."

A pilot's certificate informally is called a pilot's license. That and a medical certificate are the two essential credentials of flying in the United States.

Small commercial operations and aviation safety experts see the government's exemption from its own regulations as a free ride given government-owned aircraft.

The idea of voluntary compliance smacks of a "do as I say, not as I do" attitude from the federal government, they say.

Michael Pangia, a pilot and former top trial lawyer for the FAA now in private aviation law practice in Washington, said: "The federal government is passing regulations all the time to get me to inspect my plane and other things. If it's that important for me, it should be important for all."

The experience of other aviation experts backs up Pangia.

Of the 272 government aircraft accidents over the last decade that were reported to federal officials, as compiled by the NTSB at the Hearst Newspapers' request, 57 might have been avoided if the planes and pilots had been subjected to federal aviation regulations, according to Xifo, Charles and others who reviewed the NTSB crash data at the request of The Hearst Newspapers.

Sloppiness runs like a plot through the records of the 57 crashes.

In some cases, the pilots, mechanics and their supervisors were not qualified for the work they were assigned to do; in other cases, the pilots had histories of careless flying.

In some instances, the government aircraft crashed after key parts had been installed improperly, going unnoticed due to insufficient inspection. In many cases, pilots were unlicensed and flew in aircraft unequipped for the task.

Defenders of the current double standard argue that governmental bodies would need more tax money to spend on their aviation operations if all public aviation were subject to FAA regulations.

Others point out that some governmental units get high marks for keeping their airplanes in top shape and making sure their pilots get top training.

For example, the Los Angeles County Sheriff's Department is among those often cited for its professional flying operations. The Los Angeles sheriff's aviation operation—and other government units singled out for praise—exceed federal government safety requirements in crucial areas like aircraft inspection and maintenance.

Los Angeles County has a legion of aviation safety officials, for example, and New York state toughened its safety and flying standards after the incidents involving Cuomo and Lundine.

"After the Williamsport incident, we reassessed our whole aviation system. We looked at what needed to be improved," said Ben Marvin, a spokesman for the state Department of Environmental Conservation, which oversees New York's aviation operation. The result: The state is requiring its planes to meet the same kind of FAA safety rules that would apply to commuter airlines, he said.

"In all fairness, some of these operations are quite professional," said William Dvorak, a vice president of quality assurance for California Helicopters Inc., based in Ventura, Calif. "But anything can happen with a lot of others, and that's the worry."

CANADA, BRITAIN SUBJECT AIRCRAFT TO STRICT RULES

(By David Eisenstadt)

WASHINGTON.—When it comes to safety regulation of government-owned aircraft, U.S. skies are in anarchy compared to countries such as the United Kingdom and Canada.

Both Britain and Canada enforce standards at least as high for government fliers and aircraft as for private and commercial operations. By comparison, government planes in the United States are exempt from 54 of 63 key federal safety regulations overseeing private and commercial aviation.

Canadian aviation officials chuckle when discussing the U.S. practice.

"It's a little bit of a joke up here, what you do down there in the States," says William Peppler, general manager of the Ottawa-based Canadian Aircraft Owners and Pilots Association. "All people are entitled to the same safety standards, aren't they?"

It's a different story in Canada.

There, government-owned airplanes must meet the same safety, maintenance and flying rules that apply to commercial and private pilots and aircraft, according to Peppler.

"We try to make government aircraft conform to a high standard," says Peppler. "Believing that everyone is important, we maintain the same safety standards for all airplanes."

The British standards for government aircraft are even more rigorous.

In contrast to U.S. practices, the more difficult or dangerous a flying operation, the stiffer the rules a British pilot is required to follow.

For example, U.S. police aviators are exempt from most federal aviation laws. In Britain, by contrast, police flying operations are subject to the same rules as commercial ones.

"It's a different picture here," says Ron Campbell of the United Kingdom Aircraft Owners and Pilots Association. "The more rigorous the role, the more rigorous the oversight and inspection."

In the United States, Canada and Britain, government regulations require a private pilot to have an annual aircraft inspection as well as an airworthiness certificate for the aircraft.

But if a British aircraft and pilot are engaged in government flying work, government aviation inspectors check the airplane more frequently—every 50 hours of flying.

The Canadian government aircraft would face inspection every 100 hours of flight.

The American government flier doesn't have to do either.

GOVERNMENT AVIATION: JUST THE FACTS

Government aircraft have higher crash rates than airplanes in commercial and general (private) aviation.

Since 1983, at least 181 people have died in 272 crashes of government aircraft. Experts say the number of crashes is underreported and that many of them could have been avoided if the planes and pilots had been subjected to the same rules that apply to private and commercial aviation.

During the year with the most recent data—1992—more people died in government aircrashes (51) than in commercial air travel (33) although there were about twice as many airliners and commuter jets flying many times the miles and passengers of government aviation.

More than 200 pilots and aviation technicians have reported incidents of risky and dangerous flying and poor safety practices by government aircraft and aviators since 1986 to an airplane safety hot line run by the National Aeronautics and Space Administration.

Even the FAA—which enforces safety regulations on the aviation industry—exempts its 53 aircraft and 2,000 pilots from many of the very rules it requires others to obey.

The United States treats government aviation far more casually than countries like Canada and the United Kingdom.

Government agencies fiercely oppose moves to bring them under safety rules that apply to commercial and general aviation.

AGENCY PROBE UNDER WAY

(By David Eisenstadt)

The Federal Aviation Administration—the regulatory agency responsible for enforcing airplane safety—can get closemouthed when questions are raised about government flying operations.

When The Hearst Newspapers last February began checking the safety records of unregulated government aircraft, the FAA wasn't eager to shed light on the question.

"There's really nothing I can give you about (government) aircraft because we don't have anything to do with them," said Frasier Jones, and FAA spokesman.

As interviews with National Transportation Safety Board officials and other federal officials progressed in May and June, the FAA rejected four requests to speak with its top official, David R. Hinson, about why the FAA opposes efforts to end the exemption from federal regulation the government aircraft have.

In late June, the FAA changed its tune.

While declining to allow Hinson to be interviewed, the FAA permitted a reporter to talk with Anthony Broderick, its chief of aviation regulations.

Broderick let drop the news that the FAA had just launched its own investigation of government aircraft safety and would release its findings in "about six months."

"One of the things we just started, literally within days, is a project to try and assess the magnitude of that issue and get a better feel for what's going on out there (in government aircraft)."

PRIVATE, COMMERCIAL SKIES FULL OF REGULATIONS

(By David Eisenstadt)

WASHINGTON.—The good news is that the U.S. government has 63 key safety regulations to make sure private and commercial pilots are well trained and the aircraft they fly are safe.

The bad news is that 54 of the rules don't apply if the pilots or the aircraft work for the federal or any local or state government in the country.

Although some government aviation units set high safety standards for their pilots and planes, the only federal aviation rules that apply to government aircraft pertain to regulating aircraft in flight, such as the requirement that planes keep a safe distance from each other.

The reactions by a commercial operation and a government operation to a new safety rule illustrate the differences.

Bell Helicopters issued a warning in 1992 to owners and pilots of their 205 series helicopter—a civilian version of the military Huey UH-1. After several crashes and accidents, Bell told the 205 owners of to replace the main yoke, a critical part that holds the main rotor blades onto the helicopter.

Under federal aviation rules, a private or commercial owner of a Bell 205 series helicopter had to obey Bell's warning and replace the old steel yoke with a stainless steel model by Dec. 1, 1993, or face FAA penalties.

"I'd have hell to pay if I didn't replace mine," says Rod Qvuaam, owner of Helijet Inc., a Eugene, Ore., commercial helicopter operation. "I'd have my certificate pulled. It would put me out of business."

However, a government operation using the same helicopter—in many of the same tasks—could ignore the warning.

For example, the Washington state Department of Natural Resources and the California Department of Forestry chose not to replace the main yokes on any of their Bell 205s, according to the agencies.

This isn't the only time government flying operations have ignored a safety requirement imposed on commercial and general aviation.

For example, Washington state has skipped these safety practices that federal regulations require of commercial aviation:

The state does not subject its pilots to drug or alcohol tests.

None of Washington's five aircraft has been certified as airworthy by the FAA.

None of the state's aircraft has fire-control equipment, such as extinguishers on board, or first-aid kits.

In other areas, Washington state has elected to follow federal aviation standards.

Its mechanics are FAA-certified, its pilots are FAA-certified, and some maintenance practices are more rigorous than the FAA requires.

Still, George Kerr, operations chief for the Washington Department of Natural Resources, concedes that the state's work is not always up to federal standards.

"To be quite honest, they don't have the expertise for what they're doing," Kerr says in reference to the state's aircraft mechanics.

It's a different universe for private and commercial aviation.

To oversee those who fly for hire or fun and to protect the public, the FAA requires private and commercial flying operations to obey three sets of key safety regulations. These cover pilots and crews, maintenance and safety, and flying itself.

Private or commercial pilots, mechanics and aviation supervisors who violate these federal rules face FAA penalties that range from fines to license revocation. By contrast, under federal aviation rules, a government pilot is not subject to any outside authority.

CAUTION: FAA RULES DO NOT APPLY HERE

Federal regulations that apply to private or commercial pilots and aircraft but not to government aircraft and their pilots include:

Mandatory drug tests.

A pilot's license.

A pilot's medical certificate, which is intended to minimize the risk of a pilot being crippled by a health problem in flight.

Flight training requirements.

Flight test requirements.

An instrument certification to fly in certain weather conditions.

Required hours of flying experience to ensure a pilot can safely handle the mission.

FAA annual aircraft inspections.

FAA spot checks, termed "surveillance inspections."

Inspections are required to be completed by an FAA-certified mechanic.

An FAA-approved maintenance program.

An FAA-approved maintenance manual.

An after-maintenance inspection by the FAA or its representatives to ensure the plane is safe to fly.

An accurate maintenance log.

Commercial operators and those carrying people and cargo are required to have an aircraft inspection every 100 flying hours.

Certain failures, like a false warning light in flight, are required to be documented.

An aircraft airworthiness certificate, issued by the FAA that testifies a plane or helicopter can fly as billed and is without mechanical defect.

Fire-control equipment on board.

Operating aircraft within allowable weight limits.

A requirement on commercial operations that transport people or cargo specifies that the FAA assess the carrier's operations management structure and qualifications.

Commercial aircraft must have cockpit voice recorders and flight data recorders.

Load manifests are required of commercial operations that carry cargo.

FATAL FAA CRASH SHOWS A LACK OF ACCOUNTABILITY

(By David Eisenstadt)

LINDEN, VA.—After nine years as a pilot for the Federal Aviation Administration, the flying skills of 55-year-old government aviator Donald Robbins had achieved a kind of notoriety within the agency.

Three other FAA pilots had refused to fly with Robbins, who liked to brood at the controls and play tricks in flight on his crew members, FAA documents show. A favorite Robbins' game was to "communicate as little as possible" with co-pilots, meaning he often wouldn't tell them where they were going even after being asked several times, according to the documents obtained by The Hearst Newspapers through the Freedom of Information Act.

During the time I flew with Robbins, there was never a crew meeting. He did not like oral communication * * * and did not want to see a checklist," according to one internal FAA memo detailing complaints from fellow FAA pilots about Robbins. "If he was flying, he would not allow the (co-pilot) to read (the checklist); it appeared to me that Robbins thought this proved he was a better pilot."

Robert Pearce, an FAA safety worker, wrote in one complaint, "Mr. Robbins has had an attitude in the office during the last month and a half. He has not talked to anyone because of the poor performance appraisal he received."

The anxiety about Robbins among his FAA pilots peaked last September, prompting the FAA to dispatch an "internal audit team" to see what was going on with Robbins and his supervisors in FAA offices in Atlantic City, N.J., and Oklahoma City, according to an FAA official.

The team's report, said to be critical of Robbins, was never made public. The FAA kept Robbins in the cockpit.

Almost exactly a month late, Oct. 26, 1993, Robbins and two FAA colleagues were killed when their government plane crashed into the Blue Ridge Mountains.

After inspecting runway equipment at the Winchester Regional Airport, Robbins was weaving in and out of fog about 1,800 feet above the Virginia countryside when the plane slammed into High Knob mountain.

At the crash site in the woods about a mile from here, the plane's sheared tail poked above other pieces of bent, metal, its sharply detailed blue-and-white U.S. Transportation Department logo identifying its owner:

After rummaging through the debris, National Transportation Safety Board investigators accused the FAA of laxity toward the safety of its own aviation program.

"The oversight the FAA routinely performs over commercial carriers was not being conducted over its own operations," safety board Chairman Carl Vogt said in a statement after the crash.

The Hearst Newspapers' inquiry learned that Robbins' personnel file contained a major personal blemish that the FAA had disregarded even though it would have caused troubles had he been a commercial pilot: Robbins failed to tell the FAA promptly about a conviction for drunken driving—a violation of federal flying rules as well as the FAA's own policies.

When he later received a second drunken-driving conviction, Robbins also delayed reporting it. At the time of his death, Robbins' New Jersey driver's license had been revoked because he had failed to comply with the alcohol rehabilitation program required by state law.

Federal law doesn't require a pilot convicted of drunken driving to forfeit his flying license. However, federal regulations require such convictions to be reported to the FAA; a second such conviction prompts a special FAA investigation into the circumstances and requires FAA-certified rehabilitation.

The FAA did not launch an investigation into Robbins' case or penalize him but did ask him to document his past history of traffic violations. Said an AA official familiar with the events: "Despite all this stuff, we just did not do anything with him at all."

The events surrounding Robbins and his 1993 crash are especially surprising because concerns about the FAA's ability to police itself were raised after a 1988 FAA plane crash. That crash in western Pennsylvania killed three agency employees, two of whom—the pilot and co-pilot—had traces of alcohol in their blood.

An FAA internal audit after the 1988 crash showed that the agency violated federal aviation rules in 159 instances in its own flying operations in 1988.

After the crash, the FAA gave assurances that it would start regulating itself by the same standards it sets for the airlines.

The goal is to foster and achieve the highest degree of aviation safety in all facets of the flight inspection mission," William Williams, the FAA's aviation standards director, wrote in a 1992 internal memo almost a year before Robbins died.

"In order to realize the highest level of aviation safety, we have prescribed a program that adheres to standards set forth for the aviation industry."

However, The Hearst Newspapers inquiry found that the FAA still has not met this goal.

As the Robbins crash suggests, the FAA makes weaker demands on its aviation employees than it requires of the airline industry in these areas;

The FAA performs drug tests on only a random selection of its pilots. By contrast, commercial airline pilots have to undergo at least annual drug tests.

The FAA often waives licensing requirements for some senior FAA officials.

Under federal law, the airline officials responsible for flight operations and their assistants are required to have an airline transport pilot's license. Some of the FAA's equivalent personnel, however, have been excused from this requirement even though the safety board chided the FAA after Robbins crashed last year for having unqualified flight supervisors.

"We do not waiver this under any circumstances for the airline industry nor would an airline want to do it anyway because it's not very smart—it raises substantial liability questions," said an FAA official, who spoke in an interview on condition of anonymity.

The FAA's own rulebook for its pilots is vague compared with the detailed manuals it mandates for airline pilots.

The FAA has no approved training program for its aviators to maintain proficiency. On the other hand, federal aviation regulations clearly spell out that an airline without a training program won't get off the ground. The FAA even has 2,000 flight standards inspectors to ensure that airline pilot-training programs are up to speed.

In the Robbins' case, the FAA's only move to discipline him took the form of a reprimand letter after he damaged the engine of another FAA plane in an earlier incident.

"As far as many of us are concerned, someone should have acted to ground Robbins, that we at the FAA really are to blame for the crash," said one FAA official.

Reflecting on Robbins' death in an interview in August, Anthony Broderick, the FAA's chief of aviation regulation, said the FAA is trying to shape up.

"We are saddened by the tragic loss of lives and are determined to make sure it doesn't happen again," Broderick said.

On his last flight, Robbins ignored routine safety procedures—such as not following a filed flight plan, a violation of the FAA's internal code and federal safety regulations.

After Robbins crashed last year, FAA spokeswoman Marcia Adams said the agency had improved its practices since the 1988 crash. The FAA had "adopted most" of the recommended changes to its flight operation urged by the safety board to bring its practices in line with the airline industry, she said, including spot checks of its own operation, filing flight plans, moving forward on alcohol testing for pilots and publishing maintenance and training manuals for FAA flights.

However, a March 1994 crash of an FAA plane outside Williamson, Ga., shows that some FAA pilots and supervisors are having a hard time adapting to the rules.

Just two months earlier, in a January letter to the safety board, FAA Administrator David R. Hinson assured the NTSB that all FAA pilots would submit flight plans showing the expected route, destination, mileage and fuel.

Noted safety board investigators after the Georgia crash, which injured two: "No flight plan was filed."

A veteran FAA flight inspector who declined to be named said: "I have been involved with the FAA for more than 20 years and there really is a double standard, one that lets us ignore the standards we impose on the rest of the aviation community.

"That's why some of us here say the FAA leads the industry in deaths."

Ultimately, this FAA official said, events like the death of Robbins and his two colleagues challenge the FAA's ability to regulate the skies.

"If we can't control our own organization, how can any citizen reasonably expect us to be able to keep them safe when they fly?" the official said.

OPPONENTS GROUND LEGISLATIVE REGULATION OF GOVERNMENT FLIGHTS

(By David Eisenstadt)

WASHINGTON.—Ask those daredevil pilots who fly firefighting airplanes and helicopters for a living if they and their aircraft should be subject to federal aviation safety laws.

But be prepared to hear the sound of grinding teeth and listen to predictions of more redtape instead of more lives saved.

"If you want to handcuff us, if you want to prevent us from putting out the next fire at Barbra Streisand's mansion, regulate!" barks Rob Harrison, former safety director of the U.S. Forest Service's Flying operation.

Harrison is not a lonely voice.

George Flanagan, No. 2 man for Washington State's flying operations, has this to say about making his state's airplanes meet federal safety rules:

"If you want to put us out of business, that's the way to do it," says Flanagan.

Harrison and Flanagan are representative of the near-universal opposition to broadening federal safety standards to include government aviation among the nation's local, state and federal firefighters and police officers. They say more rules would make government flying operations more expensive, handicap fliers and cost some people their homes and perhaps their lives.

"Right now, we are already so burdened with nonsensical paperwork," says Harrison.

Opposition to greater safety regulation and oversight for government aviation isn't limited to those who risk their lives protecting the public. Paul Erway, a Federal Aviation Administration helicopter specialist, argues that more rules and laws would actually diminish safety in the sky because such a move would divert safety efforts from nongovernment aviation.

Erway says the relatively small number of government aircraft—4,000—doesn't merit the same scrutiny that is given large commercial operations which carry thousands of passengers a year. It would also force the FAA to scrimp in other areas, he says.

"There's no payoff for us to bust their chops," says Erway. "In a situation of limited resources, you try to get the most bang for the taxpayers' buck."

Still, these opponents face some spirited foes.

At least one U.S. senator and a vociferous crowd of aviation safety advocates contend that fewer rules for government aviation mean more government aircraft crashes and unnecessary deaths.

A Hearst Newspapers investigation into the lack of federal aviation safety regulations for government pilots or airplanes found that government aircraft have higher crash rates than do private and commercial aviation.

"We need to ensure that all aircraft be subject to stringent and rigorous safety standards regardless of who owns them," says Sen. Larry Pressler, a South Dakota Republican. "Government needs to sit up and take notice so that safety regulations are written and enforced—we owe that to the air-traveling public."

Pressler has tried for two years to require government aviation to obey the same safety rules that oversee commercial and private aviation. But with Congress on the verge of vacating Washington for the year, the senator's effort this year is going the same way as last year's: nowhere.

After South Dakota Gov. George Mickelson died in the crash of a state airplane in 1992, Pressler proposed legislation to subject government aircraft and fliers to the same rules as private and commercial aircraft and pilots.

Pressler's bill finally passed the Senate in June. Pressure from the FAA, other federal agencies and law enforcement groups moved other lawmakers to weaken the measure, the senator said.

"It's not my intention to obstruct law enforcement or firefighting operations," the senator said. "But all aircraft, whether commercial, private or government, should be required to maintain the highest level of safety."

This draft version, now awaiting approval in the House of Representatives, still would significantly expand federal oversight of government aircraft. Any government aircraft transporting passengers would be forced to meet the same FAA safety requirements as commercial or private aircraft.

The bill also would require the National Transportation Safety Board to investigate every government aviation accident. By comparison, the law requires the NTSB to investigate the crash of every commercial aircraft that was carrying people and every crash of a private aviation plane when there was a fatality.

But there is a gaping loophole, Pressler said—a result of the fierce lobbying against the measure by the FAA and others.

As now before the House, the bill contains a waiver to allow the FAA to excuse any government entity from the beefed-up rules if it has a good aviation record.

In addition, the diluted version of Pressler's bill provides the same special exemptions for some government agencies—such as firefighters—enjoyed under current law.

Steve Burns, a Senator committee investigator, said in a recent interview: "The status quo is pretty much indefensible in this area. People don't like the idea that the government holds them to a different standard than it holds itself."

Earlier efforts to bring government aviation under federal regulation also have failed—often because the FAA leadership has opposed the move, documents obtained by Hearst Newspapers through the Freedom of Information Act show.

In 1986, the General Accounting Office—the investigating arm of Congress—looked into the safety record of government aircraft in Alaska and concluded:

"Our review disclosed no persuasive reason why public aircraft should not be expected to meet at least the minimum FAA maintenance and crew standards expected of civil aircraft."

In 1991, the U.S. Senate Government Affairs Committee found that "government aircraft are held to a far lower standard than the private sector when it comes to operation, safety and maintenance specifications."

The committee reported that the federal government spent about $1.75 billion in 1991 to operate its non-military aircraft fleet, although the government lacked a "management system capable of preventing waste and abuse."

But after each attempt to close the loophole, top FAA officials have helped block it, concerned that accompanying costs could be too high, according to documents obtained through the Freedom of Information Act.

Rep. Norman Mineta, D-Calif., tried in 1987 to bring government fliers under the same rules as other pilots. His bill, Mineta said in an interview, was watered down in the House Transportation and Public Works Committee. In the end, Congress only required that government air crashes were to be reported to the NTSB, starting in 1989.

"That bill was killed from pressure by the FAA, the Energy Department and others," Mineta says. "Their objections had no substance because safety ought not to be compromised."

Another committee member, Rep. James Oberstar, D-Minn., chairman of its aviation panel, says the House so far has not addressed the matter because "no one has raised any concerns about public-use aircraft."

However, complaints about the use of so-called public use or government aircraft have been filed from single pilots and the Airline Pilots Association with the FAA and other government agencies for at least two decades.

T.J. Shepard, the owner of Gallup Flying Service in Gallup, N.M., framed the issue in a 1990 letter to his congressman, Rep. Joe Skeen, R-N.M.

The letter, obtained through the Freedom of Information Act, said: "As a public official, next time you fly, will it be by a qualified, currently checked pilot and aircraft?"

Mr. FORD. Mr. President, I move the Senate concur in the House amendment to the Senate amendment and reconsider and table that motion.

The motion was agreed to.

CORRECTION OF UNITED STATES CODE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4777, a bill to correct the United States Code to reflect the current names of congressional committees just received from the House; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; that any statement appear at the appropriate place in the RECORD as if read.

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

So the bill (H.R. 4777) was deemed to have been read three times and passed.

THE FEDERAL RAILROAD SAFETY AUTHORIZATION ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar 669, S. 2132, the Federal Railroad Safety Authorization Act of 1994.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2132) to authorize appropriations to carry out the Federal Railroad Safety Act of 1970, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2633

(Purpose: To restructure the high risk drivers program incentives contained in title II of the bill)

AMENDMENT NO. 2634

(Purpose: To authorize appropriations for an Amtrak project)

Mr. FORD. Mr. President, I ask unanimous consent it be in order to send to the desk en bloc amendments on behalf of Senators EXON and MOYNIHAN; the Senate proceed to their consideration en bloc; that the amendments be agreed to, and the motions to reconsider be laid upon the table en bloc; that the bill, as amended, be read three times.

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

So the amendment (No. 2633) was agreed to.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted")

The amendment (No. 2634) was agreed to, as follows:

SEC. . AUTHORIZATION.

There are authorized to be appropriated to the Secretary of Transportation for the benefit of Amtrak $40,000,000 for fiscal year 1995 and $50,000,000 for fiscal year 1996 to be used for engineering, design, and construction activities to enable the James A. Farley Post Office in New York, New York, to be used as a train station and commercial center and for necessary improvements and redevelopment of the existing Pennsylvania Station and associated service bundling in New York, New York.

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 4545, the House companion; that the Senate then proceed to its immediate consideration; that all after the enacting clause be stricken, and the text of S. 2132, as amended, be inserted in lieu thereof; that the bill be advanced to third reading, passed, and the motion to reconsider be laid upon the table; that any statements be placed in the RECORD at the appropriate place as if read, and that S. 2132 then be indefinitely postponed.

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

Mr. HOLLINGS. Mr. President, today the Senate considers S. 2132, the Federal Railroad Safety Authorization Act of 1994.

Title I of this bill would improve railroad safety by enabling the Nation to begin to reduce the number of deaths at railroad crossings. Over the last several years, approximately 600 people have died and thousands have been injured each year in collisions with trains at railroad grade crossings. This bill establishes sanctions and penalties for violations of laws and regulations pertaining to railroad grade crossings. The bill also requires the appropriate Federal agencies, State organizations, and private organizations to work together to improve compliance with and enforcement of laws and regulations pertaining to railroad grade crossings. In addition, this legislation establishes, in conjunction with a college or university, an Institute for Railroad and Grade Crossing Safety. This institute will research and test measures for reducing the number of fatalities and injuries in railroad operations.

The bill also fosters a partnership among all levels of government to evaluate laws regarding trespassing on railroad property and to develop model prevention strategies and enforcement laws for the consideration of the States and local governments. Another 600 people are killed each year when they trespass on railroad property. The partnership in this bill can go a long way to stopping this carnage.

Finally, this bill requires the Secretary of Transportation to research, review, and recommend rules on railroad car visibility and to establish minimum standards for passenger car safety. Standards for passenger car safety are critically important. The tragic accident of Lugoff, SC, in 1991 resulted in the deaths and injuries of several people who were crushed by cars in which they were riding. This bill requires the Secretary to address crashworthiness of the cars, interior features that may affect passenger safety, and emergency response procedures and equipment. Again, at the Lugoff derailment, there was some criticism about the length of time that it took for emergency service personnel to be dispatched to the crash scene.

With this legislation such time lapses could be reduced or eliminated outright.

Title II of this bill, the High Risk Drivers Act of 1994, establishes a grant program to foster the development of policies and programs to improve the driving performance of younger and older drivers. It also establishes programs to inhibit alcohol impaired drivers. This measure is virtually identical to a measure that passed the Senate last year on a voice vote.

For these reasons, Mr. President, I urge my colleagues to support this measure and to pass it as quickly as possible.

Mr. DANFORTH. Mr. President, during this Congress, public attention was drawn to railroad safety by a series of highly publicized railroad wrecks involving Amtrak. Contrary to recent public perception, railroad safety has improved steadily in recent years. Accidents involving railroads fell, from a high of 11,300 in 1978 to 2,300 in 1993.

During this same period, the number of collisions involving trains and motor vehicles also dropped dramatically, from 13,400 to 4,800. There were 83 fewer collisions in 1993 than in 1992, despite record levels of freight traffic. The number of people injured in grade crossing accidents reached an all time low last year dropping 9 percent, from 1,969 in 1992 to 1,792 in 1993.

Grade crossing safety has been the unfortunate exception to the positive rail safety trend. Between 1992 and 1993, grade crossing fatalities increased from 579 to 614, a jump of 6 percent. Nine of the Amtrak accidents noted in the previous paragraph were the result of Amtrak trains striking trucks at rail-highway grade crossings.

In testimony during the Commerce Committee's June 14 hearing, FRA Administrator Molitoris noted that 49 percent of all railroad fatalities now occur at grade crossings. Trespassing incidents account for another 41 percent of all railroad fatalities. In total, grade crossing and trespassing incidents result in 90 percent of all railroad fatalities.

A vehicle and train collide every 90 minutes in the United States, at an average annual cost as high as $1.8 billion in terms of medical costs, insurance payments, legal fees, and damages to railroad property. The driver of the car or truck that collides with a train is 30 times more likely to be killed than in a crash involving 2 motor vehicles. The main cause of these deaths is not inadequate signage. Over 50 percent of collisions between trains and motor vehicles occur at crossing with active warning gates, lights, and bells. Most of the time, motorists simply fail to recognize that to race a train is to race death.

Earlier this year, in response to the grade crossing fatality trend, the Association of American Railroads [AAR] created a special task force, which developed and submitted to the FRA and the relevant House and Senate committees, 12 recommendations for improving grade crossing safety. On May 18, I introduced S. 2127, the Railroad Grade Crossing Safety Act of 1994, which addresses 10 of the 12 points raised by AAR's task force. S. 2127, which is limited to issues within the jurisdiction of the Commerce Committee, was discussed at the committee's June 14 hearing on rail safety reauthorization.

I am pleased that the provisions of S. 2127 were incorporated into S. 2132, as reported during the committee's September 23 executive session. Specifically, the version of S. 2132 that we are considering today includes the following provisions from S. 2127, modified as described below. These provisions would:

First, reduce public risk by including plans to close dangerous and redundant grade crossings and policies to limit the creation of new crossings in highway safety management systems that States are required to develop by October 1, 1996;

Second, explore ways to ensure that existing signs and warning devices are in working order by directing the Department of Transportation [DOT] Secretary to conduct a pilot program, involving at least two States, to demonstrate the potential effectiveness of establishing a national emergency notification system, which would use a toll-free telephone number for the public to use to report problems and malfunctions at grade crossings;

Third, improve awareness of grade crossing dangers by boosting FRA funding of Operation Lifesaver, a nonprofit organization created 22 years ago to reduce crashes, fatalities, and injuries at grade crossings;

Fourth, promote advanced technology development by directing the DOT to include at least two operational tests on grade crossing safety technologies in conducting intelligent vehicle highway system research;

Fifth, encourage public safety by establishing sanctions against repeat offenders of grade crossing laws; and

Sixth, improve compliance and enforcement by directing the DOT to encourage better cooperation between the National Highway Traffic Safety Administration [NHTSA], the Office of Motor Carriers in the Federal Highway Administration, the National Association of Governor's Highway Safety Representatives, the Commercial Vehicle Safety Alliance, and Operation Lifesaver.

These provisions have the endorsement of the railroads, railroad labor, and the administration. These initiatives will save lives.

Mr. President, this legislation also includes the provisions of S. 738, the High Risk Drivers Act. Four weeks ago we witnessed a terrible highway crash in which there was a deadly mix of alcohol and a teenage driver. The driver of the car was a 16 year old who had received her drivers license 3 weeks prior to the crash. According to a post crash autopsy, the driver's blood alcohol content [BAC] was 0.17 percent. The crash involved a high speed impact with a tree. The driver and a 16-year-old classmate from Walt Whitman High in Bethesda were killed. Two other classmates aged 16 and 15 remain hospitalized. The High Risk Drivers Act would encourage all States to adopt tough measures against teenage drinking and driving. These include a .02 BAC maximum for drivers under age 21 and a minimum fine of $500 for selling alcohol to a minor.

In conclusion, I urge my colleagues to vote for S. 2132, including the provisions of the Railroad Grand Crossing Safety Act of 1994 and the High Risk Drivers Act.

Mr. EXON. Mr. President, today, the U.S. Senate has an opportunity to save lives. I urge my colleagues to pass S. 2132 the Rail Safety Act of 1994.

This legislation includes authorization for appropriations, hours of service pilot project, technical amendments sought by the administration, and a reduction in the number of reports the Federal Rail Administration makes to the Congress, from annual to biannual. These provisions were from the rail safety bill as introduced and requested by the administration.

In addition to these important provisions, the Senate Commerce Committee added the first comprehensive grade crossing initiative to be considered by the Congress in recent memory. The grade crossing safety provisions of this bill combine initiatives taken from S. 2127, originally introduced by Senator DANFORTH, the Department of Transportation grade crossing action plan and S. 2399, which I introduced earlier this year. This legislation builds on several years of work and investigation by the Senate Surface Transportation Subcommittee into the ways of improving grade crossing safety.

This landmark legislation includes provisions:

First, requiring the inclusion of grade crossing closure plans in the annual highway management system plans filed by states with DOT;

Second, establishing a pilot program to test the use of a toll free 800 number to report grade crossing malfunctions;

Third, to increase authorization for operation lifesaver and add the Secretary of Transportation to the Board of Directors;

Fourth, to require that at least IVHS projects address grade crossing safety;

Fifth, to increase penalties against truckers who violate grade crossing laws;

Sixth, to increase safety enforcement cooperation between Federal and State law enforcement agencies;

Seventh, to create an Institute for grade crossing safety;

Eighth, to create a trespassing, and vandalism prevention strategy and to design model State legislation;

Ninth, encouraging railroads to post warnings of liability for trespassing and vandalism;

Tenth, to ban local whistle bans unless certain protections are taken;

Eleventh, to require a rule making on rail car visibility;

Twelfth, which give the Secretary the power to impose a grade crossing freeze and specific numeric targets for reduction for any state which has failed to make substantial, continued progress toward crossing reductions; and

Thirteenth, to require a research and technology strategy toward improving safety and reducing trespass and vandalism.

In addition to the comprehensive grade crossing safety initiative the Rail Safety Act also includes provisions to:

First, require the Secretary of Transportation to coordinate with the Secretary of Labor on rail worker safety;

Second, require the Secretary of Transportation to update the Congress on developments in positive train control technology and demonstration;

Third, require the Federal Rail Administration to issue safety standards for passenger rail cars; and

Fourth, give the Federal Rail Administration grant authority.

This bipartisan package of safety measures puts politics aside. Our goal is to reduce death and injury. I ask my colleagues to join the Senate Commerce Committee and swiftly approve this important legislation.

So the bill (H.R. 4545), as amended, was passed.

The title was amended so as to read:

To authorize appropriations to carry out certain Federal railroad safety laws, and for other purposes.

(The text of the bill will be printed in a future edition of the RECORD.)

INDIAN SELF-DETERMINATION CONTRACT REFORM ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 625, S. 2036, the Indian Self-Determination Contract Reform Act of 1994.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2036) to specify the terms of contracts entered into by the United States and Indian tribal organizations under the Indian Self-Determination and Education Assistance Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs, with an amendment as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Self-Determination Contract Reform Act of 1994".

SEC. 2. GENERAL AMENDMENTS.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended—

(1) in section 4—

(A) by redesignating subsections (a) through (l) as paragraphs (2) through (13), respectively;

(B) by inserting before paragraph (2), as so redesignated, the following new paragraph:

"(1) 'Construction contract' means a fixed-price or cost-reimbursement self-determination contract for a construction project. Such term does not include any contract—

"(A) that is limited to providing architectural and engineering services, planning services, or construction management services (or a combination of such services);

"(B) for the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

"(C) for the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.";

(C) in each of paragraphs (2) through (12), by striking the semicolon at the end and inserting a period;

(D) in paragraph (2), as so redesignated, by striking "construction programs" and inserting "Construction programs";

(E) in paragraph (3), as so redesignated, by striking "contract funding base" and inserting "Contract funding base";

(F) in paragraph (4), as so redesignated, by striking "direct program costs" and inserting "Direct program costs";

(G) in paragraph (7), as so redesignated, by striking "indirect costs" and inserting "Indirect costs";

(H) in paragraph (8), as so redesignated, by striking "indirect costs rate" and inserting "Indirect cost rate";

(I) in paragraph (9), as so redesignated, by striking "mature contract" and inserting "Mature contract";

(J) in paragraph (11), as so redesignated, by striking "self-determination contract" and inserting "Self-determination contract"; and

(K) in paragraph (13), as so redesignated, by striking "tribal organization" and inserting "Tribal organization";

(2) by striking subsection (f) of section 5 and inserting the following new subsection:

"(f)(1) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract entered into, or grant made, under this Act, the tribal organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by chapter 75 of title 31, United States Code.

"(2) In addition to submitting a single-agency audit report pursuant to paragraph (1), a tribal organization referred to in such paragraph shall submit such additional information concerning the conduct of the program, function, service, or activity carried out pursuant to the contract or grant that is the subject of the report as the tribal organization may negotiate with the Secretary.

"(3) Any disagreement over reporting requirements shall be subject to the declination criteria and procedures set forth in section 102.";

(3) in section 7(a), by striking "of subcontractors" and inserting in lieu thereof "or subcontractors (excluding tribes and tribal organizations)";

(4) at the end of section 7, add the following new subsection:

"(c) Notwithstanding subsections (a) and (b), with respect to any self-determination contract, or portion of a self-determination contract, that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the contract or portion of the contract.";

(5) at the end of section 102(a)(1), add the following new flush sentence:

"The programs, functions, services, or activities that are contracted under this paragraph shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities related to, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractable. The administrative functions referred to in the preceding sentence shall be contractable without regard to the organizational level within the department that carries out such functions.";

(6) in section 102(a)—

(A) in paragraph (2)—

(i) in the first sentence, by inserting ", or a proposal to amend or renew a self-determination contract," before "to the Secretary for review";

(ii) in the second sentence—

(I) by striking "The" and inserting "Subject to the provisions of paragraph (4), the";

(II) by inserting "and award the contract" after "approve the proposal"; and

(III) by striking "a specific finding is made that" and inserting "the Secretary provides written notification to the applicant that contains a specific finding (citing clear and convincing evidence or a controlling legal authority) that";

(iii) in subparagraph (A)—

(I) by inserting "by the tribal organization" after "rendered"; and

(II) by striking "not be satisfactory" and inserting "endanger the health, safety, or welfare of the beneficiaries";

(iv) in subparagraph (B), by inserting "by the tribal organization" after "resources";

(v) in subparagraph (C), by striking the period at the end and inserting the following: "because—

"(i) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a); or

"(ii) the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under paragraph (1) because the proposal includes activities that cannot lawfully be carried out by the contractor."; and

(vi) by adding at the end of the paragraph the following new flush sentence:

"Notwithstanding any other provision of law, the Secretary may extend or otherwise alter a 60-day or 90-day period specified in the first or second sentence of this subsection, if before the expiration of such period, the Secretary obtains the voluntary and express written consent of the tribe or tribal organization to extend or otherwise alter such period."; and

(B) by adding at the end the following new paragraph:

"(4) The Secretary shall approve any severable portion of a contract proposal that does not support a declination finding described in paragraph (2). If the Secretary determines under such paragraph that a contract proposal—

"(A) proposed in part to plan, conduct, or administer a program, function, service, or activity

that is beyond the scope of programs covered under paragraph (1), or

"(B) proposes a level of funding that is in excess of the applicable level determined under section 106(a),

subject to any alteration in the scope of the proposal that the Secretary and the tribal organization agree to, the Secretary shall, as appropriate, approve such portion of the program, function, service, or activity as is authorized under paragraph (1) or approve a level of funding authorized under section 106(a). If a tribal organization elects to carry out a severable portion of a contract proposal pursuant to this paragraph, subsection (b) shall only apply to the portion of the contract that is declined by the Secretary pursuant to this subsection.";

(7) in section 102(b)(3)—

(A) by inserting after "record" the following: "with the right to engage in full discovery relevant to any issue raised in the matter"; and

(B) by inserting before the period the following: ", except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 110(a)";

(8) in section 102(d), by striking "as provided in section 2671 of title 28)" and inserting "as provided in section 2671 of title 28, United States Code, and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service)";

(9) by adding at the end of section 102 the following new subsections:

"(e)(1) With respect to any hearing or appeal conducted pursuant to subsection (b)(3), the Secretary shall have the burden of proof to establish by clear and convincing evidence—

"(A) the validity of the grounds for declining the contract proposal (or portion thereof); and

"(B) that the tribe or tribal organization, would not be able after the Secretary has provided such assistance as the Secretary is required to provide, to overcome the reasons for the objections to the contract proposal stated in a notice of declination issued by the Secretary pursuant to subsection (b).

"(2) Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (referred to in this paragraph as the 'Department') that constitutes final agency action and that relates to an appeal within the Department that is conducted under subsection (b)(3) shall be made by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made.

"(f)(1) Notwithstanding any other provision of law, a tribal organization that is located in Alaska that is authorized by a tribal resolution to enter into a contract under this Act for the operation of a program, function, service, or activity that meets the requirements of this Act may redelegate the authority to enter into such a contract to another tribal organization.

"(2) The redelegation of authority referred to in paragraph (1) may be carried out by formal action of the governing body of the tribal organization to another tribal organization, if the tribal organization provides advance notice of such redelegation and provides a copy of the contract proposal to all tribes served by the tribal organization prior to submitting the contract proposal to the Secretary.

"(3)(A) A tribe that receives notice of a proposed redelegation of authority under paragraph (2) may—

"(i) not later than 60 days after the date of receipt of the notification, notify the tribal organization of its intent to adopt a limiting resolution prohibiting or conditioning the proposed redelegation; and

"(ii) during the 60-day period beginning on the date of termination of the period referred to in subparagraph (A), adopt and transmit such resolution to the tribal organization.

"(B) A tribal organization that receives notification of the intent of a tribe to adopt a limiting resolution pursuant to subparagraph (A)(i) shall not proceed with the redelegation that is the subject of the notification until the expiration of the period specified in subparagraph (A)(ii).

"(4) Nothing in this subsection may be construed as a limitation on the authority of a tribe to limit, restrict, or rescind a resolution to enter into a contract described in paragraph (1) at any time or in any manner.";

(10) by striking subsection (a) of section 105 and inserting the following new subsection:

"(a)(1) Notwithstanding any other provision of law, subject to paragraph (2), the contracts and cooperative agreements entered into with, and grants made to, tribal organizations pursuant to sections 102 and 103 shall not be subject to any Federal laws (including any regulations) of general applicability relating to contracts or discretionary cooperative agreements entered into or grants made by the Federal Government, except to the extent that such laws expressly apply to Indian tribes.

"(2)(A) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations relating to acquisitions promulgated under such Act shall apply only to the extent that the application of such provision to the construction contract (or subcontract) is—

"(i) necessary to ensure that the contract may be carried out in a satisfactory manner;

"(ii) directly related to the construction activity; and

"(iii) not inconsistent with this Act.

"(B) A list of the Federal requirements that meet the requirements of clauses (i) through (iii) of subparagraph (A) shall be included in an attachment to the contract pursuant to negotiations between the Secretary and the tribal organization.

"(C)(i) Except as provided in subparagraph (B), no Federal law listed in clause (ii) or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal Government shall apply to a construction contract that a tribe or tribal organization enters into under this Act, unless expressly provided in such law.

"(ii) The laws listed in this paragraph are as follows:

"(I) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

"(II) Section 3709 of the Revised Statutes.

"(III) Section 9(c) of the Act of Aug. 2, 1946 (60 Stat. 809, chapter 744).

"(IV) Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393 et seq., chapter 288).

"(V) Section 13 of the Act of Oct. 3, 1944 (58 Stat. 770; chapter 479).

"(VI) Chapters 21, 25, 27, 29, and 31 of title 44, United States Code.

"(VII) The Work Hours Act of 1962 (40 U.S.C. 328 et seq.).

"(VIII) Section 2 of the Act of June 13, 1934 (48 Stat 948, chapter 483).

"(IX) Sections 1 through 12 of the Act of June 30, 1936 (49 Stat. 2036 et seq. chapter 881).

"(X) The Service Control Act of 1965 (41 U.S.C. 351 et seq.).

"(XI) The Small Business Act (15 U.S.C. 631 et seq.).

"(XII) Executive Order Nos. 12138, 11246, 11701 and 11758.";

(11) by striking subsection (e) and inserting the following new subsection:

"(e) If an Indian tribe or tribal organization requests retrocession of the appropriate Secretary for any contract or portion of a contract entered into pursuant to this Act, unless the tribe or tribal organization rescinds the request for retrocession, such retrocession shall become effective on—

"(1) the earlier of—

"(A) the date that is 1 year after the date the Indian tribe or tribal organization submits such request; or

"(B) the date on which the contract expires; or

"(2) such date as may be mutually agreed by the Secretary and the Indian tribe.";

(12) by striking paragraph (2) of section 105(f) and inserting the following new paragraph:

"(2) donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that—

"(A) title to property and equipment (other than property and equipment described in subparagraph (B)) furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization; and

"(B) if property described in subparagraph (A) has a value in excess of $5,000 at the time of the retrocession, rescission, or termination of the self-determination contract or grant agreement, and if such property remains in use in support of the contracted program, at the option of the Secretary, upon the retrocession, rescission, or termination, title to such property and equipment shall revert to the Department of the Interior or the Department of Health and Human Services, as appropriate; and";

(13) by adding at the end of section 105 the following new subsections:

"(i)(1) If a self-determination contract requires the Secretary to divide the administration of a program that has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall—

"(A) endeavor to minimize any adverse effect on the level of services to be provided to all affected tribes;

"(B) notify all affected tribes that are not a party to the contract, as soon as practicable after receipt of the contract proposal—

"(i) of the receipt of the contract proposal; and

"(ii) of the right of such tribes to comment on the best means of dividing the administration of the program to meet the needs of all affected tribes;

"(C) explore the feasibility of instituting cooperative agreements among the affected tribes that are not a party to the contract, the tribal organization operating the contract, and the Secretary; and

"(D)(i) identify the nature of any diminution in quality, level, or quantity of services to any affected tribe resulting from the division of the program; and

"(ii) submit a report to Congress that contains the identification, together with an estimate of the funds required to raise the quality, level, or quantity, of services to correct the diminution.

"(2) In determining whether to decline a contract under section 102(a)(2), the Secretary may not consider the effect that a contract proposal would have on—

"(A) tribes not represented by the tribe or tribal organization that submits such proposal; or

"(B) Indians who are not served by the portion of the program to be contracted.

"(3) The Secretary shall take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract.

"(j) Upon providing notice to the Secretary, a tribal organization that carries out a self-determination contract may redesign a program, activity, function, or service carried out by the tribal organization under the contract, including any program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health, and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any proposal to redesign any program, activity, function, or service provided under the contract. With respect to declining to approve a redesigned program, activity, function, or service under this subsection, the Secretary shall apply the criteria and procedures set forth in section 102.

"(k) For purposes of section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)) (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), a tribal organization carrying out a contract, grant, or cooperative agreement under this Act shall be deemed an executive agency when carrying out such contract, grant, or agreement and the employees of the tribal organization shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access.

"(l)(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a beneficial interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this Act.

"(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

"(m)(1) Each construction contract requested, approved, or awarded under this Act shall be subject to—

"(A) the provisions of this Act, including sections 7, 102(a), 102(b), 103 (d) and (e), 105(f), 106(a), 106(f), 110 and 111; and

"(B) section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (104 Stat. 1959).

"(2) In providing technical assistance to tribes and tribal organizations in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe or tribal organization, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, and archaeological reports.

"(3) Prior to finalizing a construction contract proposal pursuant to section 102(a), and upon request of the tribe or tribal organization that submits the proposal, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal. Such phase shall include, at a minimum, the following elements:

"(A) The provision of technical assistance pursuant to section 103 and paragraph (2).

"(B) A joint scoping session between the Secretary and the tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.

"(C) An opportunity for the Secretary to revise the plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the tribe or tribal organization.

"(D) A negotiation session during which the Secretary and the tribe or tribal organization shall seek to develop a mutually agreeable contract proposal.

"(E) Upon the request of the tribe or tribal organization, the use of an alternative dispute resolution mechanism to seek resolution of all remaining areas of disagreement pursuant to the dispute resolution provisions under subchapter IV of chapter 5 of title 5, United States Code.

"(F) The submission to the Secretary by the tribe or tribal organization of a final contract proposal pursuant to section 102(a).

"(4)(A) Subject to subparagraph (B), in funding a fixed-price construction contract pursuant to section 106(a), the Secretary shall provide for the following:

"(i) The reasonable costs to the tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract.

"(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract and other relevant considerations.

"(B) In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components described in clauses (i) and (ii) of subparagraph (A).

"(C) The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties, including the following costs:

"(i) The reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of this Act and any other applicable law.

"(ii) The costs of preparing the contract proposal and supporting cost data.

"(iii) The costs associated with auditing the general and administrative costs of the tribal organization.

"(iv) In the case of a fixed-price contract, a fair profit determined by taking into consideration the relevant risks and local market conditions.

"(n) Notwithstanding any other provision of law, the rental rates for housing provided to an employee by the Federal Government in Alaska pursuant to a self-determination contract shall be determined on the basis of—

"(1) the reasonable value of the quarters and facilities (as such terms are defined under section 5911 of title 5, United States Code) to such employee, and

"(2) the circumstances under which such quarters and facilities are provided to such employee,

as based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.";

(14) in section 106(a)—

(A) in paragraph (1), by inserting before the period at the end of the following: ", without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated";

(B) in paragraph (2), by inserting after "consist of" the following: "an amount for"; and

(C) by striking paragraph (3) and inserting the following new paragraphs:

"(3)(A) The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of—

"(i) direct program expenses for the operation of the Federal program that is the subject of the contract; and

"(ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract.

"(B) On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this Act, the tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

"(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program, function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract) shall—

"(A) be used to provide additional services or benefits under the contract; or

"(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 8.

"(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary—

"(A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and

"(B) to ensure compliance with the terms of the contract and prudent management.

"(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.";

(15) in section 106(c)—

(A) in paragraphs (1) and (2), by striking "indirect costs" each place it appears and inserting "indirect costs and other negotiated contract support costs";

(B) in paragraph (4), by striking "and" at the end;

(C) in paragraph (5), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following new paragraph:

"(6) an accounting of any deficiency of funds needed to maintain the preexisting level of services to any tribes affected by contracting activities under this Act, and a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle to a different accounting cycle, as authorized by section 105(d).";

(16) in section 106(f), by inserting immediately after the second sentence the following new sentence: "For the purpose of determining the 365-

day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31, United States Code, or noncompliance with any other applicable law.";

(17) by striking subsection (g) of section 106 and inserting the following new subsection:

"(g) Upon the approval of a self-determination contract, the Secretary shall allocate to the contract the full amount of funds to which the contractor is entitled under section 106(a), subject to adjustments for each subsequent year that such tribe or tribal organization administers a Federal program, function, service, or activity under such contract.";

(18) by striking subsection (i) of section 106 and inserting the following new subsection:

"(i) On an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).'; and

(19) by adding at the end of section 106 the following new subsections:

"(j) A tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

"(k) Without intending any limitation, a tribal organization may, without the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

"(1) Depreciation and use allowances not otherwise specifically prohibited by law, including the depreciation of facilities owned by the tribe or tribal organization and constructed with Federal financial assistance.

"(2) Publication and printing costs.

"(3) Building, realty, and facilities costs, including rental costs or mortgage expenses.

"(4) Automated data processing and similar equipment or services.

"(5) Costs for capital assets and repairs.

"(6) Management studies.

"(7) Professional services, other than services provided in connection with judicial proceedings by or against the United States.

"(8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.

"(9) Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.

"(10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.

"(11) Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under this Act.

"(12) Costs associated with the management of pension funds, self-insurance funds, and other funds of the tribal organization that provide for participation by the Federal Government.

"(l) Not later than 1 year after the date of enactment of this subsection, the Director of the Office of Management and Budget, with the active participation of Indian tribes and tribal organizations, the Inspector General of the Department of the Interior, and the head of the Cost Determination Branch of the Department of Health and Human Services, shall develop a separate set of cost principles applicable to Indian tribes and tribal organizations that is consistent with the government-to-government, Federal-tribal relationship provided for in this Act.

"(m) Except with respect to a rescission and reassumption of a contract made under section 109, the Secretary shall in no circumstance suspend, withhold, or delay the payment of funds to a tribal organization under a self-determination contract.

"(n) The program income earned by a tribal organization in the course of carrying out a self-determination contract—

"(1) shall be used by the tribal organization to further the general purposes of the contract; and

"(2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

"(o) To the extent that—

"(1) programs, functions, services, or activities carried out by tribal organizations pursuant to contracts entered into under this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under subsection (a), and

"(2) making such savings available to tribal organizations that carry out contracts under this Act will not adversely affect the ability of the Secretary to carry out the responsibilities of the Secretary with respect to other tribes and tribal organizations,

the Secretary shall make such savings available to tribal organizations described in paragraph (1).

"(p) Notwithstanding any other provision of law (including any regulation), a tribal organization that carries out a self-determination contract may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have a significant and adverse effect on the level or nature of services provided pursuant to the contract.".

SEC. 3. CONTRACT SPECIFICATIONS.

Section 108 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j) is amended to read as follows:

"SEC. 108. CONTRACT OR GRANT SPECIFICATIONS.

"(a) Each self-determination contract entered into under this Act, or grant made pursuant to this Act, shall—

"(1) contain, or incorporate by reference, the provisions of the model agreement described in subsection (c) (with modifications where indicated and the blanks appropriately filled in), and

"(2) contain such other provisions as are agreed to by the parties.

"(b) Notwithstanding any other provision of law, the Secretary may make payments pursuant to section 1(b)(4) of such model agreement. As provided in section 1(b)(5) of the model agreement, the records of the tribal government or tribal organization specified in such section shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

"(c) The model agreement referred to in subsection (a)(1) reads as follows:

"'SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND THE ___ TRIBAL GOVERNMENT.

"'(a) AUTHORITY AND PURPOSE.—

"'(1) AUTHORITY.—This agreement, denoted a Self-Determination Contract (referred to in this agreement as the "Contract"), is entered into by the Secretary of the Interior or the Secretary of Health and Human Services (referred to in this agreement as the "Secretary"), for and on behalf of the United States pursuant to title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and by the authority of the ___ tribal government or tribal organization (referred to in this agreement as the "Contractor"). Unless otherwise provided in this agreement, the provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.

"'(2) PURPOSE.—Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), including all related administrative functions, from the Federal Government to the Contractor: (List functions, services, activities, and programs).

"'(3) TRIBAL LAW AND FORUMS.—The laws or policies (or both) and procedures of the Contractor shall be applied in the performance of this Contract and the powers and decisions of the tribal court of the Contractor or other dispute resolution mechanism shall be binding to the extent that such laws or policies (or both) and procedures are not inconsistent with applicable Federal laws, including the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), construed in accordance with the applicable canons of construction.

"'(b) TERMS, PROVISIONS, AND CONDITIONS.—

"'(1) TERM.—The term of this Contract shall not exceed 3 years, unless the Secretary and the Contractor agree to a longer period pursuant to section 105(c)(1)(B) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(1)(B)). Pursuant to section 105(d)(1) of such Act (25 U.S.C. 450j(d)), upon the election by the Contractor, the period of this Contract shall be determined on the basis of a calendar year, unless the Secretary and the Contractor agree on a different period in the annual funding agreement incorporated by reference in subsection (f)(2).

"'(2) EFFECTIVE DATE.—This Contract shall become effective upon the date of the approval and execution by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph.

"'(3) FUNDING AMOUNT.—Subject to the availability of appropriations, the Secretary shall make available to the Contractor the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1).

"'(4) LIMITATION OF COSTS.—The Contractor shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the Contractor has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the Contractor shall notify the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary to increase the amount of funds awarded under this Contract, the Contractor may suspend performance of the Contract until such time as additional funds are awarded. If, pursuant to the

preceding sentence, the Contractor suspends performance of the Contract, all duties and responsibilities assumed by the Contractor before the date on which the Contractor suspends performance shall be transferred to the appropriate Secretary, and the appropriate Secretary shall carry out such duties and responsibilities.

"'(5) PAYMENT.—

"'(A) IN GENERAL.—Payments to the Contractor under this Contract shall—

"'(i) be made as expeditiously as practicable; and

"'(ii) include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.

"'(B) QUARTERLY SEMIANNUAL, LUMP-SUM, AND OTHER METHODS OF PAYMENT.—

"'(i) IN GENERAL.—Pursuant to section 108(b) of the Indian Self-Determination and Education Assistance Act, and notwithstanding any other provision of law, for each fiscal year covered by this Contract, the Secretary shall make available to the Contractor the funds specified for the fiscal year under the annual funding agreement incorporated by reference pursuant to subsection (f)(2) by paying to the Contractor, on a quarterly basis, one-quarter of the total amount provided for in the annual funding agreement for that fiscal year, in a lump-sum payment or as semiannual payments, or any other method of payment authorized by law, in accordance with such method as may be requested by the Contractor and specified in the annual funding agreement.

"'(ii) METHOD OF QUARTERLY PAYMENT.—If quarterly payments are specified in the annual funding agreement incorporated by reference pursuant to subsection (f)(2), each quarterly payment made pursuant to clause (i) shall be made on the first day of each quarter of the fiscal year, except that in any case in which the contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 10 calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this Contract.

"'(iii) APPLICABILITY.—Chapter 39 of title 31, United States Code, shall apply to the payment of funds due under this Contract and the annual funding agreement referred to in clause (i).

"'(6) RECORDS AND MONITORING.—

"'(A) IN GENERAL.—Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the Department of the Interior or the Department of Health and Human Services (or both), records of the Contractor shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

"'(B) RECORDKEEPING SYSTEM.—The Contractor shall maintain a recordkeeping system and, upon reasonable advance request, provide reasonable access to such records to the Secretary.

"'(C) RESPONSIBILITIES OF CONTRACTOR.—The Contractor shall be responsible for managing the day-to-day operations conducted under this Contract and for monitoring activities conducted under this Contract to ensure compliance with the contract and applicable Federal requirements. With respect to the monitoring activities of the Secretary, the monitoring visits shall be limited to not more than one performance monitoring visit for this Contract by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representative of such head unless—

"'(i) the Contractor agrees to one or more additional visits; or

"'(ii) the appropriate official determines that there is reasonable cause to believe that grounds for reassumption of the Contract or other serious contract performance deficiency exists.

No additional visit referred to in clause (i) shall be made until such time as reasonable advance notice that includes a description of the nature of the problem that requires the additional visit has been given to the Contractor.

"'(7) PROPERTY.—

"'(A) IN GENERAL.—As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(f)), at the request of the Contractor, the Secretary shall make available, or transfer to the Contractor, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities covered by this Contract. A mutually agreed upon list specifying the property, facilities, and equipment so furnished shall also be prepared by the Contractor, with the concurrence of the Secretary, and periodically revised by the contractor, with the concurrence of the Secretary.

"'(B) RECORDS.—The Secretary shall maintain a record of all property referred to in subparagraph (A) or other property acquired by the Contractor under section 105(f)(2)(A) of such Act for purposes of replacement and shall replace such property on the same basis as property remaining under the control of the Secretary.

"'(C) JOINT USE AGREEMENTS.—Upon the request of the Contractor, the Secretary and the Contractor shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.

"'(D) ACQUISITION OF PROPERTY.—The Secretary shall delegate to the Contractor the authority to acquire such excess property as the Contractor may determine to be appropriate in the judgment of the Contractor to support the programs, services, functions, and activities operated pursuant to this Contract.

"'(E) CONFISCATED OR EXCESS PROPERTY.—The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

"'(F) SCREENER IDENTIFICATION CARD.—A screener identification card (General Services Administration form numbered 2946) shall be issued to the Contractor not later than the effective date of this Contract. The designated official shall, upon request, assist the Contractor in securing the use of the card.

"'(G) CAPITAL EQUIPMENT.—The Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the Contractor under this subsection, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable tribal procurement procedures.

"'(8) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, any funds provided under this contract—

"'(A) shall remain available until expended; and

"'(B) with respect to such funds, no further—

"'(i) approval by the Secretary, or

"'(ii) justifying documentation from the Contractor,

shall be required prior to the expenditure of such funds.

"'(9) TRANSPORTATION.—Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this Contract.

"'(10) REGULATORY AUTHORITY.—Except as specifically provided in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) the Contractor is not required to abide by Federal program guidelines, manuals, or policy directives, unless otherwise agreed to by the Contractor and the Secretary.

"'(11) DISPUTES.—

"'(A) THIRD-PARTY MEDIATION DEFINED.—For the purposes of this Contract, the term "third-party mediation" means a form of mediation whereby the Secretary and the Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of Health and Human Services, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.

"'(B) ALTERNATIVE PROCEDURES.—In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m-1), the parties to this Contract may jointly—

"'(i) submit disputes under this Contract to third-party mediation;

"'(ii) submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor;

"'(iii) submit the dispute to mediation processes provided for under the laws, policies, or procedures of the Contractor; or

"'(iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

"'(C) EFFECT OF DECISIONS.—The Secretary shall be bound by decisions made pursuant to the processes set forth in subparagraph (B), except that the Secretary shall not be bound by any decision that significantly conflicts with the interests of Indians or the United States.

"'(12) ADMINISTRATIVE PROCEDURES OF CONTRACTOR.—Pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), the laws, policies, and procedures of the Contractor shall provide for administrative due process (or the equivalent of administrative due process) with respect to programs, services, functions, and activities that are provided by the Contractor pursuant to this Contract.

"'(13) SUCCESSOR ANNUAL FUNDING AGREEMENT.—

"'(A) IN GENERAL.—Negotiations for a successor annual funding agreement, provided for in subsection (f)(2), shall begin not later than 120 days prior to the conclusion of the preceding annual funding agreement. The funding for each such successor annual funding agreement shall only be reduced pursuant to section 106(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j-1(b)).

"'(B) INFORMATION.—The Secretary shall prepare and supply relevant information, and promptly comply with any request by the Contractor for information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor annual funding agreement, as provided for in subsection (f)(2) of this Contract.

"'(14) CONTRACT REQUIREMENTS; APPROVAL BY SECRETARY.—

"'(A) IN GENERAL.—Except as provided in subparagraph (B), for the term of the Contract, section 2103 of the Revised Statutes (25 U.S.C. 81) and section 16 of the Act of June 18, 1934 (48 Stat. 987, chapter 576; 25 U.S.C. 476), shall not apply to any contract entered into in connection with this Contract.

"'(B) REQUIREMENTS.—Each Contract entered into by the Contractor with a third party in connection with performing the obligations of the Contractor under this Contract shall—

"'(i) be in writing;

"'(ii) identify the interested parties, the authorities of such parties, and purposes of the Contract;

"'(iii) state the work to be performed under the Contract; and

"'(iv) state the process for making any claim, the payments to be made, and the terms of the Contract, which shall be fixed.

"'(c) OBLIGATION OF THE CONTRACTOR.—

"'(1) CONTRACT PERFORMANCE.—Except as provided in subsection (d)(2), the Contractor shall perform the programs, services, functions, and activities as provided in the annual funding agreement under subsection (f)(2) of this Contract.

"'(2) AMOUNT OF FUNDS.—The total amount of funds to be paid under this Contract shall be determined in an annual funding agreement entered into between the Secretary and the Contractor, which shall be incorporated into this Contract.

"'(3) CONTRACTED PROGRAMS.—Subject to the availability of appropriated funds, the Contractor shall administer the programs, services, functions, and activities identified in this Contract and funded through the annual funding agreement under subsection (f)(2).

"'(4) TRUST SERVICES FOR INDIVIDUAL INDIANS.—

"'(A) IN GENERAL.—To the extent that the annual funding agreement provides funding for the delivery of trust services to individual Indians that have been provided by the Secretary, the Contractor shall maintain at least the same level of service as the Secretary provided for such individual Indians, subject to the availability of appropriated funds for such services.

"'(B) TRUST SERVICES TO INDIVIDUAL INDIANS.—For the purposes of this paragraph only, the term "trust services for individual Indians" means only those services that pertain to land or financial management connected to individually held allotments.

"'(5) FAIR AND UNIFORM SERVICES.—The Contractor shall provide services under this Contract in a fair and uniform manner and shall provide access to an administrative or judicial body empowered to adjudicate or otherwise resolve complaints, claims, and grievances brought by program beneficiaries against the Contractor arising out of the performance of the Contract.

"'(d) OBLIGATION OF THE UNITED STATES.—

"'(1) TRUST RESPONSIBILITY.—

"'(A) IN GENERAL.—The United States reaffirms the trust responsibility of the United States to the ___ Indian tribe(s) to protect and conserve the trust resources of the Indian tribe(s) and the trust resources of individual Indians.

"'(B) CONSTRUCTION OF CONTRACT.—Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians.

"'(C) DUTIES OF SECRETARY.—The Secretary shall act in good faith in upholding such trust responsibility. To the extent that health programs are included in this Contract, the Secretary shall act in good faith in cooperating with the Contractor to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

"'(2) PROGRAMS RETAINED.—As specified in the annual funding agreement, the United States hereby retains the programs, services, functions, and activities with respect to the tribe(s) that are not specifically assumed by the Contractor in the annual funding agreement under subsection (f)(2).

"'(e) OTHER PROVISIONS.—

"'(1) DESIGNATED OFFICIALS.—Not later than the effective date of this Contract, the United States shall provide to the Contractor, and the Contractor shall provide to the United States, a written designation of a senior official to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.

"'(2) CONTRACT MODIFICATIONS OR AMENDMENT.—

"'(A) IN GENERAL.—Except as provided in subparagraph (B), no modification to this Contract shall take effect unless such modification is made in the form of a written amendment to the Contract, and the Contractor and the Secretary provide written consent for the modification.

"'(B) EXCEPTION.—The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the annual funding agreement under subsection (f)(2) shall not be subject to subparagraph (A).

"'(3) OFFICIALS NOT TO BENEFIT.—No Member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.

"'(4) COVENANT AGAINST CONTINGENT FEES.—The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

"'(f) ATTACHMENTS.—

"'(1) APPROVAL OF CONTRACT.—Unless previously furnished to the Secretary, the resolution of the ___ Indian tribe(s) authorizing the contracting of the programs, services, functions, and activities identified in this Contract is attached to this Contract as attachment 1.

"'(2) ANNUAL FUNDING AGREEMENT.—

"'(A) IN GENERAL.—The negotiated and duly approved annual funding agreement under this Contract shall only contain—

"'(i) terms that identify the programs, services, functions, and activities to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and

"'(ii) such other provisions, including a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary), as the Contractor may request and to which the parties agree.

"'(B) INCORPORATION BY REFERENCE.—The annual funding agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as attachment 2.'".

SEC. 4. ADDITIONAL AMENDMENTS.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), as amended by sections 2 and 3, is further amended—

(1) in section 109—

(A) by striking "action as prescribed by him" and all that follows through "in such cases, he" and inserting the following: "action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent harm to the safety of any person, and (ii) such threat arises from the failure of the contractor to fulfill the requirements of the contract. In such cases, the Secretary";

(B) by striking the second period after "the tribal organization may approve"; and

(C) by inserting before the last sentence, the following new sentence: "In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clear and convincing evidence, the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of the hearing.";

(2) in section 110(a), by inserting immediately before the period at the end the following: "(including immediate injunctive relief to reverse a declination finding under section 102(a)(2) or to compel the Secretary to award and fund an approved self-determination contract)"; and

(3) in section 110(d), by inserting immediately before the period at the end the following: ", except that all administrative appeals relating to such contracts shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607)".

SEC. 5. REGULATIONS.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), as amended by sections 2 through 4, is further amended—

(1) by striking subsections (a) and (b) of section 107 and inserting the following new subsections:

"(a)(1) Except as may be specifically authorized in this subsection, or in any other provision of this Act, the Secretary of the Interior and the Secretary of Health and Human Services may not promulgate any regulation, nor impose any nonregulatory requirement, relating to self-determination contracts or the approval, award, or declination of such contracts, except that the Secretary of the Interior and the Secretary of Health and Human Services may promulgate regulations under this Act relating to chapter 171 of title 28, United States Code, commonly known as the 'Federal Tort Claims Act', the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), declination appeal procedures, reassumption procedures, and retrocession procedures.

"(2)(A) The regulations promulgated under this Act, including the regulations referred to in this subsection, shall be promulgated—

"(i) in conformance with sections 552 and 553 of title 5, United States Code and subsections (c), (d), and (e) of this section; and

"(ii) as a single set of regulations in title 25 of the Code of Federal Regulations.

"(B) The authority to promulgate regulations set forth in this Act shall expire if final regulations are not promulgated within 1 year after the date of enactment of the Indian Self-Determination Contract Reform Act of 1994.

"(b) The provisions of this Act shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before the date of enactment of the Indian Self-Determination Contract Reform Act of 1994."; and

(2) by adding at the end of section 107, the following new subsections:

"(d)(1) In drafting and promulgating regulations as provided in subsection (a) (including drafting and promulgating any revised regulations), the Secretary of the Interior and the Secretary of Health and Human Services shall confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, individual tribal members, and representatives of other parties interested in the implementation of this Act.

"(2)(A) In carrying out rulemaking processes under this Act, the Secretary of the Interior and the Secretary of Health and Human Services shall follow the guidance of—

"(i) subchapter III of chapter 5 of title 5, United States Code, commonly known as the 'Negotiated Rulemaking Act of 1990'; and

"(ii) the recommendations of the Administrative Conference of the United States numbered 82–4 and 85–5 entitled 'Procedures for Negotiating Proposed Regulations' under sections 305.82–4 and 305.85–5 of title 1, Code of Federal Regulations, and any successor recommendation or law (including any successor regulation).

"(B) The tribal participants in the negotiation process referred to in subparagraph (A) shall be chosen by the tribes and tribal organizations participating in regional and national meetings that the Secretary shall convene. The participants shall represent the groups described in this paragraph and shall include tribal representatives from all geographic regions.

"(C) The negotiations referred to in subparagraph (B) shall be conducted in a timely manner. Proposed regulations to implement the amendments made by the Indian Self-Determination Contract Reform Act of 1994 shall be published in the Federal Register by the Secretary of the Interior and the Secretary of Health and Human Services not later than 180 days after the date of enactment of such Act.

"(D) Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund such interagency committees or other interagency bodies, including advisory bodies comprised of tribal representatives, as may be necessary or appropriate to carry out the provisions of this Act.

"(e) Notwithstanding any other provision of law (including any regulation), the Secretary may, with respect to a contract entered into under this Act, make exceptions in the regulations promulgated by the Secretary to carry out this Act, or waive such regulations, if the Secretary finds that such exception or waiver is in the best interest of the Indians served by the contract. The Secretary shall review each request for a waiver submitted by a tribe or tribal organization under this subsection in accordance with the declination criteria and procedures set forth in section 102(a)(2).".

SEC. 6. CONFORMING AMENDMENTS.

Section 105(h) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(h)) is amended by striking "and the rules and regulations adopted by the Secretaries of the Interior and Health and Human Services pursuant to section 107 of this Act".

AMENDMENT NO. 2635

(Purpose: To provide a substitute amendment)

Mr. SIMPSON. Mr. President, on behalf of Senator MCCAIN, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report. The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. MCCAIN, proposes an amendment numbered 2635.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted".)

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment (No. 2635) is agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that any statements on this measure appear in the RECORD at the appropriate place as though read.

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

THE INDIAN SELF-DETERMINATION CONTRACT REFORM ACT OF 1994

Mr. MCCAIN. Mr. President, I rise today to offer an amendment in the nature of a substitute to S. 2036, the Indian Self-Determination Contract Reform Act of 1994. The substitute amendment makes over 40 changes to the bill and by doing so responds to a significant number of concerns raised by the Department of the Interior and the Department of Health and Human Services. The substitute reflects a good faith effort on the part of the Senate, House and the tribes to be responsive to the administration's concerns. With the inclusion of the changes incorporated in this amendment, I am advised that the administration has expressed its full support for the bill.

Nevertheless, I am deeply troubled by what has taken place during this debate. In my view, after the administration concluded that its attempts to delay the bill would be useless, the administration had one thing in mind with respect to self-determination reform: the administration's concerns were critical; tribal concerns were negotiable. I suspect the tribes themselves will be troubled by this because the administration has gone out if its way to proclaim itself as an administration that is more sensitive to tribal concerns. Frankly, if there is a unifying theme in this administration's Indian policy, it is the casual relationship between words and action.

It is my hope that S. 2036, as amended, will assist tribes in recapturing the vision of Indian self-determination that has its origins in President Nixon's 1970 "Special Message to the Congress on Indian Affairs" which stated:

For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the federal authorities and not the Indian people who finally make that decision.

This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing to assume administrative responsibility for a service program which is presently administered by a federal agency.

For the benefit of my colleagues, I will summarize briefly the amendments contained in the substitute bill.

In section 2(1): deletes architectural and engineering services from the category of programs not covered by the special rules applicable to construction contracts.

In section 2(5): replaces the words "relating to" with the words "supportive of".

In section 2(6): enlarges the declination timeframe from 60 days to 90 days; replaces the "clear and convincing" standard for declination with the "clearly demonstrate" standard, an intermediate standard higher than a "preponderance of the evidence"; deletes the proposed amendment to the "satisfactory services" standard of existing law; and separates out the declination criteria relating to funding and contractibility issues. Requires that program standards be set forth in contract proposals so that they can be evaluated against the declination criteria.

In section 2(9): replaces the "clear and convincing" standard with the "clearly demonstrate" standard; deletes the requirement that a declination finding include a technical assistance finding; adds a provision permitting administrative judges to make final decisions in declination appeals; and deletes the so-called Alaska indirect redelegation provision.

In section 2(10): eliminates section 103 grants from the scope of the section; improves upon the language specifying those laws which do not apply to non-construction contracts; again requires that program standards be included in contract proposals and in final contracts so that the Departments can evaluate those standards in light of the declination criteria.

In section 2(11): limits the authority of a tribal organization that is itself not a tribe to technically retrocede a program back to the government to instances where the authority has been delegated to the tribal organization.

In section 2(12): eliminates the limitation on return of property to the federal government relating to use of the property in the contracted program.

In section 2(13): deletes virtually all of the divisibility section, and replacing it with a new explicit protection for non-contracting tribes; limits redesign authority to non-construction contracts; makes redesign a matter for a tribal organization to propose to the Secretary; prohibits any redesign that would be contrary to statute; clarifies the types of property interests necessary to support a tribal lease; clarifies that certain sections of Title I do not apply to construction contracts,

including the model contract and the reassumption section; and clarifies that auditing costs that are to be covered in construction contracts are those that relate to the management of the contract, and not those relating to other aspects of the tribal organization's operations.

In section 2(14): adds language to assure against any inadvertent double payment of contract support costs which duplicate the Secretarial amount already included in the contract.

In section 2(15): changes the reporting deadlines from March 15 to May 15, to provide adequate time to include reports relating to calendar year contracts within the supplemental appropriations cycle.

In section 2(17): changes the word "allocate" to "add".

In section 2(19): clarifies the matching provision; clarifies the depreciation provision; deletes the mandate to OMB to issue a new circular, leaving such matters up to OMB's discretion; entirely rewrites the "funding suspension" provision to grant the agencies this authority within certain guidelines; rewrites the "savings" provision so that savings equally benefit both contracted and non-contracted parts of the Secretary's programs; and clarifies the limitation applicable to a tribal organization's rebudgeting authority.

In section 3 of the bill (containing the model contract): deletes the paragraph relating to tribal forums; requires that the contract set forth the program standards applicable to the contracted programs; amends and narrows the "limitation of cost" clause; enlarges the Secretary's monitoring rights; changes certain recordkeeping requirements; conforms the funding reduction provisions of the contract with section 105(c)(2) of the Act; clarifies that the funding amount specified in the annual funding agreement is tied to the funding amount required to be paid under section 106(a) of the Act; clarifies the Secretary's responsibilities; and edits the annual funding agreement paragraphs as requested.

In section 4 of the bill (relating to reassumption): adds a new reassumption ground tied to endangerment of trust resources; provides for partial reassumption; and changes the "clear and convincing" standard to the "clearly demonstrate" standard.

In section 5 of the bill (relating to regulatory implementation): adds several additional topic areas with respect to which Congress delegates its legislative rulemaking authority to the departments; adds an explicit regulatory repeal authority; amends the tribal participant and meeting requirements related to negotiated rulemaking; and substantially rewrites the waiver and exception provisions.

Mr. President, S. 2036, as amended, is legislation that is strongly supported by the tribes. I urge my colleagues to pass this legislation.

THE PROCESS PATENT PROTECTION ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4307, a bill relating to biotechnology patents.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4307) an act to amend title 35 of the United States Code with respect to applications for process patents, and for certain other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 2636

(Purpose: To amend title 35 United States Code, with respect to applications for process patents)

Mr. FORD. Mr. President, in behalf of Senator DECONCINI and Senator HATCH, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. DECONCINI, (for himself, Mr. HATCH, and Mr. KENNEDY) proposes an amendment numbered 2636.

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—PROCESS PATENT APPLICATIONS

SECTION 101. EXAMINATION OF PROCESS PATENT APPLICATIONS FOR OBVIOUSNESS.

Section 103 of title 35, United States Code, is amended—

(1) by designating the first paragraph as subsection (a);

(2) by designating the second paragraph as subsection (c); and

(3) by inserting after the first paragraph the

"(b)(1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a "biotechnological process" using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—

"(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and

"(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

"(2) A patent issued on a process under paragraph (1)—

"(A) shall also contain the claims to the composition of matter used in or made by that process, or

"(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.".

For purposes of subsection (b), the term "biotechnological process" means a process of genetically altering or otherwise inducing a cell or a living organism to express an exogenous nucleotide sequence or to express specific physiological characteristics. Such processes include genetic alteration of a cell to express an exogenous nucleotide sequence, cell fusion procedures yielding a cell line that expresses a specific protein, including a monoclonal antibody, and genetic alteration of a multicellular organism to induce said organism to express an exogenous nucleotide sequence or to express predefined physiological characteristics.

SEC. 102. PRESUMPTION OF VALIDITY; DEFENSES.

Section 282 of title 35, United States Code, is amended by inserting after the second sentence of the first paragraph the following: "Notwithstanding the preceding sentence, if a claim to a composition of matter is held invalid and that claim was the basis of a determination of nonobviousness under section 103(b)(1), the process shall no longer be considered nonobvious solely on the basis of section 103(b)(1).".

SEC. 103. EFFECTIVE DATE.

The amendments made by section 101 shall apply to any application for patent filed on or after the date of the enactment of this Act and to any application for patent pending on such date of enactment, including (in either case) as application for the reissue of a patent.

AMENDMENT NO. 2637

(Purpose: To confer jurisdiction on the United States Court of Federal Claims relating to certain claims arising out of the furnishing of software and services)

Mr. FORD. Mr. President, on behalf of Senator HATCH, I send an amendment to the desk, and ask unanimous consent to proceed to its immediate consideration, that the amendment be agreed to, that substitute amendment as amended, be agreed to, that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, and that any statements appear in the RECORD at the appropriate place as if read.

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

The amendment (No. 2637) was agreed to, as follows:

On page , insert between lines and the following:

SEC. . JURISDICTION OF UNITED STATES COURT OF FEDERAL CLAIMS RELATING TO CERTAIN SOFTWARE AND SERVICE CLAIMS.

(a) JURISDICTION.—Jurisdiction is conferred upon the United States Court of Federal Claims to hear, determine, and render conclusions that are sufficient to inform the Congress of the amount, if any, legally or equitably due upon the claims of Inslaw, Inc., a Delaware Corporation (hereinafter referred to as "Inslaw") and William A. Hamilton and Nancy Burke Hamilton, individually against the United States which claims arise out of the furnishing of computer software and services to the United States Department of Justice. The hearings and proceedings conducted, determinations and conclusions made, and report submitted to the Congress under this subsection shall be conducted in accordance with the provisions of section 2509 of title 28, United States Code.

(b) WAIVER OF SOVEREIGN IMMUNITY AND DEFENSE.—For purposes of the report submitted under subsection (a), any available defense relating to statute of limitations, any form of estoppel, laches, res judicata, failure to exhaust all remedies, and any available defense of sovereign immunity of the United States, the Department of Justice, or any other United States Government agency is specifically waived as to the respective claims of Inslaw, William A. Hamilton, and Nancy Burke Hamilton.

THE PROCESS PATENT PROTECTION ACT OF 1994

Mr. DECONCINI. Mr. President, I urge my colleagues to join with me and Senators HATCH and KENNEDY in passing H.R. 4307, the Process Patent Protection Act of 1994. This bill will remedy a situation which has endangered the competitiveness of America's burgeoning biotech industry.

To date, patent law has failed to provide the biotechnology industry with adequate protection for the processes they utilize. Because of the failure of our laws, foreign competitors have an unfair advantage. Furthermore, biotech firms cannot obtain much needed investment to continue their research in vital areas ranging from pharmaceuticals, to agriculture and environmental cleanup. For 5 years Congress has worked to resolve the inequity in the law, and H.R. 4307 is the result of these efforts.

On September 20, 1994 the House passed H.R. 4307, a bill similar to S. 298, the Biotechnology Patent Protection Act of 1993, which passed the Senate on July 15, 1993. S. 238 amended the patent code, in particular title 35, to provide protection for the biotechnology industry which was having difficulty obtaining process patents due to conflicting court decisions. The Senate bill was industry specific and concerned only biotechnology claims.

H.R. 4307 took a different approach to the problem in that it was generic, or industry neutral. Although the electronics and computer industry initially raised concerns over this approach, H.R. 4307 was narrowed, prior to passage, to address their concerns. However, the bill remained generic in nature.

The amendment in the nature of a substitute proposed by Senators DECONCINI, HATCH and KENNEDY, takes an approach which is more general than S. 298 but more narrow than H.R. 4307 as it passed the House. In order to address concerns raised by the chemical industry that H.R. 4307 would create the possibility of overreaching process claims which could extend the scope of patent protection far downstream or upstream of the actual process which the bill seeks to protect, language has been added to narrow the bill to cover only biotechnological processes. In order to clarify and avoid any misunderstanding as to the parameters to which the protections of this amendment would be applicable, a definition of biotechnological process has also been added to the House language.

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By limiting the applicability of this law to these type of processes, only those industries which engage in biotechnological endeavors will be affected. This alternative proposal to H.R. 4307 has been accepted as a viable solution to the concerns of the chemical industry. By adding the clarifying language to the House bill, the amendment in the nature of a substitute accomplishes the proponent's original goal in a manner acceptable to all concerned industries and the Patent and Trademark Office. Furthermore, it enjoys bipartisan support in Congress.

I urge my colleagues to support the Patent Protection Act, and provide the American biotech industry the much needed protection which will allow them to maintain their position as world leaders in this vital field. The benefits of maintaining this position will be enjoyed by Americans for generations to come.

THE PROCESS PATENT PROTECTION ACT OF 1994

Mr. KENNEDY. Mr. President, I urge all of my colleagues to join in passing H.R. 4307, the Process Patent Protection Act of 1994. This bill makes essential changes to patent law which will help stimulate biomedical innovation and foster the international competitiveness of the American biotech industry. I am a principal cosponsor of the Biotechnology Patent Protection Act which passed the Senate earlier this session and which proposed legislative reforms similar to those in H.R. 4307.

The United States is the world's leader in the research, development and manufacture of biotechnology products, and Massachusetts is home to many prominent biotechnology companies. More than 100 million people are treated annually with medicines derived from biotechnology and more than 100 new products are being developed to treat Alzheimer's disease, AIDS, cancer, cystic fibrosis and many other illnesses. Our country is unsurpassed in translating state of the art science into economic growth and improved human health.

The Process Patent Protection Act of 1994 would resolve an issue that has been debated by Congress for over 5 years. The legislation is needed because of the failure of patent law to keep pace with technological innovations in the field of biotechnology. Specifically, current law fails to protect the ability of biotech firms to patent the processes by which they produce new inventions.

This legislation will extend patent protection to cover the process for preparing and using a biotechnology product. This kind of protection is routinely granted in Western Europe and Japan, and is already available under current law for inventions in areas other than biotechnology. However, by failing to protect process patents for American biotechnology, our current patent law grants foreign competitors unnecessary and unfair advantages.

Common sense tells us to reward innovation and punish imitators, but our patent laws have the opposite effect for biotechnology manufacturers. In a research-intensive industry such as biotechnology, the need to protect innovation is particularly urgent.

Without adequate patent protection, biotech firms cannot attract the investment needed to pursue promising new therapies. Companies must have assurances that rival firms cannot pirate their original research. The current patent law also leads to inconsistent decisions, and time-consuming patent litigation that drains companies' research resources.

This bill provides a needed remedy for these inadequacies. By granting adequate protection to biotechnology products, it ensures that the nation will benefit from cutting-edge therapies, and that the biotechnology industry will remain innovative and competitive. The bill has broad bipartisan support, and the Bush and Clinton Administrations have supported similar reforms.

I strongly urge passage of the Patent Protection Act of 1994, so that our patent laws will continue to serve as a stimulus to innovation, not a barrier.

The substitute amendment (No. 2636), as amended, was agreed to.

The bill (H.R. 4307), as amended, was deemed read the third time and passed.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1994

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (S. 1927) to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1927) entitled "An Act to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Benefits Act of 1994".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COST-OF-LIVING ADJUSTMENT IN RATES OF COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION

SEC. 101. DISABILITY COMPENSATION.

Section 1114 is amended—

(1) by striking out "$87" in subsection (a) and inserting in lieu thereof "$89";

(2) by striking out "$166" in subsection (b) and inserting in lieu thereof "$170";

(3) by striking out "$253" in subsection (c) and inserting in lieu thereof "$260";

(4) by striking out "$361" in subsection (d) and inserting in lieu thereof "$371";

(5) by striking out "$515" in subsection (e) and inserting in lieu thereof "$530";

(6) by striking out "$648" in subsection (f) and inserting in lieu thereof "$667";

(7) by striking out "$819" in subsection (g) and inserting in lieu thereof "$843";

(8) by striking out "$948" in subsection (h) and inserting in lieu thereof "$976";

(9) by striking out "$1,067" in subsection (i) and inserting in lieu thereof "$1,099";

(10) by striking out "$1,774" in subsection (j) and inserting in lieu thereof "$1,827";

(11) by striking out "$2,207" and "$3,093" in subsection (k) and inserting in lieu thereof "$2,273" and "$3,187", respectively;

(12) by striking out "$2,207" in subsection (l) and inserting in lieu thereof "$2,273";

(13) by striking out "$2,432" in subsection (m) and inserting in lieu thereof "$2,504";

(14) by striking out "$2,768" in subsection (n) and inserting in lieu thereof "$2,851";

(15) by striking out "$3,093" each place it appears in subsections (o) and (p) and inserting in lieu thereof "$3,185";

(16) by striking out "$1,328" and "$1,978" in subsection (r) and inserting in lieu thereof "$1,367" and "$2,037", respectively; and

(17) by striking out "$1,985" in subsection (s) and inserting in lieu thereof "$2,044".

SEC. 102. ADDITIONAL COMPENSATION FOR DEPENDENTS.

Section 1115(1) is amended—

(1) by striking out "$105" in subparagraph (A) and inserting in lieu thereof "$108";

(2) by striking out "$178" and "$55" in subparagraph (B) and inserting in lieu thereof "$183" and "$56", respectively;

(3) by striking out "$72" and "$55" in subparagraph (C) and inserting in lieu thereof "$74" and "$56", respectively;

(4) by striking out "$84" in subparagraph (D) and inserting in lieu thereof "$86";

(5) by striking out "$195" in subparagraph (E) and inserting in lieu thereof "$200"; and

(6) by striking out "$164" in subparagraph (F) and inserting in lieu thereof "$168".

SEC. 103. CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.

Section 1162 is amended by striking out "$478" and inserting in lieu thereof "$492".

SEC. 104. DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.

Section 1311 is amended—

(1) in subsection (a)(1), by striking out "$769" and inserting in lieu thereof "$792";

(2) in subsection (a)(2), by striking out "$169" and inserting in lieu thereof "$174";

(3) in subsection (a)(3), by striking out the table therein and inserting in lieu thereof the following:

"Pay grade	Monthly rate	Pay grade	Monthly rate
E–7	$817	O–3	$923
E–8	863	O–4	976
E–9	[1] 901	O–5	1,075
W–1	836	O–6	1,212
W–2	869	O–7	1,309
W–3	895	O–8	1,433
W–4	947	O–9	1,536
O–1	836	O–10	[2] 1,685
O–2	863		

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $971.

"[2] If the veteran served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $1,805.";

(4) in subsection (c), by striking out "$195" and inserting in lieu thereof "$200"; and

(5) in subsection (d), by striking out "$95" in subsection (c) and inserting in lieu thereof "$97".

SEC. 105. DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.

(a) DIC FOR ORPHAN CHILDREN.—Section 1313(a) is amended—

(1) by striking out "$327" in paragraph (1) and inserting in lieu thereof "$336";

(2) by striking out "$471" in paragraph (2) and inserting in lieu thereof "$485";

(3) by striking out "$610" in paragraph (3) and inserting in lieu thereof "$628"; and

(4) by striking out "$610" and "$120" in paragraph (4) and inserting in lieu thereof "$628" and "$123", respectively.

(b) SUPPLEMENTAL DIC FOR DISABLED ADULT CHILDREN.—Section 1314 is amended—

(1) by striking out "$195" in subsection (a) and inserting in lieu thereof "$200";

(2) by striking out "$327" in subsection (b) and inserting in lieu thereof "$336"; and

(3) by striking out "$166" in subsection (c) and inserting in lieu thereof "$170".

SEC. 106. EFFECTIVE DATE.

The amendments made by this title shall take effect on December 1, 1994.

TITLE II—DISABILITIES RESULTING FROM HERBICIDE EXPOSURE

SEC. 201. CODIFICATION OF PRESUMPTIONS ESTABLISHED ADMINISTRATIVELY.

Section 1116(a)(2) is amended by adding at the end the following new subparagraphs:

"(D) Hodgkin's disease becoming manifest to a degree of disability of 10 percent or more.

"(E) Porphyria cutanea tarda becoming manifest to a degree of disability of 10 percent or more within a year after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era.

"(F) Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea) becoming manifest to a degree of 10 percent or more within 30 years after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era.

"(G) Multiple myeloma becoming manifest to a degree of disability of 10 percent or more.".

TITLE III—BOARD OF VETERANS' APPEALS ADMINISTRATION

SEC. 301. APPOINTMENT, PAY COMPARABILITY, AND PERFORMANCE REVIEWS FOR MEMBERS OF THE BOARD OF VETERANS' APPEALS.

(a) IN GENERAL.—(1) Chapter 71 is amended by inserting after section 7101 the following new section:

"§7101A. Members of Board: appointment; pay; performance review

"(a) The members of the Board of Veterans' Appeals other than the Chairman (and including the Vice Chairman) shall be appointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman.

"(b) Members of the Board (other than the Chairman and any member of the Board who is a member of the Senior Executive Service) shall, in accordance with regulations prescribed by the Secretary, be paid basic pay at rates equivalent to the rates payable under section 5372 of title 5.

"(c)(1) Not less than one year after the job performance standards under subsection (f) are initially established, and not less often than once every three years thereafter, the Chairman shall determine, with respect to each member of the Board (other than a member who is a member of the Senior Executive Service), whether that member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f). Each such determination shall be in writing.

"(2) If the determination of the Chairman in any case is that the member's job performance as a member of the Board meets the performance standards for a member of the Board established under subsection (f), the member's appointment as a member of the Board shall be recertified.

"(3) If the determination of the Chairman in any case is that the member's job performance does not meet the performance standards for a member of the Board established under subsection (f), the Chairman shall, based upon the individual circumstances, either—

"(A) grant the member a conditional recertification; or

"(B) recommend to the Secretary that the member be noncertified.

"(4) In the case of a member of the Board who is granted a conditional recertification under paragraph (3) or (5)(C), the Chairman shall review the member's job performance record and make a further determination under paragraph (1) concerning that member not later than one year after the date of the conditional recertification. If the determination of the Chairman at that time is that the member's job performance as a member of the Board still does not meet the performance standards for a member of the Board established under subsection (f), the Chairman shall recommend to the Secretary that the member be noncertified.

"(5)(A) In a case in which the Chairman recommends to the Secretary under paragraph (3) or (4) that a member be noncertified, the Secretary shall establish a panel to review that recommendation. The panel shall be established from among employees of the Department other than members of the Board or of the Board's staff and may include Federal employees from outside the Department with appropriate expertise.

"(B) The panel shall review the matter and recommend to the Secretary whether the Board member should be noncertified or should be granted a conditional recertification.

"(C) The Secretary, after considering the recommendation of the panel, may either—

"(i) grant the member a conditional recertification; or

"(ii) determine that the member should be noncertified.

"(d)(1) If the Secretary, based upon the recommendation of the Chairman and after considering the recommendation of the panel under subsection (c)(5), determines that a member of the Board should be noncertified, that member's appointment as a member of the Board shall be terminated and that member shall be removed from the Board.

"(2) An individual so removed from the Board shall have the right to be employed by the Board in an attorney-advisor position.

"(e)(1) A member of the Board (other than the Chairman or a member of the Senior Executive Service) may be removed as a member of the Board by reason of job performance only as provided in subsections (c) and (d). Such a member may be removed by the Secretary, upon the recommendation of the Chairman, for any other reason as determined by the Secretary.

"(2) In the case of a removal of a member under this section for a reason other than job performance that would be covered by section 7521 of title 5 in the case of an administrative law judge, the removal of the member of the

Board shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subsection. In such a removal action, a member shall have the rights set out in section 7513(b) of that title.

"(f) The Chairman, subject to the approval of the Secretary, shall establish standards for the performance of the job of a member of the Board (other than a member of the Senior Executive Service). Those standards shall establish objective and fair criteria for evaluation of the job performance of a member of the Board.

"(g) The Secretary shall prescribe procedures for the administration of this section, including deadlines and time schedules for different actions under this section.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7101 the following new item:

"7101A. Members of Board: appointment; pay; performance review.".

(b) SAVE PAY PROVISION.—The rate of basic pay payable to an individual who is a member of the Board of Veterans' Appeals on the date of the enactment of this Act may not be reduced by reason of the amendments made by this section to a rate below the rate payable to such individual on the day before such date.

(c) EFFECTIVE DATE.—Section 7101A(b) of title 38, United States Code, as added by subsection (a), shall take effect on the first day of the first pay period beginning after December 31, 1994.

SEC. 302. CONFORMING AMENDMENTS.

Section 7101(b) is amended—

(1) by striking out paragraph (2);

(2) by designating as paragraph (2) the text in paragraph (1) beginning "The Chairman may be removed"; and

(3) by striking out "Members (including the Chairman)" in paragraph (3) and inserting in lieu thereof "The Chairman".

SEC. 303. DEADLINE FOR ESTABLISHMENT OF PERFORMANCE EVALUATION CRITERIA FOR BOARD MEMBERS.

(a) DEADLINE.—The job performance standards required to be established by section 7101A(d) of title 38, United States Code, as added by subsection (a), shall be established not later than 90 days after the date of the enactment of this Act.

(b) SUBMISSION TO CONGRESSIONAL COMMITTEE.—Not later than the date on which the standards referred to in subsection (a) take effect, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing the Secretary's proposal for the establishment of those standards.

TITLE IV—ADJUDICATION IMPROVEMENTS

SEC. 401. SHORT TITLE.

This title may be cited as the "Veterans' Adjudication Improvements Act of 1994".

SEC. 402. REPORT ON FEASIBILITY OF REORGANIZATION OF ADJUDICATION DIVISIONS IN VBA REGIONAL OFFICES.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report addressing the feasibility and impact of a reorganization of the adjudication divisions located within the regional offices of the Veterans Benefits Administration to a number of such divisions that would result in improved efficiency in the processing of claims filed by veterans, their survivors, or other eligible persons, for benefits administered by the Secretary.

SEC. 403. MASTER VETERAN RECORD.

(a) REQUIREMENT.—The Secretary of Veterans Affairs shall implement a recordkeeping system whereby each veteran and other person eligible for benefits under laws administered by the Secretary shall be identified by a single identification number and through which information relating to that person, including that person's current eligibility or entitlement status with respect to each benefit or service administered by the Secretary, shall be available through electronic means to employees of the Department located in each regional office of the Veterans Benefits Administration or medical center of the Veterans Health Administration.

(b) DEADLINE FOR IMPLEMENTATION.—The recordkeeping system required by subsection (a) shall be implemented not later than two years after the date of the enactment of this Act.

SEC. 404. REPORT ON PILOT PROGRAMS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report enumerating and describing each pilot program and major initiative being tested in the regional offices of the Veterans Benefits Administration that affect the adjudication of claims for benefits administered by the Secretary.

(b) CONTENTS.—The report shall include the Secretary's recommendations regarding the need, if any, for legislation to implement any of such pilot programs the Secretary may recommend. If the Secretary indicates that legislation is not required to implement one or more of such programs, the Secretary shall advise the Committees as to whether any such pilot program will be implemented and provide a timetable for such implementation.

SEC. 405. ACCEPTANCE OF CERTAIN DOCUMENTATION FOR CLAIMS PURPOSES.

(a) STATEMENTS OF CLAIMANT TO BE ACCEPTED AS PROOF OF RELATIONSHIPS.—Chapter 51 is amended by adding at the end the following new section:

"§5124. Acceptance of claimant's statement as proof of relationship

"(a) For purposes of benefits under laws administered by the Secretary, the Secretary shall accept the written statement of a claimant as proof of the existence of any relationship specified in subsection (b) for the purpose of acting on such individual's claim for benefits.

"(b) Subsection (a) applies to proof of the existence of any of the following relationships between a claimant and another person:

"(1) Marriage.

"(2) Dissolution of a marriage.

"(3) Birth of a child.

"(4) Death of any family member.

"(c) The Secretary may require the submission of documentation in support of the claimant's statement—

"(1) if the claimant does not reside within a State; or

"(2) if the statement on its face raises a question as to its validity.".

(b) REPORTS OF EXAMINATIONS BY PRIVATE PHYSICIANS.—Such chapter, as amended by subsection (a), is further amended by adding at the end the following new section:

"§5125. Acceptance of reports of private physician examinations

"For purposes of establishing a claim for benefits under chapter 11 or 15 of this title, a report of a medical examination administered by a private physician that is provided by a claimant in support of a claim for benefits under that chapter shall be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Administration if the report is sufficiently complete to be adequate for disability rating purposes.".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new items:

"5124. Acceptance of claimant's statement as proof of relationship.

"5125. Acceptance of reports of private physician examinations.".

SEC. 406. EXPEDITED TREATMENT OF REMANDED CLAIMS.

The Secretary shall take such actions as may be necessary to provide for the expeditious treatment, by the Board of Veterans' Appeals and by the regional offices of the Veterans Benefits Administration, of any claim that has been remanded by the Board of Veterans' Appeals or by the United States Court of Veterans Appeals for additional development or other appropriate action.

SEC. 407. SCREENING OF APPEALS.

Section 7107 of title 38, United States Code, is amended—

(1) in subsection (a)(1), by striking out "Each case" and inserting in lieu thereof "Except as provided in subsection (f), each case"; and

(2) by adding at the end the following new subsection:

"(f) Nothing in this section shall preclude the screening of cases for purposes of—

"(1) determining the adequacy of the record for decisional purposes; or

"(2) the development, or attempted development, of a record found to be inadequate for decisional purposes.".

SEC. 408. REVISION OF DECISIONS BASED ON CLEAR AND UNMISTAKABLE ERROR.

(a) ORIGINAL DECISIONS.—(1) Chapter 51 is amended by inserting after section 5109 the following new section:

"§5109A. Revision of decisions on grounds of clear and unmistakable error

"(a) A decision by the Secretary under this chapter is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

"(b) For the purposes of authorizing benefits, a rating or other adjudicative decision that constitutes a reversal or revision of a prior decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

"(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Secretary on the Secretary's own motion or upon request of the claimant.

"(d) A request for revision of a decision of the Secretary based on clear and unmistakable error may be made at any time after that decision is made.

"(e) Such a request shall be submitted to the Secretary and shall be decided in the same manner as any other claim.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5109 the following new item:

"5109A. Revision of decisions on grounds of clear and unmistakable error.".

(b) BVA DECISIONS.—(1) Chapter 71 is amended by adding at the end the following new section:

"§7111. Revision of decisions on grounds of clear and unmistakable error

"(a) A decision by the Board is subject to revision on the grounds of clear and unmistakable error. If evidence establishes the error, the prior decision shall be reversed or revised.

"(b) For the purposes of authorizing benefits, a rating or other adjudicative decision of the Board that constitutes a reversal or revision of a prior decision of the Board on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

"(c) Review to determine whether clear and unmistakable error exists in a case may be instituted by the Board on the Board's own motion or upon request of the claimant.

"(d) A request for revision of a decision of the Board based on clear and unmistakable error may be made at any time after that decision is made.

"(e) Such a request shall be submitted directly to the Board and shall be decided by the Board on the merits, without referral to any adjudicative or hearing official acting on behalf of the Secretary.

"(f) A claim filed with the Secretary that requests reversal or revision of a previous Board decision due to clear and unmistakable error shall be considered to be a request to the Board under this section, and the Secretary shall promptly transmit any such request to the Board for its consideration under this section.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"7111. Revision of decisions on grounds of clear and unmistakable error.".

(c) EFFECTIVE DATE.—(1) Sections 5109A and 7111 of title 38, United States Code, as added by this section, apply to any determination made before, on, or after the date of the enactment of this Act.

(2) Notwithstanding section 402 of the Veterans Judicial Review Act (38 U.S.C. 7251 note), chapter 72 of title 38, United States Code, shall apply with respect to any decision of the Board of Veterans' Appeals on a claim alleging that a previous determination of the Board was the product of clear and unmistakable error if that claim is filed after, or was pending before the Department of Veterans Affairs, the Court of Veterans Appeals, the Court of Appeals for the Federal Circuit, or the Supreme Court on, the date of the enactment of this Act.

TITLE V—MISCELLANEOUS

SEC. 501. RESTATEMENT OF INTENT OF CONGRESS CONCERNING COVERAGE OF RADIATION-EXPOSED VETERANS COMPENSATION ACT OF 1988.

(a) RESTATEMENT OF ABSENCE OF STATUTORY LIMITATION TO UNITED STATES TESTS.—(1) Clause (i) of section 1112(c)(3)(B) is amended by inserting "(without regard to whether the nation conducting the test was the United States or another nation)" after "nuclear device".

(2) The amendment made by paragraph (1) shall take effect as of May 1, 1988.

(b) PROOF OF SERVICE CONNECTION OF DISABILITIES RELATING TO EXPOSURE TO IONIZING RADIATION.—(1) Section 1113(b) is amended—

(A) by striking out "title or" and inserting in lieu thereof "title,"; and

(B) by inserting ", or section 5 of Public Law 98-542 (38 U.S.C. 1154 note)" after "of this section".

(2) The amendments made by paragraph (1) shall apply with respect to applications for veterans benefits that are submitted to the Secretary of Veterans Affairs after the date of the enactment of this Act.

SEC. 502. EXTENSION OF AUTHORITY TO MAINTAIN REGIONAL OFFICE IN THE PHILIPPINES.

Section 315(b) is amended by striking out "December 31, 1994" and inserting in lieu thereof "December 31, 1999".

SEC. 503. RENOUNCEMENT OF BENEFIT RIGHTS.

Section 5306 is amended by adding at the end the following new subsection:

"(c) Notwithstanding subsection (b), if a new application for pension under chapter 15 of this title or for dependency and indemnity compensation for parents under section 1315 of this title is filed within one year after renouncement of that benefit, such application shall not be treated as an original application and benefits will be payable as if the renouncement had not occurred.".

SEC. 504. EFFECTIVE DATE OF DISCONTINUANCE OF COMPENSATION UPON DEATH OF CERTAIN VETERANS.

(a) IN GENERAL.—Section 5112 is amended by adding the following new subsection:

"(d) In the case of a veteran who, at time of death, was in receipt of compensation for a disability rated as totally disabling with an additional amount being paid for a spouse, if the Secretary determines that the surviving spouse of such veteran is not eligible for dependency and indemnity compensation, the effective date of the discontinuance of such compensation shall be the last day of the month in which such death occurred.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to deaths occurring after September 30, 1994.

Amend the title so as to read: "An Act to amend title 38, United States Code, to provide a cost-of-living adjustment in the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans, to revise and improve veterans' benefits programs, and for other purposes.".

Mr. FORD. Mr. President, I move that the Senate concur in the amendments of the House with a further amendment which I now send to the desk on behalf of Senator ROCKEFELLER, and I ask unanimous consent that the amendment be agreed to, the motion to reconsider be laid upon the table, and any statements appear at the appropriate place in the RECORD as if read.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The Senator from Kentucky [Mr. FORD] for Mr. ROCKEFELLER, proposes an amendment numbered 2638.

The legislative clerk read as follows:

The amendment is as follows:

In lieu of the matter inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Compensation Cost-of-Living Adjustment Act of 1994".

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 1994, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b)

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under section 1115(1) of such title.

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES.—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) ADDITIONAL DIC FOR DISABILITY.—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(7) DIC FOR DEPENDENT CHILDREN.—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF PERCENTAGE INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 1994. Each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1994, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(2) In the computation of increased dollar amounts pursuant to paragraph (1), any amount which as so computed is not an even multiple of $1 shall be rounded to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 3. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1994, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in section 2(b), as increased pursuant to section 2.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1994

Mr. ROCKEFELLER. Mr. President, as the chairman of the Committee on Veterans' Affairs, I rise today to urge the Senate to pass S. 1927, the proposed "Veterans' Compensation Cost-of-Living Adjustment Act of 1994," as it will be amended by the amendment I am offering.

Mr. President, effective December 1, 1994, my amendment would increase the rates of compensation paid to veterans with service-connected disabilities, and the rates of dependency and indemnity compensation [DIC] paid to the survivors of certain service-disabled veterans, by the same percentage as the increase in Social Security and VA pension benefits.

Mr. President, ever since I began my career in public service, I have worked closely with the veterans of my home State of West Virginia, and now, as chairman of the Committee on Veterans' Affairs, I have had the opportunity to work with veterans all across the country. Consequently, I am keenly aware of the fact that the compensation payments that would be increased by this measure have a profound effect on the everyday lives of veterans and their families. The compensation payments that this measure would adjust affect over 2½ million veterans and veterans' survivors, including nearly 30,000 in West Virginia.

As chairman of the Committee on Veterans' Affairs, I am committed to ensuring that these veterans and veterans' survivors receive the benefits they

deserve. I believe strongly that we have a fundamental obligation to meet the needs of those who became disabled as the result of military service, as well as the needs of their families. This measure fulfills one of the most important aspects of that obligation. It is our responsibility to continue to provide cost-of-living adjsutments—equally to all qualified recipients—in compensation and DIC benefits, in order to guarantee that the value of these essential, service-connected VA benefits are not eroded by inflation.

I am very proud that Congress consistently has fulfilled its obligation to make sure that the real value of these benefits it preserved by providing an annual COLA for compensation and DIC benefits every fiscal year since 1976. Most recently, on November 11, 1993, Veterans' Day, President Clinton signed Public Law 103–140 into law, providing a 2.6-percent increase in these benefits, effective December 1, 1993.

Mr. President, we cannot ever repay the debt we owe to the individuals who have sacrificed so much for our country. Service-disabled veterans and the survivors of those who died as the result of service-connected conditions are reminded daily of the price they have paid for the freedom we all enjoy. The very least we can do is protect the value of the benefits they have earned through their sacrifice.

Mr. President, I strongly urge all of my colleagues to support this vitally important measure.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

RECOGNITION OF RADIO AMATEURS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 611, S.J. Res. 90, a joint resolution to recognize the achievements of radio amateurs, that the joint resolution be deemed read three times, passed, that the preamble be agreed to, and the motion to reconsider be laid upon the table; further, that any statements appear in the RECORD at the appropriate place as if read.

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

The joint resolution (S.J. Res. 90) was deemed read a third time and passed.

The preamble was agreed to.

The joint resolution, with its preamble, is as follows:

(The text of the joint resolution will be printed in a future edition of the RECORD.)

BETTER NUTRITION AND HEALTH FOR CHILDREN ACT OF 1994—MESSAGE FROM THE HOUSE

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (S. 1614) to amend the Child Nutrition Act of 1966 and the National Lunch Act to promote healthy eating habits for children and to extend certain authorities contained in such Acts through fiscal year 1998, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Healthy Meals for Healthy Americans Act of 1994".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Sense of Congress.

TITLE I—AMENDMENTS TO NATIONAL SCHOOL LUNCH ACT

Sec. 101. Purchase of fresh fruits and vegetables.
Sec. 102. Delivery of commodities.
Sec. 103. Requirement of minimum percentage of commodity assistance.
Sec. 104. Combined Federal and State commodity purchases.
Sec. 105. Technical assistance to ensure compliance with nutritional requirements.
Sec. 106. Nutritional and other program requirements.
Sec. 107. Nutritional requirements relating to provision of milk.
Sec. 108. Use of free and reduced price meal eligibility information.
Sec. 109. Automatic eligibility of Head Start participants.
Sec. 110. Use of nutrition education and training program resources.
Sec. 111. Special assistance for schools electing to serve all children free lunches or breakfasts.
Sec. 112. Miscellaneous provisions and definitions.
Sec. 113. Food and nutrition projects.
Sec. 114. Summer food service program for children.
Sec. 115. Commodity distribution program.
Sec. 116. Child and adult care food program.
Sec. 117. Homeless children nutrition program.
Sec. 118. Pilot projects.
Sec. 119. Reduction of paperwork.
Sec. 120. Food service management institute.
Sec. 121. Compliance and accountability.
Sec. 122. Duties of the Secretary of Agriculture relating to nonprocurement debarment under certain child nutrition programs.
Sec. 123. Information clearinghouse.
Sec. 124. Guidance and grants for accommodating special dietary needs of children with disabilities.
Sec. 125. Study of adulteration of juice products sold to school meal programs.

TITLE II—AMENDMENTS TO CHILD NUTRITION ACT OF 1966

Sec. 201. School breakfast program.
Sec. 202. State administrative expenses.
Sec. 203. Competitive foods of minimal nutritional value.
Sec. 204. Special supplemental nutrition program.
Sec. 205. Nutrition education and training program.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Consolidation of school lunch program and school breakfast program into comprehensive meal program.
Sec. 302. Study and report relating to use of private food establishments and caterers under school lunch program and school breakfast program.
Sec. 303. Amendment to Commodity Distribution Reform Act and WIC Amendments of 1987.
Sec. 304. Study of the effect of combining federally donated and federally inspected meat or poultry.

TITLE IV—EFFECTIVE DATE

Sec. 401. Effective date.

SEC. 2. FINDINGS.

Congress finds that—

(1) undernutrition can permanently retard physical growth, brain development, and cognitive functioning of children;

(2) the longer a child's nutritional, emotional, and educational needs go unmet, the greater the likelihood of cognitive impairment;

(3) low-income children who attend school hungry score significantly lower on standardized tests than non-hungry low-income children; and

(4) supplemental nutrition programs under the National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) can help to offset threats posed to a child's capacity to learn and perform in school that result from inadequate nutrient intake.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) funds should be made available for child nutrition programs to remove barriers to the participation of needy children in the school lunch program, school breakfast program, summer food service program for children, and the child and adult care food program under the National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(2) the Secretary of Agriculture should take actions to further strengthen the efficiency of child nutrition programs by streamlining administrative requirements to reduce the administrative burden on participating schools and other meal providers; and

(3) as a part of efforts to continue to serve nutritious meals to youths in the United States and to educate the general public regarding health and nutrition issues, the Secretary of Agriculture should take actions to coordinate the nutrition education efforts of all nutrition programs.

TITLE I—AMENDMENTS TO NATIONAL SCHOOL LUNCH ACT

SEC. 101. PURCHASE OF FRESH FRUITS AND VEGETABLES.

Section 6(a) of the National School Lunch Act (42 U.S.C. 1755(a)) is amended—

(1) in the second sentence, by striking "Any school" and inserting "Except as provided in the next 2 sentences, any school"; and

(2) by inserting after the second sentence the following new sentences: "Any school food authority may refuse some or all of the fresh fruits and vegetables offered to the school food authority in any school year and shall receive, in lieu of the offered fruits and vegetables, other more desirable fresh fruits and vegetables that are at least equal in

value to the fresh fruits and vegetables refused by the school food authority. The value of any fresh fruits and vegetables refused by a school under the preceding sentence for a school year shall not be used to determine the 20 percent of the total value of agricultural commodities and other foods tendered to the school food authority in the school year under the second sentence.".

SEC. 102. DELIVERY OF COMMODITIES.

Subsection (b) of section 6 of the National School Lunch Act (42 U.S.C. 1755(b)) is amended to read as follows:

"(b) The Secretary shall deliver, to each State participating in the school lunch program under this Act, commodities valued at the total level of assistance authorized under subsection (c) for each school year for the school lunch program in the State, not later than September 30 of the following school year.".

SEC. 103. REQUIREMENT OF MINIMUM PERCENTAGE OF COMMODITY ASSISTANCE.

Section 6 of the National School Lunch Act (42 U.S.C. 1755) is amended by adding at the end the following new subsection:

"(g)(1) Subject to paragraph (2), in each school year the Secretary shall ensure that not less than 12 percent of the assistance provided under section 4, this section, and section 11 shall be in the form of commodity assistance provided under this section, including cash in lieu of commodities and administrative costs for procurement of commodities under this section.

"(2) If amounts available to carry out the requirements of the sections described in paragraph (1) are insufficient to meet the requirement contained in paragraph (1) for a school year, the Secretary shall, to the extent necessary, use the authority provided under section 14(a) to meet the requirement for the school year.".

SEC. 104. COMBINED FEDERAL AND STATE COMMODITY PURCHASES.

Section 7 of the National School Lunch Act (42 U.S.C. 1756) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of law, the Secretary may enter into an agreement with a State agency, acting on the request of a school food service authority, under which funds payable to the State under section 4 or 11 may be used by the Secretary for the purpose of purchasing commodities for use by the school food service authority in meals served under the school lunch program under this Act.".

SEC. 105. TECHNICAL ASSISTANCE TO ENSURE COMPLIANCE WITH NUTRITIONAL REQUIREMENTS.

(a) SCHOOL LUNCH PROGRAM.—Section 9(a)(1) of the National School Lunch Act (42 U.S.C. 1758(a)(1)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following new subparagraph:

"(B) The Secretary shall provide technical assistance and training, including technical assistance and training in the preparation of lower-fat versions of foods commonly used in the school lunch program under this Act, to schools participating in the school lunch program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.".

(b) SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—Section 13(f) of such Act (42 U.S.C. 1761(f)) is amended—

(1) by inserting after the first sentence the following new sentences: "The Secretary shall provide technical assistance to service institutions and private nonprofit organizations participating in the program to assist the institutions and organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to this subsection. The Secretary shall provide additional technical assistance to those service institutions and private nonprofit organizations that are having difficulty maintaining compliance with the requirements."; and

(2) in the fourth sentence (after the amendment made by paragraph (1)), by striking "Such meals" and inserting "Meals described in the first sentence".

(c) CHILD AND ADULT CARE FOOD PROGRAM.—Section 17(g)(1) of such Act (42 U.S.C. 1766(g)(1)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following new subparagraph:

"(B) The Secretary shall provide technical assistance to those institutions participating in the program under this section to assist the institutions and family or group day care home sponsoring organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A). The Secretary shall provide additional technical assistance to those institutions and family or group day care home sponsoring organizations that are having difficulty maintaining compliance with the requirements.".

SEC. 106. NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS.

(a) MINIMUM NUTRITIONAL REQUIREMENTS BASED ON WEEKLY AVERAGE OF NUTRIENT CONTENT OF SCHOOL LUNCHES.—Section 9(a)(1)(A) of the National School Lunch Act (42 U.S.C. 1758(a)(1)(A)) (as amended by section 105(a)) is further amended—

(1) by striking "; except that such minimum nutritional requirements shall not" and inserting ", except that the minimum nutritional requirements—

"(i) shall not";

(2) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new clause:

"(ii) shall, at a minimum, be based on the weekly average of the nutrient content of school lunches.".

(b) DIETARY GUIDELINES FOR AMERICANS.—Section 9 of such Act (42 U.S.C. 1758) is amended by adding at the end the following new subsection:

"(f)(1) Not later than the first day of the 1996–97 school year, the Secretary, State educational agencies, schools, and school food service authorities shall, to the maximum extent practicable, inform students who participate in the school lunch and school breakfast programs, and parents and guardians of the students, of—

"(A) the nutritional content of the lunches and breakfasts that are served under the programs; and

"(B) the consistency of the lunches and breakfasts with the guidelines contained in the most recent 'Dietary Guidelines for Americans' that is published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341) (referred to in this subsection as the 'Guidelines'), including the consistency of the lunches and breakfasts with the guideline for fat content.

"(2)(A) Except as provided in subparagraph (B), not later than the first day of the 1996–97 school year, schools that are participating in the school lunch or school breakfast program shall serve lunches and breakfasts under the programs that are consistent with the Guidelines (as measured in accordance with subsection (a)(1)(A)(ii) and section 4(e)(1)).

"(B) State educational agencies may grant waivers from the requirements of subparagraph (A) subject to criteria established by the appropriate State educational agency. The waivers shall not permit schools to implement the requirements later than July 1, 1998, or a later date determined by the Secretary.

"(C) To assist schools in meeting the requirements of this paragraph, the Secretary—

"(i) shall—

"(I) develop, and provide to schools, standardized recipes, menu cycles, and food product specification and preparation techniques; and

"(II) provide to schools information regarding nutrient standard menu planning, assisted nutrient standard menu planning, and food-based menu systems; and

"(ii) may provide to schools information regarding other approaches, as determined by the Secretary.

"(D) Schools may use any of the approaches described in subparagraph (C) to meet the requirements of this paragraph. In the case of schools that elect to use food-based menu systems to meet the requirements of this paragraph, the Secretary may not require the schools to conduct or use nutrient analysis.".

(c) PRODUCTION RECORDS.—Section 9 of such Act (42 U.S.C. 1758) (as amended by subsection (b)) is further amended by adding at the end the following new subsection:

"(g) Not later than 1 year after the date of enactment of this subsection, the Secretary shall provide a notification to Congress that justifies the need for production records required under section 210.10(b) of title 7, Code of Federal Regulations, and describes how the Secretary has reduced paperwork relating to the school lunch and school breakfast programs.".

SEC. 107. NUTRITIONAL REQUIREMENTS RELATING TO PROVISION OF MILK.

Section 9(a)(2) of the National School Lunch Act (42 U.S.C. 1758(a)(2)) is amended to read as follows:

"(2)(A) Lunches served by schools participating in the school lunch program under this Act—

"(i) shall offer students fluid milk; and

"(ii) shall offer students a variety of fluid milk consistent with prior year preferences unless the prior year preference for any such variety of fluid milk is less than 1 percent of the total milk consumed at the school.

"(B)(i) The Secretary shall purchase in each calendar year to carry out the school lunch program under this Act, and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), lowfat cheese on a bid basis in a quantity that is the milkfat equivalent of the quantity of milkfat the Secretary estimates the Commodity Credit Corporation will purchase each calendar year as a result of the elimination of the requirement that schools offer students fluid whole milk and fluid unflavored lowfat milk, based on data provided by the Director of Office of Management and Budget.

"(ii) Not later than 30 days after the Secretary provides an estimate required under clause (i), the Director of the Congressional Budget Office shall provide to the appropriate committees of Congress a report on

whether the Director concurs with the estimate of the Secretary.

"(iii) The quantity of lowfat cheese that is purchased under this subparagraph shall be in addition to the quantity of cheese that is historically purchased by the Secretary to carry out school feeding programs. The Secretary shall take such actions as are necessary to ensure that purchases under this subparagraph shall not displace commercial purchases of cheese by schools.".

SEC. 108. USE OF FREE AND REDUCED PRICE MEAL ELIGIBILITY INFORMATION.

Section 9(b)(2)(C) of the National School Lunch Act (42 U.S.C. 1758(b)(2)(C)) is amended by striking clause (iii) and inserting the following new clauses:

"(iii) The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in clause (ii), shall be limited to—

"(I) a person directly connected with the administration or enforcement of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or a regulation issued pursuant to either Act;

"(II) a person directly connected with the administration or enforcement of—

"(aa) a Federal education program;

"(bb) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)); or

"(cc) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the program under this section; and

"(III)(aa) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

"(bb) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by paragraph (1) or this paragraph.

"(iv) Information provided under clause (iii)(II) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits was made or for whom eligibility information was provided under clause (ii), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

"(v) A person described in clause (iii) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.".

SEC. 109. AUTOMATIC ELIGIBILITY OF HEAD START PARTICIPANTS.

(a) IN GENERAL.—Section 9(b)(6) of the National School Lunch Act (42 U.S.C. 1758(b)(6)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking "a member of";

(B) in clause (i)—

(i) by inserting "a member of" after "(i)"; and

(ii) by striking "or" at the end;

(C) in clause (ii)—

(i) by inserting "a member of" after "(ii)"; and

(ii) by striking the period at the end and inserting "; or"; and

(D) by adding at the end the following new clause:

"(iii) enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A)).";

(2) in subparagraph (B), by striking "food stamps or aid to families with dependent children" and inserting "food stamps or aid to families with dependent children, or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii),".

(b) CHILD AND ADULT CARE FOOD PROGRAM.—Section 17(c) of such Act (42 U.S.C. 1766(c)) is amended by adding at the end the following new paragraph:

"(5) A child shall be considered automatically eligible for benefits under this section without further application or eligibility determination, if the child is enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A)).".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on September 25, 1995.

SEC. 110. USE OF NUTRITION EDUCATION AND TRAINING PROGRAM RESOURCES.

Section 9 of the National School Lunch Act (42 U.S.C. 1758) (as amended by section 106(c)) is further amended by adding at the end the following new subsection:

"(h) In carrying out this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a State educational agency may use resources provided through the nutrition education and training program authorized under section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) for training aimed at improving the quality and acceptance of school meals.".

SEC. 111. SPECIAL ASSISTANCE FOR SCHOOLS ELECTING TO SERVE ALL CHILDREN FREE LUNCHES OR BREAKFASTS.

Section 11(a)(1) of the National School Lunch Act (42 U.S.C. 1759a(a)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) in the second sentence, by striking "In the case of" and inserting the following:

"(B) Except as provided in subparagraph (C), (D), or (E), in the case of"; and

(3) by striking the third and fourth sentences and inserting the following new subparagraphs:

"(C)(i) Except as provided in subparagraph (D), in the case of any school that—

"(I) elects to serve all children in the school free lunches under the school lunch program during any period of 3 successive school years, or in the case of a school that serves both lunches and breakfasts, elects to serve all children in the school free lunches and free breakfasts under the school lunch program and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) during any period of 3 successive school years; and

"(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

special assistance payments shall be paid to the State educational agency with respect to the school during the period on the basis of the number of lunches or breakfasts determined under clause (ii) or (iii).

"(ii) For purposes of making special assistance payments under clause (i), except as provided in clause (iii), the number of lunches or breakfasts served by a school to children who are eligible for free lunches or breakfasts or reduced price lunches or breakfasts during each school year of the 3-school-year period shall be considered to be equal to the number of lunches or breakfasts served by the school to children eligible for free lunches or breakfasts or reduced price lunches or breakfasts during the first school year of the period.

"(iii) For purposes of computing the amount of the payments, a school may elect to determine on a more frequent basis the number of children who are eligible for free or reduced price lunches or breakfasts who are served lunches or breakfasts during the 3-school-year period.

"(D)(i) In the case of any school that, on the date of enactment of this subparagraph, is receiving special assistance payments under this paragraph for a 3-school-year period described in subparagraph (C), the State may grant, at the end of the 3-school-year period, an extension of the period for an additional 2 school years, if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school has remained stable.

"(ii) A school described in clause (i) may reapply to the State at the end of the 2-school-year period described in clause (i) for the purpose of continuing to receive special assistance payments, as determined in accordance with this paragraph, for a subsequent 5-school-year period. The school may reapply to the State at the end of the 5-school-year period, and at the end of each 5-school-year period thereafter for which the school receives special assistance payments under this paragraph, for the purpose of continuing to receive the payments for a subsequent 5-school-year period.

"(iii) If the Secretary determines after considering the best available socioeconomic data that the income level of families of children enrolled in a school has not remained stable, the Secretary may require the submission of applications for free and reduced price lunches, or for free and reduced price lunches and breakfasts, in the first school year of any 5-school-year period for which the school receives special assistance payments under this paragraph, for the purpose of calculating the special assistance payments.

"(iv) For the purpose of updating information and reimbursement levels, a school described in clause (i) that carries out a school lunch or school breakfast program may at any time require submission of applications for free and reduced price lunches or for free and reduced price lunches and breakfasts.

"(E)(i) In the case of any school that—

"(I) elects to serve all children in the school free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school that serves both lunches and breakfasts, elects to serve all children in the school free lunches and free breakfasts under the school lunch program and the school breakfast program during any period of 4 successive school years; and

"(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

total Federal cash reimbursements and total commodity assistance shall be provided to the State educational agency with respect to the school at a level that is equal to the total Federal cash reimbursements and total commodity assistance received by the school in the last school year for which the school accepted applications under the school lunch or school breakfast program, adjusted annually for inflation in accordance with paragraph (3)(B) and for changes in enrollment, to carry out the school lunch or school breakfast program.

"(ii) A school described in clause (i) may reapply to the State at the end of the 4-school-year period described in clause (i), and at the end of each 4-school-year period thereafter for which the school receives reimbursements and assistance under this subparagraph, for the purpose of continuing to receive the reimbursements and assistance for a subsequent 4-school-year period. The State may approve an application under this clause if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school has remained consistent with the income level of the population of the school in the last school year for which the school accepted the applications described in clause (i).

"(iii) Not later than 1 year after the date of enactment of this subparagraph, the Secretary shall evaluate the effects of this subparagraph and notify the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the results of the evaluation.".

SEC. 112. MISCELLANEOUS PROVISIONS AND DEFINITIONS.

(a) TECHNICAL AMENDMENT TO DEFINITION OF SCHOOL.—

(1) IN GENERAL.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended—

(A) in the first sentence—

(i) in clause (A), by inserting "and" at the end;

(ii) in clause (B), by striking ", and" and inserting a period; and

(iii) by striking clause (C); and

(B) in the second sentence, by striking "of clauses (A) and (B)".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall become effective on October 1, 1995.

(b) REIMBURSEMENT FOR MEALS, SUPPLEMENTS, AND MILK UNDER CERTAIN PROGRAMS CONTINGENT ON TIMELY SUBMISSION OF CLAIMS AND FINAL PROGRAM OPERATIONS REPORT.—Section 12 of such Act (42 U.S.C. 1760) is amended by adding at the end the following new subsection:

"(j)(1) Except as provided in paragraph (2), the Secretary may provide reimbursements for final claims for service of meals, supplements, and milk submitted to State agencies by eligible schools, summer camps, family day care homes, institutions, and service institutions only if—

"(A) the claims have been submitted to the State agencies not later than 60 days after the last day of the month for which the reimbursement is claimed; and

"(B) the final program operations report for the month is submitted to the Secretary not later than 90 days after the last day of the month.

"(2) The Secretary may waive the requirements of paragraph (1) at the discretion of the Secretary.".

(c) EXPEDITED RULEMAKING.—Section 12 of such Act (42 U.S.C. 1760) (as amended by subsection (b)) is further amended by adding at the end the following new subsection:

"(k)(1) Prior to the publication of final regulations that implement changes that are intended to bring the meal pattern requirements of the school lunch and breakfast programs into conformance with the guidelines contained in the most recent 'Dietary Guidelines for Americans' that is published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341) (referred to in this subsection as the 'Guidelines'), the Secretary shall issue proposed regulations permitting the use of food-based menu systems.

"(2) Notwithstanding chapter 5 of title 5, United States Code, not later than 45 days after the publication of the proposed regulations permitting the use of food-based menu systems, the Secretary shall publish notice in the Federal Register of, and hold, a public meeting with—

"(A) representatives of affected parties, such as Federal, State, and local administrators, school food service administrators, other school food service personnel, parents, and teachers; and

"(B) organizations representing affected parties, such as public interest antihunger organizations, doctors specializing in pediatric nutrition, health and consumer groups, commodity groups, food manufacturers and vendors, and nutritionists involved with the implementation and operation of programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

to discuss and obtain public comments on the proposed rule.

"(3) Not later than June 1, 1995, the Secretary shall issue final regulations to conform the nutritional requirements of the school lunch and breakfast programs with the Guidelines. The final regulations shall include—

"(A) rules permitting the use of food-based menu systems; and

"(B) adjustments to the rule on nutrition objectives for school meals published in the Federal Register on June 10, 1994 (59 Fed. Reg. 30218).

"(4) No school food service authority shall be required to implement final regulations issued pursuant to this subsection until the regulations have been final for at least 1 year.

"(5) The final regulations shall reflect comments made at each phase of the proposed rulemaking process, including the public meeting required under paragraph (2).".

(d) AUTHORITY OF SECRETARY TO WAIVE STATUTORY AND REGULATORY REQUIREMENTS.—Section 12 of the National School Lunch Act (42 U.S.C. 1760) (as amended by subsection (c)) is further amended by adding at the end the following new subsection:

"(l)(1)(A) Except as provided in paragraph (4), the Secretary may waive any requirement under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either such Act, for a State or eligible service provider that requests a waiver if—

"(i) the Secretary determines that the waiver of the requirement would facilitate the ability of the State or eligible service provider to carry out the purpose of the program;

"(ii) the State or eligible service provider has provided notice and information to the public regarding the proposed waiver; and

"(iii) the State or eligible service provider demonstrates to the satisfaction of the Secretary that the waiver will not increase the overall cost of the program to the Federal Government, and, if the waiver does increase the overall cost to the Federal Government, the cost will be paid from non-Federal funds.

"(B) The notice and information referred to in subparagraph (A)(ii) shall be provided in the same manner in which the State or eligible service provider customarily provides similar notices and information to the public.

"(2)(A) To request a waiver under paragraph (1), a State or eligible service provider (through the appropriate administering State agency) shall submit an application to the Secretary that—

"(i) identifies the statutory or regulatory requirements that are requested to be waived;

"(ii) in the case of a State requesting a waiver, describes actions, if any, that the State has undertaken to remove State statutory or regulatory barriers;

"(iii) describes the goal of the waiver to improve services under the program and the expected outcomes if the waiver is granted;

"(iv) includes a description of the impediments to the efficient operation and administration of the program;

"(v) describes the management goals to be achieved, such as fewer hours devoted to, or fewer number of personnel involved in, the administration of the program;

"(vi) provides a timetable for implementing the waiver; and

"(vii) describes the process the State or eligible service provider will use to monitor the progress in implementing the waiver, including the process for monitoring the cost implications of the waiver to the Federal Government.

"(B) An application described in subparagraph (A) shall be developed by the State or eligible service provider and shall be submitted to the Secretary by the State.

"(3)(A) The Secretary shall act promptly on a waiver request contained in an application submitted under paragraph (2) and shall either grant or deny the request. The Secretary shall state in writing the reasons for granting or denying the request.

"(B) If the Secretary grants a waiver request, the Secretary shall state in writing the expected outcome of granting the waiver.

"(C) The result of the decision of the Secretary shall be disseminated by the State or eligible service provider through normal means of communication.

"(D)(i) Except as provided in clause (ii), a waiver granted by the Secretary under this subsection shall be for a period not to exceed 3 years.

"(ii) The Secretary may extend the period if the Secretary determines that the waiver has been effective in enabling the State or eligible service provider to carry out the purposes of the program.

"(4) The Secretary may not grant a waiver under this subsection of any requirement relating to—

"(A) the nutritional content of meals served;

"(B) Federal reimbursement rates;

"(C) the provision of free and reduced price meals;

"(D) offer versus serve provisions;

"(E) limits on the price charged for a reduced price meal;

"(F) maintenance of effort;

"(G) equitable participation of children in private schools;

"(H) distribution of funds to State and local school food service authorities and service institutions participating in a program under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

"(I) the disclosure of information relating to students receiving free or reduced price meals and other recipients of benefits;

"(J) prohibiting the operation of a profit producing program;

"(K) the sale of competitive foods;

"(L) the commodity distribution program under section 14;

"(M) the special supplemental nutrition program authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); and

"(N) enforcement of any constitutional or statutory right of an individual, including any right under—

"(i) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

"(ii) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

"(iii) title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);

"(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

"(v) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

"(vi) the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

"(5) The Secretary shall periodically review the performance of any State or eligible service provider for which the Secretary has granted a waiver under this subsection and shall terminate the waiver if the performance of the State or service provider has been inadequate to justify a continuation of the waiver. The Secretary shall terminate the waiver if, after periodic review, the Secretary determines that the waiver has resulted in an increase in the overall cost of the program to the Federal Government and the increase has not been paid for in accordance with paragraph (1)(A)(iii).

"(6)(A)(i) An eligible service provider that receives a waiver under this subsection shall annually submit to the State a report that—

"(I) describes the use of the waiver by the eligible service provider; and

"(II) evaluates how the waiver contributed to improved services to children served by the program for which the waiver was requested.

"(ii) The State shall annually submit to the Secretary a report that summarizes all reports received by the State from eligible service providers.

"(B) The Secretary shall annually submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report—

"(i) summarizing the use of waivers by the State and eligible service providers;

"(ii) describing whether the waivers resulted in improved services to children;

"(iii) describing the impact of the waivers on providing nutritional meals to participants; and

"(iv) describing how the waivers reduced the quantity of paperwork necessary to administer the program.

"(7) As used in this subsection, the term 'eligible service provider' means—

"(A) a local school food service authority;

"(B) a service institution or private nonprofit organization described in section 13; or

"(C) a family or group day care home sponsoring organization described in section 17.".

SEC. 113. FOOD AND NUTRITION PROJECTS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) (as amended by section 112(d)) is further amended by adding at the end the following new subsection:

"(m)(1) The Secretary, acting through the Administrator of the Food and Nutrition Service or through the Extension Service, shall award on an annual basis grants to a private nonprofit organization or educational institution in each of 3 States to create, operate, and demonstrate food and nutrition projects that are fully integrated with elementary school curricula.

"(2) Each organization or institution referred to in paragraph (1) shall be selected by the Secretary and shall—

"(A) assist local schools and educators in offering food and nutrition education that integrates math, science, and verbal skills in the elementary grades;

"(B) assist local schools and educators in teaching agricultural practices through practical applications, like gardening;

"(C) create community service learning opportunities or educational programs;

"(D) be experienced in assisting in the creation of curriculum-based models in elementary schools;

"(E) be sponsored by an organization or institution, or be an organization or institution, that provides information, or conducts other educational efforts, concerning the success and productivity of American agriculture and the importance of the free enterprise system to the quality of life in the United States; and

"(F) be able to provide model curricula, examples, advice, and guidance to schools, community groups, States, and local organizations regarding means of carrying out similar projects.

"(3) Subject to the availability of appropriations to carry out this subsection, the Secretary shall make grants to each of the 3 private organizations or institutions selected under this subsection in amounts of not less than $100,000, nor more than $200,000, for each of fiscal years 1995 through 1998.

"(4) The Secretary shall establish fair and reasonable auditing procedures regarding the expenditure of funds under this subsection.

"(5) There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 1995 through 1998.".

SEC. 114. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) PRIORITY REQUIREMENTS FOR DETERMINING PARTICIPATION OF CERTAIN ELIGIBLE SERVICE INSTITUTIONS.—Section 13(a)(4) of the National School Lunch Act (42 U.S.C. 1761(a)(4)) is amended by striking subparagraphs (A) through (F) and inserting the following new subparagraphs:

"(A) Local schools.

"(B) All other service institutions and private nonprofit organizations eligible under paragraph (7) that have demonstrated successful program performance in a prior year.

"(C) New public institutions.

"(D) New private nonprofit organizations eligible under paragraph (7).".

(b) ELIMINATION OF 1-YEAR WAITING PERIOD WITH RESPECT TO PARTICIPATION OF PRIVATE NONPROFIT ORGANIZATIONS IN CERTAIN AREAS UNDER THE PROGRAM.—Section 13(a)(7) of such Act (42 U.S.C. 1761(a)(7)) is amended by striking subparagraph (C).

(c) NON-SCHOOL SITES.—Section 13(c)(1) of such Act (42 U.S.C. 1761(c)(1)) is amended by inserting before the period at the end the following: "or that provide meal service at non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause".

(d) REGISTERED FOOD SERVICE MANAGEMENT COMPANY REPORTS.—Section 13(l)(3) of such Act (42 U.S.C. 1761(*l*)(3)) is amended by striking "and their program record" and inserting "that have been seriously deficient in their participation in the program and may maintain a record of other registered food service management companies,".

(e) MANAGEMENT AND ADMINISTRATION PLAN.—Section 13(n) of such Act (42 U.S.C. 1761(n)) is amended—

(1) by striking paragraphs (5), (6), (8), and (10); and

(2) by redesignating paragraphs (7), (9), and (11) as paragraphs (5), (6), and (7), respectively;

(3) by inserting "and" after the semicolon at the end of paragraph (6) (as so redesignated); and

(4) by striking "; and (12)" and all that follows through "reimbursement".

(f) ELIMINATION OF WARNING IN PRIVATE NONPROFIT ORGANIZATION APPLICATION RELATING TO CRIMINAL PROVISIONS AND RELATED MATTERS.—Section 13(q) of such Act (42 U.S.C. 1761(q)) is amended—

(1) by striking paragraph (2);

(2) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(3) in paragraph (3) (as so redesignated), by striking "paragraphs (1) and (3)" and inserting "paragraphs (1) and (2)".

(g) EXTENSION OF PROGRAM.—Section 13(r) of such Act (42 U.S.C. 1761(r)) is amended by striking "1994" and inserting "1998".

(h) ALL-DAY ACTIVITIES.—The Secretary of Agriculture shall—

(1) not later than 180 days after the date of enactment of this Act, in consultation with the heads of other Federal agencies, identify sources of Federal funds that may be available from other Federal agencies for service institutions under the summer food service program for children established under section 13 of the National School Lunch Act (42 U.S.C. 1761) to carry out all-day educational and recreational activities for children at feeding sites under the program; and

(2) notify through State agencies, as determined appropriate by the Secretary, the service institutions of the sources.

SEC. 115. COMMODITY DISTRIBUTION PROGRAM.

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) is amended—

(1) in subsection (a), by striking "1994" and inserting "1998"; and

(2) in subsection (b)—

(A) by inserting "(1)" after "(b)"; and

(B) by adding at the end the following new paragraphs:

"(2) The Secretary shall maintain and continue to improve the overall nutritional quality of entitlement commodities provided to schools to assist the schools in improving the nutritional content of meals.

"(3) The Secretary shall—

"(A) require that nutritional content information labels be placed on packages or shipments of entitlement commodities provided to the schools; or

"(B) otherwise provide nutritional content information regarding the commodities provided to the schools.".

SEC. 116. CHILD AND ADULT CARE FOOD PROGRAM.

(a) AUTOMATIC ELIGIBILITY OF CERTAIN EVEN START PARTICIPANTS.—Section 17(c) of the National School Lunch Act (42 U.S.C. 1766(c)) (as amended by section 109(b)) is further amended by adding at the end the following new paragraph:

"(6)(A) A child who has not yet entered kindergarten shall be considered automatically eligible for benefits under this section without further application or eligibility determination if the child is enrolled as a participant in the Even Start program under

part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.).

"(B) Subparagraph (A) shall apply only with respect to the provision of benefits under this section for the period beginning September 1, 1995, and ending September 30, 1997.".

(b) REAPPLICATION FOR ASSISTANCE AT 3-YEAR INTERVALS.—Section 17(d)(2)(A) of such Act (42 U.S.C. 1766(d)(2)(A)) is amended by striking "2-year intervals" and inserting "3-year intervals".

(c) USE OF ADMINISTRATIVE FUNDS TO CONDUCT OUTREACH AND RECRUITMENT TO UNLICENSED DAY CARE HOMES.—Section 17(f)(3)(C) of such Act (42 U.S.C. 1766(f)(3)(C)) is amended—

(1) by inserting "(i)" after "(C)"; and

(2) by adding at the end the following new clause:

"(ii) Funds for administrative expenses may be used by family or group day care home sponsoring organizations to conduct outreach and recruitment to unlicensed family or group day care homes so that the day care homes may become licensed.".

(d) INFORMATION AND TRAINING CONCERNING CHILD HEALTH AND DEVELOPMENT.—Section 17(k) of such Act (42 U.S.C. 1766(k)) is amended by adding at the end the following new paragraph:

"(4) The Secretary shall instruct States to provide, through sponsoring organizations, information and training concerning child health and development to family or group day care homes participating in the program.".

(e) EXTENSION OF STATEWIDE DEMONSTRATION PROJECTS.—Section 17(p) of such Act (42 U.S.C. 1766(p)) is amended—

(1) in paragraph (1)(A), by striking "25 percent of the children served by such organization" and inserting "25 percent of the children enrolled in the organization or 25 percent of the licensed capacity of the organization for children, whichever is less,";

(2) in paragraph (4)(B), by striking "1992" and inserting "1998"; and

(3) in paragraph (5), by striking "1994" and inserting "1998".

(f) WIC INFORMATION.—Section 17 of such Act (42 U.S.C. 1766) is amended by adding at the end the following new subsection:

"(q)(1) The Secretary shall provide State agencies with basic information concerning the importance and benefits of the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

"(2) The State agency shall—

"(A) provide each child care institution participating in the program established under this section, other than institutions providing day care outside school hours for schoolchildren, with materials that include—

"(i) a basic explanation of the benefits and importance of the special supplemental nutrition program for women, infants, and children;

"(ii) the maximum income limits, according to family size, applicable to children up to age 5 in the State under the special supplemental nutrition program for women, infants, and children; and

"(iii) a listing of the addresses and phone numbers of offices at which parents may apply;

"(B) annually provide the institutions with an update of the information on income limits described in subparagraph (A)(ii); and

"(C) ensure that, at least once a year, the institutions to which subparagraph (A) applies provide written information to parents that includes—

"(i) basic information on the benefits provided under the special supplemental nutrition program for women, infants, and children;

"(ii) information on the maximum income limits, according to family size, applicable to the program; and

"(iii) information on where parents may apply to participate in the program.".

SEC. 117. HOMELESS CHILDREN NUTRITION PROGRAM.

(a) HOMELESS CHILDREN NUTRITION PROGRAM.—

(1) IN GENERAL.—The National School Lunch Act is amended by inserting after section 17A (42 U.S.C. 1766a) the following new section:

"SEC. 17B. HOMELESS CHILDREN NUTRITION PROGRAM.

"(a) IN GENERAL.—The Secretary shall conduct projects designed to provide food service throughout the year to homeless children under the age of 6 in emergency shelters.

"(b) AGREEMENTS TO PARTICIPATE IN PROJECTS.—

"(1) IN GENERAL.—The Secretary shall enter into agreements with State, city, local, or county governments, other public entities, or private nonprofit organizations to participate in the projects conducted under this section.

"(2) ELIGIBILITY REQUIREMENTS.—The Secretary shall establish eligibility requirements for the entities described in paragraph (1) that desire to participate in the projects conducted under this section. The requirements shall include the following:

"(A) Each private nonprofit organization shall operate not more than 5 food service sites under the project and shall serve not more than 300 homeless children at each such site.

"(B) Each site operated by each such organization shall meet applicable State and local health, safety, and sanitation standards.

"(c) PROJECT REQUIREMENTS.—

"(1) IN GENERAL.—A project conducted under this section shall—

"(A) use the same meal patterns and receive reimbursement payments for meals and supplements at the same rates provided to child care centers participating in the child care food program under section 17 for free meals and supplements; and

"(B) receive reimbursement payments for meals and supplements served on Saturdays, Sundays, and holidays, at the request of the sponsor of any such project.

"(2) MODIFICATION.—The Secretary may modify the meal pattern requirements to take into account the needs of infants.

"(3) HOMELESS CHILDREN ELIGIBLE FOR FREE MEALS WITHOUT APPLICATION.—Homeless children under the age of 6 in emergency shelters shall be considered eligible for free meals without application.

"(d) FUNDING PRIORITIES.—From the amount described in subsection (g), the Secretary shall provide funding for projects carried out under this section for a particular fiscal year (referred to in this subsection as the 'current fiscal year') in the following order of priority, to the maximum extent practicable:

"(1) The Secretary shall first provide the funding to entities and organizations, each of which—

"(A) received funding under this section or section 18(c) (as in effect on the day before the date of enactment of this section) to carry out a project for the preceding fiscal year; and

"(B) is eligible to receive funding under this section to carry out the project for the current fiscal year;

to enable the entity or organization to carry out the project under this section for the current fiscal year at the level of service provided by the project during the preceding fiscal year.

"(2) From the portion of the amount that remains after the application of paragraph (1), the Secretary shall provide funds to entities and organizations, each of which is eligible to receive funding under this section, to enable the entity or organization to carry out a new project under this section for the current fiscal year, or to expand the level of service provided by a project for the current fiscal year over the level provided by the project during the preceding fiscal year.

"(e) NOTICE.—The Secretary shall advise each State of the availability of the projects conducted under this subsection for States, cities, counties, local governments, and other public entities, and shall advise each State of the procedures for applying to participate in the project.

"(f) PLAN TO ALLOW PARTICIPATION IN THE CHILD AND ADULT CARE FOOD PROGRAM.—Not later than September 30, 1996, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a plan describing—

"(1) how emergency shelters and homeless children who have not attained the age of 6 and who are served by the shelters under the program might participate in the child and adult care food program authorized under section 17 by September 30, 1998; and

"(2) the advantages and disadvantages of the action described in paragraph (1).

"(g) FUNDING.—

"(1) IN GENERAL.—In addition to any amounts made available under section 7(a)(5)(B)(i)(I) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(5)(B)(i)(I)) and any amounts that are otherwise made available for fiscal year 1995, out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary to carry out this section $1,800,000 for fiscal year 1995, $2,600,000 for fiscal year 1996, $3,100,000 for fiscal year 1997, $3,400,000 for fiscal year 1998, and $3,700,000 for fiscal year 1999 and each succeeding fiscal year. The Secretary shall be entitled to receive the funds and shall accept the funds.

"(2) INSUFFICIENT NUMBER OF APPLICANTS.—The Secretary may expend less than the amount described in paragraph (1) for a fiscal year if there is an insufficient number of suitable applicants to carry out projects under this section for the fiscal year. Any funds made available under this subsection to carry out the projects for a fiscal year that are not obligated to carry out the projects in the fiscal year shall remain available until expended for purposes of carrying out the projects.

"(h) DEFINITION OF EMERGENCY SHELTER.—As used in this section, the term 'emergency shelter' has the meaning provided the term in section 321(2) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11351(2)).".

(2) CONFORMING AMENDMENTS.—

(A) NATIONAL SCHOOL LUNCH ACT.—Section 18 of the National School Lunch Act (42 U.S.C. 1769) is amended by striking subsection (c).

(B) CHILD NUTRITION ACT OF 1966.—Section 7(a)(5)(B)(i)(I) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(5)(B)(i)(I)) is amended—

(i) by striking "projects under section 18(c) of the National School Lunch Act (42 U.S.C. 1769(c))" and inserting "projects under section 17B of the National School Lunch Act"; and

(ii) by striking "each of fiscal years 1993 and 1994" each place it appears and inserting "fiscal year 1995 and each subsequent fiscal year".

(b) DEMONSTRATION PROGRAM FOR THE PREVENTION OF BOARDER BABIES.—Section 18 of the National School Lunch Act (42 U.S.C. 1769(c)) (as amended by subsection (a)(2)(A)) is further amended by inserting after subsection (b) the following new subsection:

"(c)(1) Using the funds provided under paragraph (7), the Secretary shall conduct at least 1 demonstration project through a participating entity during each of fiscal years 1995 through 1998 that is designed to provide food and nutrition services throughout the year to—

"(A) homeless pregnant women; and

"(B) homeless mothers or guardians of infants, and the children of the mothers and guardians.

"(2) To be eligible to obtain funds under this subsection, a homeless shelter, a transitional housing organization, or another entity that provides or will provide temporary housing for individuals described in paragraph (1) shall (in accordance with guidelines established by the Secretary)—

"(A) submit to the Secretary a proposal to provide food and nutrition services, including a plan for coordinating the services with services provided under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

"(B) receive the approval of the Secretary for the proposal;

"(C) be located in an urban area that has—

"(i) a significant population of boarder babies;

"(ii) a very high rate of mortality for children under 1 year of age; or

"(iii) a significant population of homeless pregnant women and homeless women with infants;

as determined by the Secretary; and

"(D) be able to coordinate services provided under this subsection with the services provided by the local government and with other programs that may assist the participants receiving services under this subsection.

"(3) Food and nutrition services funded under this subsection—

"(A) may include—

"(i) meals, supplements, and other food;

"(ii) nutrition education;

"(iii) nutrition assessments;

"(iv) referrals to—

"(I) the special supplemental nutrition program for women, infants, and children authorized under section 17 of such Act (42 U.S.C. 1786);

"(II) the medical assistance program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

"(III) the food stamp program established under section 4 of the Food Stamp Act of 1977 (7 U.S.C. 2013); and

"(IV) other public or private programs and services;

"(v) activities related to the services described in any of clauses (i) through (iv); and

"(vi) administrative activities related to the services described in any of clauses (i) through (v); and

"(B) may not include the construction, purchase, or rental of real property.

"(4)(A) A participating entity shall—

"(i) use the same meal patterns, and receive reimbursement payments for meals and supplements at the same rates, as apply to child care centers participating in the child care food program under section 17 for free meals and supplements;

"(ii) receive reimbursement payments for meals and supplements served on Saturdays, Sundays, and holidays, at the request of the entity; and

"(iii) maintain a policy of not providing services or assistance to pregnant women, or homeless women with infants, who use a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(B) The Secretary may modify the meal pattern requirements to take into account the needs of infants, homeless pregnant women, homeless mothers, guardians of infants, or the children of the women, mothers, or guardians.

"(C) The Secretary shall provide funding to a participating entity for services described in paragraph (3) that are provided to individuals described in paragraph (1).

"(5) The Secretary shall impose such auditing and recordkeeping requirements as are necessary to monitor the use of Federal funds to carry out this subsection.

"(6) The Secretary shall notify the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on projects carried out under this subsection.

"(7)(A) Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary $400,000 for each of fiscal years 1995 through 1998 to carry out this subsection. The Secretary shall be entitled to receive the funds and shall accept the funds.

"(B) Any funds provided under subparagraph (A) to carry out projects under this subsection for a fiscal year that are not obligated in the fiscal year shall be used by the Secretary to carry out the homeless children nutrition program established under section 17B.

"(8) As used in this subsection:

"(A) The term 'boarder baby' means an abandoned infant described in section 103(1) of the Abandoned Infants Assistance Act of 1988 (Public Law 100-505; 42 U.S.C. 670 note).

"(B) The term 'nutrition education' has the meaning provided in section 17(b)(7) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(7)).".

SEC. 118. PILOT PROJECTS.

(a) COMMODITY LETTER OF CREDIT (CLOC) PROGRAMS.—The first sentence of section 18(b)(1) of the National School Lunch Act (42 U.S.C. 1769(b)(1)) is amended by striking ", and ending September 30, 1994".

(b) DEMONSTRATION PROGRAM TO PROVIDE MEALS AND SUPPLEMENTS OUTSIDE OF SCHOOL HOURS.—Section 18 of such Act (42 U.S.C. 1769) is amended by adding at the end the following new subsection:

"(e)(1)(A) The Secretary shall establish a demonstration program to provide grants to eligible institutions or schools to provide meals or supplements to adolescents participating in educational, recreational, or other programs and activities provided outside of school hours.

"(B) The amount of a grant under subparagraph (A) shall be equal to the amount necessary to provide meals or supplements described in such subparagraph and shall be determined in accordance with reimbursement payment rates for meals and supplements under the child and adult care food program under section 17.

"(2) The Secretary may not provide a grant under paragraph (1) to an eligible institution or school unless the institution or school submits to the Secretary an application containing such information as the Secretary may reasonably require.

"(3) The Secretary may not provide a grant under paragraph (1) to an eligible institution or school unless the institution or school agrees that the institution or school will—

"(A) use amounts from the grant to provide meals or supplements under educational, recreational, or other programs and activities for adolescents outside of school hours, and the programs and activities are carried out in geographic areas in which there are high rates of poverty, violence, or drug and alcohol abuse among school-aged youths; and

"(B) use the same meal patterns as meal patterns required under the child and adult care food program under section 17.

"(4) Determinations with regard to eligibility for free and reduced price meals and supplements provided under programs and activities under this subsection shall be made in accordance with the income eligibility guidelines for free and reduced price lunches under section 9.

"(5)(A) Except as provided in subparagraph (B), the Secretary shall expend to carry out this subsection, from amounts appropriated for purposes of carrying out section 17, $325,000 for fiscal year 1995, $475,000 for each of fiscal years 1996 and 1997, and $525,000 for fiscal year 1998. In addition to amounts described in the preceding sentence, the Secretary shall expend any additional amounts in any fiscal year as may be provided in advance in appropriations Acts.

"(B) The Secretary may expend less than the amount required under subparagraph (A) if there is an insufficient number of suitable applicants.

"(6) As used in this subsection:

"(A) The term 'adolescent' means a child who has attained the age of 13 but has not attained the age of 19.

"(B) The term 'eligible institution or school' means—

"(i) an institution, as the term is defined in section 17; or

"(ii) an elementary or secondary school participating in the school lunch program under this Act.

"(C) The term 'outside of school hours' means after-school hours, weekends, or holidays during the regular school year.".

(c) FORTIFIED FLUID MILK.—Section 18 of such Act (42 U.S.C. 1769) (as amended by subsection (b)) is further amended by adding at the end the following new subsection:

"(f)(1) Subject to the availability of appropriations to carry out this subsection, the Secretary shall establish pilot projects in at least 25 school districts under which the milk offered by schools meets the fortification requirements of paragraph (3) for lowfat, skim, and other forms of fluid milk.

"(2) The Secretary shall make available to school districts information that compares the nutritional benefits of fluid milk that meets the fortification requirements of paragraph (3) and the nutritional benefits of other milk that is made available through the school lunch program established under this Act.

"(3) The fortification requirements for fluid milk for the pilot project referred to in paragraph (1) shall provide that—

"(A) all whole milk in final package form for beverage use shall contain not less than—

"(i) 3.25 percent milk fat; and

"(ii) 8.7 percent milk solids not fat;

"(B) all lowfat milk in final package form for beverage use shall contain not less than 10 percent milk solids not fat; and

"(C) all skim milk in final package form for beverage use shall contain not less than 9 percent milk solids not fat.

"(4)(A) In selecting where to establish pilot projects under this subsection, the Secretary shall take into account, among other factors, the availability of fortified milk and the interest of the school district in being included in the pilot project.

"(B) The Secretary shall establish the pilot projects in as many geographic areas as practicable, except that none of the projects shall be established in school districts that use milk described in paragraph (3) or similar milk.

"(5) Not later than 2 years after the establishment of the first pilot project under this subsection, the Secretary shall report to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on—

"(A) the acceptability of fortified whole, lowfat, and skim milk products to participating children;

"(B) the impact of offering the milk on milk consumption;

"(C) the views of the school food service authorities on the pilot projects; and

"(D) any increases or reductions in costs attributed to the pilot projects.

"(6) The Secretary shall—

"(A) obtain copies of any research studies or papers that discuss the impact of the fortification of milk pursuant to standards established by the States; and

"(B) on request, make available to State agencies and the public—

"(i) the information obtained under subparagraph (A); and

"(ii) information about where to obtain milk described in paragraph (3).

"(7)(A) Each pilot project established under this subsection shall terminate on the last day of the third year after the establishment of the pilot project.

"(B) The Secretary shall advise representatives of each district participating in a pilot project that the district may continue to offer the fortified forms of milk described in paragraph (3) after the project terminates.".

(d) INCREASED CHOICES OF FRUITS, VEGETABLES, LEGUMES, CEREALS, AND GRAIN-BASED PRODUCTS.—Section 18 of such Act (42 U.S.C. 1769) (as amended by subsection (c)) is further amended by adding at the end the following new subsection:

"(g)(1) The Secretary is authorized to establish a pilot project to assist schools participating in the school lunch program established under this Act, and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), to offer participating students additional choices of fruits, vegetables, legumes, cereals, and grain-based products (including, subject to paragraph (6), organically produced agricultural commodities and products) (collectively referred to in this subsection as 'qualified products').

"(2) The Secretary shall establish procedures under which schools may apply to participate in the pilot project. To the maximum extent practicable, the Secretary shall select qualified schools that apply from each State.

"(3) The Secretary may provide a priority for receiving funds under this subsection to—

"(A) schools that are located in low-income areas (as defined by the Secretary); and

"(B) schools that rarely offer 3 or more choices of qualified products per meal.

"(4) On request, the Secretary shall provide information to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the impact of the pilot project on participating schools, including—

"(A) the extent to which participating children increased consumption of qualified products;

"(B) the extent to which increased consumption of qualified products offered under the pilot project has contributed to a reduction in fat intake in the school breakfast and school lunch programs;

"(C) the desirability of requiring that—

"(i) each school participating in the school breakfast program increase the number of choices of qualified products offered per meal to at least 2 choices;

"(ii) each school participating in the school lunch program increase the number of choices of qualified products offered per meal; and

"(iii) the Secretary provide additional Federal reimbursements to assist schools in complying with clauses (i) and (ii);

"(D) the views of school food service authorities on the pilot project; and

"(E) any increase or reduction in costs to the schools in offering the additional qualified products.

"(5) Subject to the availability of funds appropriated to carry out this subsection, the Secretary shall use not more than $5,000,000 for each of fiscal years 1995 through 1997 to carry out this subsection.

"(6) For purposes of this subsection, qualified products shall include organically produced agricultural commodities and products beginning on the date the Secretary establishes an organic certification program for producers and handlers of agricultural products in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).".

(e) INCREASED CHOICES OF LOWFAT DAIRY PRODUCTS AND LEAN MEAT AND POULTRY PRODUCTS.—Section 18 of such Act (42 U.S.C. 1769) (as amended by subsection (d)) is further amended by adding at the end the following new subsection:

"(h)(1) The Secretary is authorized to establish a pilot project to assist schools participating in the school lunch program established under this Act, and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), to offer participating students additional choices of lowfat dairy products (including lactose-free dairy products) and lean meat and poultry products (including, subject to paragraph (6), organically produced agricultural commodities and products) (collectively referred to in this subsection as 'qualified products').

"(2) The Secretary shall establish procedures under which schools may apply to participate in the pilot project. To the maximum extent practicable, the Secretary shall select qualified schools that apply from each State.

"(3) The Secretary may provide a priority for receiving funds under this subsection to—

"(A) schools that are located in low-income areas (as defined by the Secretary); and

"(B) schools that rarely offer 3 or more choices of qualified products per meal.

"(4) On request, the Secretary shall provide information to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the impact of the pilot project on participating schools, including—

"(A) the extent to which participating children increased consumption of qualified products;

"(B) the extent to which increased consumption of qualified products offered under the pilot project has contributed to a reduction in fat intake in the school breakfast and school lunch programs;

"(C) the desirability of requiring that—

"(i) each school participating in the school breakfast program increase the number of choices of qualified products offered per meal to at least 2 choices;

"(ii) each school participating in the school lunch program increase the number of choices of qualified products offered per meal; and

"(iii) the Secretary provide additional Federal reimbursements to assist schools in complying with clauses (i) and (ii);

"(D) the views of the school food service authorities on the pilot project; and

"(E) any increase or reduction in costs to the schools in offering the additional qualified products.

"(5) Subject to the availability of funds appropriated to carry out this subsection, the Secretary shall use not more than $5,000,000 for each of fiscal years 1995 through 1997 to carry out this subsection.

"(6) For purposes of this subsection, qualified products shall include organically produced agricultural commodities and products beginning on the date the Secretary establishes an organic certification program for producers and handlers of agricultural products in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).".

(f) REDUCED PAPERWORK AND APPLICATION REQUIREMENTS AND INCREASED PARTICIPATION PILOTS.—Section 18 of such Act (42 U.S.C. 1769) (as amended by subsection (e)) is further amended by adding at the end the following new subsection:

"(i)(1) Subject to the availability of advance appropriations under paragraph (8), the Secretary shall make grants to a limited number of schools to conduct pilot projects in 2 or more States approved by the Secretary to—

"(A) reduce paperwork;

"(B) reduce application and meal counting requirements; and

"(C) make changes that will increase participation in the school lunch and school breakfast programs.

"(2)(A) Except as provided in subparagraph (B), the Secretary may waive the requirements of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) relating to counting of meals, applications for eligibility, and related requirements that would preclude the Secretary from making a grant to conduct a pilot project under paragraph (1).

"(B) The Secretary may not waive a requirement under subparagraph (A) if the waiver would prevent a program participant, a potential program recipient, or a school from receiving all of the benefits and protections of this Act, the Child Nutrition Act of 1966, or a Federal statute or regulation that protects an individual constitutional right or a statutory civil right.

"(C) No child otherwise eligible for free or reduced price meals under section 9 or under section 4 of the Child Nutrition Act of 1966

(42 U.S.C. 1773) shall be required to pay more under a program carried out under this subsection for such a meal than the child would otherwise pay under section 9 or under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively.

"(3) To be eligible to receive a grant to conduct a pilot project under this subsection, a school shall—

"(A) submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require, including, at a minimum, information—

"(i) demonstrating that the program carried out under the project differs from programs carried out under subparagraph (C), (D), or (E) of section 11(a)(1);

"(ii) demonstrating that at least 40 percent of the students participating in the school lunch program at the school are eligible for free or reduced price meals;

"(iii) demonstrating that the school operates both a school lunch program and a school breakfast program;

"(iv) describing the funding, if any that the school will receive from non-Federal sources to carry out the pilot project;

"(v) describing and justifying the additional amount, over the most recent prior year reimbursement amount received under the school lunch program and the school breakfast program (adjusted for inflation and fluctuations in enrollment), that the school needs from the Federal government to conduct the pilot; and

"(vi) describing the policy of the school on a la carte and competitive foods;

"(B) not have a history of violations of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

"(C) meet any other requirement that the Secretary may reasonably require.

"(4) To the extent practicable, the Secretary shall select schools to participate in the pilot program under this subsection in a manner that will provide for an equitable distribution among the following types of schools:

"(A) Urban and rural schools.

"(B) Elementary, middle, and high schools.

"(C) Schools of varying income levels.

"(5)(A) Except as provided in subparagraph (B), a school conducting a pilot project under this subsection shall receive commodities in an amount equal to the amount the school received in the prior year under the school lunch program under this Act and under the school breakfast program under section 4 of the Child Nutrition Act of 1966, adjusted for inflation and fluctuations in enrollment.

"(B) Commodities required for the pilot project in excess of the amount of commodities received by the school in the prior year under the school lunch program and the school breakfast program may be funded from amounts appropriated to carry out this section.

"(6)(A) Except as provided in subparagraph (B), a school conducting a pilot project under this subsection shall receive a total Federal reimbursement under the school lunch program and school breakfast program in an amount equal to the total Federal reimbursement for the school in the prior year under each such program (adjusted for inflation and fluctuations in enrollment).

"(B) Funds required for the pilot project in excess of the level of reimbursement received by the school in the prior year (adjusted for inflation and fluctuations in enrollment) may be taken from any non-Federal source or from amounts appropriated to carry out this subsection. If no appropriations are made for the pilot projects, schools may not conduct the pilot projects.

"(7)(A) The Secretary shall require each school conducting a pilot project under this subsection to submit to the Secretary documentation sufficient for the Secretary, to the extent practicable, to—

"(i) determine the effect that participation by schools in the pilot projects has on the rate of student participation in the school lunch program and the school breakfast program, in total and by various income groups;

"(ii) compare the quality of meals served under the pilot project to the quality of meals served under the school lunch program and the school breakfast program during the school year immediately preceding participation in the pilot project;

"(iii) summarize the views of students, parents, and administrators with respect to the pilot project;

"(iv) compare the amount of administrative costs under the pilot project to the amount of administrative costs under the school lunch program and the school breakfast program during the school year immediately preceding participation in the pilot project;

"(v) determine the reduction in paperwork under the pilot project from the amount of paperwork under the school lunch and school breakfast programs at the school; and

"(vi) determine the effect of participation in the pilot project on sales of, and school policy regarding, a la carte and competitive foods.

"(B) Not later than January 31, 1998, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing—

"(i) a description of the pilot projects approved by the Secretary under this subsection;

"(ii) a compilation of the information received by the Secretary under paragraph (1) as of this date from each school conducting a pilot project under this subsection; and

"(iii) an evaluation of the program by the Secretary.

"(8) There are authorized to be appropriated to carry out this subsection $9,000,000 for each fiscal year during the period beginning October 1, 1995, and ending July 31, 1998.".

SEC. 119. REDUCTION OF PAPERWORK.

Section 19(a) of the National School Lunch Act (42 U.S.C. 1769a(a)) is amended—

(1) by striking "and other agencies" and inserting "other agencies"; and

(2) by inserting ", and families of children participating in the programs," after "assisted under such Acts".

SEC. 120. FOOD SERVICE MANAGEMENT INSTITUTE.

(a) REQUIRED ACTIVITIES.—Section 21(c)(2) of the National School Lunch Act (42 U.S.C. 1769b-1(c)(2)) is amended—

(1) in subparagraph (B)—

(A) by striking "and" at the end of clause (viii);

(B) by redesignating clause (ix) as clause (x); and

(C) by inserting after clause (viii) the following new clause:

"(ix) culinary skills; and";

(2) by striking "and" at the end of subparagraph (D);

(3) by striking the period at the end of subparagraph (E) and inserting a semicolon; and

(4) by adding at the end the following new subparagraphs:

"(F) training food service personnel to comply with the nutrition guidance and objectives of section 24 through a national network of instructors or other means;

"(G) preparing informational materials, such as video instruction tapes and menu planners, to promote healthier food preparation; and

"(H) assisting State educational agencies in providing additional nutrition and health instructions and instructors, including training personnel to comply with the nutrition guidance and objectives of section 24.".

(b) USE OF FOOD SERVICE MANAGEMENT INSTITUTE FOR DIETARY AND NUTRITION ACTIVITIES.—Section 21(d) of such Act (42 U.S.C. 1769b-1(d)) is amended—

(1) by striking "(d) COORDINATION.—The" and inserting the following:

"(d) COORDINATION.—

"(1) IN GENERAL.—The"; and

(2) by adding at the end the following new paragraph:

"(2) USE OF INSTITUTE FOR DIETARY AND NUTRITION ACTIVITIES.—The Secretary shall use any food service management institute established under subsection (a)(2) to assist in carrying out dietary and nutrition activities of the Secretary.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 21 of such Act (42 U.S.C. 1769b-1) is amended—

(1) in subsection (a)(1), by striking "from" and inserting "subject to the availability of, and from,"; and

(2) by striking subsection (e) and inserting the following new subsection:

"(e) AUTHORIZATION OF APPROPRIATIONS.—

"(1) TRAINING ACTIVITIES AND TECHNICAL ASSISTANCE.—There are authorized to be appropriated to carry out subsection (a)(1) $3,000,000 for fiscal year 1990, $2,000,000 for fiscal year 1991, and $1,000,000 for each of fiscal years 1992 through 1998.

"(2) FOOD SERVICE MANAGEMENT INSTITUTE.—

"(A) FUNDING.—In addition to any amounts otherwise made available for fiscal year 1995, out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary $147,000 for fiscal year 1995, and $2,000,000 for fiscal year 1996, and each subsequent fiscal year, to carry out subsection (a)(2). The Secretary shall be entitled to receive the funds and shall accept the funds.

"(B) ADDITIONAL FUNDING.—In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out subsection (a)(2) such sums as are necessary for fiscal year 1995 and each subsequent fiscal year. The Secretary shall carry out activities under subsection (a)(2), in addition to the activities funded under subparagraph (A), to the extent provided for, and in such amounts as are provided for, in advance in appropriations Acts.

"(C) FUNDING FOR EDUCATION, TRAINING, OR APPLIED RESEARCH OR STUDIES.—In addition to amounts made available under subparagraphs (A) and (B), from amounts otherwise appropriated to the Secretary in discretionary appropriations, the Secretary may provide funds to any food service management institute established under subsection (a)(2) for projects specified by the Secretary that will contribute to implementing dietary or nutrition initiatives. Any additional funding under this subparagraph shall be provided noncompetitively in a separate cooperative agreement.".

SEC. 121. COMPLIANCE AND ACCOUNTABILITY.

Section 22(d) of the National School Lunch Act (42 U.S.C. 1769c(d)) is amended by striking "1990, 1991, 1992, 1993, and 1994" and inserting "1994 through 1996".

SEC. 122. DUTIES OF THE SECRETARY OF AGRICULTURE RELATING TO NONPROCUREMENT DEBARMENT UNDER CERTAIN CHILD NUTRITION PROGRAMS.

(a) IN GENERAL.—The National School Lunch Act (42 U.S.C. 1751 et seq.) is amended by adding at the end the following new section:

"SEC. 25. DUTIES OF THE SECRETARY RELATING TO NONPROCUREMENT DEBARMENT.

"(a) PURPOSES.—The purposes of this section are to promote the prevention and deterrence of instances of fraud, bid rigging, and other anticompetitive activities encountered in the procurement of products for child nutrition programs by—

"(1) establishing guidelines and a timetable for the Secretary to initiate debarment proceedings, as well as establishing mandatory debarment periods; and

"(2) providing training, technical advice, and guidance in identifying and preventing the activities.

"(b) DEFINITIONS.—As used in this section:

"(1) CHILD NUTRITION PROGRAM.—The term 'child nutrition program' means—

"(A) the school lunch program established under this Act;

"(B) the summer food service program for children established under section 13;

"(C) the child and adult care food program established under section 17;

"(D) the homeless children nutrition program established under section 17B;

"(E) the special milk program established under section 3 of the Child Nutrition Act of 1966 (42 U.S.C. 1772);

"(F) the school breakfast program established under section 4 of such Act (42 U.S.C. 1773); and

"(G) the special supplemental nutrition program for women, infants, and children authorized under section 17 of such Act (42 U.S.C. 1786).

"(2) CONTRACTOR.—The term 'contractor' means a person that contracts with a State, an agency of a State, or a local agency to provide goods or services in relation to the participation of a local agency in a child nutrition program.

"(3) LOCAL AGENCY.—The term 'local agency' means a school, school food authority, child care center, sponsoring organization, or other entity authorized to operate a child nutrition program at the local level.

"(4) NONPROCUREMENT DEBARMENT.—The term 'nonprocurement debarment' means an action to bar a person from programs and activities involving Federal financial and nonfinancial assistance, but not including Federal procurement programs and activities.

"(5) PERSON.—The term 'person' means any individual, corporation, partnership, association, cooperative, or other legal entity, however organized.

"(c) ASSISTANCE TO IDENTIFY AND PREVENT FRAUD AND ANTICOMPETITIVE ACTIVITIES.—The Secretary shall—

"(1) in cooperation with any other appropriate individual, organization, or agency, provide advice, training, technical assistance, and guidance (which may include awareness training, training films, and troubleshooting advice) to representatives of States and local agencies regarding means of identifying and preventing fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program; and

"(2) provide information to, and fully cooperate with, the Attorney General and State attorneys general regarding investigations of fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program.

"(d) NONPROCUREMENT DEBARMENT.—

"(1) IN GENERAL.—Except as provided in paragraph (3) and subsection (e), not later than 180 days after notification of the occurrence of a cause for debarment described in paragraph (2), the Secretary shall initiate nonprocurement debarment proceedings against the contractor who has committed the cause for debarment.

"(2) CAUSES FOR DEBARMENT.—Actions requiring initiation of nonprocurement debarment pursuant to paragraph (1) shall include a situation in which a contractor is found guilty in any criminal proceeding, or found liable in any civil or administrative proceeding, in connection with the supplying, providing, or selling of goods or services to any local agency in connection with a child nutrition program, of—

"(A) an anticompetitive activity, including bid-rigging, price-fixing, the allocation of customers between competitors, or other violation of Federal or State antitrust laws;

"(B) fraud, bribery, theft, forgery, or embezzlement;

"(C) knowingly receiving stolen property;

"(D) making a false claim or statement; or

"(E) any other obstruction of justice.

"(3) EXCEPTION.—If the Secretary determines that a decision on initiating nonprocurement debarment proceedings cannot be made within 180 days after notification of the occurrence of a cause for debarment described in paragraph (2) because of the need to further investigate matters relating to the possible debarment, the Secretary may have such additional time as the Secretary considers necessary to make a decision, but not to exceed an additional 180 days.

"(4) MANDATORY CHILD NUTRITION PROGRAM DEBARMENT PERIODS.—

"(A) IN GENERAL.—Subject to the other provisions of this paragraph and notwithstanding any other provision of law except subsection (e), if, after deciding to initiate nonprocurement debarment proceedings pursuant to paragraph (1), the Secretary decides to debar a contractor, the debarment shall be for a period of not less than 3 years.

"(B) PREVIOUS DEBARMENT.—If the contractor has been previously debarred pursuant to nonprocurement debarment proceedings initiated pursuant to paragraph (1), and the cause for debarment is described in paragraph (2) based on activities that occurred subsequent to the initial debarment, the debarment shall be for a period of not less than 5 years.

"(C) SCOPE.—At a minimum, a debarment under this subsection shall serve to bar the contractor for the specified period from contracting to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

"(D) REVERSAL, REDUCTION, OR EXCEPTION.—Nothing in this section shall restrict the ability of the Secretary to—

"(i) reverse a debarment decision;

"(ii) reduce the period or scope of a debarment;

"(iii) grant an exception permitting a debarred contractor to participate in a particular contract to provide goods or services; or

"(iv) otherwise settle a debarment action at any time;

in conjunction with the participation of a local agency in a child nutrition program, if the Secretary determines there is good cause for the action, after taking into account factors set forth in paragraphs (1) through (6) of subsection (e).

"(5) INFORMATION.—On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the decisions required by this subsection.

"(6) RELATIONSHIP TO OTHER AUTHORITIES.—A debarment imposed under this section shall not reduce or diminish the authority of a Federal, State, or local government agency or court to penalize, imprison, fine, suspend, debar, or take other adverse action against a person in a civil, criminal, or administrative proceeding.

"(7) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection.

"(e) MANDATORY DEBARMENT.—Notwithstanding any other provision of this section, the Secretary shall initiate nonprocurement debarment proceedings against the contractor (including any cooperative) who has committed the cause for debarment (as determined under subsection (d)(2)), unless the action—

"(1) is likely to have a significant adverse effect on competition or prices in the relevant market or nationally;

"(2) will interfere with the ability of a local agency to procure a needed product for a child nutrition program;

"(3) is unfair to a person, subsidiary corporation, affiliate, parent company, or local division of a corporation that is not involved in the improper activity that would otherwise result in the debarment;

"(4) is likely to have significant adverse economic impacts on the local economy in a manner that is unfair to innocent parties;

"(5) is not justified in light of the penalties already imposed on the contractor for violations relevant to the proposed debarment, including any suspension or debarment arising out of the same matter that is imposed by any Federal or State agency; or

"(6) is not in the public interest, or otherwise is not in the interests of justice, as determined by the Secretary.

"(f) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—Prior to seeking judicial review in a court of competent jurisdiction, a contractor against whom a nonprocurement debarment proceeding has been initiated shall—

"(1) exhaust all administrative procedures prescribed by the Secretary; and

"(2) receive notice of the final determination of the Secretary.

"(g) INFORMATION RELATING TO PREVENTION AND CONTROL OF ANTICOMPETITIVE ACTIVITIES.—On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the activities of the Secretary relating to anticompetitive activities, fraud, nonprocurement debarment, and any waiver granted by the Secretary under this section.".

(b) APPLICABILITY.—Section 25 of the National School Lunch Act (as added by subsection (a)) shall not apply to a cause for debarment as described in section 25(d)(2) of such Act that is based on an activity that took place prior to the effective date of section 25 of such Act.

(c) NO REDUCTION IN AUTHORITY TO DEBAR OR SUSPEND A PERSON FROM FEDERAL FINANCIAL AND NONFINANCIAL ASSISTANCE AND BENEFITS.—The authority of the Secretary of

Agriculture that exists on the day before the date of enactment of this Act to debar or suspend a person from Federal financial and nonfinancial assistance and benefits under Federal programs and activities shall not be diminished or reduced by subsection (a) or the amendment made by subsection (a).

SEC. 123. INFORMATION CLEARINGHOUSE.

The National School Lunch Act (42 U.S.C. 1751 et seq.) (as amended by section 122) is further amended by adding at the end the following new section:

"SEC. 26. INFORMATION CLEARINGHOUSE.

"(a) IN GENERAL.—The Secretary shall enter into a contract with a nongovernmental organization described in subsection (b) to establish and maintain a clearinghouse to provide information to nongovernmental groups located throughout the United States that assist low-income individuals or communities regarding food assistance, self-help activities to aid individuals in becoming self-reliant, and other activities that empower low-income individuals or communities to improve the lives of low-income individuals and reduce reliance on Federal, State, or local governmental agencies for food or other assistance.

"(b) NONGOVERNMENTAL ORGANIZATION.—The nongovernmental organization referred to in subsection (a) shall be selected on a competitive basis and shall—

"(1) be experienced in the gathering of first-hand information in all the States through onsite visits to grassroots organizations in each State that fight hunger and poverty or that assist individuals in becoming self-reliant;

"(2) be experienced in the establishment of a clearinghouse similar to the clearinghouse described in subsection (a);

"(3) agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse and agree to provide clearinghouse information, free of charge, to the Secretary, States, counties, cities, antihunger groups, and grassroots organizations that assist individuals in becoming self-sufficient and self-reliant;

"(4) be sponsored by an organization, or be an organization, that—

"(A) has helped combat hunger for at least 10 years;

"(B) is committed to reinvesting in the United States; and

"(C) is knowledgeable regarding Federal nutrition programs;

"(5) be experienced in communicating the purpose of the clearinghouse through the media, including the radio and print media, and be able to provide access to the clearinghouse information through computer or telecommunications technology, as well as through the mails; and

"(6) be able to provide examples, advice, and guidance to States, counties, cities, communities, antihunger groups, and local organizations regarding means of assisting individuals and communities to reduce reliance on government programs, reduce hunger, improve nutrition, and otherwise assist low-income individuals and communities become more self-sufficient.

"(c) AUDITS.—The Secretary shall establish fair and reasonable auditing procedures regarding the expenditures of funds to carry out this section.

"(d) FUNDING.—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary to provide to the organization selected under this section, to establish and maintain the information clearinghouse, $2,000,000 for each of fiscal years 1995 and 1996, $150,000 for fiscal year 1997, and $100,000 for fiscal year 1998. The Secretary shall be entitled to receive the funds and shall accept the funds.".

SEC. 124. GUIDANCE AND GRANTS FOR ACCOMMODATING SPECIAL DIETARY NEEDS OF CHILDREN WITH DISABILITIES.

The National School Lunch Act (42 U.S.C. 1751 et seq.) (as amended by section 123) is further amended by adding at the end the following new section:

"SEC. 27. GUIDANCE AND GRANTS FOR ACCOMMODATING SPECIAL DIETARY NEEDS OF CHILDREN WITH DISABILITIES.

"(a) DEFINITIONS.—As used in this section:

"(1) CHILDREN WITH DISABILITIES.—The term 'children with disabilities' means individuals, each of whom is—

"(A) a participant in a covered program; and

"(B) an individual with a disability, as defined in section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) for purposes of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

"(2) COVERED PROGRAM.—The term 'covered program' means—

"(A) the school lunch program established under this Act;

"(B) the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

"(C) any other program established under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) that the Secretary determines is appropriate.

"(3) ELIGIBLE ENTITY.—The term 'eligible entity' means a school food service authority, or an institution or organization, that participates in a covered program.

"(b) GUIDANCE.—

"(1) DEVELOPMENT.—The Secretary, in consultation with the Attorney General and the Secretary of Education, shall develop and approve guidance for accommodating the medical and special dietary needs of children with disabilities under covered programs in a manner that is consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

"(2) TIMING.—In the case of the school lunch program established under this Act and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Secretary shall develop the guidance as required by paragraph (1) not later than 150 days after the date of enactment of this section.

"(3) DISTRIBUTION.—Not later than 60 days after the date that the development of the guidance relating to a covered program is completed, the Secretary shall distribute the guidance to school food service authorities, and institutions and organizations, participating in the covered program.

"(4) REVISION OF GUIDANCE.—The Secretary, in consultation with the Attorney General and the Secretary of Education, shall periodically update and approve the guidances to reflect new scientific information and comments and suggestions from persons carrying out covered programs, recognized medical authorities, parents, and other persons.

"(c) GRANTS.—

"(1) IN GENERAL.—Subject to the availability of appropriations provided in advance to carry out this subsection, the Secretary shall make grants on a competitive basis to State educational agencies for distribution to eligible entities to assist the eligible entities with nonrecurring expenses incurred in accommodating the medical and special dietary needs of children with disabilities in a manner that is consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

"(2) ADDITIONAL ASSISTANCE.—Subject to paragraph (3)(A)(iii), assistance received through grants made under this subsection shall be in addition to any other assistance that State educational agencies and eligible entities would otherwise receive.

"(3) ALLOCATION BY SECRETARY.—

"(A) PREFERENCE.—In making grants under this subsection for any fiscal year, the Secretary shall provide a preference to State educational agencies that, individually—

"(i) submit to the Secretary a plan for accommodating the needs described in paragraph (1), including a description of the purpose of the project for which the agency seeks such a grant, a budget for the project, and a justification for the budget;

"(ii) provide to the Secretary data demonstrating that the State served by the agency has a substantial percentage of children with medical or special dietary needs, and information explaining the basis for the data; or

"(iii) demonstrate to the satisfaction of the Secretary that the activities supported through such a grant will be coordinated with activities supported under other Federal, State, and local programs, including—

"(I) activities carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

"(II) activities carried out under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

"(III) activities carried out under section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) or by the food service management institute established under section 21.

"(B) REALLOCATION.—The Secretary shall act in a timely manner to recover and reallocate to other States any amounts provided to a State educational agency under this subsection that are not used by the agency within a reasonable period (as determined by the Secretary).

"(C) APPLICATIONS.—The Secretary shall allow State educational agencies to apply on an annual basis for assistance under this subsection.

"(4) ALLOCATION BY STATE EDUCATIONAL AGENCIES.—In allocating funds made available under this subsection within a State, the State educational agency shall give a preference to eligible entities that demonstrate the greatest ability to use the funds to carry out the plan submitted by the State in accordance with paragraph (3)(A)(i).

"(5) MAINTENANCE OF EFFORT.—Expenditures of funds from State and local sources to accommodate the needs described in paragraph (1) shall not be diminished as a result of grants received under this subsection.

"(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 1995 through 1998 to carry out this subsection.".

SEC. 125. STUDY OF ADULTERATION OF JUICE PRODUCTS SOLD TO SCHOOL MEAL PROGRAMS

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the costs and problems associated with the sale of adulterated fruit juice and juice products to the school lunch program under the National School Lunch Act (42 U.S.C. 1751 et seq.) and school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), including a study of—

(1) the nature and extent to which juice products have been and are currently being adulterated;

(2) the adequacy of current requirements and standards to preclude manufacturers

from processing adulterated products for school meal programs;

(3) the availability and effectiveness of various detection methods and testing procedures used to identify adulterated juice products;

(4) the adequacy of existing enforcement mechanisms and efforts to detect and prosecute manufacturers of adulterated juice products;

(5) the economic effect of the sale of adulterated juice products on the school meal program and on manufacturers of the products; and

(6) the effect alternative mandatory inspection methods would have on program costs and various purchasing options.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the study conducted under subsection (a) (including any related recommendations) to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

TITLE II—AMENDMENTS TO CHILD NUTRITION ACT OF 1966

SEC. 201. SCHOOL BREAKFAST PROGRAM.

(a) MINIMUM NUTRITIONAL REQUIREMENTS MEASURED BY WEEKLY AVERAGE OF NUTRIENT CONTENT OF SCHOOL BREAKFASTS.—The first sentence of section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)) is amended by inserting before the period at the end the following: ", except that the minimum nutritional requirements shall be measured by not less than the weekly average of the nutrient content of school breakfasts".

(b) TECHNICAL ASSISTANCE FOR SCHOOL BREAKFAST PROGRAM.—Section 4(e)(1) of such Act (42 U.S.C. 1773(e)(1)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following new subparagraph:

"(B) The Secretary shall provide through State educational agencies technical assistance and training, including technical assistance and training in the preparation of foods high in complex carbohydrates and lower-fat versions of foods commonly used in the school breakfast program established under this section, to schools participating in the school breakfast program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide through State educational agencies additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.".

(c) PROMOTION OF PROGRAM.—Section 4(f)(1) of such Act (42 U.S.C. 1773(f)(1)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following new subparagraphs:

"(B) In cooperation with State educational agencies, the Secretary shall promote the school breakfast program by—

"(i) marketing the program in a manner that expands participation in the program by schools and students; and

"(ii) improving public education and outreach efforts in language appropriate materials that enhance the public image of the program.

"(C) As used in this paragraph, the term 'language appropriate materials' means materials using a language other than the English language in a case in which the language is dominant for a large percentage of individuals participating in the program.".

(d) STARTUP AND EXPANSION OF SCHOOL BREAKFAST PROGRAM AND SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—Subsection (g) of section 4 of such Act (42 U.S.C. 1773(g)) is amended to read as follows:

"STARTUP AND EXPANSION COSTS

"(g)(1) Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary $5,000,000 for each of fiscal years 1991 through 1997, $6,000,000 for fiscal year 1998, and $7,000,000 for fiscal year 1999 and each subsequent fiscal year to make payments under this subsection. The Secretary shall be entitled to receive the funds and shall accept the funds. The Secretary shall use the funds to make payments on a competitive basis and in the following order of priority (subject to other provisions of this subsection), to—

"(A) State educational agencies in a substantial number of States for distribution to eligible schools to assist the schools with nonrecurring expenses incurred in—

"(i) initiating a school breakfast program under this section; or

"(ii) expanding a school breakfast program; and

"(B) a substantial number of States for distribution to service institutions to assist the institutions with nonrecurring expenses incurred in—

"(i) initiating a summer food service program for children; or

"(ii) expanding a summer food service program for children.

"(2) Payments received under this subsection shall be in addition to payments to which State agencies are entitled under subsection (b) and section 13 of the National School Lunch Act (42 U.S.C. 1761).

"(3) To be eligible to receive a payment under this subsection, a State educational agency shall submit to the Secretary a plan to initiate or expand school breakfast programs conducted in the State, including a description of the manner in which the agency will provide technical assistance and funding to schools in the State to initiate or expand the programs.

"(4) In making payments under this subsection for any fiscal year to initiate or expand school breakfast programs, the Secretary shall provide a preference to State educational agencies that—

"(A) have in effect a State law that requires the expansion of the programs during the year;

"(B) have significant public or private resources that have been assembled to carry out the expansion of the programs during the year;

"(C) do not have a school breakfast program available to a large number of low-income children in the State; or

"(D) serve an unmet need among low-income children, as determined by the Secretary.

"(5) In making payments under this subsection for any fiscal year to initiate or expand summer food service programs for children, the Secretary shall provide a preference to States—

"(A)(i) in which the numbers of children participating in the summer food service program for children represent the lowest percentages of the number of children receiving free or reduced price meals under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.); or

"(ii) that do not have a summer food service program for children available to a large number of low-income children in the State; and

"(B) that submit to the Secretary a plan to expand the summer food service programs for children conducted in the State, including a description of—

"(i) the manner in which the State will provide technical assistance and funding to service institutions in the State to expand the programs; and

"(ii) significant public or private resources that have been assembled to carry out the expansion of the programs during the year.

"(6) The Secretary shall act in a timely manner to recover and reallocate to other States any amounts provided to a State educational agency or State under this subsection that are not used by the agency or State within a reasonable period (as determined by the Secretary).

"(7) The Secretary shall allow States to apply on an annual basis for assistance under this subsection.

"(8) Each State agency and State, in allocating funds within the State, shall give preference for assistance under this subsection to eligible schools and service institutions that demonstrate the greatest need for a school breakfast program or a summer food service program for children, respectively.

"(9) Expenditures of funds from State and local sources for the maintenance of the school breakfast program and the summer food service program for children shall not be diminished as a result of payments received under this subsection.

"(10) As used in this subsection:

"(A) The term 'eligible school' means a school—

"(i) attended by children a significant percentage of whom are members of low-income families;

"(ii)(I) as used with respect to a school breakfast program, that agrees to operate the school breakfast program established or expanded with the assistance provided under this subsection for a period of not less than 3 years; and

"(II) as used with respect to a summer food service program for children, that agrees to operate the summer food service program for children established or expanded with the assistance provided under this subsection for a period of not less than 3 years.

"(B) The term 'service institution' means an institution or organization described in paragraph (1)(B) or (7) of section 13(a) of the National School Lunch Act (42 U.S.C. 1761(a)(1)(B) or (7)).

"(C) The term 'summer food service program for children' means a program authorized by section 13 of such Act (42 U.S.C. 1761).".

SEC. 202. STATE ADMINISTRATIVE EXPENSES.

(a) WITHHOLDING.—Section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) is amended by adding at the end the following new paragraph:

"(9)(A) If the Secretary determines that the administration of any program by a State under this Act (other than section 17) or under the National School Lunch Act (42 U.S.C. 1751 et seq.), or compliance with a regulation issued pursuant to either of such Acts, is seriously deficient, and the State fails to correct the deficiency within a specified period of time, the Secretary may withhold from the State some or all of the funds allocated to the State under this section or under section 13(k)(1) or 17 of the National School Lunch Act (42 U.S.C. 1761(k)(1) or 1766).

"(B) On a subsequent determination by the Secretary that the administration of any

program referred to in subparagraph (A), or compliance with the regulations issued to carry out the program, is no longer seriously deficient and is operated in an acceptable manner, the Secretary may allocate some or all of the funds withheld under such subparagraph.".

(b) EXTENSION OF AUTHORITY TO PROVIDE FUNDS FOR STATE ADMINISTRATIVE EXPENSES.—Section 7(h) of such Act (42 U.S.C. 1776(h)) is amended by striking "1994" and inserting "1998".

(c) PROHIBITION OF FUNDING UNLESS STATE AGREES TO PARTICIPATE IN CERTAIN STUDIES OR SURVEYS.—Section 7 of such Act (42 U.S.C. 1776) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

"(h) The Secretary may not provide amounts under this section to a State for administrative costs incurred in any fiscal year unless the State agrees to participate in any study or survey of programs authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 et seq.) and conducted by the Secretary.".

SEC. 203. COMPETITIVE FOODS OF MINIMAL NUTRITIONAL VALUE.

Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) is amended—

(1) by designating the first, second, and third sentences as subsections (a), (b), and (c), respectively;

(2) by indenting the margins of subsections (b) and (c) so as to align with the margins of subsection (b) of section 11 of such Act (42 U.S.C. 1780); and

(3) in subsection (b) (as designated by paragraph (1))—

(A) by striking "Such regulations" and inserting "(1) The regulations"; and

(B) by adding at the end the following new paragraphs:

"(2) The Secretary shall develop and provide to State agencies, for distribution to private elementary schools and to public elementary schools through local educational agencies, model language that bans the sale of competitive foods of minimal nutritional value anywhere on elementary school grounds before the end of the last lunch period.

"(3) The Secretary shall provide to State agencies, for distribution to private secondary schools and to public secondary schools through local educational agencies, a copy of regulations (in existence on the effective date of this paragraph) concerning the sale of competitive foods of minimal nutritional value.

"(4) Paragraphs (2) and (3) shall not apply to a State that has in effect a ban on the sale of competitive foods of minimal nutritional value in schools in the State.".

SEC. 204. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM.

(a) DEFINITION OF NUTRITIONAL RISK.—Section 17(b)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(8)) is amended—

(1) by redesignating subparagraph (D) as subparagraph (E);

(2) by inserting after "health," at the end of subparagraph (C) the following new subparagraph: "(D) conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse,"; and

(3) in subparagraph (E) (as redesignated by paragraph (1)), by striking "alcoholism and drug addiction, homelessness, and" and inserting "homelessness and".

(b) PROMOTION OF PROGRAM.—Section 17(c) of such Act (42 U.S.C. 1786(c)) is amended by adding at the end the following new paragraph:

"(5) The Secretary shall promote the special supplemental nutrition program by producing and distributing materials, including television and radio public service announcements in English and other appropriate languages, that inform potentially eligible individuals of the benefits and services under the program.".

(c) ELIGIBILITY FOR CERTAIN PREGNANT WOMEN.—Section 17(d) of such Act (42 U.S.C. 1786(d)) is amended—

(1) in paragraph (2), by adding at the end the following new subparagraph:

"(C) In the case of a pregnant woman who is otherwise ineligible for participation in the program because the family of the woman is of insufficient size to meet the income eligibility standards of the program, the pregnant woman shall be considered to have satisfied the income eligibility standards if, by increasing the number of individuals in the family of the woman by 1 individual, the income eligibility standards would be met."; and

(2) in paragraph (3)—

(A) by inserting "(A)" after "(3)"; and

(B) by adding at the end the following new subparagraph:

"(B) A State may consider pregnant women who meet the income eligibility standards to be presumptively eligible to participate in the program and may certify the women for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of such a woman shall be completed not later than 60 days after the woman is certified for participation. If it is subsequently determined that the woman does not meet nutritional risk criteria, the certification of the woman shall terminate on the date of the determination.".

(d) TECHNICAL CORRECTIONS.—Section 17(e) of such Act (42 U.S.C. 1786(e)) is amended by redesignating paragraph (3) (as added by section 123(a)(3)(D) of the Child Nutrition and WIC Reauthorization Act of 1989 (Public Law 101-147; 103 Stat. 895)) and paragraphs (4) and (5) as paragraphs (4), (5), and (6), respectively.

(e) COORDINATION OF WIC AND MEDICAID PROGRAMS USING COORDINATED CARE PROVIDERS.—Section 17(f)(1)(C)(iii) of such Act (42 U.S.C. 1786(f)(1)(C)(iii)) is amended by inserting before the semicolon at the end the following: ", including medicaid programs that use coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)) (including coordination through the referral of potentially eligible women, infants, and children between the program authorized under this section and the medicaid program)".

(f) PRIORITY CONSIDERATION FOR CERTAIN MIGRANT POPULATIONS.—The first sentence of section 17(f)(3) of such Act (42 U.S.C. 1786(f)(3)) is amended by inserting before the period at the end the following: "and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time".

(g) INCOME ELIGIBILITY GUIDELINES.—Paragraph (18) of section 17(f) of such Act (42 U.S.C. 1786(f)(18)) is amended to read as follows:

"(18) Notwithstanding subsection (d)(2)(A)(i), not later than July 1 of each year, a State agency may implement income eligibility guidelines under this section concurrently with the implementation of income eligibility guidelines under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).".

(h) USE OF RECOVERED PROGRAM FUNDS IN YEAR COLLECTED.—Section 17(f) of such Act (42 U.S.C. 1786(f)) is amended by adding at the end the following new paragraph:

"(23) A State agency may use funds recovered as a result of violations in the food delivery system of the program in the year in which the funds are collected for the purpose of carrying out the program.".

(i) COORDINATION INITIATIVE FOR WIC AND MEDICAID PROGRAMS.—Section 17(f) of such Act (42 U.S.C. 1786(f)) (as amended by subsection (h)) is further amended by adding at the end the following new paragraph:

"(24) The Secretary and the Secretary of Health and Human Services shall carry out an initiative to assure that, in a case in which a State medicaid program uses coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C 1396b(m) or 1396n(b)), coordination between the program authorized by this section and the medicaid program is continued, including—

"(A) the referral of potentially eligible women, infants, and children between the 2 programs; and

"(B) the timely provision of medical information related to the program authorized by this section to agencies carrying out the program.".

(j) EXTENSION OF PROGRAM.—Section 17 of such Act (42 U.S.C. 1786) is amended—

(1) in the first sentence of subsection (g)(1), by striking "1991, 1992, 1993, and 1994" and inserting "1995 through 1998"; and

(2) in the first sentence of subsection (h)(2)(A), by striking "1990, 1991, 1992, 1993 and 1994" and inserting "1995 through 1998".

(k) USE OF FUNDS FOR TECHNICAL ASSISTANCE AND RESEARCH EVALUATION PROJECTS.—Section 17(g)(5) of such Act (42 U.S.C. 1786(g)(5)) is amended—

(1) by striking "and administration of pilot projects" and inserting "administration of pilot projects"; and

(2) by inserting before the period at the end the following: ", and carrying out technical assistance and research evaluation projects of the programs under this section".

(l) BREASTFEEDING PROMOTION AND SUPPORT ACTIVITIES.—Section 17(h)(3) of such Act (42 U.S.C. 1786(h)(3)) is amended—

(1) in subparagraph (A)(i)(II)—

(A) by striking "an amount" and inserting "except as otherwise provided in subparagraphs (F) and (G), an amount"; and

(B) by striking "$8,000,000," and inserting "the national minimum breastfeeding promotion expenditure, as described in subparagraph (E),"; and

(2) by adding at the end the following new subparagraphs:

"(E) In the case of fiscal year 1996 (except as provided in subparagraph (G)) and each subsequent fiscal year, the national minimum breastfeeding promotion expenditure means an amount that is—

"(i) equal to $21 multiplied by the number of pregnant women and breastfeeding women participating in the program nationwide, based on the average number of pregnant women and breastfeeding women so participating during the last 3 months for which the Secretary has final data; and

"(ii) adjusted for inflation on October 1, 1996, and each October 1 thereafter, in accordance with paragraph (1)(B)(ii).

"(F) In the case of fiscal year 1995, a State shall pay, in lieu of the expenditure required under subparagraph (A)(i)(II), an amount that is equal to the lesser of—

"(i) an amount that is more than the expenditure of the State for fiscal year 1994 on the activities described in subparagraph (A)(i); or

"(ii) an amount that is equal to $21 multiplied by the number of pregnant women and breastfeeding women participating in the program in the State, based on the average number of pregnant women and breastfeeding women so participating during the last 3 months for which the Secretary has final data.

"(G)(i) If the Secretary determines that a State agency is unable, for reasons the Secretary considers to be appropriate, to make the expenditure required under subparagraph (A)(i)(II) for fiscal year 1996, the Secretary may permit the State to make the required level of expenditure not later than October 1, 1996.

"(ii) In the case of fiscal year 1996, if the Secretary makes a determination described in clause (i), a State shall pay, in lieu of the expenditure required under subparagraph (A)(i)(II), an amount that is equal to the lesser of—

"(I) an amount that is more than the expenditure of the State for fiscal year 1995 on the activities described in subparagraph (A)(i); and

"(II) an amount that is equal to $21 multiplied by the number of pregnant women and breastfeeding women participating in the program in the State, based on the average number of pregnant women and breastfeeding women so participating during the last 3 months for which the Secretary has final data.".

(m) DEVELOPMENT OF STANDARDS FOR THE COLLECTION OF BREASTFEEDING DATA.—Section 17(h)(4) of such Act (42 U.S.C. 1786(h)(4)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) not later than 1 year after the date of enactment of this subparagraph, develop uniform requirements for the collection of data regarding the incidence and duration of breastfeeding among participants in the program and, on development of the uniform requirements, require each State agency to report the data for inclusion in the report to Congress described in subsection (d)(4).".

(n) SUBMISSION OF INFORMATION TO CONGRESS ON WAIVERS WITH RESPECT TO PROCUREMENT OF INFANT FORMULA.—Section 17(h)(8)(D)(iii) of such Act (42 U.S.C. 1786(h)(8)(D)(iii)) is amended by striking "at 6-month intervals" and inserting "on a timely basis".

(o) COST CONTAINMENT.—

(1) IN GENERAL.—Section 17(h)(8)(G) of such Act (42 U.S.C. 1786(h)(8)(G)) is amended by adding at the end the following new clause:

"(ix) Not later than September 30, 1996, the Secretary shall offer to solicit bids on behalf of State agencies regarding cost containment contracts to be entered into by infant cereal manufacturers and State agencies. In carrying out this clause, the Secretary shall, to the maximum extent feasible, follow the procedures prescribed in this subparagraph regarding offers made by the Secretary with regard to soliciting bids regarding infant formula cost containment contracts. The Secretary may carry out this clause without issuing regulations.".

(2) REPEAL OF TERMINATION OF AUTHORITY.—Section 209 of the WIC Infant Formula Procurement Act of 1992 (Public Law 102-512; 42 U.S.C. 1786 note) is repealed.

(p) PROHIBITION ON INTEREST LIABILITY TO FEDERAL GOVERNMENT ON REBATE FUNDS.—Section 17(h)(8) of such Act (42 U.S.C. 1786(h)(8)) is amended by adding at the end the following new subparagraph:

"(L) A State shall not incur any interest liability to the Federal Government on rebate funds for infant formula and other foods if all interest earned by the State on the funds is used for program purposes.".

(q) USE OF UNIVERSAL PRODUCT CODES.—Section 17(h)(8) of such Act (42 U.S.C. 1786(h)(8)) (as amended by subsection (p)) is further amended by adding at the end the following new subparagraph:

"(M)(i) The Secretary shall establish pilot projects in at least 1 State, with the consent of the State, to determine the feasibility and cost of requiring States to carry out a system for using universal product codes to assist retail food stores that are vendors under the program in providing the type of infant formula that the participants in the program are authorized to obtain. In carrying out the projects, the Secretary shall determine whether the system reduces the incidence of incorrect redemptions of low-iron formula or brands of infant formula not authorized to be redeemed through the program, or both.

"(ii) The Secretary shall provide a notification to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate regarding whether the system is feasible, is cost-effective, reduces the incidence of incorrect redemptions described in clause (i), and results in any additional costs to States.

"(iii) The system shall not require a vendor under the program to obtain special equipment and shall not be applicable to a vendor that does not have equipment that can use universal product codes.".

(r) USE OF UNSPENT NUTRITION SERVICES AND ADMINISTRATION FUNDS.—Section 17(h) of such Act (42 U.S.C. 1786(h)) is amended by adding at the end the following new paragraph:

"(10)(A) For each of fiscal years 1995 through 1998, the Secretary shall use for the purposes specified in subparagraph (B), $10,000,000 or the amount of nutrition services and administration funds for the prior fiscal year that has not been obligated, whichever is less.

"(B) Funds under subparagraph (A) shall be used for—

"(i) development of infrastructure for the program under this section, including management information systems;

"(ii) special State projects of regional or national significance to improve the services of the program under this section; and

"(iii) special breastfeeding support and promotion projects, including projects to assess the effectiveness of particular breastfeeding promotion strategies and to develop State or local agency capacity or facilities to provide quality breastfeeding services.".

(s) SPENDBACK FUNDS.—Section 17(i)(3) of such Act (42 U.S.C. 1786(i)(3)) is amended—

(1) in subparagraph (A)(i), by inserting "(except as provided in subparagraph (H))" after "1 percent"; and

(2) by adding at the end the following new subparagraph:

"(H) The Secretary may authorize a State agency to expend not more than 3 percent of the amount of funds allocated to a State under this section for supplemental foods for a fiscal year for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that there has been a significant reduction in infant formula cost containment savings provided to the State agency that would affect the ability of the State agency to at least maintain the level of participation by eligible participants served by the State agency.".

(t) ELIMINATION OF DUPLICATIVE MIGRANT REPORTS.—Section 17 of such Act (42 U.S.C. 1786) is amended—

(1) in subsection (d)(4), by inserting after "Congress" the following: "and the National Advisory Council on Maternal, Infant, and Fetal Nutrition established under subsection (k)"; and

(2) by striking subsection (j).

(u) INITIATIVE TO PROVIDE PROGRAM SERVICES AT COMMUNITY AND MIGRANT HEALTH CENTERS.—Section 17 of such Act (42 U.S.C. 1786) (as amended by subsection (t)(2)) is further amended by inserting after subsection (i) the following new subsection:

"(j)(1) The Secretary and the Secretary of Health and Human Services (referred to in this subsection as the 'Secretaries') shall jointly establish and carry out an initiative for the purpose of providing both supplemental foods and nutrition education under the special supplemental nutrition program and health care services to low-income pregnant, postpartum, and breastfeeding women, infants, and children at substantially more community health centers and migrant health centers.

"(2) The initiative shall also include—

"(A) activities to improve the coordination of the provision of supplemental foods and nutrition education under the special supplemental nutrition program and health care services at facilities funded by the Indian Health Service; and

"(B) the development and implementation of strategies to ensure that, to the maximum extent feasible, new community health centers, migrant health centers, and other federally supported health care facilities established in medically underserved areas provide supplemental foods and nutrition education under the special supplemental nutrition program.

"(3) The initiative may include—

"(A) outreach and technical assistance for State and local agencies and the facilities described in paragraph (2)(A) and the health centers and facilities described in paragraph (2)(B);

"(B) demonstration projects in selected State or local areas; and

"(C) such other activities as the Secretaries find are appropriate.

"(4)(A) Not later than April 1, 1995, the Secretaries shall provide to Congress a notification concerning the actions the Secretaries intend to take to carry out the initiative.

"(B) Not later than July 1, 1996, the Secretaries shall provide to Congress a notification concerning the actions the Secretaries are taking under the initiative or actions the Secretaries intend to take under the initiative as a result of their experience in implementing the initiative.

"(C) On completion of the initiative, the Secretaries shall provide to Congress a notification concerning an evaluation of the initiative by the Secretaries and a plan of the Secretaries to further the goals of the initiative.

"(5) As used in this subsection:

"(A) The term 'community health center' has the meaning given the term in section

330(a) of the Public Health Service Act (42 U.S.C. 254c(a)).

"(B) The term 'migrant health center' has the meaning given the term in section 329(a)(1) of such Act (42 U.S.C. 254b(a)(1)).".

(v) EXPANSION OF FARMERS' MARKET NUTRITION PROGRAM.—

(1) MATCHING REQUIREMENT FOR INDIAN STATE AGENCIES.—Section 17(m)(3) of such Act (42 U.S.C. 1786(m)(3)) is amended by adding at the end the following new sentence: "The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council.".

(2) EXPANSION.—Section 17(m)(5)(F) of such Act (42 U.S.C. 1786(m)(5)(F)) is amended—

(A) in clause (i), by striking "15 percent" and inserting "17 percent";

(B) by striking clause (ii) and inserting the following new clause:

"(ii) During any fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use not more than 2 percent of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables."; and

(C) in clause (iii), strike "for the administration of the program".

(3) CONTINUED FUNDING FOR CERTAIN STATES UNDER FARMERS' MARKET NUTRITION PROGRAM.—Subparagraph (A) of section 17(m)(6) of such Act (42 U.S.C. 1786(m)(6)(A)) is amended to read as follows:

"(A) The Secretary shall give the same preference for funding under this subsection to eligible States that participated in the program under this subsection in a prior fiscal year as to States that participated in the program in the most recent fiscal year. The Secretary shall inform each State of the award of funds as prescribed by subparagraph (G) by February 15 of each year.".

(4) FUNDING REDUCTION FLOOR.—Section 17(m)(6)(B)(ii) of such Act (42 U.S.C. 1786(m)(6)(B)(ii)) is amended by striking "$50,000" each place it appears and inserting "$75,000".

(5) STATE PLAN SUBMISSION DATE.—Section 17(m)(6)(D)(i) of such Act (42 U.S.C. 1786(m)(6)(D)(i)) is amended by striking "at such time and in such manner as the Secretary may reasonably require" and inserting "by November 15 of each year".

(6) PERCENTAGE OF ANNUAL APPROPRIATIONS AVAILABLE TO STATES UNDER FARMERS' MARKET NUTRITION PROGRAM.—Section 17(m)(6)(G) of such Act (42 U.S.C. 1786(m)(6)(G)) is amended—

(A) in the first sentence of clause (i), by striking "45 to 55 percent" and inserting "75 percent"; and

(B) in the first sentence of clause (ii), by striking "45 to 55 percent" and inserting "25 percent".

(7) DATA COLLECTION REQUIREMENTS.—Section 17(m)(8) of such Act (42 U.S.C. 1786(m)(8)) is amended by striking subparagraphs (D) and (E) and inserting the following new subparagraphs:

"(D) the change in consumption of fresh fruits and vegetables by recipients, if the information is available;

"(E) the effects of the program on farmers' markets, if the information is available; and".

(8) EXTENSION OF COUPON PROGRAM.—Section 17(m)(10)(A) of such Act (42 U.S.C. 1786(m)(10)(A))) is amended—

(A) by striking "$3,000,000 for fiscal year 1992, $6,500,000 for fiscal year 1993, and"; and

(B) by inserting before the period at the end ", $10,500,000 for fiscal year 1995, and such sums as may be necessary for each of fiscal years 1996 through 1998".

(9) ELIMINATION OF FUNDING CARRYOVER PROVISION UNDER FARMERS' MARKET NUTRITION PROGRAM.—Section 17(m)(10)(B)(i) of such Act (42 U.S.C. 1786(m)(10)(B)(i)) is amended—

(A) in subclause (I), by striking "Except as provided in subclause (II), each" and inserting "Each"; and

(B) in subclause (II), by striking "or may be retained" and all that follows and inserting a period.

(10) ELIMINATION OF REALLOCATION OF UNEXPENDED FUNDS WITH RESPECT TO DEMONSTRATION PROJECTS UNDER FARMERS' MARKET NUTRITION PROGRAM.—Section 17(m)(10)(B)(ii) of such Act (42 U.S.C. 1786(m)(10)(B)(ii)) is amended by striking the second sentence.

(11) DEFINITION.—Section 17(m)(11)(D) of such Act (42 U.S.C. 1786(m)(11)(D)) is amended by inserting before the period at the end the following: "and any other agency approved by the chief executive officer of the State".

(12) PROMOTION BY THE SECRETARY.—The Secretary of Agriculture shall promote the use of farmers' markets by recipients of Federal nutrition programs administered by the Secretary.

(w) CHANGE IN NAME OF PROGRAM.—

(1) IN GENERAL.—Section 17 of such Act (42 U.S.C. 1786) is amended—

(A) by striking the section heading and inserting the following new section heading:

"SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN";

(B) in the first sentence of subsection (c)(1), by striking "special supplemental food program" and inserting "special supplemental nutrition program";

(C) in the second sentence of subsection (k)(1), by striking "special supplemental food program" each place it appears and inserting "special supplemental nutrition program"; and

(D) in subsection (o)(1)(B), by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(2) CONFORMING AMENDMENTS.—

(A) The second sentence of section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) is amended by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(B) Section 685(b)(8) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a(b)(8)) is amended by striking "Special Supplemental Food Program for Women, Infants and Children" and inserting "special supplemental nutrition program for women, infants, and children".

(C) Section 3803(c)(2)(C)(x) of title 31, United States Code, is amended by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(D) Section 399(b)(6) of the Public Health Service Act (42 U.S.C. 280c-6(b)(6)) is amended by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(E) Paragraphs (11)(C) and (53)(A) of section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) are each amended by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(F) Section 202(b) of the WIC Infant Formula Procurement Act of 1992 (Public Law 102-512; 42 U.S.C. 1786 note) is amended by striking "special supplemental food program" and inserting "special supplemental nutrition program".

(3) REFERENCES.—Any reference to the special supplemental food program established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) in any provision of law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the special supplemental nutrition program established under such section.

SEC. 205. NUTRITION EDUCATION AND TRAINING PROGRAM.

(a) NAME OF PROGRAM.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) is amended by striking "information and education" each place it appears in subsections (b), (c), (d)(1), (f)(1)(G), and (j)(1) and inserting "education and training".

(b) NUTRITION EDUCATION PROGRAMS.—The second sentence of section 19(c) of such Act (42 U.S.C. 1788(c)) is amended—

(1) in subparagraph (B), by striking "school food service" and inserting "child nutrition program";

(2) by striking "and" at the end of subparagraph (C); and

(3) by inserting before the period at the end the following: "; and (E) providing information to parents and caregivers regarding the nutritional value of food and the relationship between food and health".

(c) NUTRITION EDUCATION AND TRAINING.—Section 19(d) of such Act (42 U.S.C. 1788(d)) is amended—

(1) in paragraph (1)(C), by inserting before the period at the end the following: ", and the provision of nutrition education to parents and caregivers";

(2) in the first sentence of paragraph (4), by striking "educational and school food service personnel" and inserting "educational, school food service, child care, and summer food service personnel"; and

(3) in the first sentence of paragraph (5), by inserting after "schools" the following: ", and in child care institutions and summer food service institutions,".

(d) USE OF FUNDS.—Section 19(f)(1) of such Act (42 U.S.C. 1788(f)(1)) is amended—

(1) by striking "(f)(1) The funds" and inserting "(f)(1)(A) The funds";

(2) by striking "for (A) employing" and inserting "for—

"(i) employing";

(3) by redesignating subparagraphs (B) through (I) as clauses (ii) through (ix), respectively;

(4) by indenting the margins of each of clauses (ii) through (ix) (as redesignated by paragraph (3)) so as to align with the margins of clause (i) (as amended by paragraph (2));

(5) by striking "and" at the end of clause (viii);

(6) by redesignating clause (ix) as clause (xx);

(7) by inserting after clause (viii) the following new clauses:

"(ix) providing funding for a nutrition component that can be offered in consumer and homemaking education programs as well as in the health education curriculum offered to children in kindergarten through grade 12;

"(x) instructing teachers, school administrators, or other school staff on how to promote better nutritional health and to motivate children from a variety of linguistic and cultural backgrounds to practice sound eating habits;

"(xi) developing means of providing nutrition education in language appropriate materials to children and families of children through after-school programs;

"(xii) training in relation to healthy and nutritious meals;

"(xiii) creating instructional programming, including language appropriate materials and programming, for teachers, school food service personnel, and parents on the relationships between nutrition and health and the role of the Food Guide Pyramid established by the Secretary;

"(xiv) funding aspects of the Strategic Plan for Nutrition and Education issued by the Secretary;

"(xv) encouraging public service advertisements, including language appropriate materials and advertisements, to promote healthy eating habits for children;

"(xvi) coordinating and promoting nutrition education and training activities in local school districts (incorporating, to the maximum extent practicable, as a learning laboratory, child nutrition programs);

"(xvii) contracting with public and private nonprofit educational institutions for the conduct of nutrition education instruction and programs relating to the purpose of this section;

"(xviii) increasing public awareness of the importance of breakfasts for providing the energy necessary for the cognitive development of school-age children;

"(xix) coordinating and promoting nutrition education and training activities carried out under child nutrition programs, including the summer food service program for children established under section 13 of the National School Lunch Act (42 U.S.C. 1761) and the child and adult care food program established under section 17 of such Act (42 U.S.C. 1766); and"; and

(8) by adding at the end the following new subparagraph:

"(B) As used in this paragraph, the term 'language appropriate' used with respect to materials, programming, or advertisements means materials, programming, or advertisements, respectively, using a language other than the English language in a case in which the language is dominant for a large percentage of individuals participating in the program.".

(e) ADMINISTRATIVE PURPOSES.—Section 19(f) of such Act (42 U.S.C. 1788(f)) is amended by striking paragraph (3) and inserting the following new paragraph:

"(3) A State agency may use an amount equal to not more than 15 percent of the funds made available through a grant under this section for expenditures for administrative purposes in connection with the program authorized under this section if the State makes available at least an equal amount for administrative or program purposes in connection with the program.".

(f) STATE COORDINATORS FOR NUTRITION; STATE PLAN.—Section 19(h) of such Act (42 U.S.C. 1788(h)) is amended—

(1) in the first sentence of paragraph (2), by inserting "and training" after "education"; and

(2) in the third sentence of paragraph (3)—

(A) by striking "and" at the end of subparagraph (D); and

(B) by inserting before the period at the end the following: "; and (F) a comprehensive plan for providing nutrition education during the first fiscal year beginning after the submission of the plan and the succeeding 4 fiscal years".

(g) AUTHORIZATION OF APPROPRIATIONS.—Section 19(i)(2)(A) of such Act (42 U.S.C. 1788(i)(2)(A)) is amended to read as follows:

"(A) Out of any moneys in the Treasury not otherwise appropriated, and in addition to any amounts otherwise made available for fiscal year 1995, the Secretary of the Treasury shall provide to the Secretary $1,000 for fiscal year 1995 and $10,000,000 for fiscal year 1996 and each succeeding fiscal year for making grants under this section to each State for the conduct of nutrition education and training programs. The Secretary shall be entitled to receive the funds and shall accept the funds.".

(h) AVAILABILITY OF FUNDS.—Section 19(i) of such Act (42 U.S.C. 1788(i)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) Funds made available to any State under this section shall remain available to the State for obligation in the fiscal year succeeding the fiscal year in which the funds were received by the State.".

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. CONSOLIDATION OF SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM INTO COMPREHENSIVE MEAL PROGRAM.

(a) IN GENERAL.—Notwithstanding any provision of the National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except as otherwise provided in this section, the Secretary of Agriculture shall, not later than 18 months after the date of enactment of this Act, develop and implement regulations to consolidate the school lunch program under the National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) into a comprehensive meal program.

(b) REQUIREMENTS.—In establishing the comprehensive meal program under subsection (a), the Secretary shall meet the following requirements:

(1) The Secretary shall ensure that the program continues to serve children who are eligible for free and reduced price meals. The meals shall meet the nutritional requirements of section 9(a)(1) of the National School Lunch Act (42 U.S.C. 1758(a)(1)) and section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)).

(2) The Secretary shall continue to make breakfast assistance payments in accordance with section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and food assistance payments in accordance with the National School Lunch Act (42 U.S.C. 1751 et seq.).

(3) The Secretary may not consolidate any aspect of the school lunch program or the school breakfast program with respect to any matter described in any of subparagraphs (A) through (N) of section 12(k)(4) of the National School Lunch Act (42 U.S.C. 1760(k)(4)).

(c) PLAN AND RECOMMENDATIONS.—

(1) PLAN FOR CONSOLIDATION AND SIMPLIFICATION.—Not later than 180 days prior to implementing the regulations described in subsection (a), the Secretary shall prepare and submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a plan for the consolidation and simplification of the school lunch program and the school breakfast program.

(2) RECOMMENDATIONS WITH RESPECT TO CHANGE IN PAYMENT AMOUNTS.—If the Secretary proposes to change the amount of the breakfast assistance payment or the food assistance payment under the comprehensive meal program, the Secretary shall not include the change in the consolidation and shall prepare and submit to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate recommendations for legislation to effect the change.

SEC. 302. STUDY AND REPORT RELATING TO USE OF PRIVATE FOOD ESTABLISHMENTS AND CATERERS UNDER SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM.

(a) STUDY.—The Comptroller General of the United States, in conjunction with the Director of the Office of Technology Assessment, shall conduct a study on the use of private food establishments and caterers by schools that participate in the school lunch program under the National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773). In conducting the study, the Comptroller General of the United States shall—

(1) examine the extent to which, manner in which, and terms under which the private food establishments and caterers supply meals and food to students and schools that participate in the school lunch program or the school breakfast program;

(2) determine the nutritional profile of all foods provided to students during school hours;

(3) evaluate the impact that the services provided by the establishments and caterers have on local child nutrition programs and the ability of the establishments and caterers to utilize the commodities under section 14 of the National School Lunch Act (42 U.S.C. 1762a); and

(4) examine the impact that private food establishments and caterers have on—

(A) student participation in the national school lunch program;

(B) school food service employment;

(C) generation of revenues through school lunch sales and a la carte sales of food in schools; and

(D) the number of students leaving schools during lunch periods.

(b) REPORT.—Not later than September 1, 1996, the Comptroller General of the United States shall submit to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that contains the findings, determinations, and evaluations of the study conducted pursuant to subsection (a).

SEC. 303. AMENDMENT TO COMMODITY DISTRIBUTION REFORM ACT AND WIC AMENDMENTS OF 1987.

Section 3(h)(3) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100-237; 7 U.S.C. 612c note) is amended—

(1) by striking "Hawaii,"; and

(2) by adding at the end the following new sentence: "The requirement established in paragraph (1) shall apply to recipient agencies in Hawaii only with respect to the purchase of pineapples.".

SEC. 304. STUDY OF THE EFFECT OF COMBINING FEDERALLY DONATED AND FEDERALLY INSPECTED MEAT OR POULTRY.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the incidence and the effect of States restricting or prohibiting a legally contracted commercial entity from physically combining federally donated and inspected meat or poultry from another State.

(b) REPORT.—Not later than September 1, 1996, the Comptroller General of the United States shall submit to the Committee on Education and Labor and the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the findings, determinations, and evaluations of the study conducted pursuant to subsection (a).

Mr. FORD. Mr. President, I move the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I am pleased that my bill S. 1614, reauthorizing and improving child nutrition programs, will now become law.

This bill represents a historic change in direction for the school lunch program. For the first time, the Dietary Guidelines for Americans, including the guidelines regarding fat and saturated fat, are mandated in law. Beginning in 1996, school meals will have to meet the Dietary Guidelines. That is two years sooner than the Department of Agriculture's proposed regulations would mandate.

I am firmly committed to improving the nutritional quality of our school meals. Child nutrition is a matter of our national interest—children who eat well learn better and grow into healthy adults. But I believe that schools should have flexibility in the means by which they meet the Dietary Guidelines.

I recently attended a press event with Public Voice for Food and Health Policy, in which they released a study entitled "Serving Up Success: Schools Making Nutrition a Priority." The report highlights 41 schools throughout the nation which have already taken steps to improve school meals. These schools are meeting the Dietary Guidelines in many different and creative ways—and often involve students and food service staff in the process. I want to encourage that kind of creativity, so that schools can find the way that works best in their individual situation.

My bill will also help schools meet the new nutritional standards. It requires the Department of Agriculture to improve the nutritional quality of the commodities which it provides to schools. It provides training and technical assistance to school food service staff. And it helps schools which want to ban the sale of junk food.

But that is just one of the areas in which this bill improves child nutrition programs. The bill expands a program which helps schools start-up school breakfast programs, and it provides similar grants for summer food programs, so that children will not go hungry when school is out. It makes permanent and expands a program providing meals to homeless children under age six who live in shelters. These children might otherwise go hungry while their older brothers and sisters eat in school.

In addition, the bill makes numerous improvements to the child and adult care food program, the summer food service program and the special supplemental nutrition program for women, infants and children, commonly referred to as WIC. WIC is one of our nation's most successful nutrition and health programs, and saves far more in medical costs than it spends. I am disappointed that Congress was unable to pass a health care reform package including full funding for WIC this year. But I will continue to push to fully fund this important and proven program.

I am concerned, however, about an amendment made in the House of Representatives regarding milk. In giving schools more flexibility in determining the types of milk they serve, I want to ensure that we do not impose new burdensome requirements. This is an issue that will have to be addressed further in the future.

Mr. President, I ask that the following document be included in the RECORD. It reflects special concerns and clarifications of the Senate Committee on Agriculture, Nutrition, and Forestry, the House Committee on Education and Labor, and the House Committee on Agriculture relating to the child nutrition reauthorization bill passed by Congress. This document is intended to address the issues usually found in a conference report.

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

COMMITTEES' ANALYSIS OF S. 1614

TITLE I

SECTION 101. PURCHASE OF FRESH FRUITS AND VEGETABLES

The Committees expect that this provision will address current problems with the provision of fresh fruits and vegetables through the Commodity Distribution system, so as to reduce spoilage and waste by improving the quality of products received by schools, ensuring more timely delivery of fresh fruits and vegetables, and providing fresh fruits and vegetables in appropriate and usable quantities.

SECTION 103. REQUIREMENT OF MINIMUM PERCENTAGE OF COMMODITY ASSISTANCE

The commodities purchased under section 104 of the bill (concerning combined Federal and State commodity purchases), and the costs of procuring commodities under section 104, are not to be considered when calculating the 12% commodity assistance under section 103.

SECTION 105. TECHNICAL ASSISTANCE TO ENSURE COMPLIANCE WITH NUTRITIONAL REQUIREMENTS

The Secretary shall encourage the coordination of technical assistance and training activities under this provision with activities already underway in States and schools to develop nutrition education curricula and with related Extension home economics programs in local communities. The Secretary shall encourage identification of these teaching and Extension professionals within the local schools and communities to assist in the implementation of these activities.

The Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Education and Labor support the Department's proposal to use a significant portion of funds appropriated for technical assistance to meet the dietary guidelines for funding through States to train food service staff, help school districts implement new menu systems and provide nutrition training for classroom and food service staff. The Committees encourage the Secretary to follow through on providing this funding through States.

SECTION 106. NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

Regarding the requirement that the Secretary, State educational agencies and school food service authorities inform students, parents and guardians of the nutritional content of school meals, the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Education and Labor do not expect that such information will be provided in other than the usual mailings and methods.

Regarding waivers to implementing the Guidelines, the Committees wish to clarify that individual schools do not necessarily need to apply for waivers—States have authority to determine the waiver guidelines, and may choose to require individual applications from schools for waivers or may choose to waive the requirement for categories of schools or even all schools in the State.

The Committees also want to make clear that while all schools will need to serve meals that meet the Dietary Guidelines, there should be flexibility in how they do so. In particular, schools should not be required to do nutrient analysis in cases where a food-based menu system is used. However, nutrient analysis may be used by schools, State agencies or the Secretary as part of audit and compliance activities.

The Committees also suggest that the Secretary may look to the Food Pyramid as a basis for developing a food-based menu system.

Furthermore, the Committees instruct the Secretary to develop regulations taking into account that meals should be comprised of a variety of conventional foods, as recommended in the dietary guidelines, rather than depending on highly fortified foods to meet nutritional standards. Preferred sources of adequate nutrition are meals and snacks which provide a variety of conventional foods rather than formulated, fortified foods. Moreover, foods that are fortified may not supply other essential micronutrients which conventional foods supply.

SECTION 107. ELIMINATION OF WHOLE MILK REQUIREMENT

The Senate Committee on Agriculture, Nutrition and Forestry, the House Committee

on Education and Labor and the House Committee on Agriculture note that a significant number of children participating in the school lunch and breakfast program have an intolerance to lactose in milk. Schools are encouraged to provide lactose-reduced or lactose-free milk so those students demonstrating such an intolerance can receive the nutritional benefits of milk without experiencing the digestive compilations they normally associate with the digestion of lactose.

SECTION 112. MISCELLANEOUS PROVISIONS AND DEFINITIONS

This section concerns regulations on nutritional requirements for school meals. The Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Education and Labor want to emphasize their commitment to ensuring that meals served by schools meet the Dietary Guidelines. This provision is intended to ensure that the regulations facilitate this goal, without delaying compliance with the Guidelines.

SECTION 113. FOOD AND NUTRITION PROJECTS

The Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Education and Labor encourage projects funded under this section to, to the maximum extent practicable, coordinate their activities with activities under the Nutrition Education and Training program, and other related activities already underway in schools.

SECTION 117. HOMELESS CHILDREN NUTRITION PROGRAM

The pilot project for the prevention of boarder babies established under this section includes, as a requirement for receiving funding, coordination of the projects with other programs that may assist recipients. The Senate Committee on Agriculture, Nutrition and Forestry, the House Committee on Education and Labor and the House Committee on Agriculture also want to emphasize that referrals to the Food Stamp program should be a part of these activities.

The intended benefits of these projects were discussed in the Senate Committee Report on S. 1614 (S. Rpt. 103-300). It is hoped that the Department of Agriculture will work to distribute these funds as soon as practicable.

SECTION 118. PILOT PROJECTS

This section authorizes pilots for increased choices of fruits, vegetables, legumes, cereals and grain-based products, as well as pilots for increased choices of lowfat dairy products and lean meat and poultry products. The Senate Committee on Agriculture, Nutrition and Forestry, the House Committee on Education and Labor and the House Committee on Agriculture note that some ways the Secretary may implement these provisions are by giving incentive awards to schools that agree to increase the choices of these products, or by distributing to schools qualified products.

This section also authorizes pilot programs on reduced paperwork and application requirements and increased participation. The goals of these pilots are three-fold: (1) to aid schools in the reduction of paperwork in their breakfast and lunch programs by providing waiver authority; (2) to relieve schools of the requirement to collect applications by allowing Federal reimbursement for meals to be based on prior year data adjusted for changes in enrollment and inflation; and (3) to increase participation in the pilot shcools' breakfast and lunch programs. Schools are encouraged to be innovative in their approach, and to reduce paperwork and increase participation to the greatest extent possible.

In approving applications for participation in the pilot, the Secretary is encouraged to choose programs that eliminate varying rates of payment for students.

Hunger is a significant barrier to learning. This program builds upon efforts to make school meals more nutritious; the success of increasing the nutritional quality of school meals is inherently dependent on the students eating those meals.

TITLE II

SECTION 201. SCHOOL BREAKFAST PROGRAM

In making permanent the school breakfast start-up grant program and expanding it to include start-up and expansion of school breakfast and summer food programs, this section established priority levels for the funding of projects. The Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Education and Labor want to emphasize that the Secretary should approve worthy and needy projects in each of the four priority categories established. In addition, special consideration should be given to funding expansion of school breakfast.

SECTION 203. COMPETITIVE FOODS OF MINIMAL NUTRITIONAL VALUE

In preparing the letters and other materials required by this provision, the Secretary and State agencies shall follow the wording and directions specified in the Senate Agriculture Committee Report on S. 1614 (S. Rpt. 103-300).

SECTION 204. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM

Regarding the provision concerning presumptive eligibility for pregnant women, the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Education and Labor expect that, in States adopting this option, the timetable for conducting nutritional risk assessment shall be no shorter under presumptive eligibility than is otherwise the case.

States electing to implement presumptive eligibility should inform their WIC providers of the importance of performing dietary risk assessments before—or as soon as possible after—the presumptively eligible pregnant woman begins receiving WIC benefits. The Committees are concerned that under presumptive eligibility, states might take longer to conduct the dietary assessment, since it would not delay receipt of benefits by the woman. However, the longer it takes to do the assessment, the more likely it is that a woman who would have been eligible for WIC due to inadequate diet will not be eligible because dietary inadequacies were eliminated through the woman's participation in the WIC program. The Committees do not intend for any woman who would have been able to receive benefits without presumptive eligibility to be taken off the program because the benefits of WIC eliminated the nutritional risk of the woman before her assessment was complete.

Regarding the pilot projects required under this section to test the use of universal product codes in the WIC program, the Committees believe that pilots in one State would be sufficient to carry out this provision.

Regarding the use of unspent administrative funds, the Secretary, in implementing the provision, shall not delay allocating funds until the total amount of unspent nutrition services and administration funds from the prior fiscal year is determined, if the Secretary estimates that more than $10,000,000 will be available.

Regarding the elimination of migrant reports, the purpose of this provision is to eliminate a duplicative report. The remaining report shall continue to address the issue of migrants to the same extent as previously addressed in the separate migrant report.

Regarding Indian State agencies, the Committees expect that in negotiating lower matches with those agencies, the Secretary shall consider their ability to pay. Decisions regarding whether to fund such programs shall be based on the agency's capacity to operate a program.

The Committees expect the Secretary to provide technical assistance to Indian Tribal Organizations in meeting the application requirements for the Farmers' Market Nutrition Program. Such technical assistance may include sharing approved State plans which have been submitted by Indian Tribal Organizations in prior years, providing information of sources of funding which could be used to meet the required match, facilitating the development of farmers' markets, and lending additional assistance as necessary.

Regarding the use of funds for market development, the Committees want to clarify that the goals of such development should be to increase access among WIC participants to farmers' markets and to encourage the use of farmers' markets by WIC participants.

Regarding the funding reduction floor for the farmers' market nutrition program, the Committee is concerned that the Department of Agriculture has interpreted language pertaining to pro rata reductions to apply to request for new or expanded funding by States. This was not the intent of the law. The threshold of $75,000 is not meant to serve as a minimum grant level for first-year requests from States, nor is it intended to be a factor for evaluating expansion requests from States which participated in the program in the prior fiscal year. This provision is intended to apply only to the situation in which the Secretary is unable to provide a continued level of funding to States which participated in the program in the prior fiscal year due to a reduction, or an insufficient increase, in the annual appropriation for the program.

In making grants to States already participating in the farmers' market nutrition program, the Secretary should take into account the difference between the number of WIC recipients in a State and the number participating in the program. The Committees are concerned that the Department of Agriculture has been distributing additional funds to States which participated in the program in the prior fiscal year on the basis of the size of the State's grant in the prior fiscal year. As a result, each State is awarded a pro-rata share of additional funds based upon the percentage of the annual appropriation which it received in the prior fiscal year. Thus, if a State's program started out on a small scale, its growth would be permanently limited to a very slow rate of expansion.

In addition, the Committees instruct the Secretary to examine additional methods to reduce the cost of infant formula for the WIC program and provide information to the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Education and Labor on effective means to reduce formula costs to the program. One of the methods that the Secretary shall review is the effectiveness of purchasing infant formula at lower costs by soliciting bids for rebates or discounts for milk-based and soy-based infant formula separately.

SECTION 205. NUTRITION EDUCATION AND TRAINING PROGRAM

Developing means of providing nutrition education in language appropriate materials to children and families of children through after-school programs, could be offered collaboratively among consumer and homemaking teachers in schools and non-school-district professionals in the community who are qualified to teach nutrition, such as Cooperative Extension home economists.

Mr. LEAHY. Mr. President, I would like to amplify remarks I made earlier about the child nutrition bill, S. 1614.

Section 106, "Nutritional and other Program Requirements," of this bill clearly requires that USDA allow schools to use a variety of approaches to achieve the goals of the Dietary Guidelines for Americans.

It is important to note that the Congress has required use of those dietary guidelines based on the Department's decision to require schools to follow those guidelines rather than the "Nutrition Guidance for Child Nutrition Programs" referred to in section 24 of the National School Lunch Act. While I was surprised that USDA decided in the June 10, 1994, proposal to use the Dietary Guidelines rather than the Nutrition Guidance this law change now precludes the Department from changing its mind at a later date.

This new requirement, proposed by USDA, but now in law is found in new section 9(f)(1)(B) referencing the "Dietary Guidelines for Americans," in section 9(f)(2), and in other provisions of S. 1614.

Thus, when USDA issues its final rules regarding the June 10, 1994, proposal, those final rules must apply the Dietary Guidelines for Americans to schools and not the Nutrition Guidance for Child Nutrition Programs.

Second, when USDA applies any other nutritional or nutrient requirement to schools, such as those referred to in section 9(a)(1) or any other provisions under the Child Nutrition Act of 1966, the National School Lunch Act, or this Act, USDA must allow schools with respect to food preparation or the service of meals to use standardized recipes, menu cycles, food product specification and preparation techniques, food-based menu systems, and other options.

Thus, for example, in preparing meals schools may use information regarding food-based menu systems if the school wants to use such information—this choice is not up to the Secretary.

I have previously addressed this matter in my floor statement on S. 1614 as reported by my committee. Those comments still apply to this final version of the bill.

Providing this flexibility to schools in preparing and serving meals is very important to Senate and to House members.

Thus, USDA can not preclude this local flexibility by applying some other guidelines instead of the Dietary Guidelines for Americans. That flexibility found in new section 9(f)(2)(C) thus can not be reduced or diminished by USDA—only Congress can provide less flexibility to local schools.

On another issue I want to note that even for schools not using the computer-driven nutrient analyses the Department should allow more flexibility than present. For example, schools can not get a reimbursement from USDA for serving yogurt under the current meal pattern requirements. This represents bad policy on the part of USDA—yogurt represents a great source of protein and essential vitamins and minerals.

It is also the intent of the Congress that a school choosing not to use nutrient standard menu planning should not be required to conduct, use, or obtain nutrient analysis on the recipes that it uses to comply with any provision of this Act, the Child Nutrition Act, or the National School Lunch Act.

The goal is that school must meet the dietary guidelines, including the guidelines on fat and saturated fat, but exactly how they do that is up to the school.

I want to emphasize that this Act does not interfere with the ability of USDA and states to monitor compliance with dietary guidelines. This Act fully allows the nutrition compliance procedures as set forth in the June 10, 1994, proposal. It is very important that the requirements of the dietary guidelines be met by all schools—compliance is very important.

In summary, it is very important that the dietary guidelines be met, but exactly how schools meet those requirements is up to the school.

My previous remarks upon Senate passage thank many Senators and individuals for their help. I need to stress, again, how much I appreciate the efforts of the Republican leader, Senator DOLE, and my friend and colleague, Senator LUGAR, for their constant and strong support of nutrition programs. Without their support and help this bill would not have been possible—with their support the Senate was able to pass this bill without objection.

Mr. MCCONNELL. Mr. President, I rise today to join my colleagues in supporting S. 1614, the child nutrition reauthorization bill. After months of work and several productive and very informative hearings, I believe we have put together a strong bill that addresses several concerns in our child nutrition programs. We are improving the nutritional quality of the means served to our children; we are giving schools the flexibility they need in preparing means that please the appetites of their own students; we are strengthening and coordinating our nutrition education and training efforts; and, we are directing the USDA to streamline administrative procedures and paperwork in our child nutrition programs.

I want to commend Senator LEAHY and LUGAR, the chairman and ranking Republican of the full committee, as well as Senator HARKIN, my chairman on the Subcommittee on Nutrition for their work on this bill. The School Lunch and Breakfast Programs, the Child and Adult Care Food Program, and WIC are some of the most successful programs this Government runs. It is through these nutrition programs that children of all ages consume the food to lay the groundwork needed to learn and grow and become productive members of our society.

Mr. President, there has been a lot of negative press on the School Lunch Program—judging by many of the articles and editorial cartoons I have seen, you would have thought they were serving pure garbage for food. While some of the criticisms regarding the nutritional content of lunches are legitimate, the school food service workers in our country do a commendable job of feeding 23 million lunches a day.

The average school lunch contains 38 percent of its calories from fat, a number that is higher than Federal guidelines recommend, but a number that is comparable to the amount in the average American's meal. What has not been highlighted in the press as much is the fact that school food service workers are already working to improve the nutritional quality of their means, and that they share the goal of feeding kids healthy meals. Almost half of our schools offer at least one meal that meets the dietary guidelines, and a variety of schools are using new menu planners that give tips on preparing healthy meals as well as marketing ideas to make the lunches attractive to the kids.

This bill builds on the progress many schools are already making. The Healthy Means for Healthy Americans Act of 1994 will require schools to serve meals that are consistent with the dietary guidelines by 1998. And to assist schools in those efforts, the bill directs USDA to provide the training and technical assistance necessary for the schools to comply with the Federal nutrition recommendations. Further, we have directed the Department to improve the nutritional quality of the commodities the schools receive under the entitlement program. S. 1614 encourages schools to move forward quickly and provides the training and technical assistance to back this commitment up.

This past June, USDA proposed that all schools plan their meals under a system called Nutrient Based Menu Analysis or NuMenus in order to ensure that school meals meet the dietary guidelines. S. 1614, allows the schools to have more flexibility in determining the method they will use to meet the nutrition recommendations. Nutrient based menu planning is a very new concept to a lot of schools, especially some of the smaller, rural

schools. I believe it is very important that we encourage schools to focus on providing healthy meals rather than dictate the method they must use to reach our mutual goals.

S. 1614 also bolsters and enhances the Nutrition Education and Training Program, a program which I think is essential to teaching our children healthy eating habits that will stay with them throughout their lives. We have all heard the old Chinese proverb, "Give a man a fish, and you feed him for a day. Teach a man to fish, and you feed him for life." If we teach our children the tenants of healthy eating, the importance of eating a variety of foods, the importance of various food components, then we will build a healthy population. In S. 1614, we have expanded the purpose of the program to include parents and caregivers, as well as child care institutions and summer food service providers, in order to reach more families with important information on the link between diet and health. We have also included provisions to encourage coordination and collaboration between various educators, food service personnel, USDA and the Food Service Management Institute.

During my tenure on the Senate Agriculture Committee, I have consistently heard complaints from child nutrition program personnel about the burdensome and laborious paperwork requirements of the meal programs. This bill sends a strong message to USDA: eliminate unnecessary paperwork and administrative hurdles that impede effective administration of the nutrition programs. S. 1614 also allows states and schools to apply to the Department for waivers from various legislative and regulatory requirements. I intend to closely follow the implementation of these provisions, and hope that this bill will allow the food service personnel to go back to being bean cookers, instead of bean counters.

I also want to highlight two additional provisions in this bill that are particularly important to me. First, we have continued the School Breakfast Start-Up Grant Program. In 1989, I, along with several of my colleagues, introduced the legislation to initiate this method of increasing participation in the breakfast program. In Kentucky, almost 92 percent of the schools that offer lunch also offer breakfast. Further, 49 percent of Kentucky children that are eligible for free and reduced priced meals eat breakfast—a number that places my State fourth in the country. The Start-Up Grant Program has been extremely successful in attracting schools to the breakfast program, and I am pleased that we are continuing it as well as allowing the Summer Food Program to utilize some of these resources.

A second provision I want to highlight is the provision to extend a demonstration project ongoing in the Child and Adult Care Food Program. Current law hinges participation by for-profit child care centers on the receipt of other Federal monies, not on the number of low-income children in a center. In 1989, this situation was brought to my attention, and Senator HARKIN and I introduced legislation to test a new method of eligibility, whereby a center can participate if 25 percent of the kids are from low-income families. The demo is operating in Kentucky and Iowa and has proven to be very successful. In Kentucky, over 14,000 children have participated in the program, and 57 percent of these children are from low-income families. The centers are reporting that they serve 2 to 3 meals a day instead of just one, and that they serve higher quality meals with more fresh fruits and vegetables because they participate in CACFP. The demo has been very effective and popular in my State, and I want to thank my colleagues for extending the authorization for this project.

During these times of tight budget constraints, it is even more necessary to ensure that we are targeting our resources in such a way as to reach low-income children who are at risk of nutritional deficiency. Programs like the start-up grants and the CACFP demo in Kentucky and Iowa are good examples of using Federal dollars to support nutrition programs in institutions with higher numbers of low-income children.

It is very fitting that we pass the Healthy Meals for Healthy Amercians Act right before the National School Lunch Week—a week dedicated to honoring all of those who are involved with providing nutritious meals to 23 million children nationwide. S. 1614 will go far in improving the nutritional quality of meals served, in strengthening the nutrition education and training program, and in streamlining administrative burdens. Our child nutrition programs help ensure that children have the energy and good health needed to be eager and attentive students, and S. 1614 build and improve on the success of those programs.

BASE CLOSURE COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2534, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, introduced earlier today by Senator MICHELL and Senator DOLE; that the bill be deemed read the third time, passed, the motion to reconsider be laid upon the table; that any statements relating to this measure be inserted in the RECORD at the appropriate place as if read.

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

So the bill (S. 2534) was deemed read the third time, and passed.

(The text of the bill will be printed in a future edition of the RECORD.)

Mr. PRYOR. Mr. President, I rise today to offer my full support for the unanimous consent agreement being offered by the majority and minority leaders on the behalf of Senator FEINSTEIN and myself.

Three years ago, my good friend and distinguished colleague, the Senate Majority Leader GEORGE MITCHELL asked me to serve as chairman of a special task force assigned to devise a strategy for easing the impact of reducing the size of our military and our defense budget.

Among the many post-cold war transition problems our task force has discovered is the unnecessary and costly burden the Stewart B. McKinney Homeless Assistance Act is placing on communities nationwide that are working around the clock to redevelop former military installations.

Mr. President, like many of my Senate colleagues, I have lost a base in my State. Eaker Air force Base in Mississippi County, AR closed its doors in 1992, resulting in the loss of 3,000 jobs in a community of just over 20,000 residents. As my Senate colleagues who also have lost a base in their State know, the local economic development planning efforts that follow the painful base closure announcements are truly massive and comprehensive, consuming millions of State and Federal dollars. These enormous planning efforts are focused on the community's new mission of securing their economic future following the departure of the military.

Unfortunately, local communities that are working diligently to bring new businesses to town are repeatedly finding their efforts disrupted by the so-called McKinney Act legislation. Mr. President, the McKinney Act was passed by Congress in 1987 to provide needed relief to the growing epidemic of hopelessness in America. This relief was provided by giving legitimate homeless assistance groups a priority in obtaining excess and surplus Federal property to be used for housing the homeless.

However, the McKinney Act was passed without taking into account that the cold war would soon come to an end and the U.S. military would close numerous major military installations. The McKinney Act also did not take into account the massive economic development planning efforts of communities that lose military bases. But indeed bases are closing and these planning efforts are ongoing and essential to the economic recovery of base closure communities.

Unfortunately, serious problems are currently arising in communities nationwide when homeless assistance groups exercise the legal authority provided by the McKinney Act to acquire

former base property. These transactions to homeless assistance groups are allowed by law even though they often undermine the Government-funded economic development efforts of local communities. In extreme cases, homeless assistance groups are using the McKinney Act to acquire entire former military bases.

These problems, coupled with an often unaccommodating approach to homeless problems by certain local redevelopment authorities, has contributed to the creation of an intensely adversarial relationship in base closure communities that is truly detrimental to the interests of both parties.

Mr. President, I feel that this is an unintended consequence of the McKinney Act. As a result, our bill will exempt military bases from the McKinney Act. Last year, in legislation commonly known as the Pryor amendment, we attempted to solve these problems without exempting bases from the McKinney Act. Unfortunately, our efforts provided limited solutions.

So now we have taken the next step and exempted military installations from the McKinney Act. We also established a new process for transferring former base property to homeless assistance groups that will protect the interests of the homeless and economic development. This new process emphasizes the importance of weighing economic development plans with the local needs of the homeless, in an attempt to balance these often competing interests.

This delicate balance will be achieved through good faith negotiations between local redevelopment authorities and legitimate homeless assistance groups. Since these negotiations will take place while communities are planning for the reuse of a closed base, local homeless needs can be addressed in a way that is in the best interest of the community as a whole.

Mr. President, the authors of this bill are not suggesting that the needs of the homeless in America are not a high priority. Rather, we feel that the special needs of the homeless can be addressed in a way that is less disruptive to the job creation efforts of those who ultimately desire to bring prosperity and salvation to individuals and communities that desperately need an economic boost. In addition, this bill will encourage those charged with redeveloping closed military bases to carry on their mission in a way that is more sensitive to local homeless needs.

Mr. President, there is also a true sense of urgency associated with the passage of this bill. I need not remind my colleagues that the Department of Defense and the Base Closure Commission are currently preparing for "the mother of all base closings". Next year the commission will recommend the closure of more bases than were closed in the 1988, 1991, and 1993 rounds combined. In these first three rounds, some 72 major military installations were closed. We can expect an equal or greater number of base closures from the commission next year, and we must prepare for this massive disruption to our cities and to our economy.

I look forward to the Senate's passage of this measure, and I urge the House of Representatives to quickly pass this bill before the 103d Congress adjourns.

Mr. President, I am proud to say that our legislation has been endorsed by the National Association of Installation Developers [NAID], which represents base closure communities across our country. Also, this bill was drafted in consultation with the National Law Center on Homelessness and Poverty, which represents homeless assistance groups in America.

Mr. President, our bill is a bipartisan bill that will help communities that are redirecting their resources following the end of the cold war and the closing of obsolete military bases.

I would like to thank the many people who contributed to the creation and passage of this important bill. First, I would like to recognize Senator DIANNE FEINSTEIN from California who was the original drafter of this legislation in the Senate. Senator FEINSTEIN has shown time and time again that she is truly sensitive to the many people and communities in California that have been hard hit by the end of the cold war.

I also would like to thank my good friend, the distinguished chairman of the Senate Armed Services Committee, Senator NUNN and the ranking member, Senator THURMOND, for their support. Also, special thanks to Senators GLENN and ROTH and their staffs from the Senate Governmental Affairs Committee. The Housing Subcommittee of the Banking Committee also provided tremendous assistance in the drafting of this bill and I thank the chairman and ranking member as well as their staff for this assistance.

Special recognition is also due to the Clinton administration, which worked with the Congress in admirable fashion to craft this important legislation. Officials from HUD, HHS, the President's Interagency Council on Homelessness, the National Economic Council, and Department of Defense contributed to this process. Specifically, I would like to thank David Lane from the National Economic Council, Marcia Martin from the Interagency Council on Homelessness, Jackie Lawing from HUD, and Joshua Gotbaum from DOD, as well as Mark Wagner and Rob Hertzfeld from Mr. Gotbaum's staff.

I also feel compelled to point out the tremendous staff work of Robert Mestman from Senator FEINSTEIN's office and Madelyn Creedon from Senator NUNN's office. Their efforts are greatly appreciated. Also, Charlie Armstrong from Senate Legislative Counsel was tireless in his work in bringing this bill to fruition.

From the National Law Center on Homelessness and Poverty, I commend Laurel Weir for her approach to this difficult process and for working with us in an attempt to balance the needs of the homeless with economic development. From the National Association of Installation Developers, George Schlossberg's assistance was welcomed and helpful. Also, former Congressman Bill Lowery was very instrumental in the passage of this bill.

Finally, I would like to take this opportunity to thank my good friend and colleague, Senate Majority Leader GEORGE MITCHELL for providing me with the opportunity to chair the Senate Task Force on Defense Reinvestment. I must say that I did not seek this position when Senator MITCHELL bestowed it upon me in 1992, but I have enjoyed the opportunity to serve the majority leader and the Senate in this capacity, and I thank him.

Mr. President, I yield the floor.

Mrs. FEINSTEIN. Mr. President, I rise today in strong support of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994—legislation designed to improve the military base closure and reuse process by empowering local communities. In particular, this legislation places base reuse decisions in the hands of local officials and balances economic redevelopment interests with the needs of the homeless in a commonsense manner.

As many of my colleagues know, since 1988, nearly 250 military bases have been closed or realigned under the BRAC process. While painful for States and regions, base closures can be devastating for local communities. A closing military base not only means job loss, but also translates into reduced local tax revenues, higher housing vacancy rates, and increased business failures.

Base closures, though, also create economic opportunities for localities that can expedite reuse through effective redevelopment. But, conversion of military bases has proven to be anything but quick or simple. Communities across the country have struggled to make sense of complex Federal laws and regulations that were never designed to deal with military base closures. The current process is cumbersome and conflicting, and poses difficulties for local, State and Federal authorities trying to make decisions and dispose of base property in a timely manner. Increasingly, opportunities for job creation and economic redevelopment are lost.

In order to respond to this problem, President Clinton development a five-part base community reinvestment program early last year. The Pryor amendment to the fiscal year 1994 Defense Authorization Act followed—it

was designed to basically implement the President's program for accelerating the base reuse process and make it easier for communities with closing military bases to transition to a commercial economy. Under the Pryor amendment, local communities are empowered in the reuse process with the goal to reduce the time it takes to turn closing base property over to communities and foster job creation and economic development.

The President's five-part program and the Pryor amendment are certainly steps in the right direction, and I strongly support both. However, because the base reuse problem is so difficult, the President's program and the Pryor amendment have only partially improved the process; obstacles to rapid base reuse remain. Additional action is needed to further improve the process and remove or mitigate some of the remaining obstacles to rapid base reuse.

This legislation—which is similar to section 2 of a bill I recently introduced, S. 2491—builds on last year's Pryor amendment to further improve the base reuse process. A local redevelopment authority would develop a reuse plan on the local level, balancing the needs of all community and economic development interests.

Under current law, potential homeless assistance providers apply for base property under the McKinney Homeless Assistance Act; the Department of Health and Human Services then denies or approves each request. The McKinney Act—which was enacted before the BRAC process began—has worked relatively well for small parcels of excess Federal property, but was never intended for large military bases.

This bill exempts military bases from the McKinney Act; instead, homeless assistance providers and other community groups would be given a voice in the new reuse planning process. A local redevelopment plan, developed in consultation with homeless assistance planning boards, would weigh the needs of economic redevelopment and job creation with homeless assistance. The Secretary of Housing and Urban Development would review the local redevelopment plan to ensure that it reasonably addresses the needs of the homeless, but economic redevelopment priorities would also be considered in a process that balances competing interests.

The House of Representatives recently passed a similar provision as an amendment to the Housing Reauthorization Act, H.R. 3838. The legislation before use today builds on the House passed amendment, and it is my hope that the House will recede to the Senate provision, and that this bill can be passed and signed into law shortly.

My staff has worked very closely, on a bipartisan basis, with several parties, including Senators PRYOR, ROBB, SIMON, GRAHAM, BOXER, the majority and minority leaders, as well as with Governor Wilson's office, the National Law Center on Homelessness and Proverty, and other interested parties in developing and drafting the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Crucial input was also provided from many of my colleagues in the House of Representatives, including Congresswoman JANE HARMAN. In addition, this bill was drafted in consultation with an administration interagency working group consisting of representatives from DOD, HUD, HHS, GSA, and the Council on the Homeless, as well as staff from the Armed Services, Banking and Housing, and Governmental Affairs Committees in both the House and Senate, and on both sides of the aisle.

Another base closure round is fast approaching that could be larger than the first three BRAC rounds combined; it will affect communities across the country. This timely legislation will improve the reuse process for those bases already slated for closure, as well as for bases yet to close. It will also help accomplish a very important objective—the acceleration of the economic redevelopment process for communities suffering from the closure or realignment of military bases. This is important legislation that is badly needed in base closure communities throughout the country. I urge all of my colleagues to support the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

I ask unanimous consent that some examples of letters in support of this legislation be printed in the RECORD at this time. In addition, I ask unanimous consent that a summary and concept paper of this legislation be printed in the RECORD.

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

CITY HALL,
Los Angeles, CA, August 23, 1994.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: We are writing to enlist your active support for an amendment to Title V of the Stewart B. McKinney Homeless Assistance Act of 1987, that will be offered during floor consideration of S. 2049, the housing and community development reauthorization bill. This amendment is extremely critical to the implementation of the Alameda Corridor Transportation project which is in jeopardy as a result of Title V. Title V mandates that homeless organizations be given priority in the acquisition of surplus military property to the exclusion of local government redevelopment projects.

Site 6A, a tract of land which is pivotal to the Alameda Corridor, is part of the Long Beach Naval Station complex which was closed on June 30, 1994. Pursuant to Title V, the federal Department of Health and Human Services is responsible for approving applications from homeless organizations interested in operating programs on Site 6A. However, without Site 6A the Alameda Corridor project will be irreparably harmed.

For this reason, we request that you join efforts underway in the Senate to craft a floor amendment to Title V that would expand the action already taken by the House and give local governments the authority to use available surplus military property for economic development projects that are deemed to have a significant economic impact. As you well know, the Alameda Corridor is one such project and includes significant job creation potential for both he Los Angeles region and the nation.

The success of this amendment is critical to the future of the Alameda Corridor project and similar economic development projects around the country. Thank you for your assistance in this extremely critical matter.

Sincerely,

RICHARD J. RIORDAN,
Mayor.

JOHN FERRARO,
President, Los Angeles City Counsel.

NATIONAL ASSOCIATION OF INSTALLATION DEVELOPERS,
Alexandria, VA, October 5, 1994.

Hon. GEORGE J. MITCHELL,
Senate Majority Leader, U.S. Senate, Washington, DC

DEAR MR. LEADER. As President of the National Association of Installation Developers, I am writing to urge you to use your office to ensure passage of legislation to reform the Steward B. McKinney Homeless Assistance Act as it pertains to closing military bases.

In July, the House of Representatives passed H.R. 3838, the Housing Reauthorization Act. This bill included an amendment to reform the Steward B. McKinney Homeless Assistance Act as it pertains to closing military bases. The effect of this amendment would be to restore control over the reuse of these bases to the local community while maintaining a requirement that homeless assistance be included in a final reuse plan. By including provisions for coordination between local reuse authorities and homeless providers, the legislation insures that homeless assistance will receive consideration alongside economic reuse, and that a comprehensive reuse plan serving all community interests is developed. This amendment builds upon the reforms Congress enacted as part of the Pryor Amendments included in the Fiscal Year 1995 Defense Authorization Act.

NAID was an active participant in the development of this legislation, working on behalf of our member communities, and in coordination with bipartisan House and Senate members, committee staff, representatives of national homeless groups, and an interagency Task Force on the Homeless. As a result, this amendment balances the interests of all parties and enjoys broad, bipartisan support.

It is clear now, however, that H.R. 3838 will not be considered by the Senate in this Congress. Instead, Senators Pryor and Feinstein have developed legislation to accomplish the reforms included in the House-passed amendment. This legislation now represents the best opportunity for this Congress to remove obstacles to base reuse and ensure communities have the ability to put sensible, community-based economic redevelopment plans in place.

The timing for this reform is critical, as many of the communities impacted by base closures as a result of the 1993 round will

soon begin the process of property screening and reuse planning. Without enactment of this legislation, these communities, and others in the future, will continue to face uncertain property disposals and months of potential delays and disputes.

Reform of the McKinney Act remains a top legislative concern for NAID. I appreciate your consideration of this important issue, and hope the Congress will see clear to final enactment of this legislation before adjournment.

Sincerely,

ANN SUMMERS,
President.

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
Washington, DC, October 6, 1994.

Hon. GEORGE J. MITCHELL,
Senate Majority Leader,
Washington, DC.

DEAR SENATOR MITCHELL: I am writing concerning the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 which I understand will be offered as a bipartisan Senate Leadership initiative.

We believe that the needs of homeless persons can be best met if there is close cooperation between local communities and homeless assistance organizations. We hope that this legislation which is premised on such cooperation will improve the working relationships at the local level and will enable base closings to move forward more efficiently and to meet equitably the needs of homeless persons and of the community generally.

During the development of this legislation, we have worked closely with a number of Senate offices, the relevant Committees, and representatives of the State of California to suggest improvements and are appreciative of their willingness to listen and respond to those suggestions. We were particularly concerned about the plight of homeless providers who have met all of the requirements of current law, who have filed applications for specified properties, who have had those applications approved and are simply awaiting transfer of those properties. We would want nothing enacted which would push aside those providers with approved applications and leave the identified needs of homeless persons unmet. We believe the final product will guarantee that those needs will be met either by the approved properties, substantially equivalent properties, by funding to secure substantially equivalent properties or by the provision of additional services to homeless providers sufficient to meet the identified needs.

I appreciate the cooperation of your offices in helping address our concerns.

Sincerely,

MARIA FOSCARINIS,
Executive Director.

MERCED COUNTY
BOARD OF SUPERVISORS,
Merced, CA, July 27, 1994.

Senator DIANE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: We are aware that the House has taken action to alter the Stewart B. McKinney Homeless Assistance Act to deal with the special problems raised by the Base Closure process.

It is our understanding that the House action only considers 1993 round and later closures. In fact, several bases from the 1991 closure list have not received their Record of Decision and should be included in any overall language approved by the Senate and Conference.

Military base options are a challenge and difficult to create with directly competing requirements imposed by McKinney. They are particularly difficult in depressed, rural areas desperate for viable, economic/job creating opportunities. Actions, under the law, by Washington, D.C. agencies that do not examine an entire base reuse plan can create untenable situations which, in fact, drive away potential reusers.

We strongly urge your support for changes to the McKinney Act which provide for 1991 base closure installations and the application of sensible, good business approaches to the overall reuse of each individually affected base.

Sincerely,

Jerry O'Banion, *Chairman,*
Merced County Board of Supervisors,
District 5.

SACRAMENTO HOUSING & REDEVELOPMENT AGENCY,
Sacramento, CA, August 11, 1994

Hon. DIANE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: The Sacramento Housing and Redevelopment Agency urges you to support proposed amendments to the 1994 Housing and Community development Act which would revise the McKinney Act to provide local reuse authorities a larger role in planning homeless assistance components at closing military bases. The current McKinney Act screening process which provides for multiple screenings makes it difficult for local reuse authorities to plan for and implement redevelopment activities.

The Sacramento Housing and Redevelopment Agency is involved in the reuse planning and implementation for Mather Air Force Base (announced for closure in 1988) and the Sacramento Army Depot (announced for closure in 1991). The Sacramento Housing and Redevelopment Agency's successful McKinney Act application at Mather Air Force Base has been hailed as a model for the nation. In October 1993, the U.S. Department of Housing and Urban Development (HUD) awarded the Agency $12.84 million to develop and administer a transitional housing and employment skills development program (the largest single grant ever made by HUD under the Stewart B. McKinney Supportive Housing Program). Despite this program, properties at Mather Air Force Base continue to be screened.

The Sacramento Housing and Redevelopment Agency requests that the 1994 Housing and Community Development Act be amended to exempt property screened after January 1, 1994 and for which the U.S. Department of Health and Human Services has not yet approved a homeless application be exempt from the normal McKinney process and instead be subject to a new community homeless plan component. If HUD does not approve the homeless component, base property would then be subject to the standard quarterly McKinney screening process. It is imperative that such provisions apply to 1988 and 1991 base closures and that communities with existing homeless components be exempt from planning for additional homeless assistance programs and further screening.

I thank you for your consideration of this matter. If you have any questions or would like more information, please call me at (916) 440-1333.

Sincerely,

JOHN E. MOLLOY,
Executive Director.

BASE CLOSURE COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE ACT OF 1994

USE OF CLOSING MILITARY BASES FOR ECONOMIC REDEVELOPMENT AND HOMELESS ASSISTANCE

(Developed in consultation with Congressional staff and an interagency working group consisting of representatives from DOD, HUD, HHS, GSA and the Interagency Council on the Homeless)

1. Base Closure and Realignment property shall be exempted from the current provisions of Title V of the McKinney Homeless Assistance Act. Instead, homeless assistance providers, homeless persons and their representatives will have a voice in the reuse planning process for closing military installations. The Local Redevelopment Authority (LRA) will be used to request property on a portion of the base or to request other assistance related to the development of the base. Accordingly, homeless assistance providers will no longer be able to make requests directly to the Federal government for all or part of an entire installation. The redevelopment plan developed by the LRA will be required to be based on local needs as well as balance all community and economic development interests, including those of the homeless.

2. DoD and Federal agencies will screen available properties and participate in the local planning process by submitting an expression of interest and a statement of need to DoD, with a copy to the LRA. (Federal agencies may obtain property either directly from DoD or through the LRA under economic development conveyances.)

3. Following the DoD/Federal agency screening, DoD shall publish in the Federal Register information about excess and surplus property on a base. State, local and other interested parties are encouraged to express their needs to the LRA as soon as practical after approval of closure. DoD shall also publish the name of the LRA and LRA contacts as soon as an LRA is established. The Interagency Council on the Homeless will assist in disseminating this information to organizations serving the homeless. The LRA will be responsible for publicizing its planning and public input process in local publications.

State and local interests, including community-based homeless-related interests, and all other parties shall express their interest and statement of need for base property to the LRA. A submission from a homeless assistance provider to the LRA shall include a statement describing: (1) its proposed homeless assistance program; (2) the need for the program; (3) the linkages of the proposed program to other programs available in the community; (4) the specific properties, facilities or other resources needed to carry out the proposed program; and (6) the amount of time necessary for the proposed program to become operational.

4. All statements of interest from state and local interests, homeless assistance providers and other parties shall be submitted to the LRA within a time frame set by the LRA and made public (but not less than three months and not later than six months after completion of DoD/Federal screening). [For those bases already slated for closure that have already completed the screening process, the time frame shall be not less than one month and not later than six months.] This process of submitting non-DoD/Federal statements of interests is intended as a substitute for the state and local screening under GSA regulations.

5. The local Homeless Assistance Planning Board (HAPB) established under (proposed)

Section 411(b) of Title IV of the McKinney Act (as provided for in Section 811 of H.R. 3838) (if one exists) is expected to take the lead in coordinating and reviewing requests from homeless providers and making recommendations to the LRA on those requests. If no HAPB exists, a committee with representatives from the local government and broad representation from locally based government and non-government homeless providers may be established to coordinate these efforts.

6. The LRA will have not more than 9 months from completion of the screening period to complete and submit a redevelopment plan [note: this is not more than 21 months from approval of closure]. DoD may negotiate and enter into interim leases for use of available properties (consistent with the redevelopment plan) prior to permanent transfer or disposal.

7. The LRA will submit a redevelopment plan and application for certification to DoD and HUD. (The plan discussed in this proposal is the "redevelopment plan" defined in Title 29 of the Defense Authorization Act of 1994.)

The LRA's application shall be appropriately documented and include:

(a) A copy of the redevelopment plan.

(b) Copies of all expressions of interest from homeless assistance providers and a discussion of how these and all other requests for property, including those from Federal agencies, state and local interests, etc., are being addressed;

(c) A summary of the LRA's outreach to homeless providers and publicity efforts, as well as a summary of any public comments.

(d) A summary of the LRA's consultations with other organizations in developing the plan (including consultations with local Homeless Assistance Planning Boards and homeless providers who have expressed interest);

(e) A statement from the LRA of how the plan balances the expressed needs of the homeless (either on- or off-base) and other community and economic development needs; and

(f) Copies of proposed legally binding and enforceable agreement(s) that the LRA has entered into to fulfill its commitment(s) to homeless assistance providers. The agreement(s) must set forth the LRA's policies and procedures for determining the future use of properties, transfers for homeless assistance resources provided in accordance with the plan, in the event that local needs or circumstances change. In this case, any property which has been transferred for homeless assistance use shall revert to the LRA or its authorized local designee for a use consistent with its legally binding agreement with the homeless provider, and not revert to DoD.

The redevelopment plan shall be site-specific to the extent practicable. (The LRA may submit a more specific plan at a later date if the plan involves a base which is scheduled for closure more than 24 months following DoD's Federal Register announcement). DoD may begin to review the LRA's redevelopment plan and incorporate it into the environmental analysis required for NEPA.

8. HUD will review the entire submission to certify that the plan adequately addresses the needs of the homeless and that it balances those needs with the need for community and economic development. The reuse plan must:

(a) include commitments to enter into legally binding agreements to provide assistance to the homeless within the community, and copies of such agreements;

(b) balance the need for providing property and assistance to the homeless with the overall reuse plan for the military installation;

(c) have been developed in consultation with local representatives of the homeless, including representatives of applicable local homeless assistance planning boards and representatives of local nongovernmental homeless providers;

(d) specify the manner in which property or assistance will be made available for homeless assistance.

In making the determination, HUD will consider the population of the homeless in the community involved, the extent of current services to assist the homeless within the community, the extent of the commitment of resources by local governments in the community to assist the homeless, the need for additional services to assist the homeless within the community, and the suitability of the property for serving the needs of the homeless.

Formal adoption of the redevelopment plan must be made in a public forum and in accordance with applicable state and local laws. In addition, the redevelopment plan submitted should include a summary of comments from community groups and other interested parties as expressed during a public comment period.

9. HUD will have 60 days to complete its review of the plan, certify that the plan either does or does not reasonably address the needs of the homeless (either on- or off-base) and balance those needs with the need for community and economic development, and notify the redevelopment authority. During this period, HUD may work with the LRA to identify inadequacies and may negotiate changes to the plan. DoD will not convey any properties to the LRA unless and until HUD certifies that the LRA's submission is acceptable.

(a) If HUD certifies that the plan balances homeless assistance needs with community and economic needs, HUD will notify DoD and the LRA. DoD will then work with the LRA to fulfill the approved commitments for homeless use.

(b) If HUD determines that the plan fails to reasonably address the needs of the homeless and balance the need for community and economic development, then HUD will state the specific reasons for its conclusions and specify actions needed to make the plan acceptable. HUD's report will be sent both to DoD and the LRA.

10. If the redevelopment plan is not approved by HUD, the LRA will have 90 days following the receipt of HUD's report to submit a revised plan to HUD and DoD that addresses HUD's concerns. HUD will review the revised plan and either certify that it is either acceptable or unacceptable within 30 days of receipt. If HUD certifies that the revised plan is unacceptable, HUD will, within 90 days, administer the following process:

(a) HUD will review the original expressions of interest from homeless assistance providers for property on the base there were included in the LRA's submission (see paragraph 7(b) above).

(b) HUD will consult with these providers to determine if they are still interested in property on the base for homeless assistance purposes and obtain additional information necessary to prepare leases, deeds or other conveyance documents.

(c) HUD will request that these providers submit a detailed proposal containing information related to its proposed program which is similar to that currently submitted to HHS as part of the current McKinney Title V process (e.g., financial capacity, environmental issues, and compliance with Federal non-discrimination laws). The applicant will also be asked to certify and document the availability of appropriate sewer, water, police and fire services.

(d) HUD will review these proposals and make a recommendation to DoD consistent with its previous report to DoD and the LRA on the redevelopment plan. In making this recommendation, HUD will address the suitability of the identified properties for homeless use in consultation with DoD and in accordance with the current HUD checklist for McKinney properties.

11. If HUD approves the redevelopment plan, DoD will, after reviewing recommendations from the appropriate federal agencies and in compliance with current law, ordinarily convey properties to an LRA or to other entities approved for public benefit uses under the Federal Property Act. DoD may, when necessary, transfer properties directly to providers identified by the LRA (or approved by HUD finds the LRA's plan unacceptable) to meet the needs of the homeless.

12. In those limited cases in which DoD conveys property directly to homeless providers, HUD will work with DoD and the providers in preparing the necessary deed.

13. DoD, in consultation with the LRA and the Secretary of HUD, may extend any of the time lines mentioned above if doing so is in the public interest.

14. The new process identified above shall apply to any installation approved for closure after the date of enactment.

15. In the case of property on an installation already approved for closure, the LRA may, within 60 days of enactment of this proposal, submit a request to DoD for consideration under the new procedures instead of the current McKinney Title V process.

If a homeless assistance provider has a pending McKinney Act application but not yet approved, that homeless assistance provider shall be given preferential status by the LRA when determining homeless needs in the redevelopment plan. If a McKinney Act application has already been approved by HHS but property has not yet been transferred, the LRA must demonstrate in the redevelopment plan how it will accommodate, at a minimum, the approved program(s) and activities on or off the base in a substantially equivalent manner.

16. For the 60 calendar days immediately following enactment of this proposal, HHS will suspend processing of all expressions of interest and applications for base closure properties under the current McKinney process which have been published by HUD but not approved. At the end of this 60 day period, HHS will resume processing applications in accordance with applicable law and regulations.

17. In the event a request is filed in connection with the process described in paragraphs 13 or 14 above, HHS and HUD will suspend the McKinney application process for the applicable properties. DoD will notify HHS and HUD (who will notify any affected homeless providers) that a LRA wishes to proceed under this new section.

18. The LRA will be responsible for monitoring the implementation of the redevelopment plan.

Mr. DOLE. Mr. President, I rise today to sponsor with the majority leader the "Base Closure Community Redevelopment and Homeless Assistance Act of 1994."

This legislation changes the process used to determine the use of military bases closed under the 1990 Defense Base Closure and Realignment Act.

This needed change allows local communities to determine what the best use should be for the military bases. Communities would be able to balance economic needs with other critical issues like the needs of the homeless. To facilitate this the McKinney Act, established before the 1990 Defense Base Closure and Realignment Act, would no longer give to homeless providers the first priority of all surplus property on closed military bases.

This proposed legislation would provide that local communities would establish a local redevelopment authority to develop plans for the best use of the property. There is no question that we want to leave the door open to this improved, yet still cumbersome process, and consider improving upon it next year. Nevertheless this proposed legislation is a good first step.

So far over 70 major bases have been closed and more than 30 have been realigned. Current law makes it difficult for these communities to reach the degree of economic redevelopment they want. However, this legislation will provide these communities with greater flexibility in implementing economic initiatives which will begin to meet the needs of all members of the community, including the homeless. By passing this legislation now, we will not only provide immediate relief to the already impacted communities, but we will improve the process for the upcoming round of base closures. As my colleagues know, BRAC III is suppose to equal the total, in replacement value, of the sum of BRAC I and II.

Strong bipartisan support and teamwork exist on this issue. Particular attention needs to be given to the leadership of our former colleague Senator Pete Wilson. In 1993 Governor Wilson created the California military base reuse task force and emphasized the need to identify the obstacles to effective base re-use and to make recommendations to overcome the barriers.

The basis of the legislation currently before us was one of the primary recommendations of Governor Wilson's task force which identified the need of having local economic concerns and job creation considered along with homeless issues.

The need for this legislation is significant. For example, Governor Wilson's task force reports that 22 installations in California will shut down and result in the loss of 200,000 jobs and about $7 billion of annual income. If legislation is not passed immediately those local communities will have increased difficulty under the McKinney Act in regenerating these losses because the homeless providers have the first priority on the military bases.

Mr. President, I urge my colleagues to support this proposed legislation.

BANKRUPTCY REFORM ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5116, the bankruptcy reform bill, just received from the House; that the bill be deemed read the third time, passed, the motion to reconsider laid upon the table.

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

So the bill (H.R. 5116) was deemed read the third time, and passed.

Mr. GRASSLEY. Mr. President, I am pleased to support H.R. 5116. This bill represents the collective wisdom of the Senate and the House concerning needed bankruptcy reforms. As an original cosponsor of the Senate-passed bill, S. 540, I would have its enactment. Nonetheless, compromise is the key to enact just about anything, I can support this compromise bill as a good effort to improve our Nation's bankruptcy laws. Indeed, several of the provisions of the House bill were an improvement on the Senate language.

At this time, I would like to address a number of the issues covered by this legislation. First, I am pleased that the House has agreed to create a bankruptcy review commission. Since the enactment of the present code in 1978, the code has not been able to accommodate the many changes in the economy and other laws. Although the code largely has functioned well, no one in 1978 could have foreseen the changed circumstances that now confront our bankruptcy system. This year, more than 900,000 bankruptcy petitions will be filed, many more than anyone could have imagined in 1978. Since 1978, the world economy has become more international in scope, and the economic boom, in part financed through debt in the 1980's, has led to a multitude of bankruptcies in the 1990's. Additionally, new laws have been enacted whose relation to bankruptcy has not been carefully evaluated. And despite the 1984 legislation in response to the Northern Pipeline decision, the constitutionality of the current bankruptcy system is not certain. The Blue-Ribbon Bankruptcy Commission established by this bill will evaluate the code's deficiencies, substantively and operationally, and make recommendations to the Congress for legislative change. Thus, while H.R. 5116 will improve the bankruptcy system, its greatest contributions will come from the commission it creates.

One provision in section 104 of the bill concerns the establishment of bankruptcy appellate panels. The Federal courts study committee recommended that Congress require each Federal Court of Appeals establish a bankruptcy appellate panel. It also recommended that parties affirmatively opt out of the procedure or else have their cases heard under it. Unless specified circumstances apply, the Federal Courts of Appeals will be required to establish bankruptcy appellate panels under this legislation. The Federal Courts Study Committee found that the ninth circuit's BAPS disposed of 902 appeals in 1987 and 664 in 1988, reducing the workload of both district and appellate courts, and have received favorable reviews from both bench and bar. They foster expertise, and increase the morale, of bankruptcy judges, in part by offering them an opportunity for appellate work. I am pleased that H.R. 5116 will promote this procedure.

Section 202 of the bill amends section 550 of the code relating to the recovery of preferences to insiders. Currently, section 547 of the bankruptcy code authorizes trustees to recapture preferential payments be made to creditors within 90 days prior to a bankruptcy filing. Because of the concern that corporate insiders (such as officers and directors) who are creditors of their own corporation have an unfair advantage over outside creditors, section 547 of the Bankruptcy Code further authorizes trustees to recapture any preferential payments to such insiders which were made a full year prior to a bankrputcy filing.

Several recent court decisions, beginning with *Levit* v. *Ingersoll Rand Financial Corp. in re V.N. Deprizio Construction Co.*, 874 F.2d 1186 (7th Cir. 1989), have allowed trustees to recapture payments made to non-insider creditors a full year prior to the bankruptcy filing, if an insider benefits from the transfer in some way. Although the creditor is not an insider in these cases, the courts have reasoned that because the repayment benefited a corporate insider (namely the officer who signed the guarantee), the non-insider transferee should be liable for returning the transfer to the bankrupt estate as if the transferee were an insider as well.

Our legislation overrules the Deprizio line of decisions and clarifies congressional intent that non-insider transferees should not be subject to the preference provisions of the Bankruptcy Code beyond the 90-day statutory period. Our aim is to encourage commercial lenders and landlords to extend credit to smaller business entities.

Section 219 makes needed changes in the treatment of leases of personal property. Sixty days after the order for relief, the debtor will have to perform all obligations under the equipment lease, unless the court holds a hearing and determines otherwise, with the burden on the debtor. The word "first" as used in the section refers to the payments and the performance of all other obligations that initially become due more than 60 days after the order for relief. The purpose of that reference is

to make clear the intent that the provision does not affect payments originally due prior to 60 days before the order of relief.

Title III of the bill will assist homeowners. Some homeowners attempt to prevent their homes from being foreclosed upon, even though a bankruptcy court has ordered a foreclosure sale. There may be several months between the court order and the foreclosure sale. Section 301 will preempt conflicting State laws, and permit homeowners to present a plan to pay off their mortgage debt until the foreclosure sale actually occurs. And section 305 will prevent mortgage lenders from imposing interest on interest when mortgage lenders from imposing interest on interest when mortgage arrearages are cured, even when the mortgage instrument is silent on the subject. This section will affect all future mortgages unless the mortgage expressly retains the lender's right to impose such interest on interest.

Title III also expands the criminal code's bankruptcy provision. Section 312 of the bill enacts a new section 157 to 18 U.S. Code on Bankruptcy Crimes. The provisions of section 501 of S. 540, which contained similar provisions, had a subsection (b) which contained certain provisions about requisite intent for criminal liability. The omission of these S. 540 provisions from H.R. 5116 is not intended to signal any congressional purpose to lower the standard on intent necessary to impose criminal liability on entities participating in the bankruptcy process. For example, bona fide settlements are not intended to be criminal under any provision of section 312 of H.R. 5116, nor are indeliberate errors in documents which are not part of any scheme to defraud. By way of further example, entities who act in good faith or who rely in good faith on advice of professional persons are not exposed to criminal liability under section 312.

I wish to commend Senator HEFLIN for his persistent efforts to see to it that we enact these necessary reforms. I look forward to studying the report of the Bankruptcy Review Commission to determine what further efforts should be made to strengthen the operation of the bankruptcy code.

Mr. HEFLIN. Mr. President, I rise to discuss H.R. 5116, the Bankruptcy Reform Act of 1994 that passed the Senate today.

The passage of this bill brings to a close almost 5 years of work on this legislation. I would like to briefly outline some of the major provisions of this legislation.

The first title of this bill is a collection of provisions intended to increase the efficiency of the bankruptcy court; helping debtors and creditors alike.

The second title relates to consumer bankruptcy issues. Included in this section is an amendment allowing for the curing of a default on a person's principal residence, as well as a provision that will help ensure child support and alimony will continue to be paid after the filing of an individual bankruptcy.

The next title addresses the area of commercial bankruptcy, specifically the role of chapter 11 in today's economy. In this section of the bill there are various provisions intended to update the bankruptcy code in light of the tremendous number of commercial filings each year.

Title four of this bill may be the most important section of the entire bill. This title establishes the national bankruptcy review commission. The commission will have the ability to review and study a wide range of problems presently facing the bankruptcy system, as well as help prepare for the future. I encourage the funding for this commission, at the earliest opportunity, and in the first appropriate vehicle, so that it can begin its' task.

I would like to mention several topics of importance that have come to my attention and which we have addressed during the consideration of this bill. This, of course, is not an exclusive list:

The establishment of provisions within chapter 11 which are designed to help small businesses reorganize quickly and more efficiently;

The problems in cases with single asset real estate;

The establishment of a bankruptcy appellant panel to afford debtors and creditors an efficient mechanism for bankruptcy appeals;

The new section 106(c) recodifies currently existing section 106(b). No substantive change in the law is intended.

The problems faced by issuing card companies when a debtor uses their card to pay Federal taxes and subsequently files for bankruptcy;

The protection of local governments ability to perfect and enforce tax liens;

The confusion over the hotel income/rents issue;

The clarification that section 365 protection for lessors requires the lessee to perform all obligations that become due or payable 60 days after the order for relief;

The highly complex and controversial issues that result from mass torts, health care, and environmental law.

Mr. President, I would like to thank all of the Members of the Senate who have worked with me on this important legislation. I am hopeful that this bill will be signed into law.

TREATMENT OF PRODUCTION PAYMENTS

Mr. SIMPSON. Mr. President, I rise for the purpose of entering into a colloquy with the distinguished Senators from Alabama and Louisiana regarding section 208 of H.R. 5116 which relates to the treatment of production payments i a bankruptcy context.

Mr. HEFLIN. I yield to my friends for the purpose of a colloquy.

Mr. SIMPSON. I have been informed that during House consideration of the bills, certain legislative language, although implied, was inadvertently omitted by the other body. This language is extremely important to the bill. It is critical that the point of this language be clarified so that we fully understand that not only the conveyance of a production payment, but also an oil and gas lease, are each real property interest, excluded from the debtor's estate in bankruptcy.

Mr. JOHNSTON. May good friend from Wyoming is correct, apparently there was some hesitation on the part of the other body to treat oil and gas leases in the bill language because there is currently no definition for an oil and gas lease in the Bankruptcy Code. The absence of a code definition in not relevant since the definition of and oil and gas lease is a matter of State statutory and case law. And further, I agree with him that production payments and oil and gas leases are both real property interests excluded from the debtor's estate in bankruptcy.

Mr. HEFLIN. I thank my good friends for bringing this matter to my attention and I certainly defer to my colleagues' expertise in the oil and gas industry. I concur that both production payments and oil and gas leases are real property interests for purposes of section 541 of the Bankruptcy Code and I will point out that in S. 540 we included language to that effect.

Mr. SIMPSON. I thank my good friend for that clarification, but I need to further point out drafting errors in the House section-by-section description printed in the CONGRESSIONAL RECORD for October 4, 1994, on page 10767. The language contains inaccuracies which must be corrected. Specifically, and I quote, "a production payment is an interest in the product of an oil or gas producer * * *" and "* * * the interest in the product that is produced." I think we all know that a production payment is not an interest in "product", rather, it is an interest in certain reserves of an oil or gas producer. I further quote, "These payments, often transferred by way of oil and gas leases, * * *" Production payments are not transferred by oil and gas leases; they are created out of oil an gas leases by written conveyance. The sentence should instead read, "The production payment is created out of an oil and gas lease, each of which is a real property interest." Finally, and I quote with reference to oil and gas producers "generating income from their property", it would be more appropriate to state that these capital-strapped producers may monetize their property without giving up operating control of their property.

Mr. JOHNSTON. If the Senator will yield, I would like to point out that the terms product and reserves have two very different and distinct meanings in

the oil and gas industry, therefore it is important that these points be clarified. And further, I agree with him that it is impossible to transfer a production payment by virtue of an oil and gas lease; rather, a production payment is carved out of an oil and gas lease.

I agree with the Senator that it is very important to clear up any misunderstanding that may have been inadvertently created by the House regarding production payments and oil and gas leases; each of these interests is a real property interest.

Mr. SIMPSON. I might add as a final point, the record fails to clarify the treatment of oil and gas leases in a bankruptcy context. A sentence should have been included in the House text that states: "It is not the intent of this section to permit a conveyance of a production payment or an oil and gas lease to be characterized in a bankruptcy context as a contractual interest rejectable under section 365 of the Bankruptcy Code."

Mr. HEFLIN. I concur with the honorable Senator from Wyoming, neither production payments nor oil and gas leases should be characterized in a bankruptcy context as a contractual interest rejectable under section 365 of the Bankruptcy Code. And I thank both Senators for pointing out to me that the CONGRESSIONAL RECORD contains many inaccuracies evidencing a failure to define and understand the nature of these interests.

Mr. SIMPSON. I thank my distinguished colleagues from Alabama and Louisiana.

Mr. SIMPSON. Mr. President, I rise briefly to express my appreciation to my colleagues, Senators HOWELL HEFLIN and CHARLES GRASSLEY, for their untiring work in the area of bankruptcy reform. Without their leadership, we would not see this important legislation enacted into law.

I am particularly thankful for their assistance in including an amendment I offered to the Senate bill, regarding "Production Payments", in this legislation.

It is important to note that the legislation we are now considering in the Senate, even though it is enrolled as a House bill, is in large part, the Senate-passed legislation that our colleagues crafted.

So I am grateful that Members of both Houses of Congress have agreed to include protection under the bankruptcy code for oil and gas production payments, as provided by my original amendment.

Mr. President, this is an issue which is very important to the oil and gas industry in the west. I would, very briefly, explain to my colleagues what my amendment to this legislation is.

The property law governing transactions in oil and gas—as to both real and personal property—has led to some confusion in bankruptcy cases.

Oil and gas exploration and development is already a very high risk undertaking, and uncertainty about how Federal courts will deal with particular issues makes it even riskier for potential investors.

This is one narrow area where we in Congress can help to reduce unreasonable risk to innocent investors.

Typically, the owner of rights to drill obtains part of the funding for a new well by agreeing to pay back the funding "in kind"—repayment is not in cash, but in product.

That payment is a "production payment".

A problem has arisen in that, if the produced declares bankruptcy, then some courts have looked to the production payments as a source of additional revenue for unsecured creditors.

That is a very unfair result, Mr. President, because the owner of that production payment is blameless in the bankruptcy proceeding. Indeed, the owner of a production payment is analogous to what is known in legal terms as a "bona fide purchaser for value".

This legislation recognizes that a production payment transferred prior to bankruptcy is a real property interest. it is therefore excluded for the estate of the debtor who transferred that interest to the current owner.

The intent of this provision is that an oil and gas lease, out of which the production payment is created, is also recognized as a real property interest in bankruptcy law—just as that real property interest is recognized under the laws of the various States.

When we crafted this provision, we were careful to make it clear that it was not our intent to permit a conveyance of a production payment to be treated as no more than a contractual interest. Such interests are commonly recharacterized in a bankruptcy proceeding with the result that the innocent owners of production payments are "left out in the cold". That is precisely the type of confusion and inequity that this provision is designed to prevent in the future.

So, Mr. President, I wish to extend my appreciation to our colleagues, Senators HOWELL HEFLIN and CHARLES GRASSLEY for their assistance. I would also recognize the valuable assistance provided by Oklahoma Representative MIKE SYNAR, and House Judiciary Committee Chairman JACK BROOKS, in accepting this provision as part of the final legislation which we will be voting on today. I thank them, and I thank the chair.

CREATION OF BANKRUPTCY APPELLATE PANEL SERVICES

Mr. HEFLIN. Mr. President, the intent of Section 104(c) is to require the judicial council of each circuit to establish a bankruptcy appellate panel service. However, we also recognize that there will be some circumstances in individual circuits where the establishment of a bankruptcy appellate panel service would not be a benefit to the parties or to the system. Therefore, we have included language that permits a judicial council to determine that there are insufficient judicial resources available in the circuit to create a bankruptcy appellate panel service or that creation of such a service will result in undue delay or increased cost to the parties. For example, in some circuits the majority of appeals are generated from a single large district with numerous bankruptcy judges. However, in the remaining districts within the circuit there are only one or a small number of bankruptcy judges and very few appeals. Because the legislation prohibits a bankruptcy judge from hearing an appeal that originated in the district to which they are appointed, the burden of hearing such appeals will be placed on the judges for the smaller districts, while those judges from the District with the majority of the appeals in the circuit will be eligible to hear very few appeals. Because of this disparate distribution of appeals there may be insufficient judicial resources for the effective operation of a bankruptcy appellate panel service.

Although the number of bankruptcy cases filed each year almost reached one million, the number of bankruptcy appeals is small in comparison. The average number of appeals per circuit for the last available 12-month period was 408. As with all averages, this number is lower in some circuits and higher in others. There may be situations where the number of bankruptcy appeals filed do not warrant the creation of this new system. In some districts, the medium disposition time for disposing of bankruptcy appeals is efficient under the current system.

It should be recognized that the creation of a bankruptcy appellate panel service can help to establish a dependable body of bankruptcy case law.

I ask that a letter be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, October 6, 1994.

Hon. HOWELL HEFLIN,
Chairman, Subcommittee on Courts and Administrative Practice, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing with regard to proposed bankruptcy legislation that would create a new bankruptcy fraud statute, section 312 of H.R. 5116. To put this measure in perspective, in calendar year 1993, there were over 875,000 bankruptcy cases filed; however there were a mere 183 bankruptcy fraud prosecutions during the analogous period of FY 1993.

As recently stated by the Department of Justice in a letter to House Judiciary Committee Chairman Jack Brooks, dated September 15, 1994:

"Section 157 [of Title 18 of the United States Code], patterned after the wire and

mail fraud statutes, would require proof of devising or intending to devise a 'scheme or artifice to defraud.' Like the mail fraud statute, an essential element of the proposed statute requires proof beyond a reasonable doubt of a specific intent to defraud. This is one of the highest mens rea standards in the criminal law. Because of the high burden of proof, most courses of action under the Bankruptcy Code and allowed by the bankruptcy courts are unlikely to be prosecutable under this new law or any other statute. * * * If however, there were no 'intent to defraud' present, as noted above, no prosecution could result."

I hope that this background information allays your concerns regarding proposed section 157.

Sincerely,

SHEILA F. ANTHONY,
Assistant Attorney General.

PERMANENT INJUNCTIONS

Mr. BROWN. Mr. President, I wonder if the distinguished manager of the bill, the senior Senator from Alabama, is available to answer one of two questions that I have regarding this bill? Specifically, Mr. President, when S. 540, the Bankruptcy Reform Amendments, was considered by the Senate earlier this year, the Senate adopted an amendment sponsored by myself; the senior Senator from Alabama, Mr. HEFLIN; and the Senator from Florida, Mr. GRAHAM. That amendment, which ultimately became section 221 of the Senate-passed bill, sought to codify the authority of the courts to issue permanent injunctions under certain circumstances. Can the distinguished bill manager advise me regarding the disposition of that provision? Is it included in the bill that passed the other body and is before us for approval today?

Mr. HEFLIN. Mr. President, if the Senator will yield, I can advise the Senator that the provision he refers to was approved by the House and is a part of the measure we have before us today. What was section 221 of the Senate bill is now substantively reflected in Section 111 of the House bill. Certain minor changes to the language of the provision were recommended by the House, and I understand that the provision as adopted by the House is acceptable to the various parties that have been involved in this matter.

Mr. BROWN. Mr. President, I thank the distinguished bill manager for his response, and I wonder if I might make an additional inquiry? Specifically, Mr. President, I wonder if the Senator from Alabama can enlighten the Senate regarding the impact of this "Supplemental Permanent Injunctions" provision on those existing Injunctions that have been issued in asbestos-related Chapter 11 reorganizations, as well as its impact on any subsequent injunction that may be issued in an asbestos-related reorganization proceeding.

Mr. HEFLIN. Mr. President, if the Senator will yield, I would be happy to respond. Mr. President, section 111 will codify a court's authority to issue a permanent injunction to supplement the existing injunctive effect of section 524 of the Code in asbestos-related chapter 11 reorganizations. This section provides that, if certain defined conditions are satisfied, a court may issue a supplemental permanent injunction barring asbestos-related claims or demands against the reorganized company and channeling those claims to an independent trust. To qualify under the statute, such a trust is to be funded in whole or in part by the securities of the reorganized company, which at some time could be borrowed against, or more likely sold outright, to raise cash to pay claims; and the reorganized obligation to make future payments, including dividends, to the asbestos victims' trust.

Moreover this section is carefully limited to bankruptcy orders where certain specified conditions are satisfied, including requirements that a supermajority of the affected class of asbestos claimants vote to approve the plan creating the trust and authorizing the injunction, and that the terms of the injunction be set out in the plan or related documents and fully detailed in any plan description issued for the purposes of soliciting creditor approval. If and when these and other conditions are satisfied, the section provides that the affected injunction is permanent and irrevocable except on initial appeal of the plan, if any.

Mr. President, this statutory affirmation of the court's existing injunctive authority is designed to help asbestos victims receive maximum value. It does so by assuring investors, lenders, and employees that the reorganized debtor has indeed emerged from Chapter 11 free and clear of all asbestos-related liabilities other than those defined in the confirmed plan of reorganization, and that all asbestos-related claims and demands must be made against the court-approved trust. This added certainty will ensure that the full value of such a trust's assets—the securities upon which it relies in order to generate resources to pay asbestos claims—can be realized.

Finally, Mr. President, with respect to the Senator's specific question, this section applies to injunctions in effect on or after the date of enactment. What that means is, for any injunction that may have been issued under a court's authority under the Code prior to enactment, such an injunction is afforded statutory permanence from the date of enactment forward, assuming that it otherwise meets the qualifying criteria described earlier. A good example of this would be the injunctions issued in the Manville and the UNR industries reorganizations, both of which are intended to be covered by this section and both of which will be confirmed as permanent under this statute, so that the securities of these reorganized companies should no longer be discounted because of any fear of unknown asbestos liabilities. Regarding any prospective asbestos-related trusts and their related injunctions, they, too, would qualify under the statute so long as the criteria outlined in the proposed legislation are satisfied.

Mr. BROWN. Mr. President, I thank the distinguished bill manager for his explanation, and I am pleased that this provision has been approved by the other body and can be approved by the Senate again here today. As the Senator from Alabama has ably stated, adoption of this provision will assure that the financial markets are free to value the securities of reorganized companies such as Denver-based Manville Corporation, unencumbered by any suggestion that asbestos-related claims arising from Manville's prebankruptcy activities, whether existing now or manifesting in the future, may reach to the reorganized company in any fashion other than that provided in the confirmed plan of reorganization. In essence, we are affirming what chapter 11 reorganization is supposed to be about: allowing an otherwise viable business to quantify, consolidate, and manage its debt so that it can satisfy its creditors to the maximum extent feasible, but without threatening its continued existence and the thousands of jobs that it provides. I am pleased to have been an original sponsor of this important provision, and I urge my colleagues to support it and the entire Bankruptcy Reform Amendments package that is before us today.

Mr. HATCH. Mr. President, the Bankruptcy Act of 1994 is one of the most important pieces of economic legislation to be considered and passed by the 103d Congress. It is important because it clarifies many of the existing ambiguities in our bankruptcy law that have, in essence, discouraged the extension of new credit to our businesses in Utah and throughout the Nation.

The bill responds to these concerns by offering clear guidance to both creditors and debtors as to the risks they are undertaking. It strikes a fair and delicate balance between the rights and responsibilities of creditors and the rights and obligations of debtors. More important, it encourages the credit community to extend much needed new capital to the well deserving businesses in our communities seeking to grow and expand. In sum, this bill is good for business, good for creditors, and good for consumers.

This bill also creates a new Bankruptcy Commission to study and investigate bankruptcy issues and problems. One issue that merits careful study is the relationship of local governments to bankruptcy law. This issue is of great concern to many local governments in Utah, including Salt Lake City. We need to review how the priority provisions of the code impact our

local governments as they are increasingly drawn into the bankruptcy process.

In coming to an agreement on the provisions contained in H.R. 5116, the House and the Senate have agreed to eliminate section 205 of S. 540, the Senate-passed bill. Section 205 provided that, unless a landlord obtain a stay pending appeal, the reversal or modification of an assignment of a lease will have no effect on a good faith assignee. While there is some disagreement as to the proper interpretation and implementation of the bankruptcy code in this area, I believe that the decision in in re Slocum was correct in its analysis of the law.

The House has added a new provision, section 216, to the Bankruptcy Reform Act and I would like to clarify my belief as to the purpose and intent of including this section. It is my understanding that the current statute of limitations contained in section 546(a) of title 11 requires that an avoidance action be brought within 2 years of the filing of a chapter 11 petition, even if a trustee or other estate representative is subsequently appointed or the case is later converted. Thus, under current law, if a trustee or other estate representative is appointed after the current 2 year statute of limitations expires, any actions which the trustee may discover are time-barred. This amendment has arisen from a perceived need to provide a period of time for a later appointed bankruptcy estate representative to investigate and institute actions.

This is yet another area of bankruptcy law that has been the subject of extensive litigation recently, and I commend the Congress for its attention to this problem. This amendment should prevent prejudice against potential defendents that would result from having to defend stale actions and should encourage estate representative to investigate and resolve actions earlier in a bankruptcy case, thus minimizing estate expenses and maximizing the value of the estate to all creditors.

On January 1, 1995, the longstanding "Stock for Debt" rule, which has been a fixture of U.S. tax law for 50 years, will be repealed pursuant the terms of the Revenue Reconciliation Act of 1993. The rule has been an essential tool for reorganizing and restructuring financially troubled companies in chapter 11. I regret the repeal of the "Stock for Debt" rule, but the passage of this major bankruptcy reform legislation creates the perfect opportunity to reexamine the need for tax incentives to rehabilitate troubled companies.

Currently, the "Stock for Debt" rule allows creditors to exchange millions of dollars of debt in troubled companies for equity interests in those companies, resulting in many new financially viable business ventures. If creditors agree to the exchange, they invest in the reorganized company's future, reduce the company's debt and preserve the jobs of the company's employees.

The repeal of the "Stock for Debt" now means that chapter 11 companies that exchange their stock for their debt will, in effect, be taxed on the differences between the value of the debt forgiven and the value of the stock received by the creditors. This tax liability will be satisfied by reducing the reorganized company's tax attributes—such as reducing the company's net operating losses or its tax basis in assets. By reducing these tax attributes, the creditors will be investing in a reorganized company that is worth much less. Thus, creditors will be less likely to exchange debt for stock or will demand more for the exchange. The reorganized company will be weakened—or its reorganization will fail—all to the severe detriment of its employees.

The reinstatement of the "Stock for Debt" exception is crucial to the hundreds of thousands of Americans whose jobs may be on the line in the months and years ahead as companies attempt to restructure. The "Stock for Debt" exception may make the difference between a company's survival or its failure. More important, for employees of the affected company, it could mean the difference between continued employment and unemployment.

The repeal of the "Stock for Debt" rule raises serious questions for those of us concerned with bankruptcy policy. As a matter of public policy, both our Bankruptcy Code and tax laws have traditionally favored the rehabilitation of troubled companies over their liquidation. Unfortunately, the Congress has deviated from our longstanding policy with the elimination of the "Stock for Debt" rule.

Mr. President, I urge my colleagues on both the Judiciary and Finance Committees to join me in efforts in the 104th Congress to review the need for tax incentives to rehabilitate troubled companies as well as other aspects of bankruptcy taxation.

Finally, let me again express my appreciation to Senators HEFLIN and GRASSLEY for their fine leadership in crafting a bankruptcy bill acceptable to the Senate, to consumers, and to the entire bankruptcy community. I commend them for their untiring efforts and I look forward to working with them on bankruptcy tax issues in the next Congress.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar Nos. 1136, 1137, 1138, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1211, 1213, 1228, 1288, 1290, 1291, 1292, 1293, 1316, 1319, 1320, 1321, 1323, 1324, 1325, 1326, 1329, 1330, 1331, 1332, 1333, 1347, 1348, 1349, 1350, 1351, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, and all nominations placed on the Secretary's Desk in the Air Force and Army.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read; that upon confirmation, the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action.

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

The nominations, considered and confirmed, en bloc, are as follows:

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Bill Anoatubby, of Oklahoma, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term of six years. (New Position)

Terrence L. Bracy, of Virginia, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term of four years. (New Position)

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Andrea N. Brown, of Michigan, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of one year. (New Position)

Thomas Ehrlich, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of three years. (New Position)

Christopher C. Gallagher, Sr., of New Hampshire, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of four years. (New Position)

Reatha Clark King, of Minnesota, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of five years. (New Position)

Carol W. Kinsley, of Massachusetts, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of five years. (New Position)

Leslie Lenkowsky, of Indiana, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of four years. (New Position)

Marlee Matlin, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of two years. (New Position)

Arthur J. Naparstek, of Ohio, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of four years. (New Position)

John Rother, of Maryland, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of two years. (New Position)

Walter H. Shorenstein, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of three years. (New Position)

THE JUDICIARY

Dominic J. Squatrito, of Connecticut, to be United States District Judge for the District of Connecticut.

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DEPARTMENT OF JUSTICE

Lois Jane Schiffer, of the District of Columbia, to be an Assistant Attorney General.

DEPARTMENT OF DEFENSE

Frederick F. Y. Pang, of Hawaii, to be an Assistant Secretary of Defense, vice Chas. W. Freeman.

THE JUDICIARY

David S. Tatel, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit, vice Ruth Bader Ginsburg.

Catherine D. Perry, of Missouri, to be United States District Judge for the Eastern District of Missouri.

Robert J. Cindrich, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

David H. Coar, of Illinois, to be United States District Judge for the Northern District of Illinois.

Paul E. Riley, of Illinois, to be United States District Judge for the Southern District of Illinois.

EXECUTIVE OFFICE OF THE PRESIDENT

Alice M. Rivlin, of the District of Columbia, to be Director of the Office of Management and Budget.

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

Lori Esposito Murray, of Connecticut, to be an Assistant Director of the United States Arms Control and Disarmament Agency.

FARM CREDIT ADMINISTRATION

Marsha P. Martin, of Texas, to be a Member of the Farm Credit Administration Board, Farm Credit Administration, for the term expiring October 13, 2000, vice Billy Ross Brown, term expiring.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Luise S. Jordan, of Maryland, to be Inspector General, Corporation for National and Community Service. (New Position)

FEDERAL EMERGENCY MANAGEMENT AGENCY

George J. Opfer, of Virginia, to be Inspector General, Federal Emergency Management Agency.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

James H. Atkins, of Arkansas, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 1996.

Scott B. Lukins, of Washington, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring October 11, 1995.

DEPARTMENT OF COMMERCE

Martha F. Riche, of Maryland, to be Director of the Census.

SECURITIES INVESTOR PROTECTION CORPORATION

James Clifford Hudson, of Oklahoma, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1994.

James Clifford Hudson, of Oklahoma, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1997. (Reappointment)

NATIONAL INSTITUTE OF BUILDING SCIENCES

H. Terry Rasco, of Arkansas, to be a Member of the Board of Directors of the National Institute for Building Sciences for a term expiring September 7, 1997.

Christine M. Warnke, of the District of Columbia, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 1995.

Mary Ellen R. Fise, of the District of Columbia, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 1996.

DEPARTMENT OF JUSTICE

Eddie J. Jordan, Jr., of Louisiana, to be United States Attorney for the Eastern District of Louisiana for the term of four years.

Robert Henry McMichael, of Georgia, to be United States Marshal for the Northern District of Georgia for the term of four years.

William Henry Von Edwards, III, of Alabama, to be United States Marshal for the Northern District of Alabama for the term of four years.

Reginald B. Madsen, of Oregon, to be United States Marshal for the District of Oregon for the term of four years.

John Edward Rouille, of Vermont, to be United States Marshal for the District of Vermont for the term of four years.

DEPARTMENT OF JUSTICE

Richard Thomas White, of Michigan, to be a Member of the Foreign Claims Settlement Commission of the United States for the term expiring September 30, 1996.

UNITED STATES SENTENCING COMMISSION

Richard P. Conaboy, of Pennsylvania, to be a Member of the United States Sentencing Commission for a term expiring October 31, 1999.

Richard P. Conaboy, of Pennsylvania, to be Chairman of the United States Sentencing Commission.

Deanell Reece Tacha, of Kansas, to be a Member of the United States Sentencing Commission for a term expiring October 31, 1997.

Wayne Anthony Budd, of Massachusetts, to be a Member of the United States Sentencing Commission for a term expiring October 31, 1999.

UNITED STATES SENTENCING COMMISSION

Michael Goldsmith, of Utah, to be a Member of the United States Sentencing Commission for a term expiring October 31, 1997.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

A.J. Eggenberger, of Montana, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 1998. (Reappointment)

Herbert Kouts, of New York, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 1997. (Reappointment)

SELECTIVE SERVICE SYSTEM

Gil Coronado, of Texas, to be Director of Selective Service.

PANAMA CANAL COMMISSION

Clifford B. O'Hara, of Connecticut, to be a Member of the Board of Directors of the Panama Canal Commission.

PANAMA CANAL COMMISSION

Albert H. Nahmad, of Florida, to be a Member of the Board of Directors of the Panama Canal Commission.

DEPARTMENT OF DEFENSE

Bernard Daniel Rostker, of Virginia, to be an Assistant Secretary of the Navy.

AIR FORCE

The following named officer for reappointment to the grade indicated while serving in a position of importance and responsibility designated by the President under the provisions of Title 10, United States Code, Section 601, and to be appointed as Chief of Staff, United States Air Force under the provisions of Title 10, United States Code, section 8033:

TO BE CHIEF OF STAFF, UNITED STATES AIR FORCE

To be general

Gen. Ronald R. Fogleman, 198-32-5142, United States Air Force.

The following named officer for reappointment to the grade of general while assigned to a position of importance and responsibility under Title 10, United States Code, Section 601:

To be general

Gen. Robert L. Rutherford, 454-52-7491, United States Air Force.

The following named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of Title 10, United States Code, Section 1370:

To be lieutenant general

Lt. Gen. James E. Chambers, 320-28-2492, United States Air Force.

ARMY

The following named officer for reappointment to the grade of lieutenant general while assigned to a position of importance and responsibility under Title 10, United States Code, Section 601(a):

To be lieutenant general

Lt. Gen. Daniel W. Christman, 302-36-9745, United States Army.

UNITED STATES ARMY

The following named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under Title 10, United States Code, Section 601(a):

To be lieutenant general

Maj. Gen. Otto J. Guenther, 138-32-2716, United States Army.

ARMY

The following named officer to be placed on the retired list in the grade indicated under the provisions of Title 10, United States Code, Section 1370:

To be lieutenant general

Lt. Gen. William H. Forster, 427-68-5996, United States Army.

MARINE CORPS

The following named officer, under the provisions of title 10, United States Code, section 601, for assignment to a position of importance and responsibility as follows:

To be general

Lt. Gen. John J. Sheehan, 023-30-5793, U.S. Marine Corps.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Paul L. Hill, Jr., of West Virginia, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years. (New Position)

Paul L. Hill, Jr., of West Virginia, to be Chairperson of the Chemical Safety and Hazard Investigation Board for a term of five years. (New Position)

Devra Lee Davis, of the District of Columbia, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years. (New Position)

Gerald V. Poje, of Virginia, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years. (New Position)

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Kenneth Burton, of Virginia, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term of two years. (New Position)

D. Michael Rappoport, of Arizona, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term of two years. (New Position)

Anne Jeanette Udall, of North Carolina, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for a term of four years. (New Position)

NOMINATIONS PLACED ON THE SECRETARY'S DESK

IN THE AIR FORCE, ARMY

Air Force nominations beginning Thomas O. Wildes, 388-44-3677, and ending Thomas E. Sawner Ii, 432-02-9455, which nominations were received by the Senate and appeared in the Congressional Record of September 26, 1994.

Air Force nominations beginning Major Tommie S. Alsabrook, 420-76-8875, and ending Major Donald W. Tipple, 397-60-0027, which nominations were received by the Senate and appeared in the Congressional Record of September 26, 1994.

Air Force nominations beginning Bret D Anderson, and ending Sarah H Yang, which nominations were received by the Senate and appeared in the Congressional Record of September 26, 1994.

Air Force nominations beginning Francis L. Abad, Jr, and ending Basil Tupyi, which nominations were received by the Senate and appeared in the Congressional Record of September 26, 1994.

AIR FORCE nominations beginning Major Frances M. Auclair, 005-54-3080, and ending Major Leslie Karns, 571-98-1696, which nominations were received by the Senate and appeared in the Congressional Record of October 3, 1994.

Air Force nominations beginning David W Abati, and ending Michael J. Ward, which nominations were received by the Senate and appeared in the Congressional Record of October 3, 1994.

Army nomination of Brian M. McWilliams, which was received by the Senate and appeared in the Congressional Record of September 26, 1994.

Army nomination of Michael D. Furlong, which was received by the Senate and appeared in the Congressional Record of October 3, 1994.

Army nominations beginning Kristine Campbell, and ending Sidney E. McDaniel, which nominations were received by the Senate and appeared in the Congressional Record of October 3, 1994.

Army nominations beginning Peter M. Allen, and ending Earl S. Wood, which nominations were received by the Senate and appeared in the Congressional Record of October 3, 1994.

Army nominations beginning Daniel G. Aaron, and ending 8012x, which nominations were received by the Senate and appeared in the Congressional Record of October 4, 1994.

Mr. SIMPSON. Mr. President, I am not certain that I heard the Calendar No. 1228 called, and it was approved on both sides. I do not know.

Mr FORD. Frederick F.Y. Pang, Calendar No. 1228, yes, it was. I may have been moving a little fast.

U.S. MARINE CORPS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the following nomination reported today by the Committee on Armed Services, Maj. Gen. Richard I. Neal to be Lieutenant General, that the nominee be confirmed, that any statements appear in the RECORD as if read, that the motion to reconsider be laid upon the table, and that the President be immediately notified of the Senate's action.

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

So the nomination was confirmed, as follows:

U.S. MARINE CORPS

To be lieutenant general

Maj. Gen. Richard I. Neal, 023-30-0571, USMC.

AGREEMENT TO PROMOTE COMPLIANCE WITH INTERNATIONAL CONSERVATION AND MANAGEMENT MEASURES BY FISHING VESSELS ON THE HIGH SEAS (TREATY CAL. 24)

ILO CONVENTION (NO. 150) CONCERNING LABOR ADMINISTRATION (TREATY CAL. 25)

TWO TREATIES WITH THE UNITED KINGDOM ESTABLISHING CARIBBEAN MARITIME BOUNDARIES (TREATY CAL. 26)

CONVENTION ON THE CONSERVATION AND MANAGEMENT OF POLLOCK RESOURCES IN THE CENTRAL BERING SEA (TREATY CAL. 27)

HEADQUARTERS AGREEMENT WITH THE ORGANIZATION OF AMERICAN STATES (TREATY CAL. 28)

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to consider the following five treaties, en bloc,

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Treaty Cal. 24);

ILO Convention (No. 150) concerning Labor Administration (Treaty Cal. 25);

Two Treaties with the United Kingdom Establishing Caribbean Maritime Boundaries (Treaty Cal. 26);

Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (Treaty Cal. 27); and

Headquarters Agreement with the Organization of American States (Treaty Cal. 28)

I further ask unanimous consent that the treaties be considered as having passed through their various parliamentary stages up to and including the presentation of the resolutions of ratification; that no amendments, conditions, declarations, provisos, reservations or understandings be in order; that any statements be inserted in the CONGRESSIONAL RECORD as if read; that when the resolutions of ratification are agreed to, the motion to reconsider be laid upon the table, en bloc; that the President be notified of the Senate's action and that following disposition of the treaty, the Senate return to legislative session.

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

ARRIVAL OF THE CONVENTION ON THE LAW OF THE SEA

Mr. PELL. Mr. President, I am very pleased to inform my colleagues that today, the President transmitted to the Senate for its advice and consent, the United Nations Convention on the Law of the Sea and the Agreement Relating to the Implementation of Part XI of the Convention. I ask unanimous consent that the President's Letter of Transmittal and the Secretary of State's Letter of Submittal appear immediately following my remarks in the RECORD.

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

(See exhibit 1.)

Mr. PELL. Next year, Mr. President, this body will be called upon to decide if the Convention and Agreement serve our national interest. In my view, the answer to that question is an emphatic yes. In essence, the Convention is a constitution to guide the use of the world's oceans. As a coastal and maritime nation, the United States has a vital interest in such a constitution.

From a national security perspective, the Convention establishes as a matter of international law, navigational freedoms that are fundamental to the effective operation of our military forces. As a representative from the Department of Defense testified before the Foreign Relations Committee, the Department "considers the legal framework which the Convention establishes to be essential to its mission."

I ask unanimous consent that a Department of Defense study of the Convention entitled "National Security and the Convention on the Law of the Sea" appear following my remarks in the RECORD.

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

(See exhibit 2.)

Mr. PELL. From an economic perspective, the Convention helps guarantee American jobs and economic growth. Seaborne commerce accounts for 80 percent of trade among nations, and a tremendous percentage of U.S. imports and exports. This commerce is critically dependent on the navigational freedoms formally established in the Convention. The United States has

a vital interest in the stability of the international legal order that serves as the basis for this commerce. Universal adherence to the Law of the Sea Convention provides that stability.

From an environmental perspective, the Convention provides a foundation for addressing such challenges as the depletion of many of the world's major fisheries. Just last week, the Committee on Foreign Relations reported favorably the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, commonly known as the Donut Hole Convention. By establishing a management regime to preserve Pollock resources, the Convention will help ensure the livelihood of thousands of U.S. fishermen in Alaska and the Pacific Northwest. The foundation for the Donut Hole Convention lies in the Law of the Sea Convention, and in particular the latter's provisions coupling the right to fish on the high seas with the responsibility to conserve high seas fishery resources. As Ambassador David Colson noted in his testimony the Donut Hole Convention is precisely the sort of agreement envisioned in the Law of the Sea Convention.

Mr. President, these are just a few examples of the benefits of the Law of the Sea Convention to the United States. We must recognize, however, that the Convention will not be a static document. Just as form and substance have been given our Constitution by the courts, so too will future uses of the oceans by influenced and shaped by decisions made under the Convention. As much as for what is in the Convention now, our country has an interest in participating in the Convention for what it may become. To be part of that process, the United States must become a party to the Convention.

Mr. President, the Convention and the Agreement transmitted to the Senate today are the culmination of over two decades of effort by Democratic and Republican Administrations. They are a triumph for American foreign policy, and I will make their consideration one of my highest priorities for the Committee on Foreign Relations, in the 104th Congress.

I yield the floor.

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to accession, the United Nations Convention on the Law of the Sea, with Annexes, done at Montego Bay, December 10, 1982 (the "Convention"), and, for the advice and consent of the Senate to ratification, the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, with Annex, adopted at New York, July 28, 1994 (the "Agreement"), and signed by the United States, subject to ratification, on July 29, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention and Agreement, as well as Resolution II of Annex I and Annex II of the Final Act of the Third United Nations Conference on the Law of the Sea.

The United States has basic and enduring national interests in the oceans and has consistently taken the view that the full range of these interests is best protected through a widely accepted international framework governing uses of the sea. Since the late 1960s, the basic U.S. strategy has been to conclude a comprehensive treaty on the law of the sea that will be respected by all countries. Each succeeding U.S. Administration has recognized this as the cornerstone of U.S. oceans policy. Following adoption of the Convention in 1982, it has been the policy of the United States to act in a manner consistent with its provisions relating to traditional uses of the oceans and to encourage other countries to do likewise.

The primary benefits of the Convention to the United States include the following:

—The Convention advances the interests of the United States as a global maritime power. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements and of commercial vessels to carry sea-going cargoes. It achieves this, *inter alia*, by stabilizing the breadth of the territorial sea at 12 nautical miles; by setting forth navigation regimes of innocent passage in the territorial sea, transit passage in straits used for international navigation, and archipelagic sea lanes passage; and by reaffirming the traditional freedoms of navigation and overflight in the exclusive economic zone and the high seas beyond.

—The Convention advances the interests of the United States as a coastal State. It achieves this, *inter alia*, by providing for an exclusive economic zone out to 200 nautical miles from shore by securing our rights regarding resources and artificial islands, installations and structures for economic purposes over the full extent of the continental shelf. These provisions fully comport with U.S. oil and gas leasing practices, domestic management of coastal fishery resources, and international fisheries agreements.

—As a far-reaching environmental accord addressing vessel source pollution, pollution from seabed activities, ocean dumping, and land-based sources of marine pollution, the Convention promotes continuing improvement in the health of the world's oceans.

—In light of the essential role of marine scientific research in understanding and managing the oceans, the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities.

—The Convention facilitates solutions to the increasingly complex problems of the uses of the ocean—solutions that respect the essential balance between our interests as both a coastal and a maritime nation.

—Through its dispute settlement provisions, the Convention provides for mechanisms to enhance compliance by Parties with the Convention's provisions.

Notwithstanding these beneficial provisions of the Convention and bipartisan support for them, the United States decided not to sign the Convention in 1982 because of flaws in the regime it would have established for managing the development of mineral resources of the seabed beyond national jurisdiction (Part XI). It has been the consistent view of successive U.S. Administrations that this deep seabed mining regime was inadequate and in need of reform if the United States was ever to become a Party to the Convention.

Such reform has now been achieved. The Agreement, signed by the United States on July 29, 1994, fundamentally changes the deep seabed mining regime of the Convention. As described in the report of the Secretary of State, the Agreement meets the objections the United States and other industrialized nations previously expressed to Part XI. It promises to provide a stable and internationally recognized framework for mining to proceed in response to future demand for minerals.

Early adherence by the United States to the Convention and the Agreement is important to maintain a stable legal regime for all uses of the sea, which covers more than 70 percent of the surface of the globe. Maintenance of such stability is vital to U.S. national security and economic strength.

I therefore recommend that the Senate give early and favorable consideration to the Convention and to the Agreement and give its advice and consent to accession to the Convention and to ratification of the Agreement. Should the Senate give such advice and consent, I intend to exercise the options concerning dispute settlement recommended in the accompanying report of the Secretary of State.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 6, 1994.*

DEPARTMENT OF STATE,
Washington, September 23, 1994.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the United Nations Convention on the Law of the Sea, with Annexes, done at Montego Bay, December 10, 1982 (the Convention) and the Agreement Relating to the Implementation of Part XI of the United Nations

Convention on the Law of the Sea of 10 December 1982, with Annex, adopted at New York, July 28, 1994 (the Agreement), and signed by the United States on July 29, 1994, subject to ratification. I recommend that the Convention and the Agreement be transmitted by the Senate for its advice and consent to accession and ratification, respectively.

The Convention sets forth a comprehensive framework governing uses of the oceans. It was adopted by the Third United Nations Conference on the Law of the Sea (the Conference), which met between 1973 and 1982 to negotiate a comprehensive treaty relating to the law of the sea.

The Agreement, adopted by United Nations General Assembly Resolution A/RES/48/263 on July 28, 1994, contains legally binding changes to that part of the Convention dealing with the mining of the seabed beyond the limits of national jurisdiction (Part XI and related Annexes) and is to be applied and interpreted together with the Convention as a single instrument. The Agreement promotes universal adherence to the Convention by removing obstacles to acceptance of the Convention by industrialized nations, including the United States.

I also recommend that Resolution II of Annex I, governing preparatory investment in pioneer activities relating to polymetallic nodules, and Annex II, a statement of understanding concerning a specific method to be used in establishing the outer edge of the continental margin, of the Final Act of the Third United Nations Conference on the Law of the Sea be transmitted to the Senate for its information.

THE CONVENTION

The Convention provides a comprehensive framework with respect to uses of the oceans. It creates a structure for the governance and protection of all marine areas, including the airspace above and the seabed and subsoil below. After decades of dispute and negotiation, the Convention reflects consensus on the extent of jurisdiction that States may exercise off their coasts and allocates rights and duties among States.

The Convention provides for a territorial sea of a maximum breadth of 12 nautical miles and coastal State sovereign rights over fisheries and other natural resources in an Exclusive Economic Zone (EEZ) that may extend to 200 nautical miles from the coast. In so doing, the Convention brings most fisheries under the jurisdiction of coastal States. (Some 90 percent of living marine resources are harvested within 200 nautical miles of the coast.) The Convention imposes on coastal States a duty to conserve these resources, as well as obligations upon all States to cooperate in the conservation of fisheries populations on the high seas and such populations that are found both on the high seas and within the EEZ (highly migratory stocks, such as tuna, as well as "straddling stocks"). In addition, it provides for special protective measures for anadromous species, such as salmon, and for marine mammals, such as whales.

The Convention also accords the coastal State sovereign rights over the exploration and development of non-living resources, including oil and gas, found in the seabed and subsoil of the continental shelf, which is defined to extend to 200 nautical miles from the coast or, where the continental margin extends beyond that limit, to the outer edge of the geological continental margin. It lays down specific criteria and procedures for determining the outer limit of the margin.

The Convention carefully balances the interests of States in controlling activities off their own coasts with those of all States in protecting the freedom to use ocean spaces without undue interference. It specifically preserves and elaborates the rights of military and commercial navigation and overflight in areas under coastal State jurisdiction and on the high seas beyond. It guarantees passage for all ships and aircraft through, under and over straits used for international navigation and archipelagos. It also guarantees the high seas freedoms of navigation, overflight and the laying and maintenance of submarine cables and pipelines in the EEZ and on the continental shelf.

For the non-living resources of the seabed beyond the limits of national jurisdiction (i.e., beyond the EEZ or continental margin, whichever is further seaward), the Convention establishes an international regime to govern exploration and exploitation of such resources. It defines the general conditions for access to deep seabed minerals by commercial entities and provides for the establishment of an international organization, the International Seabed Authority, to grant title to mine sites and establish necessary ground rules. The system was substantially modified by the 1994 Agreement, discussed below.

The Convention sets forth a comprehensive legal framework and basic obligations for protecting the marine environment from all sources of pollution, including pollution from vessels, from dumping, from seabed activities and from land-based activities. It creates a positive and unprecedented regime for marine environmental protection that will compel parties to come together to address issues of common and pressing concern. As such, the Convention is the strongest comprehensive environmental treaty now in existence or likely to emerge for quite some time.

The essential role of marine scientific research in understanding and managing the oceans is also secured. The Convention affirms the right of all States to conduct marine scientific research and sets forth obligations to promote and cooperate in such research. It confirms the rights of coastal States to require consent for such research undertaken in marine areas under their jurisdiction. These rights are balanced by specific criteria to ensure that coastal States exercise the consent authority in a predictable and reasonable fashion to promote maximum access for research activities.

The Convention establishes a dispute settlement system to promote compliance with its provisions and the peaceful settlement of disputes. These procedures are flexible, in providing options as to the appropriate means and fora for resolution of disputes, and comprehensive, in subjecting the bulk of the Convention's provisions to enforcement through binding mechanisms. The system also provides Parties the means of excluding from binding dispute settlement certain sensitive political and defense matters.

Further analysis of provisions of the Convention's 17 Parts, comprising 320 articles and nine Annexes, is set forth in the Commentary that is enclosed as part of this Report.

THE AGREEMENT

The achievement of a widely accepted and comprehensive law of the sea convention—to which the United States can become a Party—has been a consistent objective of successive U.S. administrations for the past quarter century. However, the United States decided not to sign the Convention upon its adoption in 1982 because of objections to the regime it would have established for managing the development of seabed mineral resources beyond national jurisdiction. While the other Parts of the Convention were judged beneficial for U.S. ocean policy interests, the United States determined the deep seabed regime of Part XI to be inadequate and in need of reform before the United States could consider becoming Party to the Convention.

Similar objections to Part XI also deterred all other major industrialized nations from adhering to the Convention. However, as a result of the important international political and economic changes of the last decade—including the end of the Cold War and growing reliance on free market principles—widespread recognition emerged that the seabed mining regime of the Convention required basic change in order to make it generally acceptable. As a result, informal negotiations were launched in 1990, under the auspices of the United Nations Secretary-General, that resulted in adoption of the Agreement on July 28, 1994.

The legally binding changes set forth in the Agreement meet the objections of the United States to Part XI of the Convention. The United States and all other major industrialized nations have signed the Agreement.

The provisions of the Agreement overhaul the decision-making procedures of Part XI to accord the United States, and others with major economic interests at stake, adequate influence over future decisions on possible deep seabed mining. The Agreement guarantee a seat for the United States on the critical executive body and requires a consensus of major contributors for financial decisions.

The Agreement restructures the deep seabed mining regime along free market principles and meets the U.S. goal of guaranteed access by U.S. firms to deep seabed minerals on the basis of reasonable terms and conditions. It eliminates mandatory transfer of technology and production controls. It scales back the structure of the organization to administer the mining regime and links the activation and operation of institutions to the actual development of concrete commercial interest in seabed mining. A future decision, which the United States and a few of its allies can block, is required before the organization's potential operating arm (the Enterprise) may be activated, and any activities on its part are subject to the same requirements that apply to private mining companies. States have no obligation to finance the Enterprise, and subsidies inconsistent with GATT are prohibited.

The Agreement provides for grandfathering the seabed mine site claims established on the basis of the exploration work already conducted by companies holding U.S. licenses on the basis of arrangements "similar to and no less favorable than" the best terms granted to previous claimants; further, it strengthens the provisions requiring consideration of the potential environmental impacts of deep seabed mining.

The Agreement provides for its provisional application from November 16, 1994, pending its entry into force. Without such a provision, the Convention would enter into force on that date with its objectionable seabed mining provisions unchanged. Provisional application may continue only for a limited period, pending entry into force. Provisional application would terminate on November 16, 1998, if the Agreement has not entered into force due to failure of a sufficient number of industrialized States to become Parties. Further, the Agreement provides flexibility in allowing States to apply it provisionally in

accordance with their domestic laws and regulations.

In signing the agreement on July 29, 1994, the United States indicated that it intends to apply the agreement provisionally pending ratification. Provisional application by the United States will permit the advancement of U.S. seabed mining interests by U.S. participation in the International Seabed Authority from the outset to ensure that the implementation of the regime is consistent with those interests, while doing so consistent with existing laws and regulations.

Further analysis of the Agreement and its Annex, including analysis of the provisions of Part XI of the Convention as modified by the Agreement, is also set forth in the Commentary that follows.

STATUS OF THE CONVENTION AND THE AGREEMENT

One hundred and fifty-two States signed the Convention during the two years it was open for signature. As of September 8, 1994, 65 States had deposited their instruments of ratification, accession or succession to the Convention. The Convention will enter into force for these States on November 16, 1994, and thereafter for other States 30 days after deposit of their instruments of ratification or accession.

The United States joined 120 other States in voting for adoption of the Agreement on July 28, 1994; there were no negative votes and seven abstentions. As of September 8, 1994, 50 States and the European Community have signed the Agreement, of which 19 had previously ratified the Convention. Eighteen developed States have signed the Agreement, including the United States, all the members of the European Community, Japan, Canada and Australia, as well as major developing countries, such as Brazil, China and India.

RELATION TO THE 1958 GENEVA CONVENTIONS

Article 311(1) of the LOS Convention provides that the Convention will prevail, as between States Parties, over the four Geneva Conventions on the Law of the Sea of April 29, 1958, which are currently in force for the United States: the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 (entered into force September 10, 1964); the Convention on the High Seas, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 (entered into force September 30, 1962); Convention on the Continental Shelf, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 (entered into force June 10, 1964); and the Convention on Fishing and Conservation of Living Resources of the High Seas, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285 (entered into force March 20, 1966). Virtually all of the provisions of these Conventions are either repeated, modified, or replaced by the provisions of the LOS Convention.

DISPUTE SETTLEMENT

The Convention identifies four potential fora for binding dispute settlement:

The International Tribunal for the Law of the Sea constituted under Annex VI;

The International Court of Justice;

An arbitral tribunal constituted in accordance with Annex VII; and

A special arbitral tribunal constituted in accordance with Annex VIII for specified categories of disputes.

A State, when adhering to the Convention, or at any time thereafter, is able to choose, by written declaration, one or more of these means for the settlement of disputes under the Convention. If the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree. If a Party has failed to announce its choice of forum, it is deemed to have accepted arbitration in accordance with Annex VII.

I recommend that the United States choose special arbitration for all the categories of disputes to which it may be applied and Annex VII arbitration for disputes not covered by the above, and thus that the United States make the following declaration:

The Government of the United States of America declares, in accordance with paragraph 1 of Article 287, that it chooses the following means for the settlement of disputes concerning the interpretation or application of the Convention:

(A) a special arbitral tribunal constituted in accordance with Annex VIII for the settlement of disputes concerning the interpretation or application of the articles of the Convention relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and by dumping, and

(B) an arbitral tribunal constituted in accordance with Annex VII for the settlement of disputes not covered by the declaration in (A) above.

Subject to limited exceptions, the Convention excludes from binding dispute settlement disputes relating to the sovereign rights of coastal States with respect to the living resources in their EEZs. In addition, the Convention permits a State to opt out of binding dispute settlement procedures with respect to one ore more enumerated categories of disputes, namely disputes regarding maritime boundaries between neighboring States, disputes concerning military activities and certain law enforcement activities, and disputes in respect of which the United Nations Security Council is exercising the functions assigned to it by the Charter of the United Nations.

I recommend that the United States elect to exclude all three of these categories of disputes from binding dispute settlement, and thus that the United States make the following declaration:

The Government of the United States of America declares, in accordance with paragraph 1 of Article 298, that it does not accept the procedures provided for in section 2 of Part XV with respect to the categories of disputes set forth in subparagraphs (a), (b) and (c) of that paragraph.

RECOMMENDATION

The interested Federal agencies and departments of the United States have unanimously concluded that our interests would be best served by the United States becoming a Party to the Convention and the Agreement.

The primary benefits of the Convention to the United States include the following:

The convention advances the interests of the United States as a global maritime power. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements and of commercial vessels to carry sea-going cargoes. It achieves this, *inter alia*, by stabilizing the breadth of the territorial sea at 12 nautical miles; by setting forth navigation regimes of innocent passage in the territorial sea, transit passage in straits used for international navigation, and archipelagic sea lanes passage; and by reaffirming the traditional freedoms of navigation and overflight in the EEZ and the high seas beyond.

The Convention advances the interests of the United States as a coastal State. It achieves this, inter alia, by providing for an EEZ out to 200 nautical miles from shore and by securing our rights regarding resources and artificial islands, installations and structures for economic purposes over the full extent of the continental shelf. These provisions fully comport with U.S. oil and gas leasing practices, domestic management of coastal fishery resources, and international fisheries agreements.

As a far-reaching environmental accord addressing vessel source pollution, pollution from seabed activities, ocean dumping and land-based sources of marine pollution, the Convention promotes continuing improvement in the health of the world's oceans.

In light of the essential role of marine scientific research in understanding and managing the oceans, the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities.

The Convention facilitates solutions to the increasingly complex problems of the uses of the ocean—solutions which respect the essential balance between our interests as both a coastal and a maritime nation.

Through its dispute settlement provisions, the Convention provides for mechanisms to enhance compliance by Parties with the Convention's provisions.

The Agreement fundamentally changes the deep seabed mining regime of the Convention. It meets the objections the United States and other industrialized nations previously expressed to Part XI. It promises to provide a stable and internationally recognized framework for mining to proceed in response to future demand for minerals.

The United States has been a leader in the international community's effort to develop a widely accepted international framework governing uses of the seas. As a Party to the Convention, the United States will be in a position to continue its role in this evolution and ensure solutions that respect our interests.

All interested agencies and departments, therefore, join the Department of State in unanimously recommending that the Convention and Agreement be transmitted to the Senate for its advice and consent to accession and ratification respectively. They further recommend that they be transmitted before the Senate adjourns sine die this fall.

The Department of State, along with other concerned agencies, stands ready to work with Congress toward enactment of legislation necessary to carry out the obligations assumed under the Convention and Agreement and to permit the United States to exercise rights granted by the Convention.

Respectfully submitted,

WARREN CHRISTOPHER.

EXHIBIT 2

THE SECRETARY OF DEFENSE,
Washington, DC, July 29, 1994.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In 1982, the United States made a decision that it would not become a party to the United Nations Convention on the Law of the Sea because of its concerns about the deep seabed mining provisions, contained in Part XI of the Convention. The Convention is due to enter into force on November 16, 1994, now that the requisite number of other states (60) have ratified it. However, consultations were recently concluded which resulted in an Agreement to correct what the United States has long viewed as the Convention's flawed deep seabed mining provisions. The United States

now intends to sign the Agreement at the United Nations on July 29, 1994. Accordingly, the Convention as modified will be transmitted to the Senate for its advice and consent at the end of the 103rd Congress.

The Department of Defense fully supports U.S. signature of the Agreement, and ratification of the Convention as modified by the Agreement. In the Administration's view, the new Agreement satisfactorily resolves the issues that the U.S. Government and ocean mining interests raised in the early 1980's during deliberations over whether the United States should sign the Law of the Sea Convention. The new Agreement meets these objections by correcting the serious institutional and free market deficiencies in the original Convention. We have received indications from other industrialized nations that, with adoption of the new Agreement, they will soon accede to the modified Convention.

The Convention establishes a universal regime for governance of the oceans which is needed to safeguard U.S. security and economic interests, as well as to defuse those situations in which competing uses of the oceans are likely to result in conflict. In addition to strongly supporting our interests in freedom of navigation, the Convention provides an effective framework for serious efforts to address land and sea-based sources of pollution and overfishing. Moreover, the Agreement provides us with an opportunity to participate with other industrialized nations in a widely accepted international order to regulate and safeguard the many diverse activities, interests, and resources in the world's oceans. Historically, this nation's security has depended upon the ability to conduct military operations over, under, and on the oceans. The best guarantee that this free and unfettered access to the high seas will continue in the years ahead is for the U.S. to become a party to the Convention, as modified by the Agreement, at the earliest possible time.

In the coming months, we anticipate heightened public debate of the merits of the Law of the Sea Convention. To put that debate into perspective, you will find enclosed a paper which briefly outlines the history of the original Convention, the steps leading to the formalization of the Part XI Agreement, and the nation's vital national security and other interests in becoming bound by the modified Convention.

To send a strong signal that the United States is committed to an ocean regulatory regime that is guided by the rule of law, General Shalikashvili and I urge your support in securing early advice and consent of the United Nations Convention on the Law of the Sea and implementing Agreement.

Sincerely,

WILLIAM J. PERRY.

NATIONAL SECURITY AND THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

EXECUTIVE SUMMARY

This position paper analyzes the Department of Defense's interests in having the United States become a party to the 1982 UN Law of the Sea Convention (Convention), as modified by the recently negotiated Part XI Implementation Agreement (Agreement). This new Agreement corrects the flaws identified by the United States in the deep seabed mining regime set out in the Convention.

Our principal judgment is that public order of the oceans is best established by a universally accepted law of the sea treaty that is in the U.S. national interest. We believe the opportunity created by the new Agreement meets this test. Reliance upon customary international law in the absence of the modified Convention would represent a necessarily imprecise approach to the problem as well as one which requires the United States to put forces into harm's way when principles of law are not universally understood or accepted. A universal Convention is the best guarantee of avoiding situations in which U.S. forces must be used to assert navigational freedoms, as well as the best method of fostering the growth and use of various conflict avoidance schemes which are contained in the Convention.

The Convention, as modified, is not a perfect solution to all oceans policy issues. However, the compromises embodied in the Agreement and the Convention as a whole establish an ocean regulatory regime that is, on balance, in the national security interest of the United States. We now have before us a rare window of opportunity to resolve favorably the deep seabed mining issues, as well as to solidify the vital navigation and other resources issues which are addressed by the Convention.

The Department of Defense's key conclusions are:

DOD has long been a major proponent of achieving a comprehensive and stable legal regime with respect to traditional uses of the oceans. A universally accepted Convention, as modified by the Agreement, would promote our strategic goals of free access to and public order on the oceans and in the superjacent airspace.

Over 150 States, including the U.S., participated in the negotiation of the Convention between 1973 and 1982. Save for Part XI, we achieved our fundamental objectives of solidifying and defining the nature of maritime claims, restraining the growth of excessive maritime claims, and codifying key legal provisions in the areas of environment, fisheries, and sovereign immunity which balance the vital interests of maritime and coastal states.

Since 1979 DOD and the Department of State have been actively involved in countering excessive maritime claims through the Freedom of Navigation (FON) program. This combination of diplomatic and operational challenges is less desirable than establishment through the Convention of universal norms of behavior and conflict resolution mechanisms.

With 62 States now having ratified, the Convention will enter into force in November 1994. Under the sponsorship of the UN Secretary General, the United States and other states have worked hard on a comprehensive set of modifications to Part XI. An Agreement has been finalized and will be offered for adoption by the UN General Assembly in late July. Negotiators of the Agreement were guided by the specified objections to Part XI articulated by President Reagan in 1982.

Correction of the Part XI flaws now allows the United States to take advantage of the opportunity to adhere to the modified Convention so as to realize its national security benefits, and permit us to ensure those rights from within the structure of the Convention.

U.S. OCEANS POLICY: 1973–1994

Between 1973 and 1982, over 150 states participated in the negotiation of the Third United Nations Convention on the Law of the Sea (Convention). Save for the provisions dealing with deep seabed mining, the Convention was a success from the U.S. perspective.It secured much needed agreement on the breadth of the territorial sea (12 nautical miles (NM)) in the face of a large number of nations seeking to establish territorial sea claims of up to 200 NM or more, and struck a positive balance between coastal states and maritime states on issues such as marine pollution, fisheries, and mineral resource exploitation, and navigational freedoms through the waters and airspace of exclusive economic zones (EEZs), territorial seas, straits, and archipelagic waters.

However, while United States maritime interests were significantly preserved in the balance struck between coastal state interests in security and resource protection, the provisions dealing with deep seabed mining in Part XI of the Convention were not satisfactory. As a result, on July 9, 1982,[1] President Reagan announced that eleven sessions of negotiations had failed to produce a universal agreement which accommodated the diverse interests represented at the conference on the full range of oceans use. Of particular concern to the U.S. and other developed countries were those seabed mining provisions that deterred development, did not guarantee a decision-making role for the U.S. which fairly reflected its interests, permitted amendments to the regime without state party consent, mandated transfers of privately owned technology, permitted sharing of benefits by national liberation movements, and failed to assure access for those pioneer investors who sought to develop deep seabed resources privately.[2] Virtually all major maritime and industrialized nations have declined to become parties to the Convention in its original form. However, 62 other states have agreed to be bound by the Convention and it will enter into force on November 16, 1994.

In 1983, President Reagan issued the U.S. Ocean Policy Statement[3] which declared, in essence, that the United States would follow the non-seabed-mining provisions of the Convention because they reflected "traditional uses of the oceans" and "generally confirm existing maritime law and practice." In that same 1983 statement, President Reagan asserted a 200 NM EEZ on behalf of the United States, in addition to confirming the United States exercise of sovereign jurisdiction over the resources of the continental shelf.

In addition to the 1983 declaration of the 200 NM EEZ, President Reagan also announced that the United States would "exercise and assert its navigation and overflight rights and freedoms on a worldwide basis consistent with . . . the Convention [but not] . . . acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses." President Reagan's statement reaffirmed the ongoing U.S. practice since 1979 of challenging, through diplomatic and navigational assertions, maritime claims which were inconsistent with the Convention. In excess of 110 diplomatic protests, as well as 35–40 operational challenges per year, have been made since 1979 under the Freedom of Navigation (FON) Program[4] challenging excessive coastal claims. Finally, to extend the breadth of the United States territorial sea (3 NM) to that authorized by the Convention, President Reagan issued a Proclamation on December 27, 1988[5] extending the Territorial Sea of the United States and its possessions to 12 NM.

SCOPE OF THE CONVENTION

The text of the Convention is the result of nine years of negotiations in which the United States was an active participant. The Convention opened for signature on 10 December 1982. It consists of 320 articles and

Footnotes at end of article.

nine annexes, covering virtually every topic of importance to coastal and maritime states. Among the topics covered: breadth of the territorial sea, exclusive economic zone (EEZ), contiguous zones, and continental shelf; freedom of navigation and overflight; the laying of cables and pipelines; rights of transit, innocent and archipelagic sea lanes passage; right of states to conduct marine scientific research; a balancing of rights between fishing states and coastal states concerning management of fish stocks, as well as empowerment of regional fishing compacts; creation of special regimes for the management and protection of marine mammals, anadromous, and highly migratory fish species; apportionment of responsibility between the coastal states and flag states to take measures to protect the marine environment; and establishment of a broad range of dispute settlement options so that universal participation would be reasonably assured. However, as noted above, Part XI of the Convention established both a regime and institutions to administer mining of the deep seabed which were objectionable to the United States and most other industrialized countries.

EFFORTS TO REFORM THE CONVENTION AND THE REACTION OF OUR ALLIES

In 1990, then UN Secretary-General Javier Perez de Cuellar convened informal meetings in New York to begin negotiation of a multilateral instrument which would correct the objectionable portions of Part XI. The object was universal adherence to the Convention. Approximately 30 developing and developed countries participated in the discussions which resulted, in early 1994, in a Draft UN General Assembly Resolution and Draft Agreement Relating to Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea (hereinafter Agreement).

The Part XI Agreement and Draft General Assembly Resolution have been crafted so as to incorporate by reference the provisions of the Convention which are not objectionable (the entire Convention less specified provisions in Part XI). Most parties and non-parties to the Convention are expected to sign the Agreement, including most industrialized nations. Since the Convention will enter into force for over 60 states in November 1994, those states which have agreed to be bound by the Convention may signal their assent to the Agreement through, in essence, silent consent procedures. The legal significance of the draft UN General Assembly Resolution is that it eliminates the requirement to amend the Convention through the convening of an entirely new Law of the Sea Conference or by use of the Convention's ⅔ vote amendment procedures. For the Agreement to formally enter into force, 40 states must register their approval of the Agreement by either signing it or failing (in the case of states which have already ratified the Convention) to "opt out" within one year after the Agreement provisionally applies. While the Agreement will not formally enter into force until there are 40 state parties, it will be provisionally applied to signatory states from November 16, 1994, when the Convention enters into force.

There is consensus among all Federal agencies that accession to the Law of the Sea Convention is a priority. Following extensive interagency coordination in conjunction with Presidential Review Directive-12, an Executive Branch policy decision was formulated in May 1993 that: (a) the U.S. should provide leadership to find solutions to the Part XI dilemma; (b) the non-seabed provisions of the Convention are the appropriate legal framework for governance of the oceans; and (c) the U.S. should, as a matter of high priority, become an active participant in efforts to reform the Convention.

VITAL NATIONAL SECURITY INTERESTS ARE ADVANCED BY THE UNITED STATES BECOMING A PARTY TO THE CONVENTION VIA THE PART XI AGREEMENT

National security interests have been a critical component over the 25 years spent in seeking a comprehensive Convention. They were at the heart of the Clinton Administration's policy of finding a satisfactory solution to the Part XI problem so that the United States could sign the Convention. The national security interests in having a stable oceans regime are, if anything, even more important today than in 1982 when the work had a roughly bipolar political dimension and the U.S. had more abundant forces to project power to wherever it was needed.

The navigational rights and freedoms embodied in the Convention are in daily use by the naval and air forces of the United States and its allies. The core rights assured by the Convention include the following:

THE RIGHT OF INNOCENT PASSAGE

This right of ships to continuous and expeditious passage which is not prejudicial to the peace, good order, or security of coastal states is a primary right of nations in foreign territorial seas. Naval vessels need this right to be able to conduct their passage expeditiously and effectively. The Convention plays a special role in codifying the customary right of innocent passage and contains an exhaustive list of the types of shipboard activities which are forbidden while a ship is engaged in innocent passage.

THE RIGHT OF TRANSIT PASSAGE.

The Convention codifies the historic regime permitting free transit through and over international straits while upholding the needs of major maritime states who could not accept the extension of territorial seas to 12 NM without a corresponding guarantee of an unimpeded right of transit through and over international straits. Over 135 straits, which would have been closed as a result of the extension of the territorial seas to 12 NM, are open to free passage under the regime of transit passage. Less restrictive than innocent passage, ships and aircraft under the passage regime may pass through straits continuously and expeditiously in their normal mode. Accordingly, submarines may pass through straits submerged, naval task forces may conduct formation steaming, aircraft carriers may engage in flight operations, and military aircraft can transit unchallenged. In three significant conflicts the regime of transit passage would have and has played a critical role:

During the 1973 Yom Kippur War, overflight of the Strait of Gibraltar enabled U.S. military aircraft to conduct emergency resupply of Israel following the denial of overflight of land territory by certain NATO Allies.[6]

Following the state-sponsored terrorist attack on U.S. armed forces in Berlin, U.S. military aircraft overflew the Strait of Gibraltar to conduct a raid on Libya on April 14, 1986, after certain NATO Allied denied the U.S. permission to overfly their land territory.

In the recent Persian Gulf War, the exercise of the right of transit passage enabled U.S. and other coalition naval and air forces to traverse through the critical choke points of Hormuz and Bab el Mandeb.

ARCHIPELAGIC SEA LANES PASSAGE

The right of transit by ships and aircraft through archipelagos, such as the Philippines, the Bahamas, and Indonesia, can have a significant impact on the ability of military forces to proceed to an area of operations in a timely and secure manner. Archipelagic sea lanes passage permits transits in the normal mode between one part of the high seas or EEZ and another through the normal routes used for international navigation or through International Maritime Organization approved sea lanes. To date, there has been a general compliance with the Convention by national claiming archipelagic status.[7]

HIGH SEAS FREEDOMS

The Convention makes an important contribution in defining the types of activities which are permissible on and over the high seas. Under the principle of "due regard" to the rights of other high seas users, U.S. forces remain free to engage in task force maneuvering, flight operations, military exercises, surveillance and intelligence activities, and ordnance testing and firing.

SOVEREIGN IMMUNITY OF WARSHIPS AND OTHER PUBLIC VESSELS AND AIRCRAFT

The concept of sovereign immunity of warships and other public vessels has come under increasing assault by coastal states wishing to circumscribe this historic right on the basis of security or pollution control concerns. Article 236 of the Convention contains a vitally important codification of the customary principle that naval auxiliaries are entitled to the same immunity from enforcement by other than the flag state as warships enjoy. To support military operations around the globe, there must be the assurance that military vessels and their cargoes can move freely without being subject to levy or interference by coastal states.

Recent events in Korea, Haiti and the former Yugoslavia are important reminders that we still live in an uncertain and dangerous world. Threats to world order and U.S. interests in the post-Cold war era include:

Ethnic rivalry and separatist violence within and outside of national borders;

Regional tensions in areas such as the Middle East and Northeast Asia;

Humanitarian crises of natural or other origin resulting in starvation, strife or mass migration patterns;

Conflict over resources including those that straddle territorial or maritime zones;

Terrorist and pirate attacks against U.S. persons, property, or shipping overseas or on the high seas.

These challenges are considerably different than those which dominated thinking in the era following World War II. What has not changed, however, is that many U.S. economic, political, and military interests are located far away from the United States. The United States has always been a maritime nation and we must have substantial air and sealift capabilities to enable our forces to be where and when needed. Assurance that key sea and air lines of communication will remain open as a matter of international legal right and not contingent upon approval by coastal or island nations is a fundamental premise in our defense posture.

The Convention continues to serve an important function in safeguarding our national security interests. Because the Convention is regarded as authoritative, it guides the behavior of states, promoting stability of expectations and providing clear benchmarks for issue resolution. For example, provisions in the Convention have been

invaluable in resolving the following issues which have strong national security implications:

Bilateral discussions with the former Soviet Union following the Black Sea "bumping" incident, resulting in the U.S.-USSR Uniform Interpretation of the Rules of International Law Governing Innocent Passage Through the Territorial Sea signed at Jackson Hole, Wyoming on September 23, 1989; and

Technical level discussions between U.S. and Indonesian representatives concerning archipelagic sea lanes passage through the Indonesian archipelago.

A universal convention offers considerable promise because of the flexibility which it provides to states to resolve disputes over conflicting uses of the sea through the employment of any of four dispute resolution mechanisms. Even though the United States and other powers will not submit to compulsory jurisdiction for military matters, a mechanism for resolving lesser disputes provides an additional method of managing conflict. The large number of "hot spots" on the glove (Haiti, Korea, Somalia, Rwanda, the Middle East, the Persian Gulf, the former Soviet Union, and the former Yugoslavia) underscore the need for additional non-military methods of resolving conflicts.

Without international respect for the freedoms of navigation and overflight set forth in the Convention, exercise of our forces' mobility rights could be jeopardized. Disputes with littoral states could delay action and be resolved only by protracted political discussions. The response time for U.S. and allied/coalition forces based away from potential areas of conflict could lengthen. Deterrence could be weakened—particularly when our coalition allies do not have sufficient power projection capacity to resist illegal claims. Forces may arrive on the scene too late to make a difference, affecting our ability to influence the course of events consistent with our interests and treaty obligations.

INTERNATIONAL TRADE AND BUSINESS INTERESTS OF THE UNITED STATES DEPEND UPON THE NAVIGATIONAL PROVISIONS OF THE CONVENTION

To be secure and influential in the political arena, the United States must maintain its economic viability. In the 12 years since the United States rejected the Convention's seabed mining regime, our country has become more economically interdependent than ever upon access to global markets. U.S. economic growth is closely linked to the world economy as a whole and the majority of that trade is carried on and over the world's oceans. Seaborne commerce exceeds 3.5 billion tons annually and accounts for 80 percent of trade among nations. Universal adherence to the Convention would provide the predictability and stability which international shippers and insurers depend upon in establishing routes and rates for global movement of commercial cargo. Increased costs of goods and services resulting from coastal state restrictions on navigation and communications would adversely impact our entire economy.

The reality that U.S. economic interests are global in nature underscores the need to uphold the transit rights under a widely accepted and comprehensive international legal regime. The Convention's dispute resolution provisions, its fixed rules for determining the breadth and access to maritime resources in the EEZ and continental shelf, and its provisions which preserve "flag state" control over vessel-source pollution all support the "stability of expectations of investment bankers, insurance companies and others who underwrite and support shipping, offshore exploration and drilling and many other activities at sea."[8]

THE LOS CONVENTION PROVIDES CLEAR AND CONCRETE RULES FOR DETERMINING THE LEGALITY OF MARITIME CLAIMS

One of the principal accomplishments of the LOS Convention is the establishment of a clear set of maritime zones: the territorial sea, contiguous zone, EEZ, and continental shelf, which uphold the security and resource interests of coastal states, balanced against the interest of maritime nations to have relatively open access to the oceans for navigation, overflight, and telecommunications. This careful balance of maritime zones reverses a disturbing trend in jurisdictional creep in which some states claimed territorial seas of up to 200 NM in order to create a monopoly over coastal resources or for purposes of security. Excessive maritime claims may not disappear altogether if the United States signs the Agreement; however, as an insider, the U.S. would be in a stronger position to assert the Convention's clear rules for establishing the baseline from which the territorial sea is measured, as well as the unambiguous rules for determining the existence of bays.

As a party to the Convention, the United States also will be entitled to make use of the dispute resolution apparatus to contest those excessive claims. Since 1979, the United States has unilaterally contested excessive coastal claims diplomatically and operationally through the FON Program. Those actions may still be required to enforce the norms of the Convention; however, to the extent we can decrease reliance upon FON challenges, the United States avoids political and military risks and other costs. Also, because the Convention provides explicit rules for fixing maritime boundaries, there should be a corresponding lessening in tension over the normative rules to be applied. In addition, from the perspective of the smaller coastal states, our becoming party to the Convention would create less perceived pressure on those states to assert excessive claims to achieve parity with the U.S. and other major maritime nations.

THE LOS CONVENTION ESTABLISHES IMPORTANT BENCHMARKS FOR PROTECTING THE MARINE ENVIRONMENT WHILE PRESERVING OPERATIONAL FREEDOMS

The Department of Defense in committed as a matter of policy to the norm established by Part XII of the Convention, which affirms that "States have the obligation to protect and preserve the marine environment." Although the Convention provides a framework for retaining navigational access to the world's oceans, the practical abilities of naval forces to gain access to foreign ports and bases for distant operations and to resist some types of coastal state claims are heavily influenced by the perceptions of coastal states that the U.S. warships and other public vessels are being operated in an environmentally responsible manner. The goal of our environmental program is to ensure that our shore installations and operational commands worldwide are able to accomplish their assigned missions while meeting our environmental obligations.[9] To meet this overall goal of environmental compliance and to maintain credibility with the world community at large, the military Departments have made a heavy commitment of resources to:

Actively participate in the international fora (such as the International Maritime Organization) which adopt and promulgate realistic procedural and substantive environmental standards affecting maritime operations;

Modify our operational practices or, as appropriate, acquire waste processing equipment, to mitigate the environmental impacts of military operations;

Conduct extensive research to develop technical solutions to the problems of processing shipboard wastes and development of special coatings and industrial processes to further limit sources of pollution from ship hulls.

The Department will continue to be proactive in the area of environmental protection as a matter of national law and policy. Nevertheless, to resist excessive maritime claims and to maintain the principle of sovereign immunity (guaranteed in Article 236 of the Convention) requires both a legal commitment to environmental protection as well as a history of sound management of environmental hazards. In the latter respect, the United States has a solid record. But failing to become committed to the comprehensive environmental norms in the Convention would inevitably hamper our ability to maintain diplomatically the balance between our interests in freedom of navigation and protection of the marine environment.

The Convention establishes a delicate balance between the rights of coastal states to adopt certain measures to protect the marine environment close to their shores and the general right of a flag state to exercise prescriptive and enforcement jurisdiction over incidents as sea, routine operational practices, design, and training of crewmembers. The Convention establishes a similar balance between the responsibility of states to curb all sources of marine pollution and the rights of maritime states to exercise their high seas freedoms. Since the Convention and most states take the position that states cannot avoid their overarching responsibilities under the Convention (or customary international law) to protect the marine environment through a claim of sovereign immunity, the U.S. has worked hard to maintain a leadership position in the International Maritime Organization (IMO), based in London.[10] The United States and all major maritime powers have refused to sign the 1982 Convention, yet all actively participate in the IMO, the institutional sponsor for a number of other related conventions, including:

The 1973 Convention and 1978 Protocol for the Prevention of Pollution from Ships (MARPOL);[11]

The 1972 Convention on Prevention of Collisions at Sea (COLREGS);[12] and

The 1972 Convention on the Prevention of Marine Pollution (London Dumping Convention).[13]

The common frame of reference for all three of these IMO-sponsored conventions is the law of the Sea Convention. In the IMO context, the United States has successfully urged positions which tend to hold those flag states accountable for failing to uphold applicable environmental protection norms. By the same token, the United States over the years has been successful in urging realistic and practical methods of dealing with unilateral restrictions on navigation or the rights of sovereign immune vessels which would potentially impair our operational freedoms in the name of environmental protection.

Once again, the Convention is the glue that holds together diverse maritime interests in the environmental field. By becoming

a party to the Convention, the United States will be in a better position to influence events in forums like the IMO. Moreover, our general ability to curtail the growth of unilateral claims which restrict navigation also will be strengthened.

From the standpoint of promoting international peace and stability, the Department strongly supports the Convention because it is one of the few comprehensive legally binding instruments committed to global environmental security. As noted above, DOD has made a significant policy and fiscal commitment to operate in an environmentally responsible manner to assure itself access to foreign ports, bases, and airfields, as well as to set a standard which other nations will follow. In examining the factors which precipitated the current and past instabilities in Haiti, Ethiopia, Somalia, the Sudan and elsewhere among developing and undeveloped states, it is clear that environmental mismanagement played a significant role. The Convention requires: states to ensure that activities under their jurisdiction do not cause environmental damage to other states or result in the spread of pollution beyond their own offshore zones; to minimize the release of harmful substances into the marine environment from land-based sources; to protect fragile ecosystems; and to conserve living resources.

Since over 80% of marine pollution emanates from land-based sources, it serves U.S. national security interests to promote universal accession to the Convention as a method of addressing conflicts which arise out of the transboundary movement of pollutants.

THE CONVENTION PROVIDES AN IMPORTANT FOUNDATION FOR FUTURE EFFORTS TO IMPROVE THE LEGAL REGIME AFFECTING MANAGEMENT OF FISH STOCKS AND RESOLVING RESOURCE CONFLICTS

The management of fish stocks is becoming an increasingly contentious issue for those states which rely upon fishing to feed their populations. Even though DOD's mission does not include fisheries management, the Department has a legitimate interest in encouraging solutions or mechanisms to resolve conflict between coastal states and/or among fishing states competing for diminishing fish stocks which are beyond the scope of a nation's management jurisdiction.

The Convention provides a legal baseline which sanctions the actions of regional fishing organizations to deal with conservation issues. The Convention also levies important duties on coastal states to manage their fishery resources to the limits of their maximum sustainable yield. These principles are the legal cornerstones for the UN-sponsored Conference on Straddling Fish Stocks and High Migratory Fish Stocks, as well as the upcoming UN-sponsored Conference on High Seas Fishing. Until such time as there is international agreement on the regime for managing fish stocks beyond a coastal state's EEZ, the fisheries management precepts of the Convention, together with its encouragement to fishing states to enter into regional agreements, are fundamental to maintaining order between fishing and coastal states. Finally, if current efforts to conclude a universal agreement on straddling stocks and high seas fishing do not meet with success, the dispute resolution provisions of the Convention (which authorize application of provisional measures to prevent serious harm to the marine environment) provide parties with a non-military method of constructively resolving disputes.

The United States has played an important role in promoting workable solutions to fisheries management problems. By acceding to the Convention, the U.S. will be in a much stronger position to exercise influence in efforts to achieve moderate solutions to fisheries management problems. The Convention provides the U.S. government with the tools to formulate workable diplomatic solutions.

The trend towards greater coastal state control over fish stocks and living resources beyond 200 NM is indicative of a general trend by coastal states to also exercise greater dominion and control over maritime activities in the water column of its EEZ or over its continental shelf. Like the current trend in fishing disputes, states have proposed measures which encroach upon navigational freedoms because of perceptions that navigation is harmful to the living marine resources or that navigation will interfere with exploitation of the resources of the continental shelf. Coral reef ecosystems are coming under tremendous pressures because of population growth (3.5 billion of the 5.6 billion people on earth now live in coastal areas), poor resource management, and land-based sources of pollution. World attention has only recently been focused on this problem. Certain states have reacted by proposing high seas zones—particularly in coral reef or polar areas—which could restrict or place "off-limits" navigation because of these areas' special ecological sensitivity or importance to coastal fish stocks. DOD's perspective, of course, is that navigation is an environmentally benign activity if flag states properly regulate their flag vessels. Also, additional regulation of navigation is an ineffective method of addressing the root cause of most marine pollution—land-based sources.

Continued offshore development of areas of the continental shelf for fish farming and oil and gas extraction (particularly in critical navigational choke points) will inevitably impact on the navigational freedoms which DOD must preserve to meet its operational commitments worldwide. At the widely attended "Strait of Malacca Conference" on June 14-15. 1994, it was argued that:

The coastal state's right to explore for oil and use the Strait for economic development is greater than the international community's right to use the Strait; and

The newness of the transit passage regime lends uncertainty as to whether the regime has become a customary practice of international law

As noted in Figures 2 and 4, the Strait of Malacca is a strategic waterway which DOD uses to move forces from Pacific bases to the Indian Ocean and Persian Gulf. These arguments, coupled with the trend towards special zones which restrict or prohibit navigation, reinforce the basic theme that the Convention provides the best structural and normative framework for the United States to attack objectionable claims as well as channel conflicts between competing ocean users.

SINCE THE UNITED STATES ALREADY REGARDS THE NON-SEABED MINING PROVISIONS OF THE CONVENTION TO BE CUSTOMARY INTERNATIONAL LAW, DOES THE UNITED STATES DERIVE ANY BENEFIT BY SIGNING THE NEW AGREEMENT?

In the view of the Department of Defense, significant interests of the United States are advanced by becoming a party to the Convention.

Negotiations of the Agreement were late in coming in part because many nations regarded the Convention to be a "package deal" and states had to accept the good with the bad to maintain balance between the various groups of states which participated in the negotiation: developing vs. developed states; mineral producing vs. non-mineral producing states; coastal vs. maritime states. Consequently, states like Yemen, Iran, Morocco, Egypt, Greece, Indonesia, Malaysia, Iran, Spain and the Philippines, at one time or another, have asserted that key navigational principles (particularly the regime of transit passage) are not customary international law but a benefit flowing from the Convention. Remaining outside of the Convention tends to reinforce those arguments. There is also general acknowledgement by the maritime powers that rejection of a "reasonable" Convention by them could create a highly unstable situation vis-a-vis those states which have already ratified the Convention.

In addition to potential for "backlash" if the United States continues to refuse to become party to the Convention as modified, accession will enable the United States to avoid arguments by states that Convention rights are contractual and only available to parties to the Convention.

From the standpoint of promoting global stability, universal accession to the Convention, as modified by the Agreement, will stabilize and fix the customary rules which states now argue do or do not exist. Unlike the 1958 Geneva Convention on the High Seas, which, according to the preamble, is a codification of "the rules of international law of the high seas," many international legal scholars view the LOS Convention as containing numerous provisions that codify customary international law, as well as a number of provisions that represent progressive development of the law. Since the United States is committed to international order determined by the rule of law, accession will put doubts to rest as to the legal underpinnings of U.S. policy towards the Convention. Moreover, since many important provisions that protect our national security interests are to be found in the very carefully drafted details of the text. Customary international law is unlikely to incorporate such detail and nuance.

It is inevitable through the passage of time that change to the Convention will be necessary to adapt it to new conditions. If the United States were to remain a non-party to the Convention, the only way that it could seek to influence changes in the LOS regime would be through unilateral action, which could lead to increased international friction. The U.S. does not seek a static system, and welcomes the gradual adaptation of the Convention to new circumstances, by agreement among states.

CONCLUSION

A universal regime for governance of the oceans is needed to safeguard U.S. security and economic interests, as well as to defuse those situations in which competing uses of the oceans are likely to result in conflict. In addition to strongly supporting our interests in freedom of navigation, the Convention provides an effective framework for serious efforts to address pressures upon the oceans resulting from land and sea-based sources of pollution and overfishing. Moreover, the Agreement provides us with a near-term opportunity to join with other industrialized nations in a widely accepted international order to regulate and safeguard the many diverse activities, interests, and resources in the world's oceans. Historically, this nation's security has depended upon the ability to conduct military operations over, under, and on the oceans. The best guarantee that this free and unfettered access to the high seas will continue in the years ahead is for

the U.S. to become a party to the Convention, as modified by the Agreement, at the earliest possible time.

RESTRICTIONS ON FREEDOM OF NAVIGATION AND OVERFLIGHT

While U.S. military forces are generally free to navigate, consistent with international law as reflected in the 1982 LOS Convention, there have been many instances where our rights have been challenged. Some examples:

In 1967 the Soviet Union denied passage through the Northeast Passage in the Arctic to two U.S. Coast Guard icebreakers. As a result, they were unable to complete their mission. This route has been denied to U.S. surface vessels since then.

In 1973, Libya enclosed a huge area of water in the Gulf of Sidra as an "historic bay." Although the world has largely rejected the claim, Libya's willingness to use force ("line of death") has deterred many from exercising their rights.

In 1982 and 1987, Soviet forces interfered with the operations of U.S. naval frigates near Peter the Great Bay. The Soviets claim the bay is "historic" and the waters as internal. The United States considers these to be international waters.

After the August 1985 transit of the U.S. Coast Guard icebreaker *Polar Sea* through the Northwest Passage, public opinion resulted in a restrictive Canadian law claiming high seas areas as internal waters and closing international straits. To maintain our access to the Northwest Passage, the United States agreed not to transit with Coast Guard icebreakers without Canada's consent to the conduct of marine scientific research during the passage.

In January 1988, two Soviet border guard vessels "bumped" the *USS Caron* and *USS Yorktown* engaged in innocent passage in the territorial sea off the Crimean Peninsula. [see figure 7, page 19]

Having claimed a 200 NM territorial sea since 1947, Peru regularly intercepts U.S. planes far off the coast of Peru. After an incident in 1989, the Chief of Staff of the Air Force, a passenger on an intercepted aircraft, demanded that the U.S. file a diplomatic protest. Later, in April 1992, a Peruvian fighter aircraft intercepted and shot at a USAF C-130 aircraft, killing one crewmember and wounding two others. Peru attempted to justify its action asserting that the U.S. aircraft was within its illegal 200 NM territorial sea/airspace.

Other States' forces are even more constrained than the United States, often acquiescing in excessive maritime claims, because they do not have the naval resources to support operational challenges.

FOOTNOTES

[1] 18 Weekly Comp. Pres. Doc. 877 (July 9, 1982).

[2] Id. See also, James L. Malone, The United States and the Law of the Sea, 24 VA. J. Int'l Law 785 (1984).

[3] 19 Weekly Comp. Pres. Doc. 383-385 (Mar. 10, 1983).

[4] Dept. of State, Limits in the Seas No. 112, United States Responses to Excessive National Maritime Claims (March 9, 1992). Illegal claims which have been challenged include: improper straight baseline claims, excessive territorial sea claims, and claims which restrict the right of transit passage or innocent passage by all ships (including warships) without prior notice or permission.

[5] 24 Weekly Comp. Pres. Docs. 52 (Dec. 27, 1989).

[6] John Norton Moore, The Regime of Straits and UNCLOS, 74 AM. J. Int'l Law 77, 81 (1980).

[7] William L. Schachte (Rear Adm., USN ret.), Remarks before the 25th Annual Law of the Sea Conference, Law of the Sea Institute, University of Hawaii, 6-9 August 1991, Malmo, Sweden (Manuscript Available in DOD REPOPA Files).

[8] John R. Stevenson & Bernard H. Oxman, The Future of the United Nations Convention on the Law of the Sea, 88 AM. J. Int'l Law 488 (1994).

[9] See. e.g., Sherri Wasserman Goodman, Deputy Undersecretary of Defense for Environmental Security, DoD's New Vision for Environmental Security, Defense Issues, Vol. 9, No. 24.

[10] The IMO is expressly recognized in Article 211 as the "competent" international organization to decide questions relating to vessel design and construction as well as restrictive navigational schemes to protect the environment (e.g., traffic separation schemes in straits and archipelagic waters).

[11] Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships of 1973, Done at London February 17, 1978. (Protocol incorporates, with modifications, the provisions of the 1973 convention, including its annexes and protocol.)

[12] Convention on the International Regulations for Preventing Collisions at Sea, Done at London October 20, 1972, 28 UST 3459, TIAS 8587.

[13] Convention on the Prevention of Maine Pollution by Dumping of Wastes and Other Matter, Done at Washington, London, Mexico City and Moscow December 29, 1972, 26 UST 2403, TIAS 8165, 1046 UNTS 120.

[From the USA Today, June 15, 1994]

U.S. REELING OVER CANADA FISHING TOLL

(By Deeann Glamser)

SEATTLE.—A plan by Canada to charge U.S. fishermen a $1,100 toll to travel its waters to fish in Alaska is threatening to start an economic war between the two countries.

The toll—charged each way starting today on boats traveling the 650-mile Inside Passage between Washington and Alaska—comes from the countries' failure to renew a salmon-fishing treaty.

"It's extortion," says commercial fisherman Mike Health.

The move has prompted the State Department and Northwest legislators to call for a new law to reimburse hundreds of fishermen who will have to make a port of call to pay the toll in cash or money orders. The State Department would then be authorized to make claims against Canada for toll money.

U.S. Rep. Jolene Unsoleld, D-Wash, is expected to propose the short-term relief measure to Congress today.

The United States is sending a letter of protest to Canada; some in Congress are asking President Clinton to intervene.

The two countries have been haggling over fishing rights for years. Big bucks are at stake: Average commercial salmon catchers are worth $140 million a year off Washington, Oregon and California, and another $575 million in Alaska.

Canada claims fishermen off Alaska are intercepting millions of fish that would be headed for its waters. Canadian officials estimate that 52% of the region's salmon spawn in British Columbia; 31% in Alaska; and 17% in Washington and Oregon.

U.S. fishermen are frustrated by U.S. law, which protects several types of threatened salmon in U.S. waterways, but has no reach once the migratory fish hit Canadian waters.

Washington and Oregon officials, frantically trying to save an industry that is an economic mainstay in the region, want Canada to reduce catchers too.

Those states already closed salmon fishing off their coasts this year because of record-low stocks. Many fishermen planned to go to Alaska's abundant waters, but now say they can't afford the toll.

"Normally that pays all our insurance, fuel and groceries (for Alaska)," says Howard Winnem, 53. "Now we start with nothing."

Winnem, like many others, plans to take a more dangerous open-sea route to Alaska to avoid paying the toll. "We don't have the money, so we have to take a chance."

But other boat owners say that's too risky.

Stan Bell and his wife, Deanna, are making only critical repairs on their weathered troller so they can afford the sheltered route. Vows Deanna; "I won't eat anything Canadian or buy Canadian."

Bud Graham, Canada's Pacific Region fisheries management director, says Canada has the legal right to impose the toll, or commercial license fee.

U.S. officials don't agree.

"The claims the Canadians are making are clearly and patently illegal," Ambassador David Colson, chief U.S. fish negotiator, told the Seattle Post-Intellegencer.

Graham says the toll is just "one in a series of measures Canada will introduce" to break the stalemate over fishing rights and restore talks.

Ultimately, many feel the problem won't be resolved until the two countries agree on restrictions to avoid overfishing salmon.

Which is why Sen. Patty Murray, D-Wash., says the reimbursement proposal provides only short-term relief.

"We can't be thinking this is a solution," Murray says. "The problem with our fisheries is much bigger."

Mr. FORD. Mr. President, I ask for a division vote on the resolutions of ratification.

The PRESIDING OFFICER. All those in favor of ratifications, please stand and be counted.

All those opposed to ratification, please stand and be counted.

Two-thirds of the Senators present and voting having voted in the affirmative, the resolutions of ratification are agreed to, as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High seas, Which Was Adopted at Rome by Consensus by the Conference of the United Nations Food and Agriculture Organization on November 24, 1993.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention (No. 150) Concerning Labor Administration: Role, Functions and Organization, Adopted by the International Labor Conference at its 64th Session in Geneva on June 7, 1978.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Two Treaties Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, both signed at London, November 5, 1993, on the Delimitation in the Caribbean of a Maritime Boundary Relating to: (A) the U.S. Virgin Islands and Anguilla; and (B) Puerto Rico/U.S. Virgin Islands and the British Virgin Islands, with Annex.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention on the Conservation and Management of Pollock Reserves in the Central Bering Sea, with Annex, done at Washington on June 16, 1994.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Headquarters Agreement Between the Government of the United States of America and

the Organization of American States, signed at Washington on May 14, 1992.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to the consideration of legislative session.

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOC. 103-39

Mr. FORD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from a treaty transmitted to the Senate on October 6, 1994, by the President of the United States.

United Nations Convention on the Law of the Sea, with Annexes, and, the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, with Annex (Treaty Doc. 103-39);

I also ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to accession, the United Nations Convention on the Law of the Sea, with Annexes, done at Montego Bay, December 10, 1982 (the "Convention"), and, for the advice and consent of the Senate to ratification, the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, with Annex, adopted at New York, July 28, 1994 (the "Agreement"), and signed by the United States, subject to ratification, on July 29, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention and Agreement, as well as Resolution II of Annex I and Annex II of the Final Act of the Third United Nations Conference on the Law of the Sea.

The United States has basic and enduring national interests in the oceans and has consistently taken the view that the full range of these interests is best protected through a widely accepted international framework governing uses of the sea. Since the late 1960s, the basic U.S. strategy has been to conclude a comprehensive treaty on the law of the sea that will be respected by all countries. Each succeeding U.S. Administration has recognized this as the cornerstone of U.S. oceans policy. Following adoption of the Convention in 1982, it has been the policy of the United States to act in a manner consistent with its provisions relating to traditional uses of the oceans and to encourage other countries to do likewise.

The primary benefits of the Convention to the United States include the following:

—The Convention advances the interests of the United States as a global maritime power. It preserves the right of the U.S. military to use the world's oceans to meet national security requirements and of commercial vessels to carry sea-going cargoes. it achieves this, inter alia, by stabilizing the breadth of the territorial sea at 12 nautical miles; by setting forth navigation regimes of innocent passage in the territorial sea, transit passage in straits used for international navigation, and archipelagic sea lanes passage; and by reaffirming the traditional freedoms of navigation and overflight in the exclusive economic zone and the high seas beyond.

—The Convention advances the interests of the United States as a coastal State. It achieves this, inter alia, by providing for an exclusive economic zone out to 200 nautical miles from shore and by securing our rights regarding resources and artificial islands, installations and structures for economic purposes over the full extent of the continental shelf. These provisions fully comport with U.S. oil and gas leasing practices, domestic management of coastal fishery resources, and international fisheries agreements.

—As a far-reaching environmental accord addressing vessel source pollution, pollution from seabed activities, ocean dumping, and land-based sources of marine pollution, the Convention promotes continuing improvement in the health of the world's oceans.

—In light of the essential role of marine scientific research in understanding and managing the oceans, the Convention sets forth criteria and procedures to promote access to marine areas, including coastal waters, for research activities.

—The Convention facilitates solutions to the increasingly complex problems of the uses of the ocean—solutions that respect the essential balance between our interests as both a coastal and a maritime nation.

—Through its dispute settlement provisions, the Convention provides for mechanisms to enhance compliance by Parties with the Convention's provisions.

Notwithstanding these beneficial provisions of the Convention and bipartisan support for them, the United States decided not to sign the Convention in 1982 because of flaws in the regime it would have established for managing the development of mineral resources of the seabed beyond national jurisdiction (Part XI). It has been the consistent view of successive U.S. Administrations that this deep seabed mining regime was inadequate and in need of reform if the United States was ever to become a Party to the Convention.

Such reform has now been achieved. The Agreement, signed by the United States on July 29, 1994, fundamentally changes the deep seabed mining regime of the Convention. As described in the report of the Secretary of State, the Agreement meets the objections the United States and other industrialized nations previously expressed to Part XI. It promises to provide a stable and internationally recognized framework for mining to proceed in response to future demand for minerals.

Early adherence by the United States to the Convention and the Agreement is important to maintain a stable legal regime for all uses of the sea, which covers more than 70 percent of the surface of the globe. Maintenance of such stability is vital to U.S. national security and economic strength.

I therefore recommend that the Senate give early and favorable consideration to the Convention and to the Agreement and give its advice and consent to accession to the Convention and to ratification of the Agreement. Should the Senate give such advice and consent, I intend to exercise the options concerning dispute settlement recommended in the accompanying report of the Secretary of State.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 6, 1994.*

REPORT OF THE RAILROAD RETIREMENT BOARD FOR FISCAL YEAR 1993—MESSAGE FROM THE PRESIDENT—PM 153

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources.

To the Congress of the United States:

I hereby submit to the Congress the Annual Report of the Railroad Retirement Board for Fiscal Year 1993, pursuant to the provisions of section 7(b)(6) of the Railroad Retirement Act and section 12(1) of the Railroad Unemployment Insurance Act.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 6, 1994.*

REPORT OF INTENTIONS RELATIVE TO THE NORTH AMERICAN FREE TRADE AGREEMENT—MESSAGE FROM THE PRESIDENT—PM 154

The PRESIDING OFFICER laid before the Senate the following message

from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation.

To the Congress of the United States:

In November 1993, in preparation for the implementation of the North American Free Trade Agreement (NAFTA) on January 1, 1994, I informed the Congress of my intent to modify the moratorium on the issuance of certificates of operating authority to Mexican-owned or-controlled motor carriers that was imposed by the Bus Regulatory Reform Act of 1982 (49 U.S.C. 10922(*l*)(2)(A)). The modification applied to Mexican charter and tour bus operations. At that time, I also informed the Congress that I would be notifying it of additional modifications to the moratorium with respect to Mexican operations as we continued to implement NAFTA's transportation provisions. In this regard, it is now my intention to further modify the moratorium to allow Mexican small package delivery services to operate in the United States provided that Mexico implements its NAFTA obligation to provide national treatment to U.S. small package delivery companies.

Prior to its implementation of the NAFTA, Mexico limited foreign-owned small package delivery services, such as that offered by United Parcel Service and Federal Express, to trucks approximately the size of a minivan. This made intercity service impractical and effectively limited small-package delivery companies to intracity service only. Mexico has no similar restriction on the size of trucks used by Mexican small package delivery services. Because Mexico did not take a reservation in this area, the NAFTA obligates Mexico to extend national treatment to U.S. small package and messenger service companies. Mexico must allow U.S. small package delivery services to use the same size trucks that Mexican small package delivery companies are permitted to use.

Mexico, earlier this year, enacted legislation that addresses the small package delivery issue. Amendments to the *Law on Roads, Bridges, and Federal Motor Carriers* authorize parcel delivery and messenger services to operate without restriction so long as they obtain a permit from the Secretariat of Communications and Transportation and direct that such permits be granted in a timely fashion. The law includes no restrictions on the size and weight of parcels nor on the dimensions of the vehicles that small package delivery services will be permitted to use.

At the North American Transportation Summit hosted by the United States on April 29, 1994, Mexico's Secretary of Communications and Transportation Emilio Gamboa reaffirmed his government's commitment to permit unrestricted operations by foreign-owned providers of small package delivery services in Mexico. In return, even though the United States does not have a similar obligation under the NAFTA, Secretary of Transportation Federico Peña stated the United States Government's intention to grant Mexican small package delivery service companies reciprocal operating rights in the United States by modifying the moratorium imposed by the Bus Regulatory Reform Act. Mexico and the United States agreed to establish a joint working group to specify the details of this arrangement by September 1, 1994.

The U.S. small package delivery service industry is supportive of United States Government efforts to eliminate Mexico's restrictions on small package delivery operations. Provided Mexico implements its NAFTA obligation to extend national treatment to U.S. small package delivery companies, the U.S. industry would not object to a modification of the moratorium that would provide Mexican small package delivery companies reciprocal treatment in the United States.

Provided that Mexico meets its NAFTA-imposed national treatment obligation to allow U.S.-owned small package delivery services unrestricted operations, I intend, pursuant to section 6 of the Bus Regulatory Reform Act, to modify the moratorium imposed by that section to permit Mexican small package delivery services to operate in the United States in exactly the same manner and to exactly the same extent that U.S. small package delivery services will be permitted to operate in Mexico. The Bus Regulatory Reform Act requires 60 days' advance notice to the Congress of my intention to modify or remove the moratorium. With this message, I am providing the advance notice so required.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 6, 1994.*

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 10:36 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 316. An act to expand the boundaries of the Saguaro National Monument, and for other purposes.

S. 1233. An act to resolve the status of certain lands in Arizona that are subject to a claim as a grant of public lands for railroad purposes, and for other purposes.

H.R. 810. An act for the relief of Elizabeth M. Hill.

H.J. Res. 389. Joint resolution to designate the second Sunday in October of 1994 as "National Children's Day."

H.J. Res. 398. Joint resolution to establish the fourth Sunday of July as "Parents' Day."

H.J. Res. 415. Joint resolution designating the week beginning October 16, 1994, as "National Penny Charity Week."

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4922. An act to amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

H.R. 5044. An act to establish the American Heritage Areas Partnership Program, and for other purposes.

H.R. 5116. An act to amend title 11 of the United States Code.

The message also announced that the House has passed the following bill, without amendment:

S. 1225. An act to authorize and encourage the President to conclude an agreement with Mexico to establish a United States-Mexico Border Health Commission.

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore (Mr. BYRD).

At 2:01 p.m., a message from the House of Representatives announced that the House has passed the following bills; in which it requests the concurrence of the Senate:

H.R. 2135. An act to provide for a National Native American Veterans' Memorial.

H.R. 3059. An act to establish a National Maritime Heritage Program to make grants available for educational programs and the restoration of America's cultural resources for the purpose of preserving America's endangered maritime heritage.

H.R. 5139. An act to amend title 39, United States Code, to provide for procedures under which persons involuntarily separated by the United States Postal Service as a result of having been improperly arrested by the Postal Inspection Service on narcotics charges may seek reemployment.

H.R. 5140. An act to provide for improved procedures for the enforcement of child support obligations of members of the Armed Forces.

H.R. 5143. An act to amend the Fair Credit Reporting Act to provide for disclosures by consumer reporting agencies to the Federal Bureau of Investigation for counterintelligence purposes.

H.R. 5155. An act to authorize the transfer of naval vessels to certain foreign countries.

H.R. 5161. An act to amend the Omnibus Budget Reconciliation Act of 1993 to permit the prompt sharing of timber sale receipts of the Forest Service and the Bureau of Land Management.

H.R. 5176. An act to amend the Federal Water Pollution Control Act relating to San Diego ocean discharge and waste water reclamation.

The message also announced that the House has agreed to the following concurrent resolutions; in which it requests the concurrence of the Senate:

H. Con. Res. 216. Concurrent resolution expressing the sense of the Congress regarding human rights in Vietnam.

H. Con. Res. 278. Concurrent resolution expressing the sense of the Congress regarding United States policy towards Vietnam.

H. Con. Res. 295. Concurrent resolution to express the sense of the Congress of the United States that the United States should actively seek compliance by all countries with

the conservation and management measures for Atlantic bluefin tuna adopted by the International Commission for the Conservation of Atlantic Tunas.

H. Con. Res. 302. Concurrent resolution urging the President to promote political stability in Tajikistan through efforts to encourage political resolution of the conflict and respect for human rights and through the provision of humanitarian assistance and, subject to certain conditions, economic assistance.

The message further announced that the House has passed the following bills; each without amendment:

S. 922. An act to provide that a State court may not modify an order of another State court requiring the payment of child support unless the recipient of child support payments resides in the State in which the modification is sought or consents to the seeking of the modification in that court.

S. 2475. An act to authorize assistance to promote the peaceful resolution of conflicts in Africa.

S. 2500. An act to enable producers and feeders of sheep and importers of sheep and sheep products to develop, finance, and carry out a nationally coordinated program for sheep and sheep product promotion, research, and information, and for other purposes.

The message also announced that the House has passed the following bills; each with an amendment, in which it requests the concurrence of the Senate:

S. 423. An act to provide for recovery of costs of supervision and regulation of investment advisors and their activities, and for other purposes.

S. 720. An act to clean up open dumps on Indian lands, and for other purposes.

S. 986. An act to provide for an interpretive center at the Civil War Battlefield of Corinth, Mississippi, and for other purposes.

S. 1457. An act to amend the Aleutian and Pribilof Restitution Act to increase authorization for appropriation to compensate Aleut villages for church property lost, damaged, or destroyed during World War II.

S. 1614. An act to amend the Child Nutrition Act of 1966 and the National Lunch Act to promote healthy eating habits for children and to extend certain authorities contained in such Acts through fiscal year 1998, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution; without amendment:

S. Con. Res. 77. Concurrent resolution expressing the sense of the Congress regarding the United States position on the disinsection of aircraft at the 11th meeting of the Facilitation Division of the International Civil Aviation Organization.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 2826) to provide for an investigation of the whereabouts of the United States citizens and others who have been missing from Cyprus since 1974.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 3485) to authorize appropriations for carrying out the Earthquake Hazards Reduction Act of 1977 for fiscal years 1994, 1995, and 1996.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 4653) to settle Indian land claims within the State of Connecticut, and for other purposes.

At 3:54 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5178. An Act to amend the Fair Credit Reporting Act, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate (H.R. 4278) to make improvements in the old-age, survivors, and disability insurance program under title II of the Social Security Act.

ENROLLED JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on October 6, 1994 she had presented to the President of the United States, the following enrolled joint resolutions:

S.J. Res. 157. Joint Resolution to designate 1994 as "The Year of Gospel Music."

S.J. Res. 185. Joint Resolution to designate October 1994 as "National Breast Cancer Awareness Month."

S.J. Res. 198. Joint Resolution to designating 1995 the "Year of Grandparent."

REPORTS OF COMMITTEE

The following report of committee was submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

Report to accompany the bill (S. 2375) to amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes (Rept. 103-402).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Martin Jay Dickman, of Illinois to be Inspector General, Railroad Retirement Board.

Jorge M. Perez, of Florida, to be a Member of the National Council on the Arts for a term expiring September 3, 1998.

Joel David Valdez, of Arizona, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 1998.

G. Mario Moreno, of Texas, to be Assistant Secretary for Intergovernmental and Interagency Affairs, Department of Education

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to request to appear and testify before any duly constituted committee of the Senate.)

By Mr. NUNN, from the Committee on Armed Services:

The following named officer, under the provisions of title 10, United States Code, section 601, for assignment to a position of importance and responsibility as follows:

To be lieutenant general

Maj. Gen. Richard I. Neal, 023-30-0571, USMC.

(The above information was reported with the recommendation that he be confirmed.)

By Mr. BUMPERS, from the Committee on Small Business:

Philp Lader, of South Carolina, to be Administrator of the Small Business Administration, vice Erskin B. Bowles.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. BIDEN, from the Committee on the Judiciary:

Robert Moore, of Illinois, to be United States Marshal for the Central District of Illinois for the term of four years.

Okla Jones, II, of Louisiana, to be United States District Judge for the Eastern District of Louisiana.

Kathleen M. O'Malley, of Ohio, to be United States District Judge for the Northern District of Ohio.

G. Thomas Porteous, Jr., of Louisiana, to be United States District Judge for the Eastern District of Louisiana.

James Robertson, of Maryland, to be United States District Judge for the District of Columbia.

Thomas B. Russell, of Kentucky, to be United States District Judge for the Western District of Kentucky.

James A. Beaty, Jr., of North Carolina, to be United States District Judge for the Middle District of North Carolina.

Charles R. Wilson, of Florida, to be United States Attorney for the Middle District of Florida for the term of four years.

Steven Scott Alm of Hawaii, to be United States Attorney for the District of Hawaii for the term of four years.

David Briones, of Texas, to be United States District Judge for the Western District of Texas.

Herbert M. Rutherford III, of the District of Columbia, to be United States Marshal for the District of Columbia for the term of four years.

Michael R. Ramon, of California, to be United States Marshal for the Central District of California.

Michael D. Carrington, of Indiana, to be United States Marshal for the Northern District of Indiana for the term of four years.

John R. Murphy, of Alaska, to be United States Marshal for the District of Alaska for the term of four years.

Eisenhower Durr, of Mississippi, to be United States Marshal for the Southern District of Mississippi for the term of four years.

Robert Bradford English, of Missouri, to be United States Marshal for the Western District of Missouri for the term of four years.

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DODD (for himself and Mr. D'AMATO):

S. 2510. A bill to amend the Federal Deposit Insurance Act to exclude certain bank products from the definition of a deposit; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LIEBERMAN:

S. 2511. A bill to specifically exclude certain programs from provisions of the Electronic Funds Transfer Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. McCONNELL (for himself and Mr. FORD):

S. 2512. A bill to require the Secretary of Agriculture to issue an order to establish a thoroughbred horse industry promotion program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. ROCKEFELLER:

S. 2513. A bill to enhance the research conducted by the Agency for Health Care Policy and Research concerning primary care, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DURENBERGER:

S. 2514. A bill to ensure economic equity for American women and their families by promoting fairness in the workplace; creating new economic opportunities for women workers and women business owners; helping workers better meet the competing demands of work and family; and enhancing economic self-sufficiency through public and private pension reform and improved child support enforcement; to the Committee on Finance.

By Mr. BROWN:

S. 2515. A bill to amend title 17, United States Code, to exempt business establishments from copyright fees for the public performance of nondramatic musical works, to provide for binding arbitration in royalty disputes involving performing rights societies, to ensure computer access to music repertoire, and for other purposes; to the Committee on the Judiciary.

By Mr. KENNEDY:

S. 2516. A bill to consolidate and reform Federal job training programs to create a world class workforce development system for the 21st century, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. SIMON:

S. 2517. A bill to amend the Fastener Quality Act; to the Committee on Commerce, Science, and Transportation.

By Mr. HATFIELD:

S. 2518. A bill for the relief of Ang Tsering Sherpa; to the Committee on the Judiciary.

By Mr. FORD:

S. 2519. A bill to amend title IV of the Surface Mining Control and Reclamation Act of 1977, to provide for acquisition and reclamation of land adversely affected by past coal mining practices, and for other purposes; to the Committee on Energy and Natural Resources.

S. 2520. A bill to amend title IV, of the Surface Mining Control and Reclamation Act of 1977, to encourage the mining and reclamation of previously mined areas by active mining operations, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WALLOP (for himself and Mr. PRESSLER):

S. 2521. A bill to amend chapter 6 of title 5, United States Code, to modify the judicial review of regulatory flexibility analyses, and for other purposes; to the Committee on the Judiciary.

By Mr. McCONNELL:

S. 2522. A bill to amend the Federal Humane Methods of Livestock Slaughter Act to authorize the Secretary of Agriculture to regulate the commercial transportation of horses for slaughter, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. WALLOP:

S. 2523. A bill to amend the Internal Revenue Code of 1986 to permit certain foreign pension plans to invest in the United States on a nontaxable basis; to the Committee on Finance.

By Mr. HEFLIN:

S. 2524. A bill to amend chapter 23 of title 28, United States Code, to authorize voluntary alternative dispute resolution programs in Federal courts, and for other purposes; to the Committee on the Judiciary.

By Mr. LIEBERMAN (for himself, Mr. MACK, Mrs. BOXER, Mr. SMITH, Mrs. FEINSTEIN, Mr. ROBB, Mr. GREGG, and Mrs. MURRAY):

S. 2525. A bill to require a majority vote of the Securities and Exchange Commission for the adoption of accounting standards and principles used in the preparation of financial statements required under the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HARKIN (for himself and Mr. SIMON):

S. 2526. A bill to prohibit any charges on telephone bills for calls to 800 numbers; to the Committee on Commerce, Science, and Transportation.

By Mr. MURKOWSKI:

S. 2527. A bill to amend section 257(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 to modify the treatment of losses from asset sales; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mrs. FEINSTEIN (for herself, Mr. SASSER, and Mr. PELL):

S. 2528. A bill to improve and strengthen the child support collection system; to the Committee on Finance.

By Mr. GRAHAM:

S. 2529. A bill to amend title XI of the Social Security Act with respect to certain criminal penalties for acts involving the medicare program or State health care programs; to the Committee on Finance.

By Mrs. HUTCHISON (for herself, Mr. WOFFORD, Mr. ROBB, Mr. DECONCINI, Mr. INOUYE, Mr. LEVIN, Mr. HATFIELD, and Mr. D'AMATO):

S. 2530. A bill to express the sense of the Congress on suspending consideration of any commemorative coin legislation during the 104th Congress, to affirm the role of the Citizens Commemorative Coin Advisory Committee in recommending new commemorative coin programs, and to authorize the Secretary of the Treasury to mint certain coins; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. METZENBAUM:

S. 2531. A bill to amend the Employee Retirement Income Security Act of 1974 to improve the pension and welfare benefits of working men and women, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. ROTH (for himself, Mr. BOREN, Mr. SIMON, and Mr. COATS):

S. 2532. A bill to amend the Internal Revenue Code of 1986 to allow for the establishment of medical savings accounts for individuals covered by certain high deductible health plans; to the Committee on Finance.

By Mr. SMITH (for himself and Mr. FAIRCLOTH):

S. 2533. A bill to amend the Immigration and Nationality Act to protect Americans against criminal activity by aliens, to defend against acts of international terrorism, and to relieve pressure on public services by enhancing border security and diminishing legal immigration into the United States; to the Committee on the Judiciary.

By Mr. MITCHELL (for himself, Mr. DOLE, Mr. PRYOR, Mrs. FEINSTEIN, Mr. McCAIN, Mr. CAMPBELL, Mr. SIMON, Mr. WOFFORD, Mr. THURMOND, Mr. ROBB, Mr. MACK, Mr. PELL, Mrs. HUTCHISON, Mrs. BOXER, Mr. SMITH, Mr. LAUTENBERG, Mr. WARNER, Mr. GRAHAM, Mr. GLENN, Mr. GREGG, and Mr. ROTH):

S. 2534. A bill to revise and improve the process for disposing of buildings and property at military installations under the base closure laws; considered and passed.

By Mr. MITCHELL (for himself, Mr. DOLE, Mr. NUNN, Mr. WARNER, Mr. COVERDELL, Mr. GREGG, Mr. McCAIN, and Mr. THURMOND):

S.J. Res. 229. A joint resolution regarding United States policy toward Haiti; considered and passed.

By Mr. MURKOWSKI:

S.J. Res. 230. A joint resolution designating the week beginning October 16, 1994, as "National Penny Charity Week", and for other purposes; to the Committee on the Judiciary.

By Mr. CHAFEE:

S.J. Res. 231. A joint resolution prohibiting funds for diplomatic relations with Vietnam at the ambassadorial level unless a report on United States servicemen who remain unaccounted for from the Vietnam War is submitted to the Senate; to the Committee on Foreign Relations.

By Mr. MURKOWSKI (for himself, Mr. STEVENS, Mr. AKAKA, Mr. BIDEN, Mr. BOND, Mr. BOREN, Mr. BRYAN, Mr. CHAFEE, Mr. COATS, Mr. COCHRAN, Mr. CRAIG, Mr. D'AMATO, Mr. DECONCINI, Mr. DURENBERGER, Mr. GLENN, Mr. GRASSLEY, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mr. LAUTENBERG, Mr. MATHEWS, Ms. MIKULSKI, Mr. PACKWOOD, Mr. PRESSLER, Mr. ROCKEFELLER, Mr. ROTH, Mr. SIMON, Mr. SPECTER, Mr. THURMOND, Mr. WARNER, and Mr. WOFFORD):

S.J. Res. 232. A joint resolution designating October 23, 1994, through October 31, 1994, as "National Red Ribbon Week for a Drug-Free America; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself, Mr. SIMPSON, Mr. NICKLES, Mr. COCHRAN, Mr. McCONNELL, Mr. SMITH, Mr. D'AMATO, Mr. DOMENICI, Mr. COATS, Mr. LOTT, Mrs. HUTCHISON, Mr. BENNETT, Mr. SHELBY, Mr. GREGG, Mr. COVERDELL, Mr. DURENBERGER, Mr.

PACKWOOD, Mr. GORTON, Mr. KEMPTHORNE, Mr. THURMOND, Mrs. KASSEBAUM, Mr. BROWN, Mr. MACK, Mr. WARNER, Mr. FAIRCLOTH, Mr. GRAMM, Mr. HATCH, Mr. BURNS, Mr. HELMS, Mr. MCCAIN, Mr. GRASSLEY, Mr. LUGAR, Mr. BOND, Mr. CRAIG, Mr. ROTH, Mr. PRESSLER, Mr. COHEN, and Mr. CHAFEE):

S. Res. 274. A resolution to amend the Standing Rules of the Senate; to the Committee on Rules and Administration.

By Mr. WELLSTONE (for himself and Mr. FEINGOLD):

S. Res. 275. A resolution to amend the Senate gift rule; to the Committee on Rules and Administration.

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 276. A resolution providing that notwithstanding the sine die adjournment; the President of the Senate, the President pro tempore, the majority and minority leaders are authorized to make appointments to commissions, committees, boards, or conferences; considered and agreed to.

By Mr. LEVIN (for himself, Mr. COHEN, Mr. MITCHELL, Mr. WELLSTONE, and Mr. LAUTENBERG):

S. Con. Res. 80. A concurrent resolution to correct technical errors in the enrollment of the bill (S. 349), and for other purposes; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DODD (for himself and Mr. D'AMATO):

S. 2510. A bill to amend the Federal Deposit Insurance Act to exclude certain bank products from the definition of a deposit; to the Committee on Banking, Housing, and Urban Affairs.

THE BANK INSURANCE FUND AND DEPOSITOR PROTECTION ACT OF 1994

• Mr. DODD. Mr. President, I introduce the Bank Insurance Fund and Depositor Protection Act of 1994. Sponsoring this legislation with me is my colleague, Senator ALFONSE D'AMATO, the ranking member of the Senate Banking Committee.

The Bank Insurance Fund and Depositor Protection Act of 1994 is simple and straightforward. It prohibits Federal deposit insurance coverage for a new financial product that recently emerged from a small corner of the retail banking world. This first of its kind product, called a retirement CD, has been cleverly constructed to receive both the benefits of Federal deposit insurance and tax deferral.

Earlier this year, the Office of the Comptroller of the Currency [OCC] and the Federal Deposit Insurance Corporation [FDIC] sanctioned the sale of the retirement CD by Blackfeet National Bank, a small national bank in Montana. In separate letters dated May 12, 1994, the FDIC and the OCC stated that they had no objection to the sale of the retirement CD by Blackfeet. I would note that the Internal Revenue Service has not issued a similar opinion on the tax status of the retirement CD.

At this time, Blackfeet is the only insured depository institution going forward with the sale of the retirement CD to consumers. However, it is my understanding that approximately eight other institutions have signed licensing agreements to sell the retirement CD and may begin offering the product within the next few weeks. Many others are carefully examining the retirement CD with an eye toward offering it at some time in the future.

Mr. President, as it is currently structured, the retirement CD is not an appropriate product to be covered by Federal deposit insurance. The retirement CD raises significant policy issues related to consumer protection, safety and soundness, regulatory control, and competitive equity. I believe that if it is allowed to proliferate as it is currently structured, the retirement CD could have a tremendously negative impact on consumer confidence in our financial institutions and on the stability of our deposit insurance system.

I have described in detail most of my concerns about the retirement CD in a June 20, 1994 letter that I and several of my Banking Committee colleagues sent to the OCC and the FDIC. I would like to include that letter along with the regulators' responses in the RECORD.

I will not reiterate all the concerns described in that letter, but will briefly mention a couple of the more troubling issues that arise in connection with the retirement CD.

First, there is enormous potential for customer confusion about the retirement CD's terms and conditions. This product is not a plain vanilla certificate of deposit. It is not a simple annuity. It is a complex newfangled hybrid that has both CD and annuity features.

The retirement CD pays a fixed rate of interest for up to 5 years, after which the rate is adjusted at the sole discretion of the bank. This rate is never supposed to fall below 3 percent. Interest ceases to be posted upon maturity. The customer may withdraw up to two-thirds of the balance at maturity, and the remainder will be disbursed in fixed periodic payments for life, incorporating the imputed interest rate.

Consumers must understand that the interest rate is set at the sole discretion of the bank. While there is a 3-percent floor during the period when interest accrues, there is no similar threshold during the payout phase. This raises the prospect that a customer may not know what the imputed rate is tied to, and that the bank could offer a fixed payout at an extremely unfavorable rate.

Second, a consumer must understand that this retirement CD, unlike traditional certificates of deposit, contains a component that is not FDIC insured. FDIC insurance only applies to the balance that is not withdrawn at maturity, less the full dollar amount of any payments received. If a bank that issues a retirement CD fails at a point when the customer had already received the full value of the account through lump-sum distribution and monthly payments, the FDIC would neither insure nor continue to pay the monthly payments for the rest of the customer's life. This is the case despite the fact that the promotional material claims to guarantee payments for life.

Mr. President, the OCC and the FDIC share many of my concerns about the likelihood of customer confusion, the existence of misleading marketing information, and the impact of this product on bank safety and soundness. They outlined these concerns in their respective no objection letters I referred to earlier. However, the regulators chose not to prevent Blackfeet from going forward with the issuance of the retirement CD, as long as the bank complied with a lengthy list of conditions.

Mr. President, I think this was ill-advised. There is already strong evidence of substantial customer confusion regarding the insurance status of non-deposit investment products like mutual funds and annuity products being sold by banks and other insured depository institutions. These products are much less complex than the retirement CD. The regulators themselves have helped to collect compelling evidence about the ongoing problem of customer confusion. At a time when we are wrestling with how to eliminate this problem, I find it difficult to understand why the regulators gave their stamp of approval to the sale of this new complex product which can only make a bad situation worse.

Mr. President, for this and many other reasons, the retirement CD as it's currently structured should not be offered by banks to the public. The legislation I am introducing today will exclude the retirement CD from the definition of a deposit under the Federal Deposit Insurance Act. The retirement CD will therefore not be convered by Federal deposit insurance.

The legislation does not prohibit banks from offering the retirement CD. It simply denies the product deposit status under the Federal Deposit Insurance Act.

The legislation is not intended to eliminate existing levels of deposit insurance coverage to deposit accounts established in connection with certain individual retirement accounts, Keogh plans, eligible deferred compensation plans, pension plans, or similar employee benefit plans which may be maintained at an insured depository institution. This legislation eliminates Federal deposit insurance coverage for products which expose the issuing insured depository institution, and ultimately the deposit insurance funds, to liabilities that are annuity contracts and are tax deferred under section 72 of the Internal Revenue Code of 1986.

The provisions of this act do not apply to any liability which is not an

annuity contract, whether or not tax deferred under section 72 of the Internal Revenue Code. For example, a liability other than an annuity contract which is part of an individual retirement account would not be affected by the provisions of this act even though the tax liability is deferred under section 72 of the Internal Revenue Code of 1986 because section 408(d) of the Code incorporates section 72 only by reference.

Mr. President, the retirement CD may be cleverly packaged. It may be a tempting new business opportunity for the banking industry. But because it raises serious public policy concerns that have not been fully explored, it must not be provided the protection of the Federal safety net—at least until it is more closely examined by Congress, the banking regulators, and the Internal Revenue Service. I hope that the Banking Committee will hold hearings on this matter early next year.

I ask unanimous consent that the Bank Insurance Fund and Consumer Protection Act of 1994 be printed in the RECORD along with additional material.

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

S. 2510

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bank Insurance Fund and Depositor Protection Act of 1994".

SEC. 2 DEFINITION OF DEPOSIT.

Section 3(*l*)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)(5)) is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) any liability of an insured depository institution that arises under an annuity contract, the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.".

SEC. 3. EFFECTIVE DATE.

The amendments made by section 2 shall apply to any liability of an insured depository institution that arises under an annuity contract issued on or after October 6, 1994.

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,

Washington, DC, June 20, 1994.

Hon. EUGENE LUDWIG,
Comptroller of the Currency, Office of the Comptroller of the Currency, Washington, DC.

Hon. ANDREW C. HOVE,
Acting Chairman, Federal Deposit Insurance Corporation, Washington, DC.

DEAR MR. LUDWIG AND CHAIRMAN HOVE: We are following with great interest and concern the efforts of the Blackfeet National Bank ("Blackfeet") of Browning, Montana to offer to the general public a new "Retirement CD." We are disappointed that the OCC and the FDIC, by separate correspondence dated May 12, 1994, have in effect sanctioned, with certain conditions, plans to market and offer this Retirement CD investment product.

We are very troubled that the OCC and FDIC would react favorably to a product with such enormous ramifications for the banking system, the Bank Insurance Fund, the insurance industry—and, most importantly, for the consumers of financial products—without consultation with Congress and without requesting more specific commitments and information from American Deposit Corp. or Blackfeet.

The Retirement CD product raises a number of significant concerns which we have detailed below. We strongly believe these matters need to be thoroughly addressed by the regulators and Congress before this investment product is offered to the public.

1. CONSUMER PROTECTION ISSUES

The OCC and FDIC letters clearly indicate that both regulators have rather significant reservations about the consumer-protection implications of the Retirement CD. Both letters contain suggestions or conditions aimed at ensuring customer understanding and adequate disclosure. This insured deposit product combines features of both certificates of deposit and annuities, and it is enormously complex. Consumers may not fully comprehend how it works, the interest rate structure or the extent of FDIC insurance coverage.

The Retirement CD will pay a fixed rate of interest for up to five years, after which the rate becomes adjustable until the agreed-upon maturity date. The only assurance given to the consumers with respect to this variable interest rate is that it will be at least 3 percent. Upon maturity, the customer may withdraw up to two-thirds of the account balance, and the remainder of the account will be dispersed for life in fixed payments. These periodic payments incorporate an imputed interest rate. The consumer must understand that the interest rate, during much of the accumulation period (prior to the agreed- upon maturity date) and all of the payout phase, will be determined at the sole discretion of the bank. Furthermore, as we understand this product during the payout phase, there will be no minimum imputed interest rate, similar to the three percent floor in the accumulation phase. This raises an ominous prospect: that a customer will not know exactly what the "imputed" rate is keyed to and that the bank could offer a fixed payout at an extremely unfavorable rate.

As we understand the product, FDIC insurance would only apply to the balance (principal plus accrued interest) that was not withdrawn on the date of maturity, less the full dollar amount of any payments received during the pay-out period. Therefore, a customer would have to understand that if the bank were to fail at a point when the customer had already received the full value of the account through lump-sum distribution and monthly payments, the FDIC would neither insure, nor continue to pay, the monthly payments for the rest of the customer's life.

The OCC and the FDIC have expressed consumer protection concerns with respect to depository institution sales of uninsured non-deposit investment products, such as mutual fund shares. There is evidence that banking consumers do not always understand the simple fact that some of the products that banks offer are not FDIC-insured. With respect to the Retirement CD, we are concerned that consumers will not be able to fully-understand that a product that is called a "certificate of deposit"—a traditional insured deposit product—contains a component that is not FDIC-insured (although we understand that the promotional materials misleadingly "guarantee" payments for life).

Even the regulators seem somewhat uncertain about how the Retirement CD works. The respective letters from the OCC and the FDIC differ in their descriptions of one of the most important basic terms of the product—mainly, at what point the payout is agreed to. The OCC letter states, "[o]n the maturity date the customer will select from various options for repayment" (p. 2, emphasis added). The FDIC letter states, "[u]pon opening the account, the customer also chooses his/her payout options" (p. 1-2, emphasis added). If the regulators are confused, certainly the potential for consumer confusion is enormous.

We must ask this question: Do the regulators honestly believe that this product—that contains variable interest rates, certain tax benefits, and partial FDIC-insured deposit status—will not create substantially greater confusion than non-deposit investment products?

2. REGULATORY ISSUES

Annuities are currently subject to the state regulations enforced by state insurance officials. It is unclear if state insurance regulatory requirements will apply to the Retirement CD. Both customers and the bank should know this. If state regulations do not apply, it should be determined whether banks and bank regulators currently have the ability or resources to safeguard these accounts, and what policies and procedures are necessary to train bank personnel about annuities and about appropriate sales practices.

3. SAFETY AND SOUNDNESS ISSUES

Blackfeet and other banks that may offer the Retirement CD clearly will be acting as an underwriter of what is essentially an annuity. Although clever lawyering has gained this annuity product designation as a "deposit", it poses much greater risk to the bank than a traditional deposit. National banks will be assuming an unprecedented and inappropriate risk as a result of having to make a fixed payout for the life of a customer. Ultimately, these payments could exceed the consumer's balance on deposit at maturity. While the OCC suggests that Blackfeet's business plan should indicate how it will manage the risk associated with the annuity payment, the OCC requires no specific showing that the bank has the capability to quantify or manage this long-term liability of unknown proportions.

This "deposit" is structured so that at the date of maturity, the bank must determine the fixed lifetime payout for the customer using a complex and not entirely-discernible process to achieve a proper rate of return. The Congress has opted not to authorize banks to assume the type of risk Blackfeet would assume in offering the Retirement CD. The OCC and the FDIC seem willing to disregard this consistent record of Congressional reluctance to allow federally-insured depository institutions to engage in such high-risk activities. The OCC and FDIC also seem too willing to take it on faith that a small national bank (armed with a software program) will have the business acumen and operational know-how to handle the risk of underwriting this annuity product.

4. COMPETITIVE EQUALITY ISSUES

The proliferation of the Retirement CD will produce an unfair competitive advantage for banks. It is reasonable to expect

that consumers will be drawn to a tax-deferred annuity that also offers federal deposit insurance. By allowing national banks to underwrite, market and sell a tax-deferred annuity that is FDIC-insured, the FDIC is granting a substantial competitive advantage over similar annuity products that do not come with a government guarantee.

In expanding future opportunities for all financial service providers and consumers, the Federal government's goal should be to encourage competition on a free and fair basis. Balance sheet strength, customer service and other market-determined characteristics, not market-distorting government guarantees, should determine success. Given the recent savings and loan crisis, and the regulators' concerns over the abuse of deposit insurance, it would seem ill-advised to extend the reach of the federal safety net to a product that raises so many regulatory, competitive and consumer protection concerns.

The OCC and the FDIC have made it very clear that when given the opportunity, they will usually take the most expansive and creative view of bank powers under current law. We strongly support the view that, to the maximum extent possible, an explicit statutory mandate must exist before the regulators authorize expanded powers for banks, or any other financial intermediaries. For this reason, we continue to support comprehensive modernization of our entire financial system. Until this can be accomplished by Congress, we urge the OCC and FDIC to balance the proclivity to expand bank powers through regulatory channels against the legitimate public policy concerns of consumer protection, safety and soundness, and competitive equality. Products that raise serious public policy concerns deserve great scrutiny, regardless of how cleverly they are packaged or how attractive they may be to the banking industry. The Retirement CD is clearly one such product.

We do not share your view that this product, as it is currently structured, is an appropriate product for national banks to offer to retail customers. Therefore, we are developing, and will soon introduce, legislation to prohibit the sale of this investment product. Pending consideration of this legislation by Congress, we urge the OCC and the FDIC to reconsider their respective positions on the Retirement CD.

Sincerely,

CHRISTOPHER J. DODD.
RICHARD H. BRYAN.
ALFONSE M. D'AMATO.
LAUCH FAIRCLOTH.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, DC, July 8, 1994.

Hon. CHRISTOPHER J. DODD,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR DODD: Thank you for your letter concerning the Retirement CD, a product developed by American Deposit Corporation which is being offered by Blackfeet National Bank, Browning, Montana. Your letter expresses reservations regarding the Federal Deposit Insurance Corporation's position, as expressed in our Legal Division's May 12, 1994 advisory opinion. We appreciate the opportunity to address your concerns. Similar letters will be sent to Senators D'Amato, Bryan and Faircloth.

Your primary concern is the "consumer protection implications of the Retirement CD." The FDIC shares your concern that potential customers not be misled with regard to the workings of and the federal deposit insurance coverage afforded to the Retirement CD. That is precisely why the advisory opinion discusses these issues in such detail. The advisory opinion expressly states that the "FDIC therefore strongly believes that all promotional materials, advertisements, agreements and other customer materials concerning the Retirement CD should clearly and conspicuously state that the lifetime monthly annuity payments are not guaranteed by the FDIC." The opinion then goes on to discuss, in great detail, the Legal Division's concerns regarding the customer promotional materials which it reviewed, including explicit suggestions to revise certain portions of the text which were found to be inaccurate and possibly misleading. The advisory opinion also states that the offering bank should follow the applicable provisions of the "Interagency Statement on Retail Sales of Nondeposit Investment Products."

Your letter questions whether (i) state insurance laws and regulations apply to the Retirement CD and (ii) a national bank may offer this type of product. Our advisory opinion makes it quite clear that since the FDIC was addressing these questions as insurer, not as the primary federal regulator of Blackfeet National Bank, the only questions considered by the Legal Division were whether the Retirement CD is a "deposit" as that term is defined in section 3(*l*) of the FDI Act and, if so, the extent to which it is insured by the FDIC. Thus, the FDIC did not consider and has taken no position on these other issues. Your letter also asserts that the FDIC has "sanctioned" and "reacted favorably" to the Retirement CD. While the FDIC has determined that the Retirement CD is a "deposit" as that term is defined in the FDI Act and, therefore, is entitled to a certain level of deposit insurance coverage, the advisory opinion explicitly provides that it "should in no way be represented or construed as an endorsement or approval by the FDIC of this product."

You suggest in your letter that the regulators seem uncertain about how the Retirement CD works since the FDIC's and OCC's descriptions of the choice of payout options differ slightly. While our advisory opinion does state that the customer chooses his/her payout option when the account is opened, it goes on to explain that this election may be changed at any time up until thirty days prior to the maturity date. Thus, the FDIC and OCC share a common understanding of the product's parameters.

Section 11(a)(1)(A) of the FDI Act requires the FDIC to insure the deposits of all insured depository institutions. Since our staff determined that the Retirement CD qualifies as a deposit—to the extent described in the advisory opinion—we are required by law to insure it. In making its determination, the Legal Division considered all applicable statutory factors. The FDI Act does not require, or even permit, the FDIC to consider the "ramifications for the . . . insurance industry."

If you have any further questions or need any additional information, please let us know.

Sincerely,

ANDREW C. HOVE, Jr.,
Acting Chairman.

COMPTROLLER OF THE CURRENCY,
ADMINISTRATOR OF NATIONAL BANKS,
Washington, DC, August 18, 1994.

Hon. CHRISTOPHER J. DODD,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR DODD: I am responding to your June 20, 1994, letter addressed jointly to me and Andrew C. Hove, Acting Chairman, Federal Deposit Insurance Corporation ("FDIC"), concerning our recent letters to the Blackfeet National Bank (the "Bank") regarding its new Retirement CD. I appreciate this opportunity to address the concerns expressed in your letter relating to this bank product. Since your letter was also signed by them, we have sent identical responses to Senators Bryan, D'Amato and Faircloth.

Your letter states you are troubled that the OCC "would react favorably to a product with such enormous ramifications for the banking system, the Bank Insurance Fund, the insurance industry—and, most importantly, for the consumers of financial products—without consultation with Congress and without requesting more specific commitments and information from American Deposit Corp. or Blackfeet."

Please be assured that during the OCC's review of the Bank's November 8, 1993, letter in which the Bank informed us of its intention to market the Retirement CD, our staff had numerous telephone conversations with Blackfeet and its legal counsel, and did request a substantial amount of additional information. On the basis of that information and our own research, we found no reason in law or supervisory policy to prohibit the offering of this product. Accordingly, we issued our no-objection letter to the Bank. Our administrative process does not routinely involve consultation with Congress. However, we are available to discuss the Blackfeet matter with you and the members of your staff at your convenience.

1. CONSUMER PROTECTION ISSUES

The consumer protection issues you address generally arise from the mix of features that comprise the Retirement CD, and the ability of the Bank to explain and of consumers adequately to understand this combination of features. You are concerned that the product's structure may prevent consumers from fully comprehending how the product works, its interest rate structure and the extent to which the product is covered by FDIC insurance. In addition, your letter indicates that consumers may not be able to understand a product that is called a certificate of deposit but contains a non-FDIC insured component. Moreover, you ask whether we believe that the Retirement CD, which contains variable interest rates, tax benefits, and partial FDIC-insured deposit status, will create substantially greater confusion than nondeposit investment products.

The OCC is concerned about any bank product that potentially may confuse customers. I understand your concern that the combination of certain attributes of the Retirement CD, including variable interest rates, tax benefits, and partial FDIC-insured deposit status presents complications and could create customer confusion. We fully agree that it is important customers not misunderstand the nature of financial products offered to them. This is a problem to which we and the other federal banking agencies have been sensitive in our evaluation of bank sales of all types of nondeposit investments products. While the Retirement CD's complexities do not present a legal basis for preventing its offer and sale by the Bank, they do raise supervisory concerns. In response to those concerns we imposed conditions on the operation of Bank sales programs to address the potential problem of customer confusion.

Our legal review of the Retirement CD rested upon an analysis of the powers of national banks to engage in the business of

banking. We concluded that offering the product represents the exercise by the Bank of its express authorizations to receive deposits and enter into contracts, coupled with its powers to incur liabilities and fund its operations. By offering the Retirement CD, the Bank is engaging in the business of banking, an activity federal law authorizes it to undertake.

The Bank did not seek and the OCC did not issue a formal approval of the product. Because offering the Retirement CD lies within the business of banking, the Bank does not need specific OCC approval to offer the product. Even so, the Bank may not ignore safety and soundness and customer protection concerns when it actually sells the product. We therefore advised the Bank that the OCC would not object to the offering of the Retirement CD only if the Bank met certain supervisory and consumer protection related conditions.

To address consumer-related concerns, our letter cautioned the Bank that the OCC expects it accurately to represent the "product's risk and economics, deposit insurance status and tax treatment in dealing with actual and prospective customers." We also stipulated twelve conditions that concern adequate disclosure and customer protection. Among these conditions are requirements that the Bank—(1) take steps to assure that its representations to customers regarding the FDIC insured status of the product are fair and accurate (condition #6); (2) make specific disclosures concerning the tax aspects of the product (conditions #9–10); (3) adequately explain the product's mechanics and economics (condition #12); (4) properly explain the calculation of the applicable interest rate (condition #13); and (5) implement an appropriate training program for personnel who will be involved in marketing the product. OCC examiners will periodically evaluate the Bank's compliance with these conditions.

In addition to the conditions detailed in our letter concerning disclosures, we informed the Bank that the Interagency Statement on Retail Sales of Nondeposit Investments Products, NR 94–21 (February 17, 1994) is applicable to the non-FDIC insured portion of the product. We have also advised the Bank of the applicability of 12 U.S.C. §4301 et seq. and 12 C.F.R. §230 et seq. (Truth in Savings).

You also set forth your understanding that during the payout phase of the Retirement CD there will be no minimum imputed interest rate, similar to the three percent floor in the accumulation phase. This is not our understanding. The Bank has represented to us that at the end of the accumulation phase, a monthly payment amount is calculated for the depositor based primarily on three elements—(1) the balance left in the account after the depositor has made any withdrawals; (2) an imputed interest rate that cannot be below three percent; and (3) the depositor's life expectancy. Once the payment amount is determined, it remains fixed for the life of the depositor. Thus, there is a minimum imputed interest rate of three percent used in calculating the monthly payments.

Another concern expressed in your letter relates to the fact that FDIC insurance only applies to the balance (principal plus accrued interest) that is left in the account at the end of the accumulation phase. Your concern is that depositors may not understand that if the Bank fails after the depositor has received payments equal to this balance, the FDIC would neither insure, nor continue to pay, the monthly payments for the rest of the customers life. We addressed this specific concern in condition #6 of our letter where we directed the Bank to take steps to assure that representations to customers concerning the FDIC insured status of the product are fair and accurate, and that any limitations on FDIC insurance are conspicuously indicated.

You also expressed concern that the Bank's promotional materials contained the phrase "guaranteed payments for life." This language was contained in an early draft of the Bank's materials, and we strongly objected to it. (See condition #8 in our letter.) The phrase has been deleted from the current draft promotional materials and the term "guaranteed" now is used only with respect to the three percent guaranteed minimum interest rate. We are discussing use of the term in the context with the Bank's counsel to make sure its use is not confusing to investors.

Finally as to consumer issues, you point out an apparent discrepancy between our letter and the FDIC's with respect to the time at which consumers may select from various options for repayment. The FDIC's letter states the selection is made "upon opening the account" whereas our letter states the selection is made "on the maturity date." The depositor is actually allowed to select the terms for repayment on either date. We viewed the maturity date as the most effective time for this selection, and that is why we used that date in our letter. However, the FDIC is correct in stating that depositors may make their selections upon opening the account.

2. REGULATORY ISSUES

You state that annuities are currently subject to state regulations enforced by state insurance officials, and note that it is unclear if state insurance regulatory requirements will apply to the Retirement CD. In addition, you believe that customers should know whether state regulations apply to the product. If they do not, you suggest we consider whether banks and bank regulators currently have the ability or resources to safeguard these accounts, and what policies and procedures are necessary to train Bank personnel about annuities and appropriate sales practices.

Our legal analysis and conclusions to date have been limited to a determination of the Bank's authority to conduct the business of banking under the National Bank Act. State regulatory officials may conclude that state insurance laws also apply to the Retirement CD or any other activity which we interpret as being authorized by the National Bank Act. Such a conclusion, however, does not affect our interpretation of that Act. The applicability of any particular state law to the Retirement CD will have to be reviewed on a case by case basis.

We believe the OCC has the expertise fully to examine and evaluate Bank practices to mitigate the risks associated with the Retirement CD. The most significant concerns associated with the Retirement CD, in our view, relate to liquidity and funding. Written procedures and formal training presently available to, and extensively used by, OCC examiners address a variety of issues relevant to the supervision of bank obligations, including the evaluation of bank liquidity and funding issues. In the event additional guidance or training is necessary, it will be provided to examiners.

Condition #15 of our no-objection letter specifically requires the Bank to implement a program for training personnel who will be involved in marketing the Retirement CD. The training program must ensure a thorough understanding of the product so that customer questions are answered properly, and investment risks are adequately conveyed. The OCC has focused, and will continue to focus, on the Bank's training efforts in this regard, as well as its other efforts to mitigate the risks associated with the product.

3. SAFETY AND SOUNDNESS ISSUES

You state that offering the Retirement CD is tantamount to acting as an underwriter of an annuity. The risks associated with the product you believe are much greater to the Bank than a traditional deposit. The risk you state comes from the "unprecedented and inappropriate risk" a bank assumes by agreeing to make a fixed payout for the life of a customer. You are also troubled that the OCC "requires no showing that the bank has the capability to quantify or manage this long-term liability of unknown proportions."

Our letter to the Blackfeet National Bank prescribed conditions for the Bank, including the need for Bank expertise in designing and implementing product controls and systems to mitigate the risks associated with the product. We directed the Bank to pay particular attention to adequate planning for the use of funds generated from the product, accurate estimation of product payouts, and proper design of internal controls. Additionally, we required that the Bank adequately manage its funding sources for the payout obligations that will arise from the Retirement CD, considering the financial risks associated with the product.

We directed the Bank to take appropriate steps to deal with the risks it will assume by offering the Retirement CD and required the Bank to furnish us with a detailed business plan. The OCC will review the business plan and will evaluate the manner in which the Bank utilizes funds received from the Retirement CD and funds these obligations.

We believe these steps adequately and responsibly address the supervisory concerns you have expressed with the payment risks associated with the Retirement CD. As with any bank product, we will continue to review the Bank's implementation of these procedures and evaluate the Bank's effectiveness in dealing with the risks associated with the product. Should we determine at any point that the Bank is materially not in compliance with these requirements, we would direct it to cease offering the product until it took appropriate corrective actions.

4. COMPETITIVE EQUALITY ISSUES

You state your belief that the proliferation of the Retirement CD will result in an unfair competitive advantage for banks over annuity products offered by insurance companies. Given the wide and growing range of products that could be viewed as competitive in this area, and uncertainties as to the popularity of the product, it is hard to tell whether any competitive advantage will actually be present. But the potential for competitive implications does not affect the Bank's legal authority to offer the product.

I hope this letter addresses the questions and concerns you expressed in your letter concerning the Blackfeet Retirement CD. Should you have any questions or need any additional information, please let me know.

Sincerely,

EUGENE A. LUDWIG.•

• Mr. D'AMATO. Mr. President, I am pleased to cosponsor the Bank Insurance Fund and Depositor Protection Act of 1994 with my distinguished colleague from Connecticut, Senator

DODD. This bill makes a necessary and important refinement to our banking laws. This bill would clarify the definition of a "deposit" in the Federal Deposit Insurance Act to make clear that certain annuity products are not FDIC-insured deposits. This legislation would provide necessary guidance to the banking regulators, make the law more precise, and protect the bank insurance fund from potential unquantifiable losses.

Mr. President, recently there has been a lot of marketing hype about a new investment product—the Retirement CD. This product will operate much like a traditional annuity, but will be underwritten by a bank under the rubric of certificate of deposit. In short, a Federal-insured hybrid investment vehicle—and a potential roll-of-the-dice with Uncle Sam's implicit backing. The Comptroller of the Currency and the FDIC will permit this so-called CD to be offered to depositors, with FDIC protection, under current law. Senator DODD and I, along with several of our colleagues on the Senate Banking Committee, wrote to the OCC and the FDIC to express our concern about this product, a product that would be marketed with the market-enhancing lure of FDIC insurance.

Mr. President, the regulators have tried to address the issues we raised, but our public policy concerns remain unabated. This legislation has been introduced in order to provide further congressional guidance as to the appropriate scope and operation of Federal banking law and the proper use of Federal deposit insurance.

This bill has been refined in an attempt to avoid any undesired effect on standard deposit products that banks commonly offer today. For instance, qualified plans and individual retirement accounts are not intended to be covered by this legislation, to the extent that they do not generate depository institution liabilities that constitute annuity contracts. This is so even if the depository institution liability has tax-deferred status under section 72 of the Internal Revenue Code.

Again, I support this bill with the hope that it will protect consumers of financial products, safeguard FDIC funds, and promote safe-and-sound banking practices.

By Mr. LIEBERMAN:

S. 2511. A bill to specifically exclude certain programs from provision of the Electronic Funds Transfer Act; to the Committee on Banking, housing, and Urban Affairs.

THE ELECTRONIC BENEFITS REGULATORY RELIEF ACT OF 1994

• Mr. LIEBERMAN. Mr. President. I introduce the Electronic Benefits Regulatory Relief Act of 1994. This bill is also cosponsored by Senators BREAUX, DOMENICI, DURENBURGER, HATFIELD, and PRESSLER. When passed, this bill will eliminate one of the major barriers to making the banking system more accessible to those receiving government benefits like Aid to Families with Dependent Children or food stamps. If this bill is not passed, we will have missed an opportunity to reduce the cost of government services, and an opportunity to make the delivery of government services more efficient and humane.

This legislation is necessary to reverse a regulation issued by the Federal Reserve Board. That ruling, issued last March, said that the electronic benefit transfer [EBT] cards issued by Stats are subject to the same liability limits as ATM or credit cards. On the surface that seems reasonable—a card is a card and there seems little reason to differentiate between cards to withdraw government benefits from a bank and cards to withdraw earnings or savings from a bank. But, as is often the case with regulations, what appears on the surface isn't necessarily the whole story.

With the simple extension of this regulation to EBT cards, the Federal Reserve has dramatically altered social benefit legislation, extended the Electronic Funds Transfer Act into a realm it was not intended to cover, and created for States a new liability of unpredictable size. This bill seeks to reestablish the legislative intent governing food stamps, the legislative intent of the Electronic Funds Transfer Act, an at the same time limit a State's exposure to liability if they chose EBT over checks and coupons.

Electronic benefit transfer cards are simply an extension of current technology into the delivery of government benefits. Instead of receiving checks or coupons, recipients receive an EBT card. With that card they can access the cash benefits whenever and wherever they choose. They can withdraw as little as $5, or as much as the system will allow in a single transaction. Recipients can use their card at the supermarket instead of food stamps the way millions of Americans now use credit or debit cards to pay for food.

EBT cards offer recipients greater protection from theft than current methods of payment. Without the associated pin number, the EBT card is useless. Checks are easily stolen and forged. Food stamp coupons, once stolen, can be used by anyone and can even be used to buy drugs on the black market.

EBT cards provide recipients access to a banking system that is frequently criticized for shunning them. It is often the case that the only way a recipient can get his or her check cashed is by paying an exorbitant fee to some non-banking facility. Several Senator have introduced or supported bills requiring banks to cash government checks. Their goal was to provide these individuals access to the same services most Americans enjoy. Those bills will be unnecessary when EBT cards replace checks. EBT cards can be used at number of locations at any hour of the day or night and no fees charged to the recipient for transactions.

The action by the Federal Reserve will stop all of these benefits from happening. State and local governments have indicated that if Regulation E is enforced they will not go forward with EBT. John Michaelson, the director of Social Services in San Bernardino County California points out that while San Bernardino County was selected as the pilot site for the California EBT development, that project will not go forward as long as Regulation E applies. Similarly, Governor Carlson of Minnesota recently wrote to me indicating that the plans to expand EBT statewide in Minnesota will be halted by the application of Regulation E. Letters of support for this legislation have come from Gov. Pete Wilson of California, Gov. David Walters of Oklahoma, Gov. Mike Sullivan of Wyoming, Gov. Edwin W. Edwards of Louisiana, Gov. Arne H. Carlson of Minnesota, the National Association of State Auditors, Comptrollers and Treasures, the American Public Welfare Association, the National Association of Counties, the National Governors Association, and the Electronic Funds Transfer Association. I ask unanimous consent that these letters, along with the letter from Mr. Michaelson, be printed in the RECORD immediately following my statement.

The dilemma that faces States is that simply switching from checks and coupons to EBT cards, because of Regulation E, creates a new liability. Stolen benefit checks and coupons are not replaced except in extreme circumstances. Regulation E requires that all but $50 of any benefits stolen through an EBT card must be replaced. The effect of the Federal Reserve's action is that the simple act of changing the method of delivery imposes on the States a liability of unknown magnitude.

This action by the Federal Reserve is inconsistent with the legislative intent that created the benefit programs. The legislation for both food stamps and Aid to Families with Dependent Children—the two largest programs included in EBT—are quite clear in specifying that lost or stolen benefits will be replaced only in extreme circumstances. We should not allow that legislation to be changed through regulation.

This action is also consistent with the legislative intent of the Electronic Funds Transfer Act. The EFTA is about the relationship between an individual and his or her bank. It is designed to protect the individual in that relationship because of the dramatic

disparity in power between the individual and the bank. In EBT, any relationship between the bank and the individual is meditated by the State. The State sets up a single account which all recipients draw upon. If there is a mistake, either in the bank's favor or the recipient's, the bank goes to the State, and it is the State's responsibility to contact the individual. It is difficult to accept that the same disparity in bargaining power exists between the State and the bank.

The differences between EBT and other electronic transfers were carefully documented in a letter from Dr. Alice Rivilin, Deputy Director of OMB, to the Board of Governors of the Federal Reserve.

Opponents of this action argue that by exempting EBT cards from the Electronic Funds Transfer Act discriminates against the poor. This argument misses two important differences between EBT and ATM cards. First, ATM access is a service that banks give with discretion, and can withdraw. States cannot deny recipients access to benefits. If there is abuse of the system, the State's only alternative is to operate dual systems, thus decreasing the efficiency gains of EBT. Second, EBT extends to recipients greater protection of their benefits than checks or coupons. If stolen, the card can't be used without the pin number. And, recipients are less likely to have all their cash stolen. With checks they must receive all the cash at once, and usually pay a fee for cashing the check. With EBT cards they can withdraw only what they need, and transaction costs are covered by the contract between the State and the bank.

Others suggest that the concern with fraud if EBT is covered by Regulation E unfairly impugns the character of the recipients. That is not so. It only says that they are like everyone else—a small portion will participate in fraudulent activities to the expense of all the rest. One of the major criminal problems with ATM cards, according to the Secret Service, is fraud involving Regulation E protection. An individual can sell his or her ATM card, and as long as the price is greater than $50, everyone wins but the bank. The Secret Service knows this type of fraud occurs, but proving it is very difficult. States rightly fear that similar fraud will occur with EBT.

Earlier this month the Vice President issued the first report from the EBT task force and called for nationwide implementation. Without passage of this legislation, that goal will never be reached. When the Federal Reserve was considering this issue, 40 Governors wrote in opposition. The National Association of State Auditors, Comptrollers, and Treasurers; The American Public Welfare Association, the National Association of Counties, the National Conference of State Legislatures, and the National Governors' Association wrote jointly to Vice President GORE and to Chairman Greenspan opposing the application of Regulation E to EBT.

The Federal Reserve has made a mistake. We in Congress now need to act to ensure that benefits cards can become a reality. I urge my colleagues to enact this bill promptly.

I ask unanimous consent that a copy of the bill and additional material be printed in the RECORD

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

S. 2511

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELECTRONIC BENEFIT TRANSFERS.

Section 940 of the Electronic Fund Transfer Act (15 U.S.C. 1693b) is amended—

(1) by inserting "(1)" after "(d)"; and

(2) by adding at the end the following new paragraphs:

"(2)(A) The Board may not, under paragraph (1), make the disclosures, protections, responsibilities, and remedies created by this title apply to an electronic benefit transfer program established under State or local law, or administered by a State or local government, unless the payment under such programs is made directly into a consumer's account held by the recipient.

"(B) Subparagraph (A) does not apply to employment related payments including salaries, pension, retirement, or unemployment benefits established by Federal, State, or local governments.

"(C) Nothing in subparagraph (A) alters the protections of benefits established by Federal, State, or local statute.

"(D) For purposes of subparagraph (A), an electronic benefit transfer program is a program under which a government agency distributes needs-tested benefits by establishing accounts to be accessed by recipients electronically, such as through automated teller machines, or point-of-sale terminals. A program established for the purpose of enforcing the support obligations owned by absent parents to their children and the custodial parents with whom the children are living is not an electronic benefit transfer program.".

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, May 21, 1993.

Mr. WILLIAM W. WILES,

Secretary, Board of Governors of the Federal Reserve System, Washington, DC

DEAR MR. WILES: This letter responds to the proposal, published for comment on February 8, 1993, to revise Regulation E to cover electronic benefit transfer (EBT) programs. Please refer to Docket No. R-0796. This letter contains our endorsement of the EBT Steering Committee proposal for modifying Reg E, our views on the differences between program beneficiaries and the consumers with bank accounts, and our recommendations for your consideration.

EBT STEERING COMMITTEE VIEW

We strongly support the recommendations of the Electronic Benefit Steering Committee, which were submitted to the Board on May 11, 1992. The EBT Steering Committee recommended that EBT be treated differently from other electronic fund transfers, that specific minimum standards be established for EBT programs, and that agencies be allowed to implement Regulation E fully on a voluntary basis, if appropriate. A copy of the Steering Committee recommendation is enclosed.

In an analysis that is being prepared for the Steering Committee, preliminary data from a study for the Department of the Treasury indicate that the additional cost to government of compliance with Regulation E as proposed could be between $120 million to $826 million annually, with the most likely costs of $498 million. Such cost increases would preclude State and Federal expansion of current EBT programs and could cause termination of some, if not all, programs.

We oppose implementation of Regulation E as proposed by the Board on February 16, 1993 based on the recommendations of the EBT Steering Committee which is composed of senior Federal program policy officials who have given a great deal of deliberation to the issue and who are accountable for the management of Federal programs. We believe that the preliminary data shows that States and the Federal government would be exposed to an expense that will seriously limit the potential for EBT in the future. In addition we believe there are significant differences between program beneficiaries and a regular bank customer. OMB urges the Board to exercise its authority under the Electronic Funds Transfer Act (EFTA) to prescribe regulations that consider the economic impact on beneficiaries, State and Federal governments, and other participants.

DIFFERENCES BETWEEN BENEFICIARIES AND BANKED CONSUMERS

The EFTA is intended to protect consumers when EFT services are made available to them. The plastic EBT card gives the beneficiary more choices on where and when to withdraw cash. However, they are not "shopping" for benefits as a customer would shop for a bank card. Benefits are only received from one payment source. Furthermore, regular banking EFT services are not necessarily being "made available" to them. In fact, these beneficiaries may be required to access benefits through EBT in the future. These differences make necessary protections that are different from, and in many ways, greater than, those afforded by Regulation E. The EFTA assumes a contractual relationship between the consumer and the bank, as evident in the provisions for disclosure of terms and conditions of electronic funds transfers (15 USC 1693c(a)). Under EBT, beneficiaries do not enter into contracts with either banks or agencies governing terms and conditions of transfers.

EBT offers great potential benefits to recipients—alleviating the stigma of welfare experienced in grocery checkout lines when presenting food coupons, eliminating check cashing fees, allowing beneficiaries to become proficient with a technology useful in the working world, and eliminating the hazard of carrying cash after cashing a check. Surveys of beneficiaries show overwhelming preference for EBT over checks. The desire to access benefits through this technology is so strong that in at least one locality individual beneficiaries and the private sector are working, without government assistance, to implement EBT.

Individual benefit programs also offer significant protections to beneficiaries that are far greater than any protections afforded by financial institutions to consumers:

Access to funds by eligible beneficiary is a right guaranteed by law and is not conditioned on any prior abuses. Eligibility is based on need.

Improper withdrawals can only be recouped in a way that protects economic interest of beneficiary. For example, reductions of future benefits are strictly limited to 10 percent per month in AFDC.

If beneficiary contests an adverse action, extensive administrative apparatus supports the appeal at no cost to the beneficiary.

OMB RECOMMENDATIONS

The Federal Reserve Board has requested comment on whether modifications to Regulation E for EBT beyond those proposed should be considered. OMB specific recommendations are enclosed.

We recommend that the Board create some exceptions in Regulation E for EBT programs. In summary, we believe the Board has authority under the EFTA to prescribe regulations that provide exceptions for any class of electronic funds transfer that would effectuate the purposes of the EFTA. We believe that the Steering Committee proposal, taken together with existing protections in individual program requirements, establish the rights, liabilities, and responsibilities of participants in EBT programs and are primarily directed to protecting and enhancing the rights of individual beneficiaries.

OMB joins with the Federal Reserve Board in its commitment to protect the rights of individuals in this emerging technology. We look forward to continued progress on this governmentwide initiative.

Sincerely,

ALICE M. RIVLIN,
Deputy Director.

GOVERNOR PETE WILSON,
Sacramento, CA, Sept. 15, 1994.

Hon. JOSEPH I. LIEBERMAN,
U.S. Senate,
Washington, DC

DEAR SENATOR LIEBERMAN: I am writing to give my support to your proposed legislation to exempt Electronic Benefit Transfer (EBT) programs from the Electronic Funds Transfer Act, Specifically from the Federal Reserve's Regulation E.

California cannot assume the unknown fiscal liability that accompanies subjecting EBT programs to Regulation E, which includes a requirement to replace lost or stolen benefits. The State has begun development of a pilot EBT project, but Regulation E greatly increases our potential liability, jeopardizing our ability to meet federal cost neutrality requirements and making EBT economically infeasible, thus thwarting further development within our state.

I recognize EBT as a tool to help the states provide efficient and effective social welfare programs, and am committed to working with you to resolve the concerns raised by the application of Regulation E to EBT programs.

Sincerely,

PETE WILSON.

STATE OF OKLAHOMA,
OFFICE OF THE GOVERNOR,
Oklahoma City, OK, June 10, 1994.

Hon. JOSEPH LIEBERMAN,
Chairman, Governmental Affairs Subcommittee on Regulation and Governmental Information, U.S. Senate,
Washington, DC.

DEAR SENATOR LIEBERMAN: I am writing in support of your legislation to exempt electronic benefits transfer (EBT) from the Electronic Funds Transfer Act (EFTA). The prompt passage of this legislation is needed to ensure that EBT becomes a reality in Oklahoma.

Electronic benefits transfer is the future of government benefit distribution. The advantages for recipients and government entities have been studied and validated. The pending implementation of Regulation E in March 1997, will be an irresponsible act in light of the consequences anticipated in liability costs to the States. If Regulation E is implemented, the nationwide costs for replacing food stamps is estimated in excess of $800 million a year. Estimates are not available for the numerous money payments anticipated for EBT distribution. Current federal regulations provide ample protection to the consumer recipients, in addition to the known advantages of receiving benefits electronically.

Oklahoma is leading a multi-state southwest regional team in procuring an EBT system to distribute food stamps and money payments. This month, the Oklahoma Department of Human Services will publish a Request for Information to be distributed to potential bidders to inform them of our unique approach to procurement, and to provide the opportunity to comment on the proposed system design. We plan to publish a Request for Bids in September 1994 to hire a vendor to provide EBT services. Oklahoma has been working toward this goal for five years. Our investment in EBT is an investment in fiscal responsibility. Please feel free to call Dee Fones (405) 521-3533 if you have any questions or if we can be of further assistance in helping to pass this legislation.

Sincerely,

DAVID WALTERS.

STATE OF WYOMING,
OFFICE OF THE GOVERNOR,
Cheyenne, WY, June 21, 1994.

Hon. JOSEPH LIEBERMAN,
Chairman, Government Affairs Subcommittee on Regulation and Government Information, U.S. Senate, Washington, DC

DEAR SENATOR LIEBERMAN: We are writing to you to express full support for your leadership in proceeding with legislation to exempt electronic benefits transfer (EBT) from the Electronic Funds Transfer Act (EFTA), including exception from the Regulation E (Reg E) provision.

Wyoming is developing an off-line smart card system solution to deliver state and federal benefits. Wyoming's first phase is to conduct a federally approved combined Food Stamp and WIC Supplemental Food Program Demonstration Pilot. As this approach uses off-line distributive technology in contrast to traditional on-line magnetic stripe banking technology, we propose that smart card technology should be exempt as benefits are in the hands of the client/user and not controlled by a mainframe bank processor.

The application of Reg E to EBT represents a major transfer of liability that states are not prepared to embrace. One estimate suggests that for Good Stamps alone, the liability losses could be 800 million each year.

Of greatest concern is the faulty premise of the Federal Reserve Board. The assumption in applying EFTA to EBT is that the bank/customer relationship in the private sector is analogous to the government/recipient relationship in the public sector. This assumption is false because public assistance recipients are entitled to benefit and must be served. Banks market their services for profits. They get to choose the customers they serve.

Second, customers of government benefit programs are given a card to access and manage their benefits, but they do not own the account and cannot deposit additional resources to the account. Further, banks charge fees to cover the costs of maintaining bank accounts, including complying with Regulation E.

Finally, Congress set up benefit programs like Food Stamps, AFDC and WIC to achieve a public safety net to assure health and welfare for all citizens. States will never be able to apply Regulation E to these programs like banks apply the Regulation because the goals of the relationship with the client/user are fundamentally different.

Once again, thank you for your leadership on this important issue.

Sincerely,

MIKE SULLIVAN,
Governor.
DAVE FERRARI,
State Auditor.

STATE OF LOUISIANA,
OFFICE OF THE GOVERNOR,
Baton Rouge, LA, June 28, 1994.

Hon. JOSEPH LIEBERMAN,
Chairman, Governmental Affairs Subcommittee on Regulation and Governmental Information, U.S. Senate, Washington, DC.

DEAR SENATOR LIEBERMAN: I am writing in support of your legislation to exempt electronic benefits transfer (EBT) from the Electronic Funds Transfer Act (EFTA). This legislation is needed to ensure the future electronic delivery of governmental entitlement benefits in Louisiana.

Electronic benefits transfer as a method of distribution of government benefits has proven to be viable and secure. Although entitlement programs have been granted exemption from Regulation E until 1997, this regulation threatens the development and growth of EBT because of anticipated liability to the states. Estimated losses to the states could exceed $1.5 billion a year if Regulation E is implemented in March 1997.

Louisiana is participating in a joint venture with other states in the southwest region in procuring an EBT system to distribute AFDC and food stamp benefits. Proposals from bidders will be solicited in September 1994. Implemention of EBT is an investment that is responsible administratively in addition to being beneficial to recipients. Your efforts in securing the future of EBT are appreciated.

Sincerely,

EDWIN W. EDWARDS.

STATE OF MINNESOTA,
Washington, DC, June 29, 1994.

Hon. JOSEPH I. LIEBERMAN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR LIEBERMAN: I am writing in support of legislation you plan to introduce which would exempt welfare benefit programs from provisions of the Electronic Funds Transfer Act. Without such an exemption, plans to expand Minnesota's statewide Electronic Benefits Systems (EBT) would be halted.

As you know, the Federal Reserve Board recently ruled that welfare programs using electronic benefit issuance are subject to the consumer protection provisions of Regulation E under the Electronic Funds Act. Welfare programs have been exempted from Regulation E since 1987. Under the new Federal Reserve Board ruling, as of March, 1997, the regulation will be applied.

Minnesota cannot accept the unknown liability inherent in applying Regulation E to

benefit programs. The cost of replacing benefits should a card become lost or stolen would fall strictly on the state under this rule, even for the share of the benefit which is federally funded.

Your legislation, if enacted, would permit Minnesota and other states to move forward with developing electronic benefit transfer (EBT) systems which will help state and federal government improve service delivery of welfare benefits to the client.

Warmest regards,

ARNE H. CARLSON,
Governor.

NATIONAL ASSOCIATION OF STATE AUDITORS, COMPTROLLERS AND TREASURERS,
Phoenix, AZ, May 20, 1994.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Subcommittee on Regulation and Government Information, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR LIEBERMAN: I am writing in support of your legislation to exclude Electronic Benefit Transfer (EBT) programs from the Electronic Fund Transfer Act. The National Association of State Auditors, Comptrollers and Treasurers (NASACT) supports the establishment of EBT programs, but opposes the decision of the Board of Governors of the Federal Reserve of March 1994 to apply the liability provisions of Regulation E, which implements the Electronic Fund Transfer Act, to these programs.

Regulation E governs the relationship between a financial institution and its customers. This is a decidedly different relationship from that which exists between a government and benefit recipients. Regulation E is a "show stopper" for EBT. By requiring governments to replace all but $50 of a benefit that a recipient claims has been lost or stolen, it would change the current policy for benefit replacement and make EBT too expensive to implement. While we support consumer protection and training programs for recipients participating in EBT programs, we believe that the protections provided under Regulation E are inappropriate in a government EBT environment.

Simply stated, governments are not banks. Banks market their services to specific customers whose business will generate increased profits. Banks can choose not to serve customers. Governments, on the other hand, must serve recipients that are entitled to benefits. While banks charge fees or surcharges to cover the cost of maintaining bank accounts—including the cost of Regulation E—governments do not charge recipients to participate in public assistance programs. In addition, unlike banking customers, government benefit recipients do not establish individual accounts, they do not own the accounts, they cannot deposit funds into the accounts and they cannot write checks against the accounts.

I want to commend you for introducing legislation addressing this important issue. Your legislation will help assure that governments can improve service delivery without experiencing undue liability. As the legislation progresses, you may want to consider a technical amendment to clarify the scope of the bill. For instance, it might be helpful to more fully explain the meaning of the term "general assistance." NASACT will, of course, be happy to assist you and your staff in any way possible.

Sincerely,

DOUGLAS R. NORTON,
President.

AMERICAN PUBLIC WELFARE ASSOCIATION,
Washington, DC, May 25, 1994.

Hon. JOSEPH LIEBERMAN,
Chairman, Governmental Affairs Subcommittee on Regulation and Government Information, U.S. Senate, Washington, DC.

DEAR SENATOR LIEBERMAN: I am writing to give full support to your legislation to exempt electronic benefits transfer (EBT) from the Electronic Funds Transfer Act (EFTA), including from its Regulation E (Reg E) provision.

Across the country, human service agencies are moving toward making EBT a reality for the people they serve. Unfortunately, as you know, the Federal Reserve Board decided on March 7, 1994 to apply Reg E to EBT starting in March, 1997, requiring the issuer of an electronic transfer card to replace all but $50 of any benefits that are lost or stolen. The Board's decision to apply banking law to EBT expands the liability of government and taxpayers regarding benefit replacement, creating a drastic change in current social policy. Furthermore, making card issuers responsible for benefit replacement shifts costs from the federal domain to the states, creating a new unfunded mandate. Financial estimates conclude that the costs to government and taxpayers for replacing food stamps alone under this ruling could run in excess of $800 million a year. This estimate does not include the potential costs associated with replacing other benefits that can be transferred electronically, such as AFDC, child support, General Assistance, WIC, and SSI.

Indeed, the Federal Reserve Board's decision effectively will impede state EBT activity due to the prohibitive costs associated with replacing lost or unauthorized transfers of government benefits. Currently, the regulations of the Food Stamp Program (a 100% federally-funded program) prohibit replacing food coupons, unless coupons were not received in the mail, were stolen from the mail, or were destroyed in a "household misfortune." Current AFDC regulations prohibit replacing the federal portion of the amount of an AFDC benefit check unless the initial check has been voided or, if cashed, the federal portion has been refunded (AFDC is jointly funded by federal and state governments). These policies have provided adequate client protection in the past, and when combined with the added safeguard of a properly-used EBT card with a PIN number, would continue offering adequate protections.

In an era when government is striving—both due to necessity and public demand—to deliver services that cut or contain costs rather than provide opportunities for increased costs, Regulation E not only dampens but may thwart state efforts to benefit from EBT. In fact, in a federal government attempts to have states or localities currently operating EBT programs test the costs associated with the regulation, no state has yet come forward to volunteer for the pilot test due to the financial and political risk.

As the national representative of the 50 cabinet-level state human service departments, hundreds of local public welfare agencies, and thousands of individuals concerned about achieving efficient and effective social welfare policy, APWA is quite concerned about finding a solution that will allow progress on EBT. Our members are the innovators and visionaries bringing EBT to clients at the state and local levels. They are the people who deliver the government benefits such as food stamps, AFDC, child support, and medical and are committed to working with you to find a solution to the barrier Reg E presents.

Sincere thanks to you for taking the critical steps needed to mitigate the impact of the Board's decision. We look forward to working with you to help pass this legislation quickly. Please feel free to call either me or Kelly Thompson at 202-682-0100.

Sincerely,

A. SIDNEY JOHNSON III,
Executive Director.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, DC, June 29, 1994.

Hon. JOSEPH I. LIEBERMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LIEBERMAN:

EBT/EFT offers numerous advantages to both the issuing agency and the recipient. Government agencies will save substantial administrative and production costs, as well as costs associated with fraud. Recipients will have the benefit of a secure delivery system, and a more dignified method of receiving public assistance. Also, retail establishments would save the time and money involved in manually processing Food Stamps and vouchers. In all, EBT/EFT benefits everyone, especially the taxpayers.

Presently, numerous counties in six states are operating EBT/EFT programs in various stages of development. Many other counties are considering EBT/EFT implementation, but are reserving initiating a system until the issue of liability under Regulation E of the EFTA is resolved. For many counties, the application of Regulation E would effectively make initiating an electronic delivery system economically unfeasible through the violation of the cost neutrality requirement.

It is also the position of NACo that the consumer rights of welfare and Food Stamp recipients, which appear to be the major concern of the Federal Reserve Board of Governors and the driving force behind their push for Regulation E's application, are protected under extensive federal rules in the authorizing statutes and program regulations. Application of Regulation E would be duplicative in some cases, and costly in all cases.

For these reasons, NACo supports your draft bill excluding government EBT/EFT programs and looks forward to working with you as this bill moves through the legislative process. Please do not hesitate to contact Marilina Sanz, Associate Legislative Director for Human Services and Education at NACo on 202-942-4260 should you have any questions.

Sincerely,

LARRY E. NAAKE,
Executive Director.

NATIONAL GOVERNORS ASSOCIATION,
Washington, DC, Oct. 4, 1994.

Hon. JOSEPH I. LIEBERMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LIEBERMAN: We are writing in strong support of legislation that you are introducing to exempt certain electronic benefit transfer programs from the Electronic Funds Transfer Act.

As you know, Governors have been leaders in using technology to improve the delivery of services to the public through such initiatives as distance learning, telemedicine, and electronic benefit transfer (EBT). States and localities have been exploring for over a decade the potential of EBT for providing clients with more convenient and safer access

to benefits and for improving the ability of states to manage programs and prevent fraud. More recently, Vice President Albert Gore has promoted nationwide EBT for some federal benefit programs in the near future as part of his Reinventing Government initiative.

Progress toward wider use of EBT has been slowed, however, by the Federal Reserve Board's decision last March to apply Regulation E of the Electronic Funds Transfer Act to EBT programs. This Federal Reserve decision essentially changed federal social policy by creating a new entitlement to replacement of lost or sto'en welfare benefits for EBT clients—a new entitlement benefit that clients who receive those same welfare benefits in cash or coupons do not have. Estimates of the cost of this new benefit vary widely but range as high as $800 million annually.

While the Board's decision created this new entitlement benefit, it did not address how this benefit would be financed. To date the federal government has refused to commit to reimburse states for the EBT benefit replacement costs of even those welfare benefits that are entirely federally financed, such as food stamps. This is true despite the fact that most of the administrative savings from EBT accrue to the federal government, not to the states.

Governors are not opposed to consumer protections for EBT clients. If the consumer protections of Regulation E are applied to EBT programs, however, we believe that Congress must recognize that this is a new entitlement benefit and act accordingly to fund it. Otherwise it will become an unfunded mandate on the states, and Governors will have little choice but to halt their efforts toward creating EBT systems for welfare clients.

If Congress is not able to fund this new entitlement benefit, then we believe that the only alternative is to make it clear that clients who receive welfare benefits through EBT are entitled to the same protections as clients who receive benefits in cash or in coupons—no more, no less. That is exactly what your legislation would do. We believe your bill addresses the following problems created by the Federal Reserve Board decision:

Inequitable treatment of clients—The bill ensures that clients have the same rights and responsibilities regardless of whether their welfare benfits are delivered by check, by coupon or electronically.

Unfunded mandates on states and localities—The bill eliminates the unfunded mandate for states and localities to replace lost or stolen EBT benefits even when the original benefit was entirely federally funded.

Loss of EBT as a viable means of delivering welfare benefits—The bill will remove the Regulation E roadblock to nationwide EBT by making it financially possible for Governors to proceed with EBT to the benefit of clients and federal, state and local governments.

We recognize that there may be other ways to address these problems but all of these other means would necessarily involve some unknown new cost because they would create some level of new entitlement to benefit replacement. Until Governors have a commitment from the federal government to assume the costs of any new EBT entitlement benefits, your bill's exemption approach is the only solution that we can support.

Sincerely,

GOV. MEL CARNAHAN,
Chair, Human Resources Committee.

GOV. ARNE H. CARLSON,
Vice Chair, Human Resources Committee.

ELECTRONIC FUNDS TRANSFER ASSOCIATION,
Herndon, VA, Oct. 4, 1994.

Hon. JOSEPH LIEBERMAN,
Chairman, Government Affairs Subcommittee on Regulation and Government Information, U.S. Senate, Washington, DC,

DEAR SENATOR LIEBERMAN: On behalf of the Board of Directors of the Electronic Funds Transfer Association (EFTA), I wish to express support for your legislation to exempt electronic benefits transfer (EBT) from Regulation E (Reg E) of the Electronic Funds Transfer Act (EFT Act).

The Federal Reserve Board has declared its intention to apply Reg E to EBT starting in March 1997. Under the provisions of the regulation, the issuer of an EBT card will be required to replace all but $50 of any benefits that are lost or stolen. The replacement costs have delayed indefinitely the implementation of EBT programs in several states, including California. States cannot pass their fraud costs to benefit recipients; they must be borne by taxpayers, who are looking to EBT to cut delivery costs, not increase them. Financial estimates conclude that costs to government and taxpayers for replacing benefits may run as high as $800 million per year. Currently, the state of Maryland (and possibly others) is considering pursuing legal action against the Federal Reserve Board for regulating a matter that is not within its purview. EFTA agrees with this assessment and believes the three year delay in implementation provides the opportunity for Congress to resolve this matter.

On August 1, 1994, EFTA filed comments with the Federal Reserve Board of Governors in response to the proposed revisions of Reg E. We indicated that the imposition of Reg E's liability and error resolution rules will terminate EBT programs in many states and will substantially delay progress of many other important EBT initiatives. As a fiscal and political matter, states are unwilling to undertake responsibility for liabilities of an undermined value. If EBT fails to develop, benefits recipients will be substantially disadvantaged. They will not obtain the advantages of convenience, security, speed and dignity that EBT can offer.

EFTA has become a strong advocate of EBT over the past several years, advising the Office of Technology Assessment (OTA) and the Federal EBT Task Force of the myriad benefits associated with EBT. Like Vice President Gore, EFTA's goal is to utilize the current ATM/POS infrastructure in order to facilitate the electronic delivery of federal and state benefits nationwide. However, as Dale Brown, Director of the Maryland statewide EBT project indicated, applying the regulation would be a "show stopper." Ms. Brown estimates that Maryland could inherit a potential liability of several million dollars. EFTA members include government agencies, EFT processors and networks, card issuers and manufacturers, as well as financial institutions. With a significant increase in costs due to benefit replacement, EBT would no longer be a viable venture for these stakeholders.

EFTA would be pleased to work with you to help pass this legislation. In addition, we offer our assistance in crafting language that would further protect recipients whose benefits have been lost or stolen, while minimizing the opportunities for fraud that currently threaten fledgling EBT programs across the country.

We thank you for your thoughtful analysis and interest in such a significant issue. If EFTA can be of any help in this matter please do not hesitate to call at 703-435-9800.

Sincerely,

H. KURT HELWIG,
Acting President and CEO, Director, Government Relations.

DEPARTMENT OF PUBLIC SOCIAL SERVICES,
San Bernardino, CA, April 15, 1994.

Mr. WILLIAM LUDWIG,
Administrator, Food and Nutrition Service, Alexandria, VA.

DEAR BILL: For more than 4 years San Bernardino County has attempted to bring Electronic Benefit Transfer (EBT), not only to our County, but to the entire State of California. Now, as we submit the attached Request for Proposal (RFP), after overcoming many hurdles and after finally being named as the EBT Pilot County for California, yet another mountain stands in our way. That mountain is the Federal Reserve Board's ruling that Regulation E does apply to EBT.

The San Bernardino County Board of Supervisors and I have made EBT a high priority. Besides being a cost-effective use of new technology, it is the best of all worlds (an occurrence not often seen in today's world of government bureaucracy). EBT holds the promise of being more cost effective than our current Food Stamp distribution system, it is also less costly for grocers and is generally viewed favorably by recipients for a number of reasons, not the least of which is having to access their benefits only as they use them.

REGULATION E IMPACT

First, I am not aware of any written definitive statement of shares of cost of Regulation E by any federal agency, in particular FNS or ACF. I have heard verbal statements from FNS that our County Cost Cap, which EBT cannot exceed, may dictate that all Regulation E costs above that cap must be borne 100% by the State or local Government—in our case San Bernardino County.

I cannot, in good conscience, recommend to my Board of Supervisors, a contract which includes an unknown liability for Regulation E. To do so is tantamount to asking them to sign a blank check.

Therefore, with the concurrence of the California Welfare Director's Association, the County of San Diego and the California Department of Social Service, I must put you on notice that our EBT RFP will not be released until we receive a written Federal commitment for relief from the unknown liability of Regulation E, such as assurance that we will not be responsible for any Regulation E costs above our cap.

As you are aware, San Bernardino, a number of other California counties and the State have been committed to bringing EBT to California and, therefore, the above statement was arrived at only after a great deal of debate and discussion with all affected parties. However, an immediate resolution to the Regulation E cost-sharing issue could resolve this and allow us to move forward.

As always, I and my staff will make ourselves available for any discussion that you think will be helpful in our pursuit of EBT for San Bernardino County and, therefore, California.

Sincerely,

JOHN F. MICHAELSON,
Director.●

By Mr. McCONNELL (for himself and Mr. FORD):

S. 2512. A bill to require the Secretary of Agriculture to issue an order to establish a thoroughbred horse industry promotion program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE THOROUGHBRED INDUSTRY PROMOTION ACT

Mr. McCONNELL. Mr. President, I rise today with my colleague Senator FORD, to introduce legislation authorizing the Secretary of Agriculture to establish a check-off program to fund critical promotion and research activities in the thoroughbred horse industry.

The Thoroughbred Industry Promotion and Research Act of 1994 is patterned after more than a dozen other successful commodity promotion and research programs which are similarly authorized by Federal statutes.

Kentucky is the thoroughbred horse breeding capital of North America—indeed of the world. In 1992, there were 34,512 thoroughbred foals registered in the United States; 6,807 or 19.7 percent in Kentucky alone, followed by California, 11.7 percent; Florida, 10.1 percent; and Texas, 6.4 percent. Those four States, plus Oklahoma, 4.5 percent, accounted for more than half of the 1992 registered foal crop. Large or small, however, each State makes its own contribution to the industry on a nationwide basis.

Many of our colleagues may not know that Kentucky also has become one of the leading racing States in the country. It has always enjoyed that distinction on the first Saturday in May when the Kentucky Derby is run at historic Churchill Downs in Louisville. Another historic event returns in just a month—November 5—when the Breeders' Cup returns to Churchill Downs. But other Kentucky racetracks—notably Keeneland, Turfway Park, Dueling Grounds, and Bluegrass Downs—have moved Kentucky up into the top three racing States, measured by gross purse distributions—$51.6 million in 1993—behind only California and New York, and followed by Florida and Illinois, according to 1993 statistics from the Daily Racing Form.

But there is not a lot of good news in the industry outside of Kentucky. Historically speaking, horseracing has always been a leading spectator sport. But in 1993, for the first time in modern history, thoroughbred racing suffered declines in both on-track attendance and parimutuel wagering. In the competitive context of expanding demands for the entertainment dollar, declines in revenue and handle are dangerous trends.

Needless to say, I and thoroughbred breeders, owners, and racetracks, do not propose to stand by while competition shrinks market shares and replaces thoroughbred racing at the top of America's menu of entertainment options.

Like many agricultural industries, the thoroughbred horse industry is comprised mainly of small- and medium-sized owners, breeders, and small business proprietors, such as trainers, jockeys, exercise riders, grooms, blacksmiths, and veterinarians. Not surprisingly, development of nationally coordinated marketing and promotion programs is difficult to accomplish for such a diverse bunch.

A market research project recently conducted by a nationally recognized advertising agency for the Thoroughbred Owners and Breeders Association [TOBA] in a three-State market—Kentucky, Illinois, and Ohio—identified several marketing objectives for thoroughbred racing. But as TOBA President Helen Alexander recently noted," * * * strategies for attaining those or any other business objectives cannot be developed without adequate funding."

This bill would provide a method of funding that is needed for effective marketing and promotion of the industry. It provides a mandatory assessment of one-fourth of 1 percent of gross handle—25 cents per $100. Operations and promotional activities would be directed by a board comprised of owners, racetracks, a trainer, and a jockey—all representative of purse participants in the net revenue stream after payouts to patrons who wager on thoroughbred racing—and to State governments, which regulate and tax the sport.

This bill also would create a funding source for needed research activity; economic impact data at national, regional, and State levels; drug testing; the quality assurance program administered by the Association of Racing Commissioners International; and sustained racing surface and injury breakdown reporting studies, to name but a few needed research and development activities.

Something meaningful must be done to promote the thoroughbred industry and enable it to compete more effectively for its market share. This approach has worked elsewhere. As I recently told a thoroughbred industry journalist, "Professional promotion has worked like charm for every other agricultural commodity for which it has been implemented." It ought to be made available for this one, too.

This is a starting point for reasoned consideration and informed discussion of an optional method of funding needed marketing, promotion and research activity in a significant American industry whose roots trace to Colonial times. This bill provides a solid foundation for addressing unmet needs.

By Mr. ROCKEFELLER:

S. 2513. A bill to enhance the research conducted by the Agency for Health Care Policy and Research concerning primary care, and for other purposes; to the Committee on Labor and Human Resources.

THE CENTER FOR PRIMARY CARE RESEARCH ACT OF 1994

• Mr. ROCKEFELLER. Mr. President, I offer a bill that would establish a new Center for Primary Care Research within the Agency for Health Care Policy and Research. This bill would establish within the Federal Government the only location dedicated to increasing the Nation's critical need for primary care research.

Family doctors, general internists, and pediatricians handle most of the health care problems for most of the people, most of the time. They care for the bulk of serious and disabling problems, as well as provide preventive care and treatment of common illnesses. As the health care system in the United States continues to evolve, more and more emphasis and responsibility will be placed on these primary care providers.

Each time a primary care provider sees a patient, he or she must make a decision on whether or not to perform certain laboratory tests, to treat, observe, educate, refer to a specialist, or hospitalize that patient. These decisions have a dramatic impact on people's health and on health care costs. Therefore, it is of critical importance that family doctors and other primary care providers, such as nurse practitioners and physician assistants, make their decisions based on the best scientific information available.

Currently there is almost no primary care research being done and only a small number of primary care providers are actually trained to do this type of research. There is an urgent need to develop an infrastructure of primary care research and financial support for primary care research.

Primary care is defined as comprehensive and person-centered care—as opposed to disease or organ-specific—addressing the full range of personal health needs through preventive, curative, and rehabilitative care. It is the care you get when you first get sick, and the care you get from your own doctor over time. Results from the Medical Outcomes Study, the largest and best study ever done on the subject, showed that primary care doctors provided similar medical care as specialists, at lower cost, even when the severity of illness was taken into consideration.

Our country already spends over $11 billion on biomedical research, and does so wisely. Biomedical research focuses on basic science research, such as molecular biology, and individual diseases in highly artificial hospital settings, usually in patients of certain ages and sex, and without the complications of other diseases and without the interaction of other medicines. While this information is extremely important, there is a critical need to complement this type of research with

primary care research which is relevant to illness as most people experience it. This kind of research is not specifically addressed anywhere in the Federal research establishment.

For example, while there is lots of research on the treatment of brain tumors, most patients do not see their doctor because of a brain tumor. Instead people come in complaining of a headache and while specialists are frequently trained to order a CAT scan or MRI for every headache, primary care providers need to determine which patients need these tests, which patients might, in fact, have a tumor and which patients do not need an MRI. Currently, there is very little medical science to help doctors make these determinations. It is critical for our health care system—for patient care research program to answer these questions.

The same goes for back pain. Which patients have a pulled muscle and which ones have a slipped disk? Should they all have an MRI? A recent study showed that over half of normal people have an abnormal MRI. So we don't want to MRIs on everyone with back pain. Or, another example, ear infections in kids. In the United States we tend to treat them all with antibiotics. In many European countries they seem to do just as well without antibiotic treatment. We need research to answer these questions, based on real life patients being treated by their family doctor.

Other examples are chronic disease like high blood pressure. Doctors have very little scientific information on how often patients with high blood pressure should have their blood pressure checked. Should it be every month, every 3 months, every 6 months, or every day at home? Does it make a difference? We just don't have the answer to these very basic questions. And many patients, especially the elderly, have multiple problems. For patients with Alzheimer's disease, we don't know what the best way is to care for them.

We know how to treat many types of cancer, and we know how to treat depression, but what about patients with cancer and depression. Another example is prevention. We know that lowering cholesterol is important in preventing heart disease, at least for men, as is exercise, diet, and not smoking. But we need to know more about the relative importance of these factors, how they interact, or whether lowering cholesterol is as important for women or the elderly. These are the real life situations which patients see primary care doctors about every day, and where research is desperately needed.

If primary care providers are to effectively care for most patients, they need to base their treatments on the sound foundation of science obtained through research. There needs to be a "home" for primary care research with its own funding source.

Therefore, Mr. President, I propose that the current division of primary care in AHCPR which has very little visibility and has not been very effective in competing for support or in building an infrastructure of primary care research, be elevated to the center for primary care research. This center should have its own funding source which would make it the only place in the Federal Government with dedicated funding for primary care research.

The purpose of the Center for Primary Care Research would be to meet our country's critical need for primary care research. Research that is relevant to actual primary care practice. This would include: development of a research agenda for primary care; conducting and supporting primary care research; providing support for institutions to develop an infrastructure in primary care research; promoting collaboration among the various primary care disciplines, researchers, and primary care practitioners; implementation of career development strategies to help develop primary care researchers; and other strategies to increase capacity in primary care research as outlined in "Putting Research into Practice," the AHCPR report of the task force on building capacity for research in primary care. This task force was put together by AHCPR to make recommendations on exactly this problem.

In summary, as we move to a health care system which is increasingly based on primary health care and as the education and training of health care providers becomes increasingly oriented toward primary care providers, there is an essential need for more research to provide a basis for primary care practice and to improve the quality of primary health care.

This amendment is strongly supported by the American Academy of Family Physicians, the American College of Physicians, the American Society of Internal Medicine, the American Academy of Pediatrics, the Association of American Medical Colleges, the Association of Academic Health Centers, the Association of Professors of Medicine, the Organizations of Academic Family Medicine, the American Academy of Nurse Practitioners, and the American Academy of Physician Assistants.

I also want to express my special thanks to Dr. Howard Rabinowitz, a dedicated physician who is completing a fellowship in my office, for his assistance with this legislation and his many valuable contributions over the past year to our efforts to better meet the health care needs of Americans.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2513

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CENTER FOR PRIMARY CARE RESEARCH.

(a) ESTABLISHMENT.—Section 902 of the Public Health Service Act (42 U.S.C. 299a) is amended by adding at the end thereof the following new subsection:

"(f) CENTER FOR PRIMARY CARE RESEARCH.—

"(1) ESTABLISHMENT.—The Secretary shall establish within the Agency, a Center for Primary Care Research.

"(2) FUNDING AND ACTIVITIES.—The Center established under paragraph (1) shall carry out research that is relevant to the practice of primary care, including—

"(A) the development and support of a research agenda for primary care;

"(B) The provision of support to enable institutions to develop an infrastructure in primary care research;

"(C) the development of increased communication and collaboration among various primary care disciplines, researchers, and primary care clinicians, including physicians, nurse practitioners, and physician's assistants;

"(D) the implementation of career development strategies and technical assistance for primary care researchers; and

"(E) the conduct of other activities to increase capacity in primary care research determined appropriate by the Administrator.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, $15,000,000 for fiscal year 1996, $20,000,000 for fiscal year 1997, and $25,000,000 for fiscal year 1998.".

(b) TRANSFERS.—

(1) IN GENERAL.—There are transferred to the Center for Primary Care Research (established under the amendment made by subsection (a)) all functions, personnel employed in connection with, and assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this subsection, of the Division of Primary Care within the Agency for Health Care Policy and Research (including all related functions for any officer or employee of such Division).

(2) PERSONNEL.—The transfer pursuant to paragraph (1) of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer of such employee under this subsection.

(3) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(A) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this paragraph, and

(B) which are in effect at the time this subsection takes effect, or were final before the date of enactment of this Act and are to become effective on or after the date of enactment of this Act,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary or other authorized official, a court of competent jurisdiction, or by operation of law.•

By Mr. DURENBERGER:

S. 2514. A bill to ensure economic equity for American women and their families by promoting fairness in the workplace; creating new economic opportunities for women workers and women businessowners; helping workers better meet the competing demands of work and family; and enhancing economic self-sufficiency through public and private pension reform and improved child support enforcement; to the Committee on Finance.

THE ECONOMIC EQUITY ACT

• Mr. DURENBERGER. Mr. President, I introduce the Economic Equity Act. I think it is fitting that one of my last official acts will be the introduction of the EEA in my final session in Congress.

Today, a 13-year commitment of mine comes full circle. Back in 1981, I was one of the architects of the very first EEA. The concept of the EEA and the phrase "Economic Equity" originated in Minnesota, through a task force of interested citizens that I organized. The Economic Equity Act has been introduced in every Congress since 1981, and I am proud to have been a sponsor each time.

From the beginning, the purpose of the act was to bring attention to the problem of economic discrimination against women, and to offer some real solutions. That goal is the same today.

The EEA is an omnibus bill—a package of several free-standing bills that address a broad array of economic obstacles for women. The EEA changes in each successive Congress, reflecting past accomplishments and new challenges. Although the EEA itself has never passed, its great contribution has been that many of its individual provisions have become law.

These are some of the provisions in past versions of the EEA that have been enacted:

First, estate tax reforms that recognize women as equal partners in building a family business;

Second, day care tax credits, especially for low- and moderate-income families;

Third, Individual Retirement Accounts for women who choose to work in the home;

Fourth, changes in farm credit regulations to eliminate the previous bias against unmarried women;

Fifth, tougher child support enforcement;

Sixth, the removal of economic roadblocks for women in pension and insurance laws;

Seventh, increases in the standard deduction for single heads of household and an expansion in the earned income tax credit;

Eighth, continued health benefits coverage for widows, divorced spouses, and dependent children under COBRA; and

Nineth, grant programs for college students who need affordable child care.

This year's Economic Equity Act is identical to the bill that was introduced on the House side by Representatives PAT SCHROEDER and OLYMPIA SNOWE, members of the Congressional Caucus for Women's Issues. The bill's four titles contain a total of 22 separate bills.

The first title, Workplace Fairness, addresses the problem of discrimination in the workplace. One of the bills in this title, the Equal Remedies Act, was introduced last year by Senator KENNEDY and myself. The Equal Remedies Act would cure an inequity in the law that prohibits victims of gender discrimination from receiving the same remedies available to victims of racial discrimination.

Title I also contains a bill I sponsored with Senator PATTY MURRAY, the Sexual Harassment Prevention Act. This would set up a low-cost system to help employers establish policies to reduce the incidence of sexual harassment in the workplace.

The second title, Economic Opportunity, would expand access to the fields of science and engineering, increase Federal contract opportunities, and increase access to credit for women starting small businesses.

Title III addresses the difficulty of balancing the demands of work and family, by encouraging family friendly policies in the workplace and expanding access to quality child care.

The fourth and final title, Economic Self-Sufficiency, deals with a variety of impediments to income security for women. These challenges range from the effectiveness of child support enforcement, to Social Security penalties for those who take time off from work to care for a family member, to the adequacy of job training programs.

Although I may not endorse the particular approach of every provision of the EEA, I stand behind the EEA because it illuminates the enormity of economic obstacles facing half of America's citizens. Each of the challenges addressed under the umbrella of the EEA—touching countless areas of the law—deserves our attention and action.

When we recognize the potential of all Americans and remove barriers to their economic participation, America will not only become a more fair place, it will become a better competitor in the international marketplace.

America must make all of its citizens full partners in the economy. It is not only the right thing to do, it is the smart thing to do. Long after my retirement from this body, I hope the EEA will continue to speak that message.•

By Mr. BROWN:

S. 2515. A bill to amend title 17, United States Code, to exempt business establishments from copyright fees for the public performance of nondramatic musical works, to provide for binding arbitration in royalty disputes involving performing rights societies, to ensure computer access to music repertoire, and for other purposes; to the Committee on the Judiciary.

THE FAIRNESS IN MUSICAL LICENSING ACT OF 1994

• Mr. BROWN. Mr. President, I introduce legislation that would lift a burden off of small businesses who currently pay fees to music licensing organizations under a complicated and cumbersome copyright law.

Under current law, music licensing organizations are permitted to collect fees from those who play a radio or television in their commercial establishment. The music may be background music, or it may be music played at half-time during a football game. The music license fee applies to shoe stores, to diners, to shopping centers, or any other business establishment.

The artists who create this music certainly deserve compensation for their intellectual property. In fact, those artists are compensated for their labors. When a song is played over a radio or TV, the broadcaster pays for the rights to play that song. When we are at home, and we turn on the radio, we are not expected to pay a second fee. Yet, if a radio is played at a commercial establishment for no commercial gain, a second fee is charged for the music. This double-dipping smacks of unfairness.

In addition, there is tremendous inequity in the way licensing companies assess these fees. The businesses are unable to see a list of the songs that are available for licensing. The businesses are unable, because of the market inequity, to bargain for a fair price. Instead, we have an anticompetitive environment where two or three licensing companies control almost all of the music available. Small businesses have two options: pay the preordained fee or turn off the radio or TV.

The approach I have taken to address this problem aims at leveling this playing field. The legislation I am introducing would require the licensing companies to make a list of their repertory available so businesses can know what products they are paying for.

The legislation would exempt retail and other businesses from paying the fee for music played over radio and TV if a fee has already been paid. Where music has already been paid for by the broadcaster, the copyright owner has in fact been compensated.

In addition, the legislation would establish arbitration to resolve disputes over fees. As it stands, if a retail store

wishes to contest the fees paid to one of the licensing companies, they have to go to a court in New York. Moreover, full blown litigation in any case is often prohibitively expensive.

The legislation would require the music licensing companies to offer per period programming licenses—in other words allow radio stations to purchase licenses for shorter time periods instead of 24 hours a day if they are only playing music in short spots between religious, news, or talk shows. I hope my colleagues will join me in leveling the playing field and will support this bill.•

By Mr. KENNEDY:

S. 2516. A bill to consolidate and reform Federal job training programs to create a world class workforce development system for the 21st century, and for other purposes; to the Committee on Labor and Human Resources.

THE JOB TRAINING CONSOLIDATION AND REFORM ACT

Mr. KENNEDY. Mr. President, today I am introducing the Job Training Consolidation and Reform Act. This bill grew out of a bipartisan effort that Senator KASSEBAUM and I initiated earlier this year to consolidate, reform, and revitalize federally funded job training programs, and I hope that this measure will help to lay the foundation for early and effective action on this important issue in the next Congress.

In his State of the Union Address this year, President Clinton called on Congress to improve all aspects of Federal work force development policy. In this session of the Congress, we have responded by enacting new education and job training measures for youth, such as the School-to-Work Opportunities Act and the Goals 2000: Educate America Act.

We have also made significant progress in responding to President Clinton's challenge to streamline today's patchwork of job training programs and make them a more effective source of skills for all those whom these programs were designed to serve.

For the past 6 months, we have been working to develop legislation to make job training more responsive to the needs of job seekers, workers, and businesses. We made substantial progress and reached agreement on many aspects of a comprehensive reform bill. Our goal is to transform federally funded job training efforts from the current disparate collection of free-standing, categorical programs into a coherent, integrated, accountable work force development system.

Compared to other major industrial nations, the United States does not have a coherent labor market policy to help workers and firms adjust to structural changes in our economy. The basic building blocks of our current job training system were established during the years of the New Deal, the New Frontier, and the Great Society. The challenge then was to help hard-to-serve groups enter the labor force.

Now, as we head into the 21st century, we must respond to a new set of problems. As a result of increased international competition, rapid technological change, and the current downsizing of defense, many workers already in the labor force need to be retrained in order to improve their skills and continue productive careers. Often, this kind of retraining may be needed more than once or even several times over the course of their careers.

The increasing number of two-income families and families with single heads of household requires more flexible labor market institutions capable of helping workers to move in and out of the labor force without losing their earning power.

In addition, as President Clinton has emphasized, more effective job training is an essential part of our efforts to reform the welfare system and end the endless cycle of welfare dependency.

In the past decade, many private businesses have taken steps to try to deal with the profound structural changes taking place in our economy. It is time for the Federal government to act as well, by revising its own approach to job training, and giving workers a greater opportunity to succeed. The Clinton administration deserves credit for its leadership on this issue and for facing up to this serious challenge.

In a series of recent speeches, Secretary of Labor Robert Reich has described the broad trends since the 1970's that have split the old middle class into three new groups—an "underclass" largely trapped in central cities and increasingly isolated from the heart of the economy; an "overclass" of those who are well-positioned to ride the waves of change successfully; and in between, the largest group, an "anxious class", most of whom hold jobs but who are justifiably uneasy about their own future and even more fearful for their children's future.

As Secretary Reich persuasively states, success in today's work force is heavily based on education and skills. Well-educated and highly skilled workers are prospering. Those with few skills or whose skills are out of date or out of step with the changing economy are concerned about their prospects as they drift farther and farther from the mainstream.

The most effective way for Congress and the administration to deal with this challenge is to develop a more coherent job training system that is accessible to all job seekers, workers, and businesses, without retreating from the commitment we have made to the most disadvantaged.

We must assess the strengths and weaknesses of the current system and develop a better strategy to achieve our goals, and all this must be accomplished within the constraints of the budget.

According to a series of reports issued by the General Accounting Office at the request of Senator KASSEBAUM and myself and several other members of Congress, the Federal Government is now spending $25 billion a year on 154 separate job training programs. In Massachusetts, more than $700 million is spent each year on a variety of Federal and State programs outside the traditional school and college environments.

Although we know the total Federal investment in job training, we still lack basic data about our return on this investment. The most alarming finding of the GAO reports is that many Federal agencies do not know whether their programs are working.

At the request of Senator KASSEBAUM, GAO assessed 62 programs that provide job training assistance to the disadvantaged. The survey found that although Federal agencies monitor the expenditure of funds, they generally do not have information on outcomes. In light of the importance of job training, the lack of focus on outcomes is unacceptable, especially in this time of increasingly tight Federal budgets and scarce resources for new investments.

Over the past 6 months, Senator KASSEBAUM, and I have been working together to devise a new strategy to create the type of work force development system the Nation needs. In June we issued a joint statement on the Senate floor which laid out a series of principles to guide this reform. Several other Senators joined us at that time. We have subsequently received support from many other Senators on both sides of the aisle, and our staffs have spent many hours meeting with representatives of organizations and constituencies concerned with how the current system operates.

This bill that I am introducing today—the Job Training Consolidation and Reform Act—contains a detailed strategy for reforming these programs. This bill has two major aspects. It establishes a process for sensible consolidation and streamlining of federally funded job training programs. And it reforms the delivery system to create a marketplace for job training services connected to real jobs.

The consolidation that will take place under the bill is a means to an end. Although we should eliminate unnecessary or outmoded programs, the primary goal is to do a better job of helping jobseekers, workers, and firms in labor markets in communities across the Nation. The bill clearly states that savings resulting from program elimination or consolidation are to be reinvested into building a more integrated and accountable work force development system. We are clearly

spending these resources unwisely and inefficiently now, and reform will enable us to accomplish far more with the same level of resources.

I take pride that bipartisan developments in Massachusetts in recent years form the basis for major elements of the legislation. In 1988, Massachusetts became the first State to establish supercouncils at the State and local level to oversee policy on work force development.

The MassJobs Council has played a vital role in pioneering new ways to link education reform with economic development. The MJC has also done excellent work in building the type of information system needed to provide beneficiaries of job training programs with vital information about the supply, demand, price, and quality of the services available in local labor markets.

The bill encourages States to experiment with different strategies. All States will have an opportunity to obtain planning grants to design more efficient information systems. All States will be able to apply for waivers to remove cumbersome requirements that stand in the way of providing effective services to customers.

Leading-edge States like Massachusetts will have an opportunity to compete for larger grants to accelerate reform. A new tripartite national board consisting of business, labor, and governmental officials will oversee State efforts, and establish accountability to ensure that lessons learned in the States are incorporated into national policy.

The bill also provides incentives for communities to create local boards to oversee these activities. In Massachusetts, our 16 private sector led regional employment boards are playing a key role in ensuring that all programs—not just those funded by the Job Training Partnership Act—are linked to the skill requirements of industries that are vital to each region's competitiveness.

Each of these REB's has responded to this challenge in a different way, based on the character of its local economy. In Boston, the REB has taken a leadership role in integrating youth employment programs in the public schools into a citywide school to work effort that leads to paid jobs in the hospital, financial services, communications, and environmental industries.

In Springfield, the REB is helping design a comprehensive program for the 350 small- and medium-sized machine firms in Hampden County. REB's in Pittsfield and northern Worcester County have initiated similar efforts with the plastic industry. The REB on Cape Cod is developing a comprehensive one stop center in Hyannis to make it easier to obtain services.

The act makes fund available to local boards on a matching basis for training programs to upgrade the skills and earnings of front-line workers in local industries. Local boards under the act, in conjunction with local officials, will oversee the development of one stop career centers.

The act also includes provisions to strengthen cooperation and planning among the various Federal agencies responsible for these programs. The national board will be responsible for comparing the preparedness of the U.S. work force with that of other countries. It will develop a biennial plan to guide Federal policy, and produce an annual report card on the performance of the Nation's training programs.

In sum, it is clear that the current policy is flawed. Many workers are increasingly anxious about their ability to adjust to economic changes, and it is increasingly clear that our Nation's job training programs are not operating effectively.

By introducing this legislation now, I hope to be laying the groundwork for major reform in the next Congress. The effort that Senator KASSEBAUM and I have launched has been viewed as a positive development by a wide range of groups representing business, labor, and State and local governments. I would encourage these organizations and others who share our concern about its importance to review the bill I am introducing and Senator KASSEBAUM'S earlier bill S. 1943, and to offer their comments and suggestions.

The need for this reform has never been greater. Based on the constructive progress we have made this year and the positive response our effort has received, I am optimistic that there will be broad bipartisan support for comprehensive reform in the next Congress.

I ask unanimous consent that the text of the bill and a summary of the bill be printed in the RECORD.

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

S. 2516

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Job Training Consolidation and Reform Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purpose.
Sec. 3. Authorization of appropriations.
Sec. 4. Definitions.

TITLE I—FEDERAL RESPONSIBILITIES

Sec. 101. National Workforce Development Board.
Sec. 102. National Report Card.
Sec. 103. Mechanisms for building high quality integrated workforce development systems.
Sec. 104. Centralized waivers.
Sec. 105. Quality assurance system.

TITLE II—STATE RESPONSIBILITIES

Sec. 201. State Workforce Development Councils.
Sec. 202. Membership.
Sec. 203. Chairperson.
Sec. 204. Duties and responsibilities.
Sec. 205. Development of quality assurance systems and consumer reports.
Sec. 206. Administration.
Sec. 207. Establishment of unified service delivery areas.
Sec. 208. Financial and management information systems.
Sec. 209. Capacity building grants.
Sec. 210. Performance standards for unified service delivery areas.

TITLE III—LOCAL RESPONSIBILITIES

Sec. 301. Workforce development boards.
Sec. 302. Workforce development board policy blueprint.
Sec. 303. Report card.
Sec. 304. One-stop career centers.
Sec. 305. Progress reports.
Sec. 306. Capacity building.
Sec. 307. Incentive grants for incumbent worker training.

TITLE IV—CONSOLIDATION

Sec. 401. Purpose; findings; sense of the Congress.
Sec. 402. Integration of youth programs.
Sec. 403. Consolidation of workforce development programs.
Sec. 404. Integration of programs at the local level.
Sec. 405. Sunset of major workforce development programs.

TITLE V—INTEGRATED LABOR MARKET INFORMATION SYSTEM

Sec. 501. Integrated labor market information.
Sec. 502. Responsibilities of the National Board.
Sec. 503. Responsibilities of the Secretary.
Sec. 504. Responsibilities of Governors.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) increasing international competition, technological advances, and structural changes in the United States economy present new challenges to private firms and public policy makers in creating a skilled workforce with the ability to adapt to change and technological progress;

(2) the Federal Government should work with the private sector to create a high performance workforce development system to encourage collaboration among private sector firms and publicly funded education and training efforts to assist jobseekers and workers adjust to structural economic changes;

(3) according to the General Accounting Office, there are currently 154 federally funded employment and training programs (hereafter referred to in section as the "programs");

(4) the programs cost more than $25,000,000,000 annually and are administered by 14 different Federal departments and agencies;

(5) although it is necessary for the Federal Government to consolidate or eliminate unnecessary programs, the primary goal of Federal workforce development policy should be to help facilitate transactions taking place between jobseekers, workers, and business in local labor markets;

(6) in order to bring more coherence to Federal workforce development policy, there should be a single entity at the Federal, State, or local level vested with the necessary authority to strategically plan ways to transform the separate training and employment programs into an integrated and accountable workforce development system;

(7) these Federal, State, and local strategic planning bodies should be structured in such

a way to give businesses and workers a meaningful role in shaping policy and overseeing the quality of workforce development programs;

(8) while the Federal Government must maintain its commitment to provide economically and educationally disadvantaged individuals with skills and support services necessary to succeed in the labor market, Federal workforce development policy must also begin to provide incentives to assist firms to help upgrade the skills of their front-line workers;

(9) the United States needs a comprehensive integrated labor market information system to ensure that workforce development programs are related to the demand for particular skills in local labor markets, and to ensure that information about the employment and earnings of the local workforce, and the performance of education and training institutions, will be available to citizens and decision makers;

(10) in recent years, many States and communities have made progress in developing new approaches to better integrate Federal employment and training programs;

(11) the Federal Government should take more systematic measures to encourage experimentation and flexibility, and to disseminate best practices in the design and implementation of a comprehensive workforce development system throughout the country; and

(12) the Federal Government should address the findings of this subsection through the implementation of immediate and long-term improvements that result in the establishment of a high quality workforce development system needed for the economy of the 21st century.

(b) PURPOSE.—It is the purpose of this Act to take certain immediate actions, and to establish a process for bringing about longer term improvements, that are needed to begin the transformation of federally funded education and job training efforts from a collection of fragmented programs into a coherent, integrated, accountable workforce development system that—

(1) is based on the needs of jobseekers, workers, and employers, rather than bureaucratic requirements;

(2) is accessible to any jobseeker, worker, or employer;

(3) focuses on accountability, performance, and accurate information;

(4) provides flexibility and responsibility to the States, and in turn to local communities, for design and implementation of workforce development systems;

(5) requires the active involvement of firms and workers in the governance, design, and implementation of such system;

(6) is linked directly to employment and training opportunities in the private sector; and

(7) adopts best practices of quality administration and management that have been successful in the private sector .

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subject to subsection (b), there is authorized to be appropriated to carry out titles I, II, III, and IV—

(1) $160,000,000 for fiscal year 1996; and

(2) such sums as may be necessary for each of fiscal years 1997 through 1999.

(b) LIMITATIONS.—

(1) FISCAL YEAR 1996.—In fiscal year 1996, of the funds made available pursuant to subsection (a)—

(A) not more than 5 percent shall be used for the activities of the National Board;

(B) not more than 10 percent shall be used for incentive grants, pursuant to section 307;

(C) not more than 15 percent shall be used for development grants, pursuant to section 103(a); and

(D) not less than 70 percent shall be used for implementation grants, pursuant to section 103(b).

(2) Fiscal years 1997 THROUGH 1999.—In each of fiscal years 1997 through 1999, of the funds made available pursuant to subsection (a)—

(A) not more than 5 percent shall be used for the activities of the National Board;

(B) not more than 10 percent shall be used for incentive grants, pursuant to section 307; and

(C) not less than 85 percent shall be used for implementation grants, pursuant to section 103(b).

(c) INTEGRATED LABOR MARKET INFORMATION SYSTEM.—To carry out title V, there is authorized to be appropriated—

(1) $90,000,000 for fiscal year 1996; and

(2) such sums as may be necessary for each succeeding fiscal year.

SEC. 4. DEFINITIONS.

For purposes of this Act—

(1) the term "development grant" means a grant provided to each State under section 103(a);

(2) the term "implementation grant" means a grant provided under section 103(b);

(3) the term "leading edge State" means a State that has been awarded an implementation grant under section 103(b);

(4) the term "workforce development program" means any of the more than 150 federally funded job training programs identified by the General Accounting Office in testimony on March 3, 1994, before the Subcommittee on Employment, Housing and Aviation of the Committee on Government Operations of the House of Representatives, and any State-funded program that provides job training assistance to individuals or assists employers to identify or train workers;

(5) the terms "integrated workforce development system" and "integrated system" mean the system of employment, training, and employment-related education programs, including the mandatory programs described in section 404(a) and any additional Federal or State programs designated by the Governor of a State, comprising the consolidated system pursuant to section 404(b);

(6) the term "National Board" means the National Workforce Development Board established under section 101(b);

(7) the term "Federal Blueprint" means the National Workforce Development Strategic Plan issued by the National Board pursuant to section 101(c)(1);

(8) the term "National Report Card" means the Nation's Workforce Development Report Card prepared pursuant to section 102;

(9) the term "State Council" means a State Workforce Development Council established pursuant to section 201;

(10) the term "State Blueprint" means the State Workforce Development Policy Blueprint prepared pursuant to section 204(a);

(11) the term "State Report Card" means the State Workforce Development Report Card issued pursuant to section 204(b);

(12) the term "workforce development board" means a local board established pursuant to section 301;

(13) the term "unified service delivery area" means the common geographic service area boundaries established pursuant to section 207 and overseen by a workforce development board;

(14) the term "one-stop career center" means an access point for intake, assessment, referral, and placement services, including services provided electronically, that is part of the network established pursuant to section 304;

(15) the term "hard-to-serve" means an individual meeting the requirements of section 203(b) of the Job Training Partnership Act (29 U.S.C. 1603(b)); and

(16) the term "Secretary" means the Secretary of Labor, unless the context suggests otherwise.

TITLE I—FEDERAL RESPONSIBILITIES

SEC. 101. NATIONAL WORKFORCE DEVELOPMENT BOARD.

(a) FINDINGS.—Congress finds that a national workforce development board is necessary to—

(1) oversee the establishment and continuous improvement of the national workforce development system;

(2) provide policy guidance to enhance strategic planning among the Federal agencies responsible for administering job training programs;

(3) bring private sector expertise to the governance of the national workforce development system; and

(4) take active steps to remove the legislative and regulatory barriers to service integration.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the National Workforce Development Board (referred to in this Act as the "National Board").

(2) COMPOSITION.—The National Board shall be comprised of 9 members, of whom—

(A) one member shall be the Secretary of Labor;

(B) one member shall be the Secretary of Education;

(C) one member shall be the Secretary of Health and Human Services;

(D) three members shall be representatives of business (including representatives of small businesses and large employers);

(E) two members shall be representatives of organized labor; and

(F) one member shall be selected from representatives of—

(i) community-based organizations;

(ii) State and local governments; or

(iii) nongovernmental organizations that have a history of successfully protecting the rights of individuals with disabilities or older persons.

(3) ADDITIONAL REQUIREMENTS.—The members described in subparagraphs (D), (E), and (F) of paragraph (2) shall—

(A) in the aggregate, represent a broad cross-section of occupations and industries;

(B) to the extent feasible, be geographically representative of the United States, and reflect the racial, ethnic, and gender diversity of the United States; and

(C) one member shall be a member of the National Skill Standards Board established pursuant to the National Skill Standards Act of 1994.

(4) EXPERTISE.—The National Board and the staff shall have sufficient expertise to effectively carry out the duties and functions of the National Board.

(5) BUSINESS AND LABOR ADVISORY COMMITTEES.—The National Board may establish a business advisory committee and a labor advisory committee which shall be comprised of members who are appointed to the National Board pursuant to subparagraphs (D) and (E) of paragraph (2), respectively, and members who are not on the National Board, to assist the National Board to carry out its duties pursuant to subsection (c).

(6) APPOINTMENT.—The members described in subparagraphs (D), (E), and (F) of paragraph (2) shall be appointed by the President,

by and with the advice and consent of the Senate.

(7) EX OFFICIO NONVOTING MEMBERS.—The Director of the Office of Management and Budget, the Secretary of Commerce, the chairpersons and ranking minority members of the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives shall be ex officio, nonvoting members of the National Board.

(8) TERMS.—Each member of the National Board appointed under subparagraph (D), (E), and (F) of paragraph (2) shall be appointed for a term of 4 years, except that of the initial members of the National Board appointed under such subparagraphs—

(A) two members shall be appointed for a term of 2 years;

(B) two members shall be appointed for a term of 3 years; and

(C) two members shall be appointed for a term of 4 years.

(9) VACANCIES.—Any vacancy on the National Board shall not affect the powers of the National Board, but shall be filled in the same manner as the original appointments.

(10) CHAIRPERSONS.—The President, by and with the advice and consent of the Senate, shall select one co-chairperson of the National Board from among the members of the National Board appointed under paragraph (2)(D) and one co-chairperson from among the members appointed pursuant to paragraph (2)(E).

(11) COMPENSATION AND EXPENSES.—

(A) COMPENSATION.—Each member of the National Board who is not a full-time employee or officer of the Federal Government shall serve without compensation. Each member of the National Board who is an officer or employee of the Federal Government shall serve without compensation in addition to that received for the services of such member as an officer or employee of the Federal Government.

(B) EXPENSES.—The members of the National Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the National Board.

(12) EXECUTIVE DIRECTOR AND STAFF.—

(A) EXECUTIVE DIRECTOR.—The co-chairpersons of the National Board shall appoint an Executive Director who shall be compensated at a rate determined by the National Board, not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(B) STAFF.—The Executive Director may—

(i) appoint and compensate such additional staff as may be necessary to enable the National Board to perform its duties; and

(ii) fix the compensation of the staff without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classifications of positions and General Schedule pay rates, except that the rate of pay for the staff may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(13) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the National Board is authorized, in carrying out this Act, to accept voluntary and uncompensated services.

(14) AGENCY SUPPORT.—

(A) USE OF FACILITIES.—The National Board may use the research, equipment, services, and facilities of any agency or instrumentality of the United States with the consent of such agency or instrumentality.

(B) STAFF OF FEDERAL AGENCIES.—Upon the request of the National Board, the head of any Federal agency may detail to the National Board, on a reimbursable basis, any of the personnel of such Federal agency to assist the National Board in carrying out this Act. Such detail shall be without interruption or loss of civil service status or privilege.

(15) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The co-chairpersons of the National Board may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

(16) NATIONAL COMMISSION FOR EMPLOYMENT POLICY.—

(A) IN GENERAL.—Part F of title IV of the Job Training Partnership Act (29 U.S.C. 1771 et seq.) is repealed.

(B) CONFORMING AMENDMENT.—Subsection (i) of section 106 of such Act (29 U.S.C. 1516(i)) is amended by striking "(i) FUNCTIONS OF NCEP.—The National Commission for Employment Policy" and inserting "(i) FUNCTIONS OF NATIONAL WORKFORCE DEVELOPMENT BOARD.—The National Workforce Development Board established under section 101 of the Job Training Consolidation and Reform Act".

(c) DUTIES.—

(1) NATIONAL WORKFORCE DEVELOPMENT STRATEGIC PLAN.—

(A) IN GENERAL.—Not later than July 1, 1995, and every 2 years thereafter, the National Board shall issue a National Workforce Development Strategic Plan (referred to in this Act as the "Federal Blueprint").

(B) REQUIREMENTS.—The Federal Blueprint shall evaluate the progress being made toward streamlining, consolidating, and reforming the workforce development system of the United States, and toward the purposes described in section 2(b). The Federal Blueprint shall—

(i) compare the preparedness of the workforce of the United States with the workforce of other countries;

(ii) serve as a strategic plan to guide the integration of federally funded workforce development programs into a streamlined system;

(iii) assess the lessons learned from the experience of leading edge States, and States that waive certain program requirements to experiment with alternative workforce development strategies;

(iv) analyze how businesses are—

(I) progressing in the restructuring of the workplace to provide continuous learning for their employees;

(II) improving the skills and abilities of the front-line workers of such businesses; and

(III) taking measures to integrate public workforce development programs into private sector training systems;

(v) make recommendations to Congress and the President on ways to improve linkages between federally funded business modernization programs and federally funded workforce development programs;

(vi) include a research agenda for the National Board to carry out its activities;

(vii) evaluate the labor market information of the Nation and recommend areas in need of improvement; and

(viii) based on the evaluation of the progress being made toward the development of an integrated, accountable, effective workforce development system, as described in the National Report Card, make recommendations to Congress and the President on ways to promote further streamlining, consolidation, and reform.

(2) CONGRESSIONAL TESTIMONY.—The co-chairpersons of the National Board shall, at least annually, provide testimony, during a joint hearing before the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives on the progress being made in developing a more integrated and accountable public and private workforce development system in the United States.

(3) EMPLOYER AND WORKER TRAINING.—Not later than 180 days after the date of enactment of this Act, the National Board shall make recommendations to Congress and the President on what measures can be taken, including changes in the tax codes, to encourage employers and workers to invest in training and skills upgrading, and to encourage employers to hire and train hard-to-serve individuals.

(4) REVIEW OF GRANT PROPOSALS.—The National Board shall review the implementation grant proposals pursuant to section 103(b) and the incentive grant proposals submitted pursuant to section 307, and make recommendations to the Secretary regarding such proposals.

(5) COORDINATION WITH THE NATIONAL SKILL STANDARDS BOARD.—The National Board shall annually hold a joint meeting with the National Skill Standards Board established pursuant to section 503 of the National Skill Standards Act to ensure that Federal efforts to reform and streamline the Nation's workforce development system are integrated and coordinated.

(6) FINAL RECOMMENDATIONS.—Not later than June 1, 1999, the National Board shall submit recommendations in the form of a joint resolution to the President and Congress, pursuant to section 403(b).

SEC. 102. NATIONAL REPORT CARD.

(a) IN GENERAL.—Not later than July 1, 1996, and each July 1 thereafter, the National Board shall prepare a report to be known as the Nation's Workforce Development Report Card (referred to in this Act as the "National Report Card").

(b) REQUIREMENTS.—The National Report Card shall assess the performance of the workforce development system of the United States, based on the earnings and employment gains and other nonemployment-related outcomes of individuals assisted by the programs comprising such system. The National Report Card shall evaluate all workforce development programs that receive Federal funding, and shall—

(1) assess the performance of each program;

(2) assess performance based on the type of assistance provided, including the categories of services identified in section 105(b)(1)(C);

(3) assess year-to-year changes in performance;

(4) report on the extent to which hard-to-serve populations are receiving services and the related outcomes in relation to services received in the preceding three years;

(5) determine the annual Federal investment in workforce development in each State; and

(6) assess the performance of the workforce development system in each State.

SEC. 103. MECHANISMS FOR BUILDING HIGH QUALITY INTEGRATED WORKFORCE DEVELOPMENT SYSTEMS.

(a) STATE DEVELOPMENT GRANTS.—

(1) PURPOSE.—The purpose of this subsection is to assist States and communities

in strategic planning for integrated workforce development systems, including the development of a financial and management information system, a quality assurance system, and an integrated labor market information system.

(2) GRANTS TO STATES.—On the application of the Governor of a State, on behalf of the State, the Secretary may provide a development grant to the State in such amount as the Secretary, in consultation with the National Board, determines to be necessary to enable such State to develop a strategic plan pursuant to paragraph (1) for the development of a comprehensive statewide integrated workforce development system.

(3) APPLICATION.—To be eligible to receive a development grant under this subsection, the Governor of a State, on behalf of the State, shall submit to the National Board and the Secretary an application, at such time, in such form, and containing such information as the Secretary may require.

(b) IMPLEMENTATION GRANTS TO LEADING EDGE STATES.—

(1) PURPOSE.—The purpose of this subsection is to assist States in the implementation of statewide high quality integrated workforce development systems that are accountable for achieving results.

(2) GRANTS TO STATES.—On the application of a Governor of a State, on behalf of the State, in accordance with paragraph (6), the Secretary, in consultation with the National Board, may provide an implementation grant to the State in such amount as the Secretary determines to be necessary to enable such State to implement an integrated workforce development system.

(3) PERIOD OF GRANT.—The provision of payments under a grant under this subsection shall not exceed 4 fiscal years, and shall be subject to the annual approval of the Secretary, in consultation with the National Board, and the availability of appropriations for the fiscal year involved.

(4) ALLOCATION REQUIREMENTS.—

(A) FIRST YEAR.—In the first fiscal year in which a State receives amounts from an implementation grant under subsection (b), the State shall use not less than 75 percent of such amount to provide subgrants to local workforce development boards.

(B) SECOND YEAR.—In the second fiscal year in which a State receives amounts from an implementation grant under subsection (b), the State shall use not less than 80 percent of such amount to provide subgrants to local workforce development boards.

(C) THIRD AND SUCCEEDING YEARS.—In the third, and each succeeding, fiscal year in which a State receives amounts from an implementation grant under subsection (b), the State shall use not less than 85 percent of such amount to provide subgrants to local workforce development boards.

(5) LIMITATION.—A State shall be eligible to receive not more than 1 implementation grant under this subsection.

(6) APPLICATION.—To be eligible to receive an implementation grant under this subsection, the Governor of a State, on behalf of the State, shall submit to the National Board and the Secretary an application that shall include a copy of the State Blueprint and such other information as the Secretary, with the advice of the National Board, may require.

(c) DISSEMINATION OF INFORMATION ON BEST PRACTICES.—

(1) IN GENERAL.—The Secretary, in consultation with the National Board, shall—

(A) collect and disseminate information that will assist State and local communities undertaking activities to streamline and reform their job training systems, including information on—

(i) the successful experiences of States and localities that have received development or implementation grants, or that have been granted waivers; and

(ii) research concerning the restructuring of workforce development systems; and

(B) facilitate the exchange of information and ideas among States and local entities carrying out job training reform initiatives.

(2) USE OF INFORMATION CLEARINGHOUSES AND OTHER ENTITIES.—To carry out this subsection, the Secretary and the National Board shall utilize such mechanisms as—

(A) the Capacity Building and Information Dissemination Network established pursuant to section 453(b) of the Job Training Partnership Act (29 U.S.C. 1733(b));

(B) the education resources information center clearinghouses referred to in the General Education Provisions Act (20 U.S.C. 1221e);

(C) the National Network for Curriculum Coordination in Vocational and Technical Education established under section 402(c)(2) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2402(c)(2));

(D) the National Institute for Literacy established under section 384 of the Adult Education Act (20 U.S.C. 1213c); and

(E) the State Literacy Resource Centers established under section 356 of such Act (20 U.S.C. 1208aa).

(d) WORKFORCE DEVELOPMENT IMPACT REPORTS.—

(1) SUBMISSION.—For each bill or resolution concerning workforce development reported by any committee of the Senate or the House of Representatives, the National Board shall determine whether proposed Federal job training legislation complies with the data reporting, common definitions, and common funding cycles described in subsections (b) and (e) of section 105. A determination of compliance by the National Board under this subsection shall be included in the committee report accompanying such legislation, if timely submitted to such committee before such report is filed.

(2) PROCEDURE.—It shall not be in order in the Senate or the House of Representatives to consider any bill or resolution concerning workforce development that would not comply with the national workforce development system, as determined by the National Board under paragraph (1).

(3) WAIVER.—This subsection may be waived or suspended in the Senate or the House of Representatives only by the affirmative vote of three-fifths of the members of such House.

SEC. 104. CENTRALIZED WAIVERS.

(a) EXPEDITED PROCESS.—Not later than 180 days after the date of enactment of this Act, the President shall establish an expedited process to consider and act on waiver requests submitted by the States under this section.

(b) STATES NOT RECEIVING IMPLEMENTATION GRANTS.—

(1) IN GENERAL.—Any State may apply, in accordance with this section, for a waiver relating to provisions of law or regulations for one or more of the programs listed in section 404(a), for a period of 2 years to facilitate the provision of assistance for workforce development.

(2) WAIVER AUTHORITY.—A waiver may be granted under this subsection only if—

(A) the requirement sought to be waived impedes the ability of the State, or a local entity in the States, to carry out the State or local workforce development plan;

(B) the State has waived, or agrees to waive, similar requirements of State law; and

(C) in the case of a statewide waiver, the State—

(i) provides all State and local agencies and appropriate organizations in the State with notice and an opportunity to comment on the State's proposal to seek a waiver; and

(ii) submits the affected agency's comments with the waiver application.

(3) APPLICATION.—Each application submitted under this subsection shall—

(A) identify the statutory or regulatory requirements that are requested to be waived and the goals that the State or local agency intends to achieve;

(B) describe the action that the State has undertaken to remove State statutory or regulatory barriers identified in the application;

(C) describe the goals of the waiver and the expected programmatic outcomes if the request is granted;

(D) describe the numbers and types of people to be affected by such waiver;

(E) describe a timetable for implementing the waiver;

(F) describe the process the State will use to monitor, on a biannual basis, the progress in implementing the waiver; and

(G) describe how the goals of the waived program or programs will continue to be met.

(c) STATES RECEIVING IMPLEMENTATION GRANTS.—Subject to subsection (d), each State receiving an implementation grant under section 103(b) shall have the provisions of law, or regulations under such provisions, described in its grant application or State Blueprint of such State waived for the duration of the implementation grant.

(d) LIMITATIONS.—

(1) IN GENERAL.—A waiver shall not be granted of a provision of law (or a regulation under such provision) under a workforce development program if such waiver would alter—

(A) the purposes or goals of such program;

(B) the allocation of funds under such program;

(C) any provision of law under such program relating to public health or safety, civil rights, protections granted under title I and sections 503 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), occupational safety and health, environmental protection, displacement of current employees, or fraud and abuse; or

(D) eligibility requirements under such program, except that a waiver may be granted with respect to an eligibility requirement if such waiver would provide for increased flexibility in developing common definitions for individuals eligible for such program.

(2) CIRCULARS AND RELATED REGULATIONS.—The following circulars promulgated by the Office of Management and Budget shall be subject to the waiver authority of this subsection:

(A) A-87, relating to cost principles for State and local governments.

(B) A-102, relating to grants and cooperative agreements with State and local governments.

(C) A-122, relating to nonprofit organizations.

(D) A-110, relating to administrative requirements for grants and cooperative agreements with nonprofit organizations and institutions of higher education.

(E) A-21, relating to cost principles for institutions of higher education.

(3) EFFECTIVE DATE.—A waiver granted under this section shall take effect on the date such waiver is granted.

(4) REVIEW OF APPLICATION.—Each application submitted by a State pursuant to paragraph (3) shall be reviewed by the Secretary or agency head who has jurisdiction over the workforce development program or programs to which such waiver request relates.

(5) APPROVAL OR DISAPPROVAL OF APPLICATION.—

(A) TIMING.—Each application submitted by a State in accordance with subsection (b)(3) shall be reviewed promptly upon receipt, and shall be approved or disapproved not later than the end of the 60-day period beginning on the date such application is received.

(B) APPROVAL.—Waiver or waivers proposed in an application may be approved for the 2-year period beginning on the date such application is approved, if the State demonstrates in the application that such waiver or waivers would achieve coordination, expansion, and improvement in the quality of services under its workforce development system.

(C) DISAPPROVAL AND RESUBMISSION.—If an application is incomplete or unsatisfactory, the appropriated Federal official shall, before the end of the period referred to in subparagraph (A)—

(i) notify the State of the reasons for the failure to approve the application;

(ii) notify the State that the application may be resubmitted during the period referred to in clause (iii); and

(iii) permit the State to resubmit a corrected or amended application during the 60-day period beginning on notification under this subparagraph.

(D) REVIEW OF RESUBMITTED APPLICATION.—Any application resubmitted under subparagraph (C) shall be approved or disapproved before the expiration of the 60-day period beginning on the date of the resubmission.

(6) REVOCATION OF WAIVER.—If, after approving an application under this subsection, it is found that the waiver or waivers do not achieve coordination, expansion, and improvement in the quality of services under the workforce development programs to which such waiver or waivers relate, the waiver or waivers may be revoked in whole or in part.

(7) NOTIFICATION OF INSPECTOR GENERAL.—The inspector general of any Federal agency that has jurisdiction over a workforce development program for which a waiver or waivers has been approved shall be notified of the grant of such waiver.

SEC. 105. QUALITY ASSURANCE SYSTEM.

(a) PURPOSE.—The purpose of this section is to improve the quality of all Federal programs directed at improving the knowledge, skills, and abilities of members of the workforce by strengthening accountability and encouraging the adoption of quality improvement processes at all levels of the workforce development system. In order to accomplish this purpose, this Act—

(1) directs the Secretaries of Labor, Education, and Health and Human Services to jointly, in consultation with the National Board—

(A) develop common terms and definitions as described in subsection (b);

(B) develop a placement accountability system as described in subsection (c); and

(C) adjust existing program performance standards as described in section 210; and

(2) directs the National Board to recommend a system of performance standards in its joint resolution submitted to Congress pursuant to section 403(b) that includes standard outcome measures relating to—

(A) employment;

(B) job retention;

(C) earnings; and

(D) nonemployment outcome measures (such as learning and competency gains).

(b) COMMON TERMS AND DEFINITIONS.—

(1) IN GENERAL.—Each workforce development program that receives Federal funds shall collect and report to the Governor and the State Council, if applicable, for each participant to whom assistance is provided, the following information:

(A) The quarterly employment status and earnings for 1 year after the participant no longer receives assistance under such program.

(B) Economic and demographic characteristics, including the participant's—

(i) social security number;

(ii) date of birth;

(iii) gender;

(iv) race or ethnicity;

(v) disability status;

(vi) education (highest formal grade level achieved at commencement of participation in program);

(vii) academic degrees and credentials at time of entry into the program; and

(viii) employment status at time of entry into the program, including—

(I) scheduled hours of work per week (if employed);

(II) weeks of unemployment (if not employed);

(III) status as a homeless individual;

(IV) veteran status; and

(V) information regarding the receipt by the individual of public financial assistance (including Federal, State, and local assistance).

(C) Services received, the extent, when appropriate, and spending for such services, including—

(i) assessments;

(ii) testing;

(iii) counseling;

(iv) job development or job search assistance;

(v) occupational skills training, including on-the-job training;

(vi) work experience;

(vii) job readiness training;

(viii) basic skills education;

(ix) postsecondary academic education (nonoccupational); and

(x) supportive and supplementary services.

(D) Program outcomes, as specified by the State, such as—

(i) advancement to higher level education or training;

(ii) attainment of additional degrees or credentials (including skill standards as such standards become available);

(iii) assessment of learning gain in basic skills programs;

(iv) attainment and retention of subsidized or unsubsidized employment;

(v) quarterly earnings; and

(vi) reduction in welfare dependency.

(E) Other data elements that may be added to the items required to be collected and reported for all program participants, as the National Board develops additional standard definitions, including—

(i) date of entry into the program and date of exit from the program;

(ii) program applicant, program participant, and program terminee; and

(iii) attainment of recognized skills standards.

(2) REPLACEMENT OF EXISTING REQUIREMENTS.—Program monitoring under this section shall supplant existing monitoring and reporting requirements for program participants.

(3) ADOPTION OF COMMON TERMS AND DEFINITIONS.—

(A) REPORT.—Not later than 180 days after the date of enactment of this Act, each Federal department and agency with responsibility for a workforce development program shall report to the National Board on its progress in adopting the common terms and definitions for program participants, service activities, and outcomes by program operators and grant recipients.

(B) IMPLEMENTATION.—Not later than 1 year after the date of enactment of this Act, each workforce development program receiving Federal funds shall use the common terms and definitions.

(C) USE.—Upon adoption by the appropriate Federal agencies, the common definitions for terminology developed and reported pursuant to section 455 of the Job Training Partnership Act (29 U.S.C. 1735(b)) shall be utilized in interpreting and compiling the core data elements. Notwithstanding any other provision of Federal law, such common definitions shall be utilized in lieu of existing program definitions for similar data elements.

(4) RECOMMENDATIONS.—Not later than 180 days after the date all of the Members of the National Board are appointed, the National Board shall make recommendations to the Secretaries of Labor, Education, and Health and Human Services, and the heads of other agencies operating workforce development programs, on common definitions for other terms, including terms relating to—

(A) program status, including—

(i) applicant;

(ii) participant;

(iii) terminee; and

(iv) training-related placement;

(B) program eligibility, including—

(i) family income; and

(ii) economically disadvantaged individuals; and

(C) other terms considered appropriate by the National Board, such as common cost categories.

(5) AMENDMENTS.—If any of the proposed common definitions require amendment to existing laws, the National Board shall submit to Congress recommendations for legislative action not later than 9 months after the date all of the members of the National Board are appointed.

(c) PLACEMENT ACCOUNTABILITY.—

(1) IN GENERAL.—The purpose of this subsection is to establish a placement accountability system using a cost-effective data source with information on job placement, earnings, and job retention, to foster accountability by all federally funded workforce development programs.

(2) PERFORMANCE MONITORING.—Each workforce development program that receives Federal funds shall—

(A) engage in continuous performance self-monitoring by measuring, at a minimum, the quarterly employment status and earnings of each recipient of assistance under such program; and

(B) monitor each recipient of assistance for a period of not less than 1 year, beginning on the date on which the recipient no longer receives assistance under such program.

(3) INFORMATION MATCHING.—

(A) CORE DATA.—Each workforce development program that receives Federal funds shall provide the information described in subsection (b) regarding program participants to the State agency responsible for

labor market information designated in title V.

(B) MATCHING.—The State agency responsible for labor market information designated in title V shall, in conjunction with the Bureau of Labor Statistics, match the information provided pursuant to subparagraph (A) with quarterly employment and earnings records.

(4) REIMBURSEMENT.—Requesting programs shall reimburse the State agency responsible for wage record data for the cost of matching such information. Notwithstanding any other provision of Federal law, requesting programs may use Federal funds for such reimbursement.

(5) CONFIDENTIALITY.—Requesting programs—

(A) shall protect the confidentiality of wage record data through the use of recognized security procedures; and

(B) may not retain such data for more than 10 years.

(6) SUBMISSION TO STATE COUNCIL.—The State agency responsible for labor market information shall submit the results of the matching to the State Council, in accordance with procedures and schedules specified by the National Board and the Secretary.

(7) RESPONSIBILITY OF GOVERNORS.—The Governor of each State shall ensure the submission of the matched data to the State Council, the National Board, the Secretary, and other Federal entities, as required by the National Board.

(d) DISSEMINATION OF QUALITY ASSURANCE.—The information obtained under subsection (c) shall be made available to—

(1) the State Council of the State in which the program is located;

(2) the local workforce development boards in the State in which the program is located; and

(3) consumers of labor market information to judge individual program performance in an easily accessible format.

(e) CONSISTENT FUNDING CYCLES.—

(1) IN GENERAL.—All federally funded workforce development training activities shall, to the extent practicable, be funded on a consistent funding cycle basis.

(2) RECOMMENDATIONS FOR FUNDING CYCLE.—Not later than 180 days after the date on which all of the members of the National Board are appointed, the National Board shall make recommendations to Congress on the appropriate funding cycle to be used for all workforce development programs and activities.

TITLE II—STATE RESPONSIBILITIES

SEC. 201. STATE WORKFORCE DEVELOPMENT COUNCILS.

(a) ESTABLISHMENT.—Each State desiring to participate in the development of an integrated and accountable workforce development system under the procedures specified in section 103(b) shall establish a State Workforce Development Council (referred to in this Act as a "State Council") or have located within such State an existing entity that is similar to a State Council and that includes members who are representatives of employers and workers.

(b) PURPOSE.—Each State Council shall serve as the principal advisory board for the Governor of such State for all programs included in the State's integrated workforce development system.

(c) FUNCTIONS.—Each State Council shall assume the functions and responsibilities of councils and commissions required under Federal law that are part of the integrated workforce development system of such State.

SEC. 202. MEMBERSHIP.

(a) IN GENERAL.—

(1) REPRESENTATIVES OF BUSINESS AND INDUSTRY AND ORGANIZED LABOR.—Each State Council shall be comprised of individuals who are appointed by the Governor for a term of not less than 2 years from among—

(A) representatives of business and industry, who shall constitute not less than 33 percent of the membership of the State Council, including individuals who are members of local workforce development boards; and

(B) representatives of organized labor who shall constitute not less than 25 percent of the membership of the State Council and shall be selected from among individuals nominated by recognized State labor federations.

(2) ADDITIONAL MEMBERS.—Each State Council may include one or more qualified members who are appointed by the Governor from among representatives of the following:

(A) Postsecondary institutions.

(B) Secondary or postsecondary vocational education institutions.

(C) Community-based organizations.

(D) Nongovernmental organizations that have a history of successfully protecting the rights of individuals with disabilities or older persons.

(E) Units of general local government or consortia of such units.

(F) State officials responsible for administering programs listed in sections 402 and 404(a), and included in the integrated system.

(G) The State legislature.

(H) Any local program that receives Federal funding from any program included in the integrated workforce development system of the State.

(b) EX OFFICIO.—

(1) NONVOTING MEMBERS.—The Governor may appoint ex officio additional nonvoting members to the State Council.

(2) EXPERTISE.—The Governor of the State shall ensure that the State Council and the staff of the State Council have sufficient expertise to effectively carry out the duties and functions of the State Council described under the laws relating to the applicable program.

(c) ADVISORY COMMITTEES.—Each State Council may establish a business and a labor advisory committee to assist the State Council in carrying out its duties pursuant to section 204. Membership on such advisory committees shall include State Council members from the business and labor communities and such additional members as the State Council requires.

SEC. 203. CHAIRPERSON.

The Governor of the State shall appoint a chairperson of the State Council who is a representative of the business community.

SEC. 204. DUTIES AND RESPONSIBILITIES.

(a) STATE WORKFORCE DEVELOPMENT POLICY BLUEPRINT.—The State Council shall assist the Governor to prepare and submit to the National Board a biennial report to be known as the State Workforce Development Policy Blueprint (referred to in this Act as the "State Blueprint"). The State Blueprint shall—

(1) serve as a strategic plan for integrating federally funded workforce development programs included in an integrated system of the State, established pursuant to section 103(b), with State-funded job training, employment, employment-related education, and economic development activities;

(2) summarize and analyze information about training needs of critical industries in the State contained in the local workforce development policy blueprints developed by the workforce development board;

(3) establish State goals for the integrated workforce development system and a common core set of performance measures and standards for programs included in the system, to be used in lieu of existing performance measures and standards for each of the included programs;

(4) analyze how the businesses of the State are—

(A) progressing in the restructuring of the workplace to provide continuous learning;

(B) improving the skills and abilities of front-line workers of such businesses; and

(C) participating in State and local efforts to transform federally funded education and job training programs into a coherent and accountable workforce development system;

(5) utilize information available from the State Report Card and other sources to analyze the relative effectiveness of individual workforce development programs within the State and of the State's workforce development system as a whole;

(6) evaluate the progress being made within the State in streamlining, consolidating, and reforming the workforce development system of the State in accordance with the purposes contained in section 2(b) and the framework for State implementation contained in the implementation grant proposal of the State;

(7) describe how service to special hard-to-serve populations is to be maintained;

(8) identify how any funds that a State may be receiving under section 103(b) are to be utilized in conjunction with existing resources to continuously improve the effectiveness of the workforce development system of the State;

(9) describe the method to be used to allocate funds received under section 103(b) in a fair and equitable manner among unified service delivery areas;

(10) specify the additional elements, if any, to be included in operating agreements between local workforce development boards and one-stop career centers;

(11) specify additional criteria, if any, for selection of one-stop career centers;

(12) specify the conditions under which the requirements of section 304(g) may be waived;

(13) specify the nonemployment-related outcome measures that will be used for the workforce development system;

(14) specify the nature and scope of the budget authority for local workforce development boards in the State; and

(15) supplant federally required planning reports for programs under the integrated workforce development system of the State.

(b) STATE WORKFORCE DEVELOPMENT REPORT CARD.—The State Council shall assist the Governor of the State to issue an annual report to be known as the State Workforce Development Report Card (referred to in this Act as the "State Report Card"). The State Report Card shall describe the performance of all workforce development programs operating in the State that receive Federal funding and any additional State-funded programs that the Governor may choose to include. The State Report Card shall—

(1) include an integrated budget that documents the annual spending, number of clients served, and types of services provided for workforce development programs for the State as a whole and for each unified service delivery area within the State;

(2) assess the maintenance of effort to hard-to-serve populations in relation to the number served and outcomes for those populations in the preceding 3 years;

(3) utilize information available from the quality assurance system established under section 105 to assess—

(A) employment and earnings experiences of individuals who have received assistance from each workforce development program operated in the State; and

(B) relative employment and earnings experiences of participants receiving services from each one-stop career center in the State;

(4) include an analysis of other nonemployment-related results for each workforce development program operating within the State; and

(5) include a report of annual employment trends and earnings (by industry and occupation) in the State and each unified service delivery area, to assist State and local policy makers, training providers, and users of the system to link the training provided to the skill and labor force needs of local employers.

(c) WORKFORCE DEVELOPMENT BOARD CERTIFICATION AND EFFECTIVENESS CRITERIA.—Each State Council shall—

(1) assist the Governor to certify each local workforce development board; and

(2) make recommendations to the Governor for criteria that will be used to judge the effectiveness of each of the workforce development boards of the State.

SEC. 205. DEVELOPMENT OF QUALITY ASSURANCE SYSTEMS AND CONSUMER REPORTS.

(a) IN GENERAL.—The State Council shall develop a quality assurance system to complement and expand upon the quality assurance system established in section 105 in order to provide customers of job training services with consumer reports on the supply, demand, price, and quality of job training services in each unified service delivery area in the State.

(b) SELECTION OF TOOLS AND MEASURES.—Each State shall select the tools and measures that are appropriate to the needs of such State, including, but not limited to—

(1) collecting and organizing service provider performance data in accordance with information generated from the State Report Card under section 204(b), the financial and management information system designed pursuant to section 208, and the labor market information system of the State described in section 501; and

(2) conducting surveys as appropriate to ascertain customer satisfaction.

(c) COLLECTION AND DISSEMINATION.—The State Council shall, in conjunction with the local workforce development boards, establish mechanisms for collecting and disseminating the quality assurance information on a regular basis to—

(1) individuals seeking employment;

(2) employers;

(3) policymakers at the Federal, State, and local levels; and

(4) training and education providers.

(d) ASSURANCES.—Each public and private education, training, and career development service provider receiving Federal funds under a program in an integrated system of the State pursuant to section 103(b) shall collect and provide the quality assurance information required under this section.

SEC. 206. ADMINISTRATION.

(a) AUTHORITIES.—Each State Council shall be independent of other State workforce development agencies and have the authority to—

(1) employ staff; and

(2) receive and disburse funds.

(b) SPECIAL PROJECTS.—Each State Council may fund and operate special pilot or demonstration projects for purposes of research or continuous improvement of system performance.

(c) LIMITATION ON USE OF FUNDS.—Not more than 5 percent of the funds received by the State from an implementation grant under section 103(b) shall be used for the administration of the State Council.

SEC. 207. ESTABLISHMENT OF UNIFIED SERVICE DELIVERY AREAS.

(a) RECOMMENDATIONS.—Each State Council shall make recommendations to the Governor of such State for the establishment of unified service delivery areas that may be used as intrastate geographic boundaries, to the extent practicable, for all workforce development programs in an integrated system of the State pursuant to section 103(b).

(b) ESTABLISHMENT.—Each State receiving an implementation grant under section 103(b) shall, based upon the recommendations of the State Council, and in consultation and cooperation with local communities, establish unified service delivery areas throughout the State for the purpose of providing community wide workforce development assistance in one-stop career centers under section 304.

(c) RESPONSIBILITIES.—In establishing unified service delivery areas, the Governor, in consultation with the State Council and local communities—

(1) shall take into consideration existing—

(A) labor market areas;

(B) units of general local government;

(C) service delivery areas established under section 101 of the Job Training Partnership Act (29 U.S.C. 1511); and

(D) the distance traveled by individuals to receive services;

(2) may merge existing service delivery areas; and

(3) may not approve a total number of unified service delivery areas that is greater than the total number of service delivery areas in existence in the State on the date of enactment of this Act.

SEC. 208. FINANCIAL AND MANAGEMENT INFORMATION SYSTEMS.

(a) IN GENERAL.—Each State shall use a portion of the funds it receives under section 103(a) to design a unified financial and management information system. Each State that receives an implementation grant under section 103(b) shall require that all programs designated in the integrated system use the unified financial and management information system.

(b) REQUIREMENTS.—Each unified financial and management information system shall—

(1) be used by all agencies involved in workforce development activities, including one-stop career centers which shall have the capability to track the overall public investments within the State and unified service delivery areas, and to inform policymakers as to the results being achieved through that investment;

(2) contain a common structure of financial reporting requirements, fiscal systems, and monitoring for all workforce development expenditures included in the integrated system that shall utilize the common data elements and definitions included in subsections (b) and (c) of section 105;

(3) support local efforts to establish unified service systems, including intake and eligibility determination for all financial aid sources; and

(4) notwithstanding any other provision of Federal law, supplant federally required fiscal reporting and monitoring for each individual program included in the integrated system.

SEC. 209. CAPACITY BUILDING GRANTS.

From funds made available to a State for implementation pursuant to section 103(b) or development pursuant to section 103(a), the State shall develop a strategy to enhance the capacity of the institutions, organizations, and staff involved in State and local workforce development activities by providing services such as—

(1) training for members of the local workforce development boards;

(2) training for front-line staff of any local education or training service provider or one-stop career center;

(3) technical assistance regarding managing systemic change;

(4) customer service training;

(5) organization of peer-to-peer networks for training, technical assistance, and information sharing;

(6) organizing a best practices database covering the various workforce development system components; and

(7) training for State and local staff on the principles of quality management and decentralizing decisionmaking.

SEC. 210. PERFORMANCE STANDARDS FOR UNIFIED SERVICE DELIVERY AREAS.

(a) IN GENERAL.—The Governor of each State that implements an integrated workforce development system under section 103(b) may, in consultation with the State Council, the local workforce development boards in the State, and employees of any of the job training programs included in the integrated system or the employee organizations of such employees, make adjustments to existing performance standards for programs in such system in the unified service delivery area of the State.

(b) CRITERIA.—Criteria developed pursuant to subsection (a) may include such factors as—

(1) placement, retention, and earnings of participants in unsubsidized employment, including—

(A) earnings at 1, 2, and 4 quarters after termination from the program; and

(B) comparability of wages 1 year after termination from the program with wages prior to participation in the program;

(2) acquisition of skills pursuant to a skill standards and skill certification system endorsed by the National Skill Standards Board established pursuant to section 503 of the National Skill Standards Act of 1994;

(3) the satisfaction of participants and employers with services provided and employment outcomes; and

(4) the quality of services provided and the maintenance of effort to hard-to-serve populations, such as low-income individuals and older workers.

(c) ADJUSTMENTS.—Each Governor of a State that implements an integrated workforce development system under section 103(b) shall, within parameters established by the National Board, and after consultation with the workforce development boards in the State, prescribe adjustments to the performance criteria prescribed under subsections (a) and (b) for the unified service delivery areas based on—

(1) specific economic, geographic, and demographic factors in the State and in regions within the State; and

(2) the characteristics of the population to be served, including the demonstrated difficulties in serving special populations.

(d) USE OF CRITERIA.—The performance criteria developed pursuant to this section shall be utilized in lieu of similar criteria for programs receiving Federal funding included in the integrated system of the State, to the

extent determined by the State Council subject to the approval of the National Board.

TITLE III—LOCAL RESPONSIBILITIES

SEC. 301. WORKFORCE DEVELOPMENT BOARDS.

(a) ESTABLISHMENT.—In each State receiving an implementation grant under section 103(b), and subject to subsection (b) of this section, the local elected officials of each unified service delivery area shall establish a workforce development board to administer the workforce development assistance provided by all the programs in the integrated workforce development system in such area.

(b) EXCEPTION.—States with a single unified delivery area with contiguous borders shall not be subject to the requirement of subsection (a).

(c) MEMBERSHIP.—Each workforce development board shall be comprised of—

(1) representatives of business and industry, who shall constitute a majority of the board and who shall be business leaders in the unified service delivery area;

(2)(A)(i) representatives of organized labor organizations, who shall be selected from among individuals nominated by recognized State labor federations; and

(ii) representatives of community-based organizations, who shall be selected from among those individuals nominated by officers of such organizations; and

(B) who shall comprise not less than 30 percent of the membership of the board;

(3) representatives of educational institutions;

(4) community leaders, such as leaders of—

(A) economic development agencies;

(B) human service agencies and institutions;

(C) veterans organizations; and

(D) entities providing job training;

(5) representatives of nongovernmental organizations that have a history of successfully protecting the rights of individuals with disabilities or older persons; and

(6) a local elected official, who shall be a nonvoting member.

(d) NOMINATIONS.—

(1) BUSINESS AND INDUSTRY REPRESENTATIVES.—

(A) IN GENERAL.—The representatives of business and industry under paragraph (1) of subsection (c) shall be selected by local elected officials from among individuals nominated by general purpose business organizations after consultation with, and receiving recommendations from, other business organizations in the unified service delivery area.

(B) DEFINITION.—For purposes of this paragraph, the term "general purpose business organization" means an organization that admits to membership any for-profit business operating within the unified service delivery area.

(2) LABOR REPRESENTATIVES.—The representatives of organized labor under paragraph (2) of subsection (c) shall be selected from among individuals recommended by recognized State and local labor federations. If the State or local labor federation fails to nominate a sufficient number of individuals, individual workers may be included on the workforce development board as labor representatives.

(3) OTHER MEMBERS.—The members of the workforce development board described in paragraphs (1), (4), and (5) of subsection (c) shall be selected by chief local elected officials in accordance with subsection (e) from individuals recommended by interested organizations.

(4) EXPERTISE.—The State Council and Governor of each State shall ensure that the workforce development board and the staff of the State Council have sufficient expertise to effectively carry out the duties and functions of existing local boards described under the laws relating to the applicable program. Such expertise shall include, where appropriate, knowledge of—

(A) the long-term needs of individuals preparing to enter the workforce;

(B) the needs of State, local, and regional labor markets; and

(C) the methods for evaluating the effectiveness of education and job training programs in serving various populations.

(e) APPOINTMENT PROCESS.—In the case of a unified service delivery area—

(1) in which there is one unit of general local government, the chief elected official of such unit shall determine the number and appoint members to the board from the individuals nominated or recommended under subsection (d); and

(2) in which there are 2 or more units of general local government, the chief elected officials of such units shall determine the number and appoint members to the workforce development board from the individuals nominated or recommended under subsection (d), in accordance with an agreement entered into by such units of general local government or, in the absence of such an agreement, by the Governor of the State in which the unified service delivery area is located.

(f) TERMS.—Each workforce development board shall establish, in its bylaws, terms to be served by its members, who may serve until the successors of such members are appointed.

(g) VACANCIES.—Any vacancy on a workforce development board shall be filled in the same manner as the original appointment was made.

(h) REMOVAL FOR CAUSE.—Any member of a workforce development board may be removed for cause in accordance with procedures established by the workforce development board.

(i) CHAIRPERSON.—Each workforce development board shall select a chairperson, by a majority vote of the members of the board, from among the members of the workforce development board who are from business or industry. The term of the chairperson shall be determined by the board.

(j) SUBCOMMITTEES.—Each workforce development board may establish business and labor subcommittees to advise the board on workforce development issues. Such subcommittees shall have as members representatives of the business and labor communities, and such other members as the board determines necessary.

(k) DUTIES.—Each workforce development board shall—

(1) prepare a workforce development board policy blueprint in accordance with section 302;

(2) issue an annual unified service delivery area report card in accordance with section 303;

(3) review and comment on the local plans for all programs included in the integrated workforce development system of the State and operating within the unified service delivery area, prior to the submission of such plans to the appropriate State Council, or the relevant Federal agency, if no State approval is required;

(4) oversee the operations of the one-stop career center established in the unified service delivery area under section 304, including the responsibility to—

(A) designate one-stop career center operators within the unified service delivery area consistent with selection criteria specified in section 204(a);

(B) develop and approve the budgets and annual operating plans of the one-stop career centers;

(C) establish annual performance standards, customer service quality criteria, and outcome measures for the one-stop career centers, consistent with measures developed pursuant to sections 210;

(D) assess the results of programs and services;

(E) ensure that services and skills provided through the centers are of high quality and are relevant to labor market demands; and

(F) determine priorities for client services from Federal funding sources in the system;

(5) develop a strategy to disseminate consumer reports produced under section 205 to workers, jobseekers, and employers, and other individuals in the unified service delivery area; and

(6) upon recommendation of a business or labor advisory committee, the local board may apply to the Secretary for a grant in the amount of 50 percent of the cost of establishing innovative models of workplace training and upgrading of incumbent workers pursuant to section 307.

(k) ADMINISTRATION.—

(1) IN GENERAL.—Each local workforce development board shall have the authority to receive and disburse funds made available for carrying out the provisions of this Act and shall employ its own staff, independent of local programs and service providers.

(2) FUNDING.—Each workforce development board shall receive a portion of its funding from the implementation grant of the State, with additional funds made available from participating programs.

(l) CONFLICT OF INTEREST.—No member of a workforce development board shall cast a vote on the provision of services by that member (or any organization which that member directly represents) or vote on any matter that would provide direct financial benefit to such member.

SEC. 302. WORKFORCE DEVELOPMENT BOARD POLICY BLUEPRINT.

(a) IN GENERAL.—Each workforce development board shall prepare and submit to the State Council a biennial report, to be known as the workforce development board policy blueprint, except that in States with a single unified service delivery area, the additional elements required in the regional blueprint shall be incorporated into the State Blueprint.

(b) REQUIREMENTS.—The workforce development board policy blueprint shall—

(1) include a list of the key industries and industry clusters of small- to mid-size firms that are most critical to the current and future economic competitiveness of unified service delivery area;

(2) identify the workforce development needs of the critical industries and industry clusters;

(3) summarize the capacity of local education and training providers to respond to the workforce development needs;

(4) indicate how the local workforce development programs intend to strategically deploy resources available from implementation grants and existing programs operating in the unified service delivery area to better meet the workforce development needs of critical industries and industry clusters in the unified service delivery area and enhance program performance;

(5) include a plan to develop one-stop career centers, as described in section 304, including an estimate of the costs in personnel

and other resources to develop a network adequate to provide universal access to such centers in the local labor market;

(6) describe how services will be maintained to all groups served by the participating programs in accordance with their legislative intent, including hard-to-serve populations;

(7) identify actions for building the capacity of the workforce development system in the unified service delivery area; and

(8) report on the level and recent changes in earned income of workers in the local labor market, in relation to State and national levels, by occupation and industry.

(c) USE IN OTHER REPORTS.—The workforce development board policy blueprint may be utilized in lieu of local planning reports required by any other Federal law for any program included in the integrated workforce development system, subject to the approval of the State Council.

SEC. 303. REPORT CARD.

(a) IN GENERAL.—Each workforce development board shall annually prepare and submit to the State Council a unified service delivery area report card in accordance with this section. The report card shall describe the performance of all workforce development programs and service providers, including the one-stop career centers, operating in the area that is included in the integrated workforce development system. In States with a single unified service delivery area, the State Council shall prepare the report card.

(b) REQUIREMENTS.—The report card shall—

(1) report on the relationship between services provided and the local labor market needs as described in the workforce development board policy blueprint;

(2) using the quality assurance system information established pursuant to section 205, include an analysis of employment-related, and other outcomes achieved by the programs and service providers operating in the area;

(3) identity the performance of the one-stop career centers;

(4) detail the economic and demographic characteristics of individuals served compared to the characteristics of the general population of the unified service delivery area, and the jobseekers, workers, and businesses of such area; and

(5) assess the maintenance of effort to hard-to-serve populations in relation to the level of services and outcomes during the preceding 3 years.

SEC. 304. ONE-STOP CAREER CENTERS.

(a) ESTABLISHMENT.—Each workforce development board receiving funds under an implementation grant awarded under section 103(b) shall develop and implement a network of one-stop career centers in the unified service delivery area of the workforce development board. The one-stop career centers shall provide jobseekers, workers, and businesses universal access to a comprehensive array of quality employment, education, and training services.

(b) PROCEDURES.—Each workforce development board shall, in conjunction with local elected official or officials in the unified service delivery area, and consistent with criteria specified in section 204(a), select a method for establishing one-stop career centers.

(c) ELIGIBLE ENTITIES.—Each entity within the unified service delivery area that performs the functions specified in subsections (e) and (f) for any of the programs in the integrated workforce development system shall be eligible to be selected as a one-stop career center.

(d) PERIOD OF SELECTION.—Each one-stop career center operator shall be designated for two-year periods. Every 2 years, one-stop career center designations shall be reevaluated by the workforce development board based on performance indicated in the unified service delivery area report card and other criteria established by the workforce development board and the State Council.

(e) BROKERAGE SERVICES TO INDIVIDUALS.—Each one-stop career center shall make available to the public, at no cost—

(1) outreach to make individuals aware of, and encourage the use of, services available from workforce development programs operating in the unified service delivery area;

(2) intake and orientation to the information and services available through the one-stop career center;

(3) preliminary assessments of the skill levels (including appropriate testing) and service needs of individuals, including—

(A) basic skills;

(B) occupational skills;

(C) prior work experience;

(D) employability;

(E) interests;

(F) aptitude; and

(G) supportive service needs;

(4) job search assistance, including resume and interview preparation and workshops;

(5) information relating to the supply, demand, price, and quality of job training services available in each unified service delivery area in the State pursuant to section 501(c);

(6) information relating to eligibility requirements and sources of financial assistance for entering the programs described in 501(c)(2)(C); and

(7) referral to appropriate job training, employment, and employment-related education or support services in the unified service delivery area.

(f) BROKERAGE SERVICES TO EMPLOYERS.—Each one-stop career center shall provide to each requesting employer—

(1) information relating to supply, demand, price, and quality of job training services available in each unified service delivery area in the State, consistent with the consumer reports described in section 205;

(2) customized screening and referral of individuals for employment;

(3) customized assessment of skills of the current workers of the employer;

(4) an analysis of the skill needs of the employer; and

(5) other specialized employment and training services.

(g) CONFLICTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), any entity that performs one-stop career center functions shall be prohibited from making an education and training referral to itself.

(2) WAIVER.—If the enforcement of paragraph (1) would result in diminished access to either one-stop career center services or to education and training services, as defined under section 204(a), such prohibition may be waived by the State council upon request of a regional board.

(h) FEES.—

(1) IN GENERAL.—Except as provided in paragraph (2), each one-stop career center may charge fees for the services described in subsection (f), subject to approval by the workforce development board.

(2) LIMITATION.—No fee may be charged for any service that an individual would be eligible to receive at no cost under a participating program.

(3) INCOME.—Income received by a one-stop career center from the fees collected shall be used by the workforce development board to expand or enhance one-stop career centers available within the unified service delivery area.

(i) CORE DATA ELEMENTS AND COMMON DEFINITIONS.—Each one-stop career center shall adopt the core data elements and common definitions as specified in subsections (b) and (c) of section 105, and updated by the National Board.

(j) OPERATING AGREEMENTS.—

(1) IN GENERAL.—Each one-stop career center operator shall enter into a written agreement with the workforce development board concerning the operation of the center.

(2) APPROVAL.—The agreement shall—

(A) be subject to the approval of—

(i) the local chief elected official or officials;

(ii) the State Council; and

(iii) the Governor of the State in which the center is located; and

(B) shall address—

(i) the services to be provided;

(ii) the financial and nonfinancial contributions to be made to the centers from funds made available pursuant to section 103(b) and all participating workforce development programs;

(iii) methods of administration;

(iv) procedures to be used to ensure compliance with statutory requirements of the programs in the integrated workforce development system; and

(v) other elements, as required by the workforce development board or the State Council under section 204(a).

SEC. 305. PROGRESS REPORTS.

Each workforce development board shall annually report to the State Council on the progress such board is making with respect to the effectiveness criteria of the workforce development board established under section 210, assessing the implementation of the integrated system, except that in States with a single unified service delivery area the State Council shall be responsible for carrying out the activities under this section.

SEC. 306. CAPACITY BUILDING.

(a) IN GENERAL.—Each workforce development board shall identify actions to be taken for building the capacity of the workforce development system in such unified service delivery, except that in States with a single unified delivery area, the State Council shall be responsible for carrying out the activities under this section.

(b) FUNDING.—The State Council shall make funds available to each workforce development board for capacity building activities from funds made available under section 103(b) and any other funds within the integrated workforce development budget of the State. For the activities described in subsection (c), the workforce development board may also submit requests to the State Council to redirect a portion of training and technical assistance resources available from any of the workforce development programs included in the integrated system within the unified service development area of the workforce development board.

(c) TYPES OF ACTIVITIES.—Capacity building activities may include—

(1) training of workforce development board members;

(2) staff training;

(3) technical assistance regarding managing systemic change;

(4) customer service training;

(5) organization of peer-to-peer networks for training, technical assistance, and information sharing;

(6) organizing a best practices database covering the various system activities; and

(7) training for local staff on the principles of quality management and decentralized decisionmaking.

SEC. 307. INCENTIVE GRANTS FOR INCUMBENT WORKER TRAINING.

(a) PURPOSE.—The purpose of this section is to establish a program to award competitive matching grants to assist local workforce development boards respond to the training needs of front-line workers in the communities in which such boards are located.

(b) APPLICATION.—Each local workforce development board seeking a grant under this section shall submit an application to the State Council of the State in which such board is located, at such time, in such manner, and containing such information as the Secretary may prescribe. Not later than 30 days after receiving an application, the State Council shall review and forward the application, with comments, to the National Board and the Secretary.

(c) SELECTION OF GRANTEES.—

(1) IN GENERAL.—The Secretary, with the advice of the National Board, shall award a grant under this section only if the Secretary determines, from the grant application, that the grant will be used to maintain or enhance the competitive position of local industries that are committed to making the investments necessary to develop the skills of their workers.

(2) CRITERIA.—In awarding grants under this section, the Secretary shall take into account—

(A) the policy priorities and training needs of local industries identified in the local workforce development policy blueprints;

(B) whether there is a demonstrated need for skill upgrading to maintain firm or industry competitiveness;

(C) whether the application contains proposals for training that will directly lead to increased earnings of front-line workers;

(D) initiatives by firms or firm partnerships to develop high performance work organizations;

(E) whether the grant proposal meets the training needs of small and medium sized firms;

(F) whether the grant proposal is focused on workers with substantial firm or industry tenure; and

(G) whether the proposed industry activities are integrated with private sector activities under the School-to-Work Opportunities Act of 1994.

(d) USE OF FUNDS.—Grants awarded under this section shall be used for skill enhancement and training activities that may include—

(1) basic skills;

(2) occupational skills;

(3) statistical process control training;

(4) total quality management techniques;

(5) team building and problem solving skills; and

(6) other training or activities that will result in the increased likelihood of job retention, higher wages, or increased firm competitiveness.

(e) FUNDING.—

(1) COST SHARE.—

(A) FEDERAL SHARE.—A grant awarded under this section shall be in an amount equal to 50 percent of the cost of carrying out the grant proposal.

(B) LOCAL SHARE.—As a condition to receiving Federal funds under this section, local businesses, industry associations, and worker organizations shall provide funding in an amount equal to 50 percent of the cost of carrying out the grant proposal.

(2) LIMITATIONS.—

(A) USE OF FUNDS.—Amounts awarded under this section shall not be used to pay the wages of workers during the training of such workers.

(B) ADDITIONAL FUNDING.—Each recipient of funds under this section shall certify that such funds shall supplement and not supplant other public or private funds otherwise spent on worker training.

TITLE IV—CONSOLIDATION

SEC. 401. PURPOSE; FINDINGS; SENSE OF THE CONGRESS.

(a) PURPOSE.—The purpose of this title is to streamline the system of federally funded employment training services available to jobseekers, workers, and businesses.

(b) FINDINGS.—The Congress finds that—

(1) the process of streamlining the system of federally funded employment training services begins with consolidating and eliminating separate employment training programs; and

(2) as such programs are eliminated, the funding for such programs should be invested back into such system to support the creation of a workforce development system, as described in section 2(b).

(c) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) any budget savings realized as a result of the elimination or consolidation of programs pursuant to section 403(a) or through the sunsetting of programs pursuant to section 405 should be reinvested in the Nation's job training system as described in subsection (b); and

(2) as programs are eliminated and merged, it is imperative that such elimination and merging be done without in any way reducing the commitment or level of effort of the Federal Government to improving the education, employment, and earnings of all workers, particularly hard-to-serve individuals, including individuals with limited-English proficiency, and other workers with special needs.

SEC. 402. INTEGRATION OF YOUTH PROGRAMS.

Not later than 180 days after the date of enactment of this Act, the National Board shall study and report to the President and Congress on how best to integrate the programs, under the following statutes or portions of statutes, for in-school and out-of-school youth with the School-to-Work Opportunities Act of 1994:

(1) Part C of title II of the Job Training Partnership Act (29 U.S.C. 1641 et seq.).

(2) Part B of title II of the Job Training Partnership Act (29 U.S.C. 1630 et seq.).

(3) Part H of title IV of the Job Training Partnership Act (29 U.S.C. 1782 et seq.).

(4) The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

(5) Youthbuild programs under title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899 et seq.).

(6) Part B of title IV of the Job Training Partnership Act (29 U.S.C. 1691 et seq.).

SEC. 403. CONSOLIDATION OF WORKFORCE DEVELOPMENT PROGRAMS.

(a) ANNUAL RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, and each June 1 thereafter, the National Board shall make recommendations to the President and Congress for the elimination of Federal workforce development programs, or programs whose functions should be subsumed under other Federal programs.

(b) REPORT.—Not later than June 1, 1999, the National Board, based on such board's analysis of the experience of leading edge States and the progress made toward establishing an integrated workforce development system, shall prepare and submit recommendations to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report containing the findings of such board, and recommendations for proposed reforms. The National Board shall also submit to the Congress a draft of a joint resolution containing provisions to develop a streamlined, integrated, federally supported workforce development system, from the programs listed in section 404(a) and any other Federal workforce development program determined by the National Board as appropriate to be included that is consistent with this Act, pursuant to section 2(b). The joint resolution shall include recommendations for standard outcome measures as described in section 105(a) and shall describe how the new system will maintain services to hard-to-serve populations.

SEC. 404. INTEGRATION OF PROGRAMS AT THE LOCAL LEVEL.

(a) REQUIREMENT.—Any State receiving an implementation grant to develop an integrated workforce development system shall, at a minimum, include the programs and activities carried out on the date of enactment of this Act under the following provisions and Acts in such State's reformed delivery system pursuant to section 103(b):

(1) Part F of title IV of the Social Security Act (42 U.S.C. 681 et seq.).

(2) Part A of title II, and title III of the Job Training Partnership Act (29 U.S.C. 1601 et seq., 1651 et seq.).

(3) The Wagner-Peyser Act (29 U.S.C. 49 et seq.).

(4) Sections 235 and 236 of the Trade Act of 1974 (19 U.S.C. 2295 and 2296) and paragraphs (1) and (2) of section 250(d) of such Act (19 U.S.C. 2331(d)).

(5) The Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note).

(6) Title VII of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421 et seq.).

(7) Section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4)).

(b) ADDITIONAL PROGRAMS.—Any State receiving an implementation grant to develop an integrated workforce development system may include the programs and activities carried out on the date of enactment of this Act under the following provisions and Acts in such State's reformed delivery system pursuant to section 103(b):

(1) Part B of title III of the Adult Education Act (20 U.S.C. 1203 et seq.).

(2) Title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.).

(3) The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

(4) Part C of title IV of the Job Training Partnership Act (29 U.S.C. 1721).

(5) Any other Federal or State workforce development program identified by the Governor pursuant to section 103(b), subject to a two-thirds vote of the National Board.

SEC. 405. SUNSET OF MAJOR WORKFORCE DEVELOPMENT PROGRAMS.

(a) REPEAL.—

(1) IN GENERAL.—Subject to paragraph (2), the provisions and Acts listed in paragraphs (1) through (7) of section 404(a) are repealed.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on September 30, 1999.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The National Board shall include in the draft joint resolution submitted under

section 403(b), technical and conforming amendments regarding the provisions and Act repealed under subsection (a). Such proposed amendments should be consistent with the purposes of this Act.

TITLE V—INTEGRATED LABOR MARKET INFORMATION SYSTEM

SEC. 501. INTEGRATED LABOR MARKET INFORMATION.

(a) FINDINGS.—Congress finds that accurate, timely, and relevant data for the Nation, States, and localities is required to achieve Federal domestic policy goals, such as—

(1) economic growth and productivity through—

(A) career planning and successful job training and job searching by youth and adults; and

(B) efficient hiring, effective worker training, and appropriate location and organization of work by employers;

(2) accountability, through planning and evaluation, in workforce development and job placement programs funded by the Federal Government or developed by other public or private entities;

(3) equity and efficiency in the allocation of Federal funds; and

(4) greater understanding of local labor market dynamics through the support of research.

(b) PURPOSE.—The purpose of this title is to provide for the development, maintenance, and continuous improvement of a nationwide integrated system for the collection, analysis, and dissemination of labor market information.

(c) SYSTEM.—

(1) DEVELOPMENT.—The Secretary, in cooperation with the National Board, the State Councils, where appropriate, and the Governors, shall oversee and ensure the development, maintenance, and continuous improvement of a nationwide integrated system of labor market information that will—

(A) promote comprehensive workforce development planning, evaluation, and service integration;

(B) meet and be responsive to the customer needs of jobseekers, employers, and public officials at all government levels who develop economic and social policy, allocate funds, plan and implement workforce development systems, are involved in career planning or exploration, and deliver integrated services;

(C) serve as the foundation for automated information delivery systems that provide easy access to labor market, occupational and career information; and

(D) meet the Federal domestic policy goals specified in section 501(a).

(2) INFORMATION TO BE INCLUDED.—The integrated system described in paragraph (1) shall include statistical data from survey and projection programs and data from administrative reporting systems which, taken together, shall enumerate, estimate, and project the supply of and demand for labor at national, State, and local levels in a timely manner, including, but not limited to, data on—

(A) labor market demand, such as—

(i) profiles of occupations that describe job duties, education, and training requirements, skills, wages, benefits, working conditions, and the industrial distribution of occupations;

(ii) current and projected employment opportunities and trends, by industry and occupation, including growth projections by industry, and growth and replacement need projections by occupation;

(iii) job openings, job locations, hiring requirements, and application procedures;

(iv) profiles of industries and employers in the local labor market describing the nature of the work performed, employment skill and experience requirements, specific occupations, wages, hours, and benefits, and hiring patterns;

(v) industries, occupations, and geographic locations facing significant change or dislocation; and

(vi) information maintained in a longitudinal manner on the quarterly earnings, establishment, industry affiliation, and geographic location of employment for all individuals for whom such information is collected by the States;

(B) labor supply, such as—

(i) educational attainment, training, skills, skill levels, and occupations of the population;

(ii) demographic, socioeconomic characteristics, and current employment status of the population, including self-employed, part-time, and seasonal workers;

(iii) job seekers, including their education and training, skills, skill levels, employment experience, and employment goals;

(iv) the number of workers displaced by permanent layoffs and plant closings by industry, occupation, and geographic location; and

(v) current and projected training completers who have acquired specific occupational or work skills and competencies; and

(C) consumer information, which shall be current, comprehensive, localized, automated, and in a form useful for immediate employment, entry into training and education programs, and career exploration, including—

(i) job openings, locations, hiring requirements, application procedures, and profiles of employers in the local labor market describing the nature of the work performed, employment requirements, wages, benefits, and hiring patterns;

(ii) jobseekers, including their education and training, skills, skill levels, employment experience, and employment goals;

(iii) the labor market experiences, in terms of wages and annual earnings, by industry and occupation, of workers in local labor markets, by sex and racial or ethnic group, including information on hard-to-serve populations;

(iv) education courses, training programs, and job placement programs, including information derived from statistically based performance evaluations and their user satisfaction ratings; and

(v) eligibility for funding and other assistance in job training, job search, income support, supportive services, and other employment services.

(3) TECHNICAL STANDARDS.—The integrated labor market information system shall use common standards that will include—

(A) standard classification and coding systems for industries, occupations, skills, programs, and courses;

(B) nationally standardized definitions of terms consistent with sections 105 and 501(c)(2);

(C) a common system for designating geographic areas consistent with the unified service delivery areas;

(D) data standards and quality control mechanisms; and

(E) common schedules for data collection and dissemination.

(4) AVAILABILITY OF INFORMATION.—Data generated by the labor market information system including information on quarterly employment and earnings, together with matched data on individuals who have participated in a federally supported job training activity, shall be made available to the National Board for use in the preparation of the National Report Card. Aggregate level information will be made available to consumers in automated information delivery systems.

(5) DISSEMINATION, TECHNICAL ASSISTANCE, AND RESEARCH.—The Secretary, in cooperation with the National Board, the Governors, and State Councils, where appropriate, shall oversee the development, maintenance, and continuous improvement of—

(A) dissemination mechanisms for data and analysis, including mechanisms that may be standardized among the States;

(B) programs of technical assistance and staff development for States and localities, including assistance in adopting and utilizing automated systems and improving the access, through electronic and other means, to labor market information; and

(C) programs of research and demonstration, on ways to improve the products and processes authorized by this section.

SEC. 502. RESPONSIBILITIES OF THE NATIONAL BOARD.

(a) IN GENERAL.—The National Board shall plan, review, and evaluate the Nation's integrated labor market information system.

(b) DUTIES.—The National Board shall—

(1) be responsible for providing policy guidance;

(2) evaluate the integrated labor market information system and ensure the cooperation of participating agencies; and

(3) recommend to the Secretary needed improvements in Federal, State, and local information systems to support the development of an integrated labor market information system.

SEC. 503. RESPONSIBILITIES OF THE SECRETARY.

(a) IN GENERAL.—The Secretary shall manage the investment in an integrated labor market information system by—

(1) reviewing all requirements for labor market information across all programs within the system;

(2) developing a comprehensive annual budget, including funds at the Federal level, funds allotted to States by formula, and funds supplied to the States by contracts with departmental entities;

(3) administering grants allotted to States by formula;

(4) negotiating and executing contracts with the States;

(5) coordinating the activities of Federal workforce development agencies responsible for collecting the statistics and program administrative data that comprise the integrated system and disseminating labor market information at the National, State, regional, and local levels; and

(6) ensuring that standards are designed to meet the requirements of chapter 35 of title 44, United States Code, and are coordinated and consistent with other appropriate Federal standards established by the Bureau of Labor Statistics and other statistical agencies;

(b) REQUIREMENTS.—In carrying out the duties of the Secretary under this section, the Secretary shall—

(1) in consultation with the States and the private sector, define a common core set of labor market information data elements as specified in section 501(c)(2) that will be consistently available across States in an integrated labor market information system; and

(2) ensure that data is sufficiently timely and locally detailed for use, including uses specified in subsections (b) and (c)(2) of section 501.

(c) ANNUAL PLAN.—

(1) IN GENERAL.—The Secretary shall annually prepare and submit to the National Board for review, a plan for improving the Nation's integrated labor market information system. The Secretary shall also submit the plan, together with the comments and recommendations of the National Board, to the President and Congress.

(2) CONTENTS.—The plan shall describe the budgetary needs of the labor market information system, and shall describe the activities of such Federal agencies with respect to data collection, analysis, and dissemination for each fiscal year succeeding the fiscal year in which the plan is developed. The plan shall—

(A) establish goals for system development and improvement based on information needs for achieving economic growth and productivity, accountability, fund allocation equity, and an understanding of labor market characteristics and dynamics;

(B) specify the common core set of data that shall be included in the integrated labor market information system;

(C) describe the current spending on integrated labor market information activities from all sources, assess the adequacy of the funds and identify the specific budget needs of the Federal and State workforce development agencies with respect to implementing and improving an integrated labor market information system and the activities of such agencies with respect to data compilation, analysis, and dissemination for each fiscal year in which the plan is developed;

(D) develop a budget for an integrated labor market information system that accounts for all funds in subparagraph (C) and any new funds made available pursuant to this Act, and describes the relative allotments to be made for—

(i) the operation of the cooperative statistical programs under section 501(c)(2);

(ii) ensuring that technical standards are met pursuant to section 501(c)(3); and

(iii) consumer information, analysis and dissemination, technical assistance, and research under paragraphs (2)(C), (4), and (6) of section 501(c);

(E) describe the existing system, information needs, and the development of new data programs, analytical techniques, definitions and standards, dissemination mechanisms, governance mechanisms, and funding processes to meet new needs;

(F) summarize the results of an annual review of the costs to the States of meeting contract requirements for data production, including a description of how the budget request for an integrated labor market information system will cover such costs;

(G) describe how the State Councils will be reimbursed for carrying out the duties for labor market information;

(H) recommend methods to simplify and integrate automated client intake and eligibility determination systems across workforce development programs to permit easy determination of eligibility for funding and other assistance in job training, job search, income support, supportive services, and other reemployment services; and

(I) provide for the involvement of States in developing the plan by holding formal consultations conducted in cooperation with representatives of the Governor or State Council, where appropriate, pursuant to a process established by the National Board.

(d) ASSISTANCE FROM OTHER AGENCIES.—The Secretary may receive assistance from member and other Federal agencies (such as the Bureau of Labor Statistics and the Employment and Training Administration of the Department of Labor, the Administration on Children and Families of the Department of Health and Human Services, and the Office of Adult and Vocational Education and the National Commission for Education Statistics of the Department of Education) to assist in the collection, analysis, and dissemination of labor market information, and in the provision of training and technical assistance to users of information, including States, employers, youth, and adults.

SEC. 504. RESPONSIBILITIES OF GOVERNORS.

(a) DESIGNATION OF STATE AGENCY.—The Governor of each State and the State Council, where appropriate, shall designate one State agency to be the agency responsible for—

(1) the management and oversight of a statewide comprehensive integrated labor market information system; and

(2) developing a State unified labor market information budget on an annual basis.

(b) REQUIREMENTS.—As a condition of receiving Federal financial assistance under this title, the Governor or State Council, where appropriate, shall—

(1) develop, maintain, and continuously improve a comprehensive integrated labor market information system, which shall—

(A) include the elements specified in section 501(c)(2);

(B) be responsive to the needs of the State and the localities of such State for planning and evaluative data, including employment and economic analyses and projections, and program outcome data on employment and earnings for the quality assurance system under section 205; and

(C) meet Federal standards under chapter 35 of title 44, United States Code, and other appropriate Federal standards established by the Bureau;

(2) ensure the performance of contract and grant responsibilities for data compilation, analysis, and dissemination;

(3) conduct such other data collection, analysis, and dissemination activities as will ensure the availability of comprehensive State and local labor market information;

(4) coordinate the data collection, analysis, and dissemination activities of other State and local agencies, with particular attention to State education, economic development, human services, and welfare agencies, to ensure complementary and compatibility among data; and

(5) cooperate with the National Board and the Secretary by making available, as requested, data for the evaluation of programs covered by the labor market information and the quality assurance systems under section 205.

(c) NONINTERFERENCE WITH STATE FUNCTIONS.—Nothing in this Act shall limit the ability of the State agency designated under this section to conduct additional data collection, analysis, and dissemination activities with funds derived from sources other than this Act.

JOB TRAINING CONSOLIDATION AND REFORM ACT

I. OVERVIEW

The federal government currently spends over $25 billion each year on 154 different job training programs. There is widespread consensus that these programs are not preparing workers adequately for jobs in the increasingly competitive world economy.

This bill is intended to transform federally-funded job training from a collection of free-standing programs into a coherent, integrated, accountable workforce development system. The goal is to consolidate and streamline duplicative and overlapping programs, and create a more effective system that will provide greater opportunities for workers to obtain the job skills they need.

II. KEY FEATURES

Proposal will streamline and consolidate fragmented job training programs

One-stop shopping will make services accessible and user-friendly to job seekers, workers and business.

Businesses and workers will have a key role in designing and overseeing job training programs and will help ensure that workers have skills and labor market information needed to obtain jobs in growth industries.

Programs will be held accountable for results.

Legislation builds on lessons learned from bipartisan efforts underway in Massachusetts and other states.

Federal savings from job training consolidation will be used as venture capital to reward leading-edge States and communities.

III. MAJOR PROVISIONS

A National Workforce Development Board will, within 6 months, make recommendations to the President and the Congress on which of the 154 current job training programs are redundant or ineffective and should be consolidated or eliminated. This nine-member board will be comprised of the Secretary of Labor, the Secretary of Education, the Secretary of Health and Human Services and representatives of business and organized labor.

All states will be eligible for planning grants to establish labor market systems to give policy makers and citizens a sense of how well each program is preparing and placing people in jobs.

States and communities will be encouraged to experiment with new approaches to integrating job training and education. Competitive grants will be available to states ready to adopt system-wide reforms in cooperation with the private sector. These stats will be required to establish one-stop career centers which will make services more accessible to jobseekers, workers and businesses.

The Board will also make matching grants to communities to upgrade the skills of existing workers. It will make recommendations for incentives to employers to increase training of front-line workers, and propose strategies to integrate existing youth employment and training programs with the recently enacted School-to-Work Opportunities Act.

By June 1, 1999, the Board must submit recommendations to the President and Congress for a new public/private workforce development system suitable for the needs of the 21st century. These recommendations will be based upon the lessons learned from the experience of leading-edge states and a review of the performance of existing programs.

IV. FUNDING

Funding for the reforms will be primarily generated by savings resulting from program elimination or consolidation. In addition, the bill authorizes $250 million in fiscal year 1996 as seed money to help states and communities set up one-stop career centers, and to ensure that hard-to-serve populations continue to receive services as the new system is developed.

By Mr. FORD:

S. 2519. A bill to amend title IV of the Surface Mining Control and Reclamation Act of 1977, to provide for acquisition and reclamation of land adversely affected by past coal mining practices, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. FORD:

S. 2520. A bill to amend title IV, of the Surface Mining Control and Reclamation Act of 1977, to encourage the mining and reclamation of previously mind areas by active mining operations, and for other purposes; to the

MINING LEGISLATION

Mr. FORD. Mr. President, the Surface Mining Control and Reclamation Act of 1977 has brought a degree of tangible gain to coal-producing areas. Today, I am introducing legislation to allow for cost-effective ways of dealing with abandoned mine emergencies through public-private partnership.

For the past several years, the Interior Department's Office of Surface Mining and the Commonwealth of Kentucky have been working together to deal with a recurring crisis in administering the Abandoned Mine Lands Reclamation Program.

The Office of Surface Mining has been exploring possible solutions to the annual dilemma of having too little money to abate all the abandoned coal mine emergencies in a timely manner. Although additional funding looks like an obvious solution, other management solutions are being sought that could be just as effective and more economical.

For example, one area of the program being reexamined for possible improvements is the actual abatement process, in particular, the abatement of landslides. Mr. President, I am sure you are aware of the high potential for landslides to occur on the steeply minded slopes of eastern Kentucky. Moreover, I am sure it is no surprise to you that the cost of stabilizing those shifting masses of earth is extremely high.

Sometimes the cost of abatement in that rugged country is more than the monetary value of the dwellings that the landslides are threatening. Emergency abatement is necessary when an occupied dwelling downhill is directly in the path of an advancing landslide. Mr. President, we appreciate the fact that these dwellings are not just houses, but peoples' homes. Yet there are times when it is in the best interest of the homeowner as well as the taxpayers to find a more cost-effective way of eliminating the emergency condition.

Therefore, today I am introducing legislation to provide the Office of Surface Mining and the affected citizens of eastern Kentucky and similarly affected areas a more practical option.

One of my bills will provide the Office of Surface Mining with flexibility to abate the emergency condition by purchasing the land or dwelling that is being threatened, thereby eliminating the emergency condition. This option would be exercised only when it can be demonstrated that the purchase option will result in significant cost savings to the reclamation program and will be agreeable to the homeowner. If this option is exercised only a few times a year in Kentucky, the Commonwealth's annual allocation could be saved so it would be available to abate other abandoned mine emergencies.

I recognize that eliminating an emergency condition in this manner does not eliminate landslides. However, by eliminating the emergency condition, the landslide problem can then be referred to the State for less costly nonemergency reclamation through the State's regularly, Federally-funded abandoned mine land program. Thus we will enable the State to continue reclaiming abandoned mined sites according to the priorities of their regular program, other than as dire emergencies.

Another beneficial feature of my legislature is that it will allow the States to establish self-sustaining funds for the purpose of insuring private property against damages caused by abandoned coal mine landslides. This same concept is already working successfully in several coal mining States to insure property owners against subsidence damage caused by abandoned underground coal mines. My proposal is designed to operate in the same way to provide landowners with the ability to insure their homes against abandoned mine landslides damage in those instances where the landslides happens so fast that the responsible agency can only respond after the home has already been damaged.

Together, those two features of my first bill offer the citizens of the coal fields a better expectation that funds already in the Treasury for dealing with abandoned coal mine emergencies will actually do them some good. This legislation will enable the responsible State or Federal reclamation agency, working with the people who are directly affected by the emergency conditions, to reach the best decision together as to how to abate the emergency condition. And, through the landslide insurance program, coal field homeowners who today have no financial options to protect their investments will, for the first time, have the opportunity to insure themselves against the constant threat of landslide damage to their homes.

Mr. President, I am also introducing a second bill to provide incentives for commercial coal mine operators to extract coal from places that others have previously mined, abandoned and left unreclaimed or inadequately reclaimed. The incentives would apply when, in the process of remining those previously mined lands, the operators reclaim the land with no outlay of money from the national Abandoned Mine Reclamation Fund.

As background, let me explain that the Abandoned Mine Land reclamation program was established in title IV of the 1977 Surface Mining Act in response to concern over extensive environmental damage caused by coal mining activities of the past, that is, before the 1977 surface mining law was enacted.

As enacted in 1977, lands and waters eligible for reclamation or drainage abatement expenditures under title IV are those that were mined for coal or which were affected by such mining, waste banks, coal processing, or other coal mining processes, then abandoned or left in an inadequate reclamation status, before August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws. Reclamation funding is based on a priority system; sites representing a threat to the public health and safety get first priority for reclamation.

Mr. President, the Abandoned Mine Land Reclamation program has mitigated many health, safety and environment hazards faced by people living in the coal mining regions of the United States. However, while progress has been made, the inventory of unreclaimed high-priority abandoned coal mine sites, the ones still threatening public health and safety, is still overwhelming. Moreover, little has been done to address the threats posed by lower priority environmental problems from pre-1977 coal mining.

The need for amending title IV of the Surface Mining Act in this respect is premised on the large inventory of abandoned coal mine sites which may never be addressed by the current reclamation effort. The time has come to try a new approach, a cooperative effort between the government and private industry to reclaim more of those abandoned lands.

My second bill would be the third time that Congress has addressed remining. First in 1987, we amended the Clean Water Act standards (30 U.S.C. §1311) regarding pre-existing discharges as applied to remining operations. Such modified requirements apply the best technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations for each permit. Second, as part of the Energy Policy Act of 1992, Public Law 102–486, we again attempted to provide additional incentives to encourage remining operations by shortening the revegetation success liability period for remining operations and eliminating the penalty of permit blocking under section 510(c) of the 1977 Surface Mining Act of 1977, 30 U.S.C. 201 *et seq.*, as amended, as long as the violation resulted from an unanticipated event or

condition occurring on the remining site.

Mr. President, now I am seeking to make coal available that otherwise would be bypassed by providing a financial incentive for industry to extract and reprocess, in an environmentally sound manner, coal that remains within an eligible abandoned coal mine site. The Secretary of the Interior, working through cooperative agreements with the States, would be authorized to provide a fee credit to operators if the Secretary makes a finding that the cost to the reclamation fund to reclaim the abandoned site would significantly exceed the reclamation fees that would be credited to the operator for mining and reclaiming the abandoned site, and that the mining and subsequent reclamation of the site is in the public interest.

What I'm proposing saves the government money. Instead of laying out millions for Government-sponsored reclamation, we will get private industry to do it at a cost of no more than a few thousand in reclamation fees concessions. Moreover, many, if not most of the abandoned sites to be reclaimed in this way are beyond the foreseeable reach of conventional State and Federal reclamation programs. Despite the environmental blight these abandoned coal mine sites are responsible for, most of them rate too low on the priority scale for Government-financed reclamation.

Mr. President, reclamation of abandoned mine lands through remining is the most practical way to achieve reclamation of these orphan lands. The reclamation already accomplished through remining validates the concept. Now is the time to broaden the scope and enlarge the scale of remining's benefits by providing a modest concession in fees charged to operators in exchange for an immense reclamation bonus to the Nation.

Mr. President, I ask unanimous consent that the text of the two bills be printed in the RECORD.

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

S. 2519

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

ACQUISITION AND RECLAMATION OF LAND ADVERSELY AFFECTED BY PAST COAL MINING PRACTICES

SECTION 1. Section 401(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(c)) is amended by inserting "or landslides caused by past coal mining activities" after the phrase "land subsidence resulting from underground coal mining"."

SEC. 2. Section 407(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1237(c)) is amended by—

(1) inserting "or dwellings" after the phrase, "may acquire any land";

(2) inserting "or dwellings" after the phrase, "acquisition of such land"; and

(3) inserting "except paragraph 4" after the phrase, "to successful reclamation".

SEC. 3. Section 407(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1237(c)) is amended by striking the period at the end of paragraph (3); inserting "; or", and adding the following new paragraph at the end:

"(4) acquisition of any interest in the threatened site in lieu of performing reclamation activities, will protect the public health and safety, and will result in significant cost savings to the Abandoned Mine Reclamation Fund over performing emergency reclamation activities."

SEC. 4. Section 407(h) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1237(h)) is amended by striking the sentence stating: "No part of the funds provided under this title may be used to pay the actual construction costs of housing.", and inserting in lieu thereof: "Provided further, the Secretary or a State with an approved program, is authorized to utilize available funds to acquire comparable property, when necessary and when agreed to by the homeowner, and to relocate private residences that are threatened by past mining abuses in lieu of performing emergency reclamation activities at the site if such relocation will result in significant cost savings to the program over performing emergency reclamation activities, and safeguard the public health and safety.".

S. 2520

Be it enacted by the Senate and the House of Representatives the United States of Representatives America in Congress assembled.

ABANDONED MINE FEE CREDIT

SECTION 1. Section 402(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1322(a)) is amended as follows:

(1) Add the following after Sec. 402(a):

"(1) Except as provided in subsection 402(a)(2),".

(2) At the end of the paragraph add the following paragraph:

"(2) The Secretary may grant a credit to any operator for the reclamation fee otherwise required to be paid in section 402(a)(1) for coal within an eligible site, pursuant to section 404, as an incentive to operators, to remine areas if the Secretary finds that (1) the cost to reclaim the affected area under this title would significantly exceed the reclamation fee credit provided for the recoverable coal within the affected site and (2) the mining and subsequent reclamation of the affected site by a private operator is in the public interest. In a primary State, the Secretary shall administer the provision of this paragraph through a cooperative agreement with that State and shall obtain the recommendation of the State before granting the credit. The Secretary may require a bond to ensure repayment of the credit in the event the site is not fully reclaimed.".

By Mr. MCCONNELL:

S. 2522. A bill to amend the Federal Humane Methods of Livestock Slaughter Act to authorize the Secretary of Agriculture to regulate the commercial transportation of horses for slaughter, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE HUMANE AND SAFE COMMERCIAL TRANSPORTATION OF HORSES FOR SLAUGHTER ACT OF 1994

• Mr. MCCONNELL. Mr. President, today I am introducing legislation amending the Federal Humane Methods of Livestock Slaughter Act to regulate the commercial transportation of horses to slaughter facilities. This is an area of great concern to me, the horse industry, and animal welfare groups. I am pleased that my bill is supported by the American Horse Council, the American Association of Equine Practitioners, the American Horse Protection Association, the Society for Animal Protective Legislation, the American Humane Association.

Currently, some horses are being transported for long periods in overcrowded conditions without rest, food or water. Some vehicles used for transport have inadequate headroom and are not intended to transport large animals. Further, some of the horses transported have serious injuries which can be severely aggravated by the journey.

My legislation would give the Secretary of Agriculture the authority to correct these practices by regulating those in the business of transporting horses to processing facilities.

I want to make it clear that it is not my intention to either promote or prevent the commercial slaughter of horses. This industry has been in existence for a long time in this country, and I expect that it will continue to operate long into the future. My purpose in this legislation is to protect horses from unduly harsh and unpleasant treatment as they are transported across the country.

Horses occupy a central role in the traditions, history, and economy of Kentucky. Thousands of Kentuckians are employed either directly or indirectly by the horse industry. Horses have been good to Kentucky; and we should try to the maximum practical extent to be good to horses.

This bill would require that horses be rested off the vehicle after 24 hours, with access to food and water. Any vehicles used to transport the animals would have to have headroom of at least 6 feet 6 inches and interiors free of sharp edges. Transporting vehicles must be maintained in a sanitary condition, offer adequate ventilation and shelter from extremes of heat and cold, be large enough for the number of horses transported, and allow for the position of horses by sex and size. Finally, in order to be transported, horses must be physically fit to travel.

Enforcement of the act is placed with the U.S. Department of Agriculture, which presently regulates the slaughter process itself under the Humane Methods of Slaughter Act. The Department would be authorized to work with State and local authorities to enforce the provisions of this bill. This bill, while correcting abuses that exist, will not be an excessive burden on the processing facilities, auctions, or the commercial transporters of these horses.

Unlike other livestock, the transportation of horses to processing facilities

is often a lengthy process, because there are fewer facilities that handle horses and they are located in only a few areas. Moreover, not all of them operate on a full-time basis. The result is that the transporting of these animals requires special protection.

There are several States that have passed legislation to regulate the transportation of these horses, but most of the travel is interstate, across wide areas. This is why Federal legislation is needed. The shipment of horses over long distances in inappropriate trailers, without food or water, is unacceptable. This bill would extend Federal regulation to the commercial transport of horses to slaughter and assure the humane and safe conditions of that transport.

I invite all groups that are concerned about these horses to work with me in passing this legislation.•

By Mr. WALLOP:

S. 2523. A bill to amend the Internal Revenue Code of 1986 to permit certain foreign pension plans to invest in the United States on a nontaxable basis; to the Committee on Finance.

THE FOREIGN PENSION PLAN INVESTMENT ACT OF 1994

• Mr. WALLOP. Mr. President, increasing capital investment in America is vital to our efforts to improve our country's international competitiveness. A larger capital pool leads to increased innovation, which in turn stimulates productivity and income growth. Today, I rise to introduce a bill—similar to one I introduced back in 1981 with Senator MOYNIHAN, and to one I introduced in 1983 with then Senator, and now Treasury Secretary, Bentsen—which will increase capital investment in America by removing tax barriers now faced by foreign pension plans interested in long-term passive investments in U.S. industry and real estate.

Private pension systems in Great Britain, Holland, Japan, and other countries have hundreds of billions of dollars in assets but presently invest very little of that money in the United States. Our tax system is largely to blame for this lack of investment. The 30-percent withholding tax on investment income and the FIRPTA tax on real estate gains place a prohibitive tax burden on foreign pension plan investment here in the United States which does not exist in the plans' home countries.

Foreign pension plans are an excellent potential source of capital for the American economy. Increased U.S. investment by these plans would expand the available pool of capital for industrial, technological, and infrastructure growth. In this respect, the bill differs from many capital formation proposals of years past, which would have merely shifted capital already invested in the United States from one sector to another. U.S. investment by foreign pension plans also would have the distinct advantage of serving our capital needs without leading to foreign control of U.S. businesses. That is so because various provisions of our Federal securities laws, and diversification requirements imposed by the home countries of these plans effectively limit foreign control of U.S. business by foreign pension plans.

Recently, there has been some very disturbing evidence that capital investment in the United States from certain traditional sources has faltered in recent years. For example, the Commerce Department reported in May 1993 that new foreign direct investment in the United States hit a 10-year low in 1992; such investment fell by 47 percent from the year before, the fourth straight annual decline. The Washington Post reported only last month that American's personal savings rate fell by nearly half from 1970 to 1990. In February 1993 and April 1994, the Wall Street Journal indicated that the outflow of U.S. pension monies to the Far East was accelerating. Foreign pension plan investment in the United States would help make up the shortfall in the U.S. capital pool created by these trends.

U.S. taxes now levied on foreign pension plan investment here have also contributed to the fall in real estate sales and prices and the slowdown in new construction. Removing these tax barriers will give our real estate industry a needed stimulus and will go a long ways toward strengthening the entire economy.

Exempting foreign pension plans from U.S. tax will not give these plans special advantage. On the contrary, the bill will remove an inequity in the current tax treatment of U.S. and foreign plans. Today, the investment income and gains of qualified U.S. pension plans are exempt from U.S. tax. However, U.S. investment income of foreign plans, including dividends on equity investments in U.S. companies, rental income, and capital gains on U.S. real property, and earnings from insurance company investment accounts, is often subject to full taxation, even though the foreign plan is exempt from tax in its home country.

Present law prevents U.S. life insurance companies from economically offering to foreign pension plans investment accounts that lack annuity purchase features. A foreign plan administrator may not want annuity purchase features but will be forced to incur these costs because, without them, there is a significant tax penalty on the insurance company. Congress eliminated this problem for qualified U.S. pension plans in 1976. We should do the same for comparable foreign plans.

Mr. President, let me point out that foreign governments would be expected to reciprocate. That is, the President would have the power to withdraw the tax exemption from any foreign pension plan if the country in which the plan was formed refuses to reduce its taxes on U.S. pension plans. The bill is to be used as a carrot. And in the absence of reciprocation, the carrot should be a disappearing one.

Finally, Mr. President, because foreign pension plans are either not investing here on account of the present tax barriers, or are structuring their U.S. investments to minimize U.S. tax, the bill involves little or no revenue loss. In the long-term, the bill should raise revenue because increased long-term investment and a reinvigorated real estate industry will lead to increased GNP and higher Federal income tax collections. In addition, U.S. pension plans also should benefit from the bill because it would lead to an increase in the value of their U.S. investment portfolios.

Those, in essence, are the major arguments for this bill. Now let me discuss the principal provisions.

The bill would add a new subparagraph to section 501(c) of the Internal Revenue Code of 1986. A trust, corporation, or fund that is part of a foreign pension plan would be exempted from Federal income taxes if it passed four tests.

First, the plan of which the trust, corporation, or fund is a part, must meet the pension plan definition in section (3)(2) of ERISA.

Second, the plan's assets must be kept separately from the assets of the employer in accordance with the laws of the country where the plan is maintained.

Third, the income of the plan must be taxed at preferential rates, or not at all, in the home country.

Fourth, the plan must give benefits to a broad classification of employees, not merely highly compensated employees or owners.

The bill would also make clear that the tax exemption is to be subject to adjustment under section 896 of the Internal Revenue Code. Section 896(b) requires the President to act whenever he finds that a foreign country is taxing U.S. citizens or corporations more heavily than United States nationals of the same country. The President must ask the foreign country "to eliminate (the) higher effective rate of tax." And if that does not work, he "shall proclaim" that the U.S. taxes on the foreign nationals in question will be increased. The Senate and House must be given 30 days' notice.

Those are the key provisions. The bill would take effect with respect to income earned on or after January 1 of this year. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2523

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TAX EXEMPTION FOR CERTAIN FOREIGN PENSION PLANS INVESTING IN THE UNITED STATES.

(a) IN GENERAL.—Section 501(c) of the Internal Revenue Code of 1986 (relating to organizations exempt from tax under section 501(a)) is amended by adding at the end the following new paragraph:

"(26)(A) Except as provided in subparagraph (B), a trust, corporation, or fund which is formed pursuant to, or as part of, a foreign pension plan—

"(i) which is described in section 3(2) of the Employee Retirement Income Security Act (29 U.S.C. 1002(2));

"(ii) the assets of which are segregated from the assets of the employer or employers maintaining the plan pursuant to the laws of the foreign country in which such plan is maintained;

"(iii) the income of which is, under the laws of the foreign country in which the plan is maintained, exempt from tax or is subject to a lower rate of taxation than is generally imposed on other residents of such foreign country; and

"(iv) which provides benefits to a broad classification of employees, not merely highly compensated employees or owners.

If all of the assets of a trust, corporation, or fund are held for the benefit of one or more foreign pension plans described in this subparagraph, such trust, corporation, or fund shall be treated as described in this subparagraph.

"(B) The exemption provided by this paragraph shall be subject to adjustment under section 896 (relating to the adjustment of tax of nationals of foreign countries). The President shall, no later than January 1, 1996, report to Congress on the extent to which the President has exercised the authority under that section with respect to relief from foreign income taxes for plans described in section 401(a)."

(b) CONFORMING AMENDMENTS.—(1) Section 512(a)(2) of the Internal Revenue Code of 1986 (relating to the unrelated business taxable income of certain foreign organizations) is amended by inserting "or section 501(c)(26)" after "section 511".

(2) Clause (ii) of section 514(c)(9)(C) of such Code (relating to unrelated debt-financed income of qualified trusts) is amended by inserting "or any foreign pension plan described in section 501(c)(26)" after "section 401".

(3) Section 818(a) of such Code (relating to pension plan contracts of life insurance companies) is amended by striking "or" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting "; or", and by adding at the end the following new paragraph:

"(7) entered into with trusts, corporations, or funds which are formed pursuant to, or as part of, a foreign pension plan described in section 501(c)(26)."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1995.●

By Mr. HEFLIN:

S. 2524. A bill to amend chapter 23 of title 28, United States Code, to authorize voluntary alternative dispute resolution programs in Federal courts, and for other purposes; to the Committee on the Judiciary.

THE VOLUNTARY ALTERNATIVE DISPUTE RESOLUTION ACT

Mr. HEFLIN. Mr. President, I am today introducing legislation that would authorize our Nation's Federal district courts to adopt and utilize voluntary alternative dispute resolution programs.

The time has come for Congress and the Federal courts to realize that there must be alternative ways of settling disputes other than the traditional methods utilizing a Federal judge and jury. With criminal cases crowding the dockets, many litigants in civil cases, especially small businesses, simply cannot get their cases heard in a timely manner.

Recent statistics from the Administrative Office of the United States Courts indicate that a majority of cases in the Federal courts are civil cases and that the number of filings since 1990 has increased 9 percent. With criminal cases being put on a fast track, the time has come for Congress to assist the Federal courts in processing civil cases for the benefit of the American people.

Our Federal court system is one of the best in the world, and our judges work long hours to hear cases which come before them. I believe the approach that my legislation takes will bring the Federal courts into the 21st century ahead of schedule by expressing Congress' intent that if parties want to voluntarily settle their civil disputes by such methods as court annexed arbitration, mediation, early neutral evaluation, mini-trials, or summary trials, then they should be allowed to do so.

I am introducing this legislation as a result of a hearing which the Judiciary Subcommittee on Courts and Administrative Practice held last year on October 29, 1993. I am privileged to chair this subcommittee, and the hearing heard testimony from a number of distinguished witnesses including Judge Anne Williams, on behalf of the U.S. Judicial Conference; Judge Bill Wilson, U.S. District Court, E.D. Arkansas; Judge William Schwarzer on behalf of the Federal Judicial Center; U.S. Magistrate Judge Wayne Brazil, N.D. California; Judge Raymond Broderick, E.D. Pennsylvania; Stuart Grossman, on behalf of the American Board of Trial Advocates; Jack Watson, on behalf of the American Bar Association; and Dianne Nast, a practicing attorney in Philadelphia.

The focus of the hearing last year was to consider H.R. 1102, introduced by Congressman BILL HUGHES of New Jersey, which would require, not merely authorize, each of the 94 Federal district courts to adopt either a mandatory or a voluntary court-annexed arbitration program which would operate under the existing authority of chapter 44 (sections 651–658) of title 28 of the United States Code. H.R. 1102 would also increase the maximum amount in controversy for cases referred under the mandatory programs from $100,000 to $150,000.

In 1988, Congress enacted legislation to authorize the continuation of 10 pilot programs of mandatory court-annexed arbitration that were in operation in the Federal courts, and this legislation also authorized 10 additional pilot programs that would be of a voluntary nature.

This authorization was to terminate toward the end of last year, and H.R. 1102 would have made that authorization permanent and would have required each district court to adopt either a mandatory or a voluntary program of court-annexed arbitration. Because of strong concerns raised at last year's hearing regarding the mandatory nature of court-annexed arbitration, our subcommittee was unwilling to immediately go forward with H.R. 1102. Instead, S. 1732, which became Public Law 103–192, was introduced toward the end of last year which simply extended the existing authority for 1 year with regard to the 20 pilot districts utilizing court-annexed arbitration.

Recently, I, along with my colleagues Senators BIDEN, HATCH, GRASSLEY, and SPECTER, introduced S. 2407, the Judicial Amendments Act of 1994, to extend this authority for an additional 3 years until the end of 1997. S. 2407 was introduced and passed by voice vote on August 19, and it is now in the House of Representatives for consideration.

Let me return now to the hearing which the subcommittee held last year and which focused primarily on arbitration which is one of the programs of alternative dispute resolution as ADR is popularly called. Judge Ann Claire Williams of the U.S. District Court for the Northern District of Illinois appeared on behalf of the U.S. Judicial Conference which is the policymaking body of the Federal judiciary. The Judicial Conference has recommended that Congress should authorize all Federal district courts to have the discretion to utilize voluntary nonbinding court-annexed arbitration. Thus, the Judicial Conference did not recommend the expansion of mandatory court-annexed arbitration for the remainder of the Federal district courts.

The legislation which I am introducing today builds on the recommendation of the Judicial Conference by authorizing each of the 94 Federal district courts to adopt not only voluntary court-annexed arbitration but also other ADR programs, including but not limited to mediation, early neutral evaluation, mini-trials, summary jury, or bench trials.

My legislation also contains a provision that clearly states that "[a]n alternative dispute resolution program shall not in any way infringe on a litigant's right to trial de novo and shall

impose no penalty on participating litigants."

Over the last year, I have talked with many people from both the bar and the business community, and I believe that it is an undeniable fact that civil litigation in the Federal courts has become more complicated, time-consuming, and expensive. Further, the Speedy Trial Act, requiring criminal cases to proceed on a fast track, has resulted in delays in civil cases being considered by the Federal courts.

I want to make certain that the Congress clearly intends for our Federal courts to consider alternative means of dispute resolution, so that litigants can have a speedy and less expensive alternative to formal civil adjudication, consistent with the requirements of the seventh amendment to the U.S. Constitution. Where parties are willing to mutually participate in such alternatives, I believe there are merits that justify our support for such programs.

I hope that this legislation will be carefully considered by my colleagues, and I look forward to further discussion on its merits in the days ahead.

By Mr. LIEBERMAN (for himself, Mr. MACK, Mrs. BOXER, Mr. SMITH, Mrs. FEINSTEIN, Mr. ROBB, Mr. GREGG, and Mrs. MURRAY):

S. 2525. A bill to require a majority vote of the Securities and Exchange Commission for the adoption of accounting standards and principles used in the preparation of financial statements required under the Securities Exchange Act of 1934; to the Committee on Banking, Housing, and Urban Affairs.

THE ACCOUNTING STANDARDS REFORM ACT OF 1994

• Mr. LIEBERMAN. Mr. President, last May the Senate approved a sense-of-the-Senate resolution by a vote of 88 to 9 urging the Financial Accounting Standards Board [FASB] to drop their controversial project on accounting for employee stock options and stock purchase plans. However, more than 4 months later, it is quite clear that FASB has chosen to ignore the will of the Senate, to move forward with this project, and to implement a final rule by the first quarter of 1995.

I firmly believe that markets operate freely and efficiently only with full and accurate information. I also believe that financial statements must be credible and comparable, and that the accounting standards that drive financial reporting ought to be set by the private sector. Yet, FASB's choice to ignore the outcry from the pension fund managers, high-technology companies, individual investors, and the accounting profession in order to ram this proposal through has made many people think about how to improve the process by which accounting standards are adopted. I rise today for two purposes. First, I want to express my true discomfort over FASB's handling of this issue and the continuation of a process which, by any rational analysis, has run its course. Second, I rise to introduce the Accounting Standards Reform Act, legislation which is critical to bringing this problem to closure and crucial to correcting what I believe is a serious lack of accountability in the process for setting accounting standards.

I. THE ACCOUNTING STANDARDS REFORM ACT

Mr. President, the legislation I am introducing today, the Accounting Standards Reform Act, merely states that the Securities and Exchange Commission [SEC] shall approve by a majority vote, any new change in accounting standards for publicly traded companies. Currently, unless the SEC affirmatively rejects a FASB pronouncement, the standard becomes part of the Generally Accepted Accounting Principles [GAAP] and is applicable to all publicly traded companies. In other words, SEC silence is tantamount to SEC approval.

It's important to emphasize that this bill—unlike my earlier bill on this topic, S. 1175—does not specify the content of any financial standard, nor does it legislatively overturn any FASB standard. This bill only addresses the procedure that the SEC shall use to approve and enforce FASB standards in the future.

This legislation is entirely consistent with the intent of the Securities Exchange Act of 1934 and will help strengthen the private-sector standards setting process. It is not the intent of this legislation to diminish the legitimate role of the FASB. It is simply to bring back some accountability to the process.

II. OVERVIEW BACKGROUND

For the benefit of those not familiar with this debate, a stock option represents the future right of an employee to purchase a set number of company shares at a fixed price. Presuming the company does well and the stock price increases, the employee shares some of the benefit. But if the stock price remains constant or decreases, the employee gets nothing.

At present, stock options are accounted for in the same manner as other inherently difficult-to-value item—by disclosure. For example, since the cost of a pending law suit cannot be known in advance, current accounting rules—FASB 5—require the fact of the suit to be disclosed to investors. In the same way, since the value of an employee stock option depends on unknown variables, the proper accounting is full disclosure to the shareholders. This proposal would require companies to use a complex mathematical formula to estimate the value of an employee's option at the date of grant and to record that estimate as a reduction to earnings regardless whether the employee ever receives a benefit.

When FASB first issued their proposed rule on June 30, 1993, SEC Chairman Arthur Levitt urged Congress to let the FASB process run its course, and avoid the politicalization of the accounting standard setting process. His advice was sound because the public commentary collected during the process has made the case against FASB's draft proposal stronger than ever.

Mr. President, FASB's process has brought to life these facts about this proposal: First, this issue is about accounting, economic growth, and jobs—not about the level of CEO pay; second, FASB's proposal is not sound accounting, and it is almost universally opposed by all sides of the financial community; and third, any cost-benefit analysis requires a rejection of the proposal. Unfortunately, the Board is clearly determined to ignore these facts.

A. This is not about executive pay

First, the current accounting treatment for employee stock options is not the result of some conspiracy to enrich corporate executives. It is the result of a genuine accounting quandary. Moreover, this debate has nothing—nothing—to do with the level of executive compensation. This is one point where FASB and I are in compete agreement. FASB has pointed out over and over again that their proposal is about accounting, not pay. Let me quote Dennis Beresford, chairman of FASB in a recent interview with the Bureau of National Affairs: He states:

> Our project has gotten confused with the so-called excessive executive pay issue. Many of the articles that have been written, and some of the interested Members of Congress have focused, at least initially, on some people making too much money. Our project has gotten confused with that issue.

B. FASB's proposal is not sound accounting, and is near-universally opposed

Mr. President, this proposal is not sound accounting for the simple reason that placing an accurate estimate of the present value of an employees' stock option at the time the transaction takes place is impossible. It is true that the value of trade options can be estimated. But, comparisons between fixed employee stock options and traded options are invalid for four reasons: First, employee options are nontransferable, while market options are traded freely; second, employee options generally vest over a 5-year period and expire after 10 years, while market options generally have a life of only 3 to 6 months; and third, employee options are not liquid until they vest, while market options may be liquidated at any time. And, most important, there is no market for long-term, nonliquid employee stock options. Because of these differences, complex formulas designed to value exchange traded short-term options do not work

when applied to employee options. If the required formulas will be erratic and the values overstated, financial statements will be less useful to investors than they are today.

FASB has been inundated with testimony, letters, and studies criticizing their proposals. Their position is opposed by the overwhelming majority of the financial community including individual investors, institutional investors, pension funds, and the accounting professions; by both Commerce Secretary Brown and Treasury Secretary Bentsen; by the venture capital community; by the financial markets; by thousands of companies across the Nation; and by hundreds of thousands of employees.

Even those who agree with FASB's contention that options have value and ought to be expensed, invariably they still acknowledge that a reasonable and accurate measurement formula remains exclusive. Even the American Institute of Certified Public Accountants, representing more than 310,000 CPA's, opposed FASB's proposal saying it is "too complex and unreliable." Here are some of the other comments:

Letter from Secretary Brown and Secretary Bentsen:

> Most troubling is the possibility that implementation of the proposal might result in more volatile and less accurate and consistent financial statements because of the extreme difficulty of valuing long-term, nonmarketable, forfeitable stock options.

Testimony from the Council of Institutional Investors—representing hundreds of union and corporate pension funds:

> There is no group that has a greater interest in the principled right answers to accounting questions than we do. We are the people who invest real money—huge amounts of money—based upon what we read in financial statements. We are America's employees and America's retirees, and we will not get our pensions if we do not invest wisely based on accurate financial information. So no one will be hurt more than we if any other agenda—however virtuous—is pursued at the expense of the accuracy and usefulness of financial statements. This is real people's grocery money.

CII goes on to say:

> The exposure draft requires companies to put something in their financial statements that simply isn't true.

Letter from the United Shareholders Association—representing 65,000 individual investors:

> As investors and regular users of corporate financial reports, USA members are the very people the accounting rules are designed to protect. Our members oppose charging earnings for stock options. We do not believe FASB's proposal would clarify the reports we receive. In fact, we believe that including speculative estimates of future stock option values in corporate earnings statements diminishes rather than enhances their usefulness.

C. The cost outweighs the benefits

The FASB charter requires it to "promulgate standards only when the expected benefits exceed the perceived costs." Almost everyone who has seriously considered this proposal has concluded that the costs in terms of potential damage to the economy far outweigh any benefits. In fact, try as I might, I don't see any benefits which will flow from the FASB change.

We all agree that the goal of financial reporting should be to maximize the integrity and comparability of financial statements. But it is also apparent that purist accounting theory can be brought to illogical ends which benefit neither the investing public nor the economy as a whole. The stock option proposal is one such example. No one—let me say that again—no one is arguing that concerns over job creation justify bad accounting. But we are saying that an accounting standard ought not move forward if the economic consequences so clearly outweigh the accounting benefits. This case has been continually and persuasively made to FASB. Indeed, with the public comment period and the field hearings now behind us, we must conclude that the stock option project ought to be dropped in favor of a disclosure based alternative. To conclude otherwise simply ignores the extensive public record and makes a mockery out of FASB's public process.

III. IS THE PROCESS WORKING?

Mr. President, unfortunately, I am forced to conclude that one of the casualties of this debate may be the Board's credibility. Members of the financial community are justifiably starting to question FASB's process and the Board's accountability.

From the earliest days of this process FASB has regularly and continually prejudged the key issues. The central issues of this debate are: First, whether options and stock purchase plans are compensatory; second, whether options and stock purchase plans should be expenses on the income statement; and third, whether we can derive a reasonable estimate of their value. FASB has been willing to discuss the question of valuation, but has refused to discuss the questions of compensation, expense, or cost-benefit analysis.

Mr. President, fundamental requirements of due process and fair administrative procedure require that those affected by proposed regulations have a right to have their views heard and considered before the regulations are implemented. These basic principles apply to all issues under consideration, not just those issues which FASB wishes to discuss. FASB should not be permitted to artificially limit the scope of discussion to a narrow set of issues.

On the issue of process, FASB will soon be tested once again because it appears intent on adopting a standard even if the standard is flawed. At FASB's August 25th meeting, the Board explored the idea of changing the measurement date from grant date to vesting date to help solve some of the inherent difficulty in valuing options. But as the Board pointed out in its own exposure draft:

> The measurement date for equity instruments granted to employees as compensation is the date at which the stock price that enters into the measurement of the transaction is fixed. Stock price changes after that date have no effect on measuring the value of the equity instrument issued or the related compensation cost.

The exposure draft went on to argue:

> If compensation is measured at a later date, such as the date at which the shares vest, not even the approximate amount of compensation that would result from an award could be known when the employer decides how many shares to grant.

Now one would have to question why FASB is now revisiting approaches it has already considered and rejected. One can only guess that they are more interested in finding an answer than finding the right answer.

Mr. President, 2 weeks ago, 600 chief financial officers sent a letter to FASB which said:

> It is central to the FASB's deliberative process that the public be allowed to comment officially, on the record, on any material change to the existing exposure draft. Given the propensity of the Board to move forward with this project, and the highly complex and technical nature of the Board's current deliberations, we urge the FASB to reexpose its proposal.

The letter goes on to say:

> We hope you agree with us that given the controversial nature and the outpouring of sentiment in opposition to the exposure draft, the integrity of the Board's process dictates that FASB issue a new exposure draft.

It will be interesting to see now FASB will respond. If they make changes to either the measurement date or the measurement formula, the changes will be material and should be subject to another exposure draft. We will see, Mr. President, whether FASB plans to include the public in this process or whether they will continue to move forward in isolation.

Mr. President, allow me to highlight just one part of FASB's deliberative process which I found particularly disturbing. As part of the exposure draft the Board committed to perform a field test, ostensibly to measure the "effects of the exposure draft on individual companies" and to measure implementation issues. One of the most perplexing pieces of the field test was FASB's utter failure to include small growth companies. Only 2 of FASB's 25 participants—8 percent—had revenue of less than $100 million, while almost 60 percent of the companies in the SEC database have revenues in this category. Conversely, large companies—those with revenue of more than $5 billion—accounted for 52 percent of FASB's sample group while these firms represent only slightly more than 3 percent of publicly traded companies. When asked about this distortion,

FASB responded that the existing sample was sufficient for testing purposes. How can this be sufficient when the sector of the economy most affected by the proposal was barely considered?

Each of the Big Six accounting firms recently signed a letter to FASB which stated:

We believe that expanding the effort and spending significant additional time trying to develop a reasonable and reliable measurement method, including the recently announced decision to reconsider finalizing measurement at the vesting date, would not be a productive use of the Board's limited resources. The Board's resources could be put to far better use working on more critical financial reporting issues, such as accounting for derivatives and other financial instruments.

Mr. President, to watch FASB deliberate on this issue for another 6 months, no matter what the outcome, would merely confirm what many have alleged. The process is designed to yield only those outcomes which FASB prescribes.

Mr. President, what has occurred in this debate is not a deliberative process, but a lack of governance. The existing exposure draft is fatally flawed. Its option-pricing models have proven unworkable. This process should end. FASB's efforts at this juncture will undermine—not advance—the private sector standard setting process. Indeed this debate has demonstrated that the threat to the private sector accounting standard setting process is real. I believe that this threat will not come from Congress, but from the private sector itself. An accounting system which is based upon Generally Accepted Accounting Principles, cannot continue in an environment of general unacceptance.

IV. FASB'S MYTHS

A. Myth 1: There will be no real impact on the economy

Mr. President, one of FASB's regular arguments is that there will be no impact on the economy, this is just an accounting change. The Board says the market will learn to overlook these charges and discern the true nature of the companies earnings. They regularly cite the accounting change regarding post-retirement health benefits and argue that many large companies experienced a large reduction in earnings which in some cases resulted in an increase in stock price. Presuming a thoroughly efficient marketplace, this could be true for the Fortune 500, but nearly 50 percent of all NASDAQ stocks are never followed by any analyst. These companies—the smaller, more volatile, job-creating companies—will be seriously impacted. What the Board does not understand—and this came shining through in the field test—is that this is not about the Fortune 500. This is about the growth sector of the economy. The result of this change will be lower earnings which will impact the ability of these firms to raise capital and will curtail their ability to offer options to a broad-base of their workforce.

B. Myth 2: S&L crisis

Mr. President, shortly after the Senate passed my resolution last May, the Financial Accounting Standards Board sent a letter to all 535 Members of Congress. Let me quote from the letter:

We invite your attention to the record of attempts to tilt accounting information in promoting social and economic goals. Experience has shown that manipulating accounting information does more harm than good. Regulatory accounting for the savings and loan industry is one prominent example.

Mr. President, this is just plain nonsense. Clearly there is no defense for Regulatory Accounting Practice [RAP] accounting adopted during the S&L debacle. But there is absolutely no comparison between accounting for stock options and the collapse of the savings and loan industry. No one seriously contends that companies are fraudulently hiding their imminent collapse through their accounting for stock options.

C. Myth 3: This really like other accounting debates

FASB claims is has no responsibility to take the economic impact of its actions into account. And, they argue that Congress should not become involved in the standard setting process. Generally speaking, I agree with both points. However, do not be fooled into thinking that this is like past accounting debates, despite FASB's attempt to raise the stakes of this proposal. This debate is not about post-retirement health benefits, unfunded pensions, or thrift accounting. There is no comparison because in this case, there are not identifiable victims of the present accounting approach. In fact, the very people who should benefit from accounting rules—investors—are crying out against this proposal.

Myth 4: There is a problem with current financial statements:

FASB states that "Current accounting produces financial statements that are neither credible nor representational faithful." This statement—like the statement comparing this debate to the Savings and Loan crisis—is an outrageous exaggeration of the facts. Let me quote Jim Bunt, Comptroller of General Electric, at last year's Senate hearing testifying on behalf of the Financial Executives Institute:

I can assert that during the past 20 years, not one share owner, securities analyst, not one member of the business press, has ever suggested that my Company's financial statements are flawed or misleading as a result of our accounting for employee stock options.

This is simply not an area in which the public needs nor wants a complex new formula.

Myth 5: Stock purchase plans:

Mr. President, one other issue I would like to mention falls into the category of what FASB does not say rather than what they do say. This exposure draft explicitly applies to section 423 plans, commonly known as employee stock purchase plans. These plans, by statute, are broadly disseminated throughout the company work force. FASB does not wish to talk about these plans because it is convenient to allow the CEO pay perception to fester. Instead, what's really at stake are employee dreams of owning a piece of the company they work for. Simply stated, the hundreds of thousands of employees who participate in stock purchase plans will lose an important part of their livelihood if this rule goes forward.

V. IS THERE A ROLE FOR CONGRESS?

Pursuant to the Securities Exchange Act of 1934, Congress granted the Securities and Exchange Commission broad statutory authority to ensure the integrity and effectiveness of our capital markets. I agree that the private sector is best suited to deal with these difficult and often controversial issues. Historically, the SEC has looked to the private sector to promulgate accounting standards for U.S. companies. However, it is the SEC's acceptance of these standards which gives them standing in the financial community. Let me quote from FASB's publication, An Introduction to the FASB:

Throughout its history, the SEC has relied on the private sector for this function [setting accounting standards], to the extent that the private sector demonstrates an ability to fulfill the responsibility in the public interest. The SEC and congressional committees maintain an active oversight of the FASB to ensure that the public interest is served.

Clearly, Mr. President, it is desirable for the SEC to defer to the private sector in matters of financial accounting. But it is also clear that the SEC, as well as the Congress, have not—and should not—give up legitimate oversight responsibilities. That is, FASB knows this, but more importantly, that is what the law says. Congress granted responsibility to set accounting standards to the SEC because they are an independent, but accountable, commission charged to act in the public interest. We did not grant this authority to a nonaccountable private board.

VI. WHERE SHOULD THE PROCESS GO FROM HERE?

Mr. President, at this juncture of the debate there is only one logical and legitimate outcome. The SEC should immediately adopt a disclosure-based alternative to FASB's proposal. From the SEC perspective, the marketplace has yet to receive any meaningful information regarding an individual company's use of option plans. The SEC can move forward independently with disclosure on the financial statements. SEC Chairman Arthur Levitt can and should justify this move in defense of small investors and institutional investors. FASB could then take as much

time as it needs to develop an option valuation formula which is truly generally accepted.

FASB'S FLAWED FIELD TEST: LOOKING IN THE WRONG PLACE

Revenue	No. of stock option plans	Percentage	FASB field test	Percentage
Less than $100 million	3,656	59.06	2	8
$100 million to $249.99 million	864	13.96	4	16
$250 million to $499.99 million	566	9.14		
$500 million to $1.99 billion	665	10.74	[1] 6	24
$2 billion to $4.99 billion	247	3.99		
More than $5 billion	192	3.10	13	52
Total	6,190		25	

[1] The Financial Accounting Standards Board field test included only one category for companies with annual revenues of $250 million to $5 billion. According to the FASB field test there were six companies which fit this category. As a result, the three SEC categories $250 million to $499.99 million; $500 million to $1.99 billion; and $2 billion to $4.99 billion were combined.

Sources: The Disclosure, Inc. database (SEC data represents publicly-traded companies listed as of March, 1994); Financial Accounting Standards Board Field Test, Accounting for Stock Based Compensation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2525

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Accounting Standards Reform Act of 1994".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) under the Securities Exchange Act of 1934, the Congress granted the Securities and Exchange Commission (hereafter in this Act referred to as the "Commission") broad authority to set financial accounting and reporting standards for publicly held companies;

(2) historically, the Commission has delegated such responsibility to the private sector, to the extent that the private sector demonstrates an ability to fulfill such responsibility in the public interest; and

(3) although the Commission has reserved the right to disapprove standards proposed by the private sector, a more affirmative process in needed to ensure that the public interest is protected.

(b) PURPOSES.—The purposes of this Act are—

(1) to clarify the Securities Exchange Act of 1934 with regard to the Commission's responsibility in setting financial accounting and reporting standards for publicly held companies; and

(2) to ensure that the public interest is served in the financial accounting standards setting process.

SEC. 3. ADOPTION OF ACCOUNTING STANDARDS AND PRINCIPLES FOR PURPOSES OF THE SECURITIES EXCHANGE ACT OF 1934.

Section 13(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(1)) is amended by adding at the end the following: "On and after the date of enactment of the Accounting Standards Reform Act of 1994, any new accounting standard or principle, and any modification to an existing accounting standard or principle, to be used on the preparation of financial statements required to be filed pursuant to this title shall become effective only following an affirmative vote of a majority of a quorum of the members of the Commission.".●

By Mr. HARKIN (for himself and Mr. SIMON):

S. 2526. A bill to prohibit any charges on telephone bills for calls to 800 numbers; to the Committee on Commerce, Science, and Transportation.

THE TOLL-FREE 800 NUMBER PROTECTION ACT

Mr. HARKIN. Mr. President, I want to speak about a problem being faced by families across the country—a problem that has cost families hundreds and even thousands of dollars. This problem exposes families to rip-off schemes in their own homes. Worst of all, young people are being exposed to dial-a-porn phone sex services, even when the families take the step of placing a block on extra-cost 900 number calls from their home.

Most people believe that when they dial 1-800 at the beginning of a call, they are calling toll free. Toll-free 800 number calling has had a dramatically positive impact on many businesses, allowing catalog sales to take off, and providing helpful customer services. My State of Iowa is prominent in providing these telemarketing services. So I strongly believe that we must ensure public confidence in toll-free 800 numbers.

Federal law prohibits most practices that would allow people calling an 800 number to be charged for the call. Callers cannot be assessed a charge by virtue of completing the call, and they cannot be connected to a pay-per-call service—which are usually called 900 number services. They also cannot be charged for information conveyed during the call—with one exception. If there is a preexisting agreement to be charged, a charge is allowed. This provision was added, because there was concern that the provision might be read to prevent people buying merchandise with a credit card on an 800 number, or for nationwide access numbers for long distance providers.

Unfortunately, Mr. President, this small loophole has allowed some sleazy operators to set up phone sex services on 800 numbers—and to make the caller pay the bill. They use the loophole allowing a charge when there is a preexisting arrangement to turn a toll-free 800 number call into a toll call.

Families are being hurt by these services. Youngsters run across the ads, like the ads shown on this exhibit, and thinking the call will be free, call numbers like 1-800-HOT TALK. These numbers appear in all kinds of publications—from the City Paper here in Washington; Rolling Stone magazine; and a host of adult magazines. The ads on this exhibit were the least offensive ones we could find. The worst ones could not be displayed here.

A woman from Fort Dodge, IA, recently wrote to me about this problem. I will not give out her name in the interest of her privacy. Her 16-year-old son was found to be using phone sex services. She has tried putting phone blocks on to prevent him from calling 900 numbers and international numbers. But these 800 numbers cannot be blocked. She says, Why can't this be stopped? Why are the phone companies handling these lines? The answer to her question is, the phone companies are common carriers. They are not allowed to discriminate based on the content of calls. Only by congressional action can we put a halt to these outrageous practices.

Here's how the companies do it. A caller calls an 800 number. He or she is directed to enter an access code, in order to be connected to a service—without knowing that, by entering the number, they are authorizing the service to charge for the call. Another scam is for the call to be switched to international numbers in small countries around the world. Phone sex companies set up in these companies, where local law allows them to receive a cut from the charges. One service operated out of Suriname charges some $50 per minute.

Under another so-called preexisting agreement, the first call from a number establishes the agreement, and subsequent calls are charged to the phone number the first call was made from. This means that anyone making a telephone call from your phone could make you liable for hundreds of dollars of calls—even if the person never makes another call from that phone. A person making a call from a model can set up one of these agreements with a phone-sex service, and the motel could be forced to pay for subsequent calls from anywhere in the country. At the Motel 6 chain alone, porn calls have cost a quarter of a million dollars in the last year. In our own offices here at the Senate, a courier who uses the courtesy telephone, supposedly to call his dispatcher, could charge phone-sex calls back to your office account.

How many people are concerned about this problem? All you need to know is how many families have signed up for 900 number blocking. These families have said that they have no intention of using pay-per-call services. In Iowa, about one in four lines are restricted from calling 900 numbers, most of which are homes, rather than businesses.

Recently, the Federal Communications Commission took action to clamp down on these services. It would require that the service providers have a written agreement with the person being billed. While this is a first step, it will not eliminate the problem. When you look at the tiny loophole in the law that allowed the abusive practices I just described, I feel that Congressional action is needed to slam the loophole shut, once and for all.

Today, I am offering a bill that would prohibit this abuse. My bill, a companion to which has been introduced by my House colleague, Representative

BART GORDON of Tennessee, would simply clarify that the loophole does not allow charges to be placed on the phone bill. It would have no impact on the 800 number services that have made all of our lives more convenient, and helped our businesses grow. While we obviously will not have time to fully consider this legislation in this Congress, I wanted to start a discussion of it so that it can be acted on promptly next year. I believe we must act to stop this abuse.

I ask unanimous consent that a copy of the bill and a recent article in the New York Times on this subject be included in the RECORD.

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

S. 2526

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds the following:

(1) Reforms required by the Telephone Disclosure and Dispute Resolution Act (Public Law 102-556) have improved the reputation of the pay-per-call industry and resulted in regulations that have reduced the incidence of misleading practices that are harmful to the public interest.

(2) Among the successful reforms is a prohibition on charges being assessed for calls to 800 telephone numbers or other telephone numbers advertised or widely understood to be toll free.

(3) Nevertheless, certain interstate pay-per-call businesses are taking advantage of an exception in the prohibition on charging for information conveyed during a call to a "toll-free" number to continue to engage in misleading practices. These practices are not in compliance with the intent of Congress in passing the Telephone Disclosure and Dispute Resolution Act.

(4) Therefore, it is necessary for Congress to clarify that its intent is that charges for information provided during a call to an 800 number or other number widely advertised and understood to be toll free shall not, under any circumstances, be included or transmitted with a bill for telephone services.

SEC. 2. AMENDMENT TO THE COMMUNICATIONS ACT OF 1934.

(a) AMENDMENT.—Section 228(c)(6)(C) of the Communications Act of 1934 (47 U.S.C. 228(c)(6)(C) is amended by inserting before the semicolon the following: ", except that nothing in this paragraph shall permit the calling party to be charged for the information or the call by means of a charge included on, or transmitted with, a bill for telephone exchange service or telephone toll service".

(b) REGULATIONS.—The Federal Communications Commission shall revise its regulations to comply with the amendment made by subsection (a) of this section within 30 days after the date of enactment of this Act.

[From the New York Times, Thursday, Aug. 18, 1994]

1-800-$$$-$$$$

True or false? Calls to 800 numbers are free.

Mostly true, but there is a loophole. Some 800-number calls carry a charge, sometimes steep, and the caller is probably not aware of it. A lot of duped customers are angry, to the point where phone companies are finally cracking down, the Federal Communications Commission has proposed some new rules and Representative Bart Gordon of Tennessee has a bill that would ban the charges outright.

The trouble stems from a 1992 law to curb abuses on 900-number calls. That law also said 800-number calls shall be toll-free. However, in case toll-free was taken to mean, for example, that a catalogue company could not charge for a shirt sold over its 800 line, the law says it is all right to charge for the business transacted so long as there is an agreement—for example, where the caller has contracted for a computer information service on an 800 line, or where the caller gives a credit card number to order that shirt.

The loophole was not meant for pornography, psychics, sports lines and others scheming to exploit it. They work their trickery by answering with a recording that tells callers to punch a numerical "code." The code is deemed an agreement to pay; once punched in, it transfers the call to a pay-per-call number, sometimes overseas. The charge then appears on the caller's bill.

The F.C.C. now proposes that callers must give written agreement to pay for a service that charges for 800 calls. Representative Gordon's bill seems simpler and surer: Permit no charges on telephone bills for calls placed to 800 numbers. That would cut off the money and, pretty quickly, the service. If a business wants to charge for phone services, it can get a 900 number, or put the charge on the caller's credit card, or bill the caller directly.

By Mr. MURKOWSKI:

S. 2527. A bill to amend section 257(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 to modify the treatment of losses from asset sales; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

THE ASSET SALE BUDGET RULES ACT OF 1994

• Mr. MURKOWSKI. Mr. President, I introduce legislation that would modify the budget rules governing the sale of Federal assets. It is my hope that Congress next year will review many of the perverse and unintended effects of our budget rules and consider including this legislation in a budget process reform package.

Under current law, the sale of an asset does not alter the deficit or produce any net deficit reduction in the budget baseline. My legislation maintains this principle. Although an asset sale would not be counted in calculating the deficit, future revenue generated by the asset which the Government would have received if the asset had not been sold could be offset by the revenue generated from the sale. I want to emphasize that this rule is narrowly crafted so that revenue gained from an asset sale could not be used to offset a separate revenue losing program.

Mr. President, the current budget rules governing asset sales make it nearly impossible for the Federal Government to sell assets. For example, during the last several years, both the Bush and Clinton administrations have sought to sell the Alaska Power Administration [APA]. The Department of Energy (DOE) has entered into sale agreements and negotiated a price of more than $80 million for these electric generating assets.

Unfortunately, legislation needed to implement this sale has been delayed for several years, in part because of the budget rules governing asset sales. Since the APA takes in approximately $11 million per year from the sale of electricity, under our pay-as-you-go rules, the sale if scored by the Congressional Budget Office [CBO] as losing the Federal Government $11 million annually. In other words, even though the Federal Government will receive upfront more than $80 million by selling the APA, our budget scoring rules require that the sale proceeds be ignored, but that the stream of lost future revenues be counted.

The end result of these rules is that for the sale to proceed, the lost $11 million per year must be offset by other unrelated spending reductions. This is Alice-In-Wonderland accounting that has no relationship to the real world. Presumably, the Department of Energy negotiated what it believed was a fair price for the APA assets. Certainly DOE factored in the amount of revenue that will no longer be coming to the Federal Government as a result of the sale as well as the fact that the Federal Government will no longer have to staff and maintain these operations. Yet when it comes to Congressional budget scoring rules, all that is counted is the lost stream of future revenues.

The legislation I am introducing today would rationalize the asset sale rules by allowing the price the Federal Government receives from the asset sale to offset future revenue lost as a result of the transfer of the asset from the Government to private parties. Thus, in the APA example, if over the next 5 years, it is assumed that electricity sales from APA would generate $11 million per year, $55 million over 5 years, for purposes of the Budget Act, the $83 million sales price could offset the $55 million loss of revenue to the government. And I want to emphasize that under my legislation, the remaining $28 million associated with the sale could neither count toward deficit reduction, nor could it be used to increase spending in any other program.

I look forward to working with the members of the Budget Committee to resolve the current asset sale anomaly. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2527

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. OFFSETTING LOSSES FROM ASSET SALES.

Section 257(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking the semicolon at the end thereof and inserting the following: ". Effective beginning fiscal year 1995, the proceeds from the sale of an asset may be applied to offset the loss of any revenue or receipts resulting from such sale.".●

By Mrs. FEINSTEIN (for herself, Mr. SASSER, and Mr. PELL):

S. 2528. A bill to improve and strengthen the child support collection system; to the Committee on Finance.

THE CHILD SUPPORT RESPONSIBILITY ACT

Mrs. FEINSTEIN. Madam President, I rise today to join with Senators SASSER and PELL to introduce legislation that will provide comprehensive reform of our Nation's system of child support.

The Child Support Responsibility Act is companion legislation to a measure which has been introduced in the House of Representatives and which has been moving quickly in several committees with strong bipartisan support.

This legislation builds upon legislation which was introduced by Senator BRADLEY last year, and which was based on the recommendations of the U.S. Commission of Interstate Child Support. I was proud to be a cosponsor of that bill, and I want to take this opportunity to commend the Senator from New Jersey for his early leadership in this area.

In this Nation, one in four children grow up in poverty. One of the principal reasons for this is the absence of child support. According to the Department of Health and Human Services, in 1990, noncustodial parents paid a total of $14 billion in child support.

However, the Department reports that, if child support orders had been established, based on the absent parents' ability to pay, and if those orders had been enforced, $48 billion would have been paid that year. That is an annual shortfall of $34 billion, $34 billion that could be paid each year—and $34 billion that is not paid, and that does not reach the children of those absent parents. In California alone, $3 billion goes uncollected each year.

Madam President, this is a national disgrace.

The annual cost of AFDC to Federal and State governments is $22 billion. In July, in testimony before the Senate, Mary Jo Bane, Assistant Secretary for Children and Families at the Department of Health and Human Services, acknowledged that a substantial increase in child support collections would yield a reduction of 25 percent in AFDC payments.

But this problem is not limited just to AFDC recipients. In that same hearing, the Children's Defense Fund testified that the nonwelfare caseload of child support agencies around the country has quadrupled, from 1.7 million in 1983, to 6.5 million in 1992.

The Children's Defense Fund also reported another statistic. And this, I must say, is a statistic which absolutely confounds me. According to the Children's Defense Fund, in 1992 the default rate for used car loans was less than 3 percent. However, the delinquency rate for child support was 49 percent in 1990.

What does this say about our society?

What it says to me is that people care more about their cars than they do about their children. And this is a very sad commentary indeed. But it also says to me that the time has come for the Federal Government to assert its jurisdiction over a worsening national problem. In fact, almost one-third of unpaid child support is due from parents living in another State, and without adequate interstate enforcement, noncustodial parents can simply become child support scofflaws.

As I stated before, it is a national disgrace that these parents are allowed to willfully shirk their obligations to their families and to society. Even if parents walk away from their families, they should not be permitted to walk away from the law. And our laws should have teeth in them. The message should be loud, and it should be clear: "No longer will you burden the taxpayer with your obligations; if you run, we will find out."

And that is precisely what this legislation does. This legislation will create a new Federal registry of child support orders issued by State courts. In addition, a new W-4 form is created which contains child support information indicating if child support is owned, to whom it is payable, and whether it is to be paid through wage withholding.

This new W-4 form will be filed with Federal Child Support Registry where data will be compared to the information on file and transmitted to the State registry where the noncustodial parent is employed.

States are also required to establish child support registries. They will transmit wage withholding orders to employers, receive funds from employers that have withheld wages, and distribute all funds received within 3 days.

In addition, this legislation provides for reconciliation of child support payments on Federal income tax returns. Withheld child support will be shown on a revised W-2 form. Arrearages will be deducted by the Internal Revenue Service from any refund due and funds will be forwarded to State registries.

Social Security numbers will be required on marriage licenses, divorce decrees, parentage decrees, and birth certificates.

Let me turn for a moment to the issue of parentage. We know that, more and more, ours is a society which, over the past few decades, has witnessed a dramatic increase in the number of families headed by one parent. In fact, in 1991, 14.6 million children lived in a female-headed family. Of those, 56 percent were living in poverty. And for most children born to single mothers, paternity is not established.

There are many who question what has happened to our family structure, and we know these circumstances are complex and not without controversy. Indeed, many wonder what, if anything, government can or should do about it.

There is, however, one thing upon which I think we can all agree. Irrespective of their marital status or living arrangement, both parents must be held accountable for their children. This is impossible if paternity is never established.

Therefore, this bill strengthens our ability to establish paternity early on. States will be required to provide for hospital-based paternity establishment. It is widely believed that the most likely time for voluntary acknowledgment of paternity is in the days immediately following birth, when there is the initial euphoria around the birth and the baby's father will often visit mother and child in the hospital.

In this legislation, we outline procedures and specify information which must be given to each of the parents about their rights and responsibilities. This information includes the availability of genetic testing.

A new National Paternity Acknowledgment Affidavit is created for voluntary acknowledgment and, after an initial 30-day challenge period, this document will be conclusively presumed to create a legal finding of paternity with the effect of a final judgment at law.

And so, with these new registries, and with strengthened paternity establishment procedures, we will have the tools and information to monitor, at the Federal and State levels, the payment record of the noncustodial parents. And this legislation says: "You'd better pay your child support." If you don't, we'll make you pay with tough new enforcement measures. We will track you from employer to employer, and State to State, and we will make you pay. We will garnishee your wages if necessary, across State lines if necessary. We will reconcile your payment record with your income tax return, and if you owe child support, we'll deduct it from any refund due.

And if you still don't pay, we will take away your driver's license. We will take away your business license or your professional license. If you are a doctor, or a lawyer, or a member of any profession requiring State or Federal licensing, you will pay your child support or you will lose your license. You

can forget about foreign travel because we won't issue you a passport.

And those cars, about which you care so much? We will even place a lien on your vehicle title until you have paid your child support. We'll attach your bank account. We will seize your State lottery winnings, your insurance settlements, any judgments you may win, and any bequests you may inherit. And we'll also file a report with the credit bureau.

This law will apply to everyone. It applies to those in the private sector, as well as Federal workers and members of the armed services. Garnishment will be authorized not only for wages but also for Federal death benefits and veterans' benefits.

Finally, this legislation will establish a stronger Federal role. It creates a new Assistant Secretary of Child Support Enforcement, reporting directly to the Secretary of Health and Human Services, and confirmed by the Senate. The Secretary is directed to study the staffing of each State's child support enforcement program and report to Congress within 1 year of enactment of this legislation.

Demonstration projects are established in four States to create a system of assured minimum child support payments. And a new children's trust fund is established which allows for voluntary contributions from taxpayers on their Federal tax returns. This fund will be dedicated to programs aimed at the prevention of child poverty.

Madam President, years of study have gone into our Nation's failed child support system. There is consensus on the steps that need to be taken to overhaul that system. There are those who believe that child reform should be coupled with welfare reform. That is not my view. We have consensus, and our children cannot wait.

Our Nation and its children are being cheated by irresponsible parents. We cannot wait for welfare reform to right this wrong. It takes two people to bring a child into this world, and two people must be held responsible.

This is legislation whose time has come.

Madam President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2528

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Child Support Responsibility Act of 1994".

(b) REFERENCE TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, wherever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; reference; table of contents.

TITLE I—LOCATE AND CASE TRACKING

Sec. 101. Federal child support order registry.
Sec. 102. Expansion of Federal parent locator systems.
Sec. 103. National reporting of employees and child support information.
Sec. 104. State role.
Sec. 105. Reconciliation of child support obligation and payments on income tax return.

TITLE II—ESTABLISHMENT

Sec. 201. Service of process on Federal employees and members of the armed services in connection with proceedings relating to child support and parentage obligations.
Sec. 202. Presumed address of obligor and obligee.
Sec. 203. Fair Credit Reporting Act amendment.
Sec. 204. National child support guideline commission.
Sec. 205. Duration of support.
Sec. 206. Evidence.
Sec. 207. Telephonic appearance in interstate cases.
Sec. 208. Uniform terms in orders.
Sec. 209. Social security numbers on marriage licenses, divorce decrees, parentage decrees, and birth certificates.
Sec. 210. Administrative subpoena power.
Sec. 211. Support orders outreach and demonstrations.
Sec. 212. Health care support.
Sec. 213. Rules governing modification of child support orders.

TITLE III—PARENTAGE

Sec. 301. Paternity establishment procedures.

TITLE IV—ENFORCEMENT

Sec. 401. Direct wage withholding.
Sec. 402. Priorities in application of withheld wages.
Sec. 403. Additional benefits subject to garnishment.
Sec. 404. Consumer Credit Protection Act amendments.
Sec. 405. Prohibition against use of election of remedies doctrine to prevent collection of child support.
Sec. 406. Hold on occupational, professional, and business licenses.
Sec. 407. Driver's licenses and vehicle registrations denied to persons failing to appear in child support cases.
Sec. 408. Liens on certificates of vehicle title.
Sec. 409. Attachment of bank accounts.
Sec. 410. Seizure of lottery winnings, settlements, payouts, awards, and bequests, and sale of forfeited property, to pay child support arrearages.
Sec. 411. Fraudulent transfer pursuit.
Sec. 412. Full IRS collection.
Sec. 413. Tax refund offset program expanded to cover non-AFDC post-minor children.
Sec. 414. Attachment of public and private retirement funds.
Sec. 415. Reporting of child support arrearages to credit bureaus.
Sec. 416. Elimination of statutes of limitations in child support cases.
Sec. 417. Interest.
Sec. 418. Bankruptcy.
Sec. 419. Federal government cooperation in enforcement of support obligations of members and former members of the Armed Forces.
Sec. 420. States required to enact the Uniform Interstate Family Support Act.
Sec. 421. Denial of passports to noncustodial parents subject to State arrest warrants in cases of nonpayment of child support.
Sec. 422. Denial of Federal benefits, loans, guarantees, and employment to certain persons with large child support arrearages.
Sec. 423. States required to order courts to allow assignment of life insurance benefits to satisfy child support arrearages.
Sec. 424. Interests in jointly held property subject to assignment to satisfy child support arrearages.
Sec. 425. International child support enforcement.
Sec. 426. Nonliability for depository institutions providing financial records to State child support enforcement agencies in child support cases.
Sec. 427. Cost-of-living adjustment of child support awards.
Sec. 428. Annual exchange of financial information by parties to child support order.
Sec. 429. Criminal penalties for failure to pay child support.

TITLE V—COLLECTION AND DISTRIBUTION

Sec. 501. Priorities in distribution of collected child support.
Sec. 502. State claims against noncustodial parent limited to assistance provided to the child.
Sec. 503. Fees for non-AFDC clients.
Sec. 504. Collection and disbursement points for child support.

TITLE VI—FEDERAL ROLE

Sec. 601. Placement and role of the Office of Child Support Enforcement.
Sec. 602. Training.
Sec. 603. Staffing.
Sec. 604. Child support definition.
Sec. 605. Technical correction to ERISA definition of medical child support order.
Sec. 606. Audits.
Sec. 607. Establishment of child support assurance demonstration projects.
Sec. 608. Children's Trust Fund.
Sec. 609. Study of reasons for nonpayment of child support; report.
Sec. 610. Study of effectiveness of administrative processes; report.
Sec. 611. Compendium of State child support statutes.
Sec. 612. Establishment of permanent child support advisory committee.

TITLE VII—STATE ROLE

Sec. 701. Advocation of children's economic security.
Sec. 702. Duties of State child support agencies.
Sec. 704. Administrative process for change of payee in IV-D cases.
Sec. 705. Financial incentives.
Sec. 706. Avoidance of conflicts of interest.

TITLE I—LOCATE AND CASE TRACKING

SEC. 101. FEDERAL CHILD SUPPORT ORDER REGISTRY.

(a) ESTABLISHMENT.—Not later than October 1, 1995, the Secretary shall establish a

Federal registry of child support orders issued or modified by any State court or administrative process established under State law.

(b) COMPARISON OF INFORMATION ON W-4 FORMS WITH INFORMATION IN CHILD SUPPORT ORDERS.—Within 10 days after the registry established under subsection (a) receives a W-4 form of an employee, the registry shall—

(1) compare the information on the form with the information in the registry on the child support obligations of the employee; and

(2) transmit to the registry established under section 466(a)(12) of the State in which the employee is employed a notice as to whether the amount specified on the W-4 form as the monthly child support obligation of the employee is accurate or not.

(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out this section, especially in cases involving an employee who has 2 or more employers or child support obligations.

(d) STATE ACCESS TO THE REGISTRY.—The Secretary shall, upon request of any State, provide the State with access to the information contained in the registry established under subsection (a).

(e) DEFINITIONS.—As used in this section:

(1) CHILD SUPPORT ORDER.—The term "child support order" means an order requiring payments for support and maintenance of a child or of a child and the parent with whom the child is living (including an order requiring health insurance to be provided to such a child or parent).

(2) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(3) STATE.—The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

SEC. 102. EXPANSION OF FEDERAL PARENT LOCATOR SYSTEMS.

(a) EXPANSION OF FUNCTIONS.—Section 453(a) (42 U.S.C. 653(a)) is amended by striking "enforcing support obligations against such parent" and inserting "establishing parentage, establishing, modifying, and enforcing child support obligations".

(b) ACCESS TO ADDITIONAL DATA BASES.—Section 453 (42 U.S.C. 653) is amended—

(1) in subsection (b), by striking "the most recent address and place of employment" and inserting "the most recent residential address, employer name and address, and amounts and nature of income and assets";

(2) in subsection (c)(3), by striking "resident" and inserting "custodial"; and

(3) in subsection (e), by adding at the end the following:

"(4) The Secretary of the Treasury shall enter into an agreement with the Secretary to provide prompt access by the Secretary (in accordance with this subsection and section 6103(l)(6) of the Internal Revenue Code of 1986) to all Federal income tax returns filed by individuals with the Internal Revenue Service.".

(c) EXPANSION OF ACCESS TO THE NATIONAL PARENT LOCATOR NETWORK.—Section 453 (42 U.S.C. 653) is amended by adding at the end the following:

"(g) The Secretary shall expand the Parent Locator Service to establish a national network based on the comprehensive statewide child support enforcement systems developed by the States, to—

"(1) allow each State to—

"(A) locate any absent parent who owes child support or for whom a child support obligation is being established, by—

"(i) to the extent practicable, accessing the records of other State agencies and sources of locate information directly from one computer system to another; and

"(ii) accessing Federal sources of locate information in the same fashion;

"(B) access the files of other States to determine whether there are other child support orders and obtain the details of those orders;

"(C) provide for both on-line and batch processing of locate requests, with on-line access restricted to cases in which the information is needed immediately (for such reasons as court appearances) and batch processing used to 'troll' data bases to locate individuals or update information periodically; and

"(D) direct locate requests to individual States or Federal agencies, broadcast requests to selected States, or broadcast cases to all States when there is no indication of the source of needed information;

"(2) provide for a maximum of 48-hour turnaround time for information to be broadcast and returned to a requesting State;

"(3) provide ready access to courts and administrative agencies of the information on the network by location of a computer terminal in each court; and

"(4) access the registries of child support orders maintained by States pursuant to section 466(a)(12).".

SEC. 103. NATIONAL REPORTING OF EMPLOYEES AND CHILD SUPPORT INFORMATION.

(a) IN GENERAL.—Not later than Janauary 1, 1995, the Secretary of the Treasury, in consultation with the Secretary of Labor, shall establish a system of reporting of employees by requiring employers to provide a copy of every employee's W-4 form to the Federal child support order registry established pursuant to section 101(a) of the Child Support Responsibility Act of 1994 and to the child support order registry established pursuant to section 466(a)(12) of the Social Security Act by the State in which the employment is located—

(1) in the case of employees hired on or after the effective date of this section, on the date the employee is hired; or

(2) in the case of employees hired before such effective date, within 10 days after such effective date.

(b) INCLUSION OF CHILD SUPPORT INFORMATION ON W-4 FORMS.—The Secretary of the Treasury shall modify the W-4 form to enable the employee to indicate on the form—

(A) whether the employee owes child support, and if so—

(i) to whom the support is payable and the amount of the support payable; and

(ii) whether the support is to be paid through wage withholding; and

(B) whether health care insurance is available to the new employee, and, if so, whether the employee has obtained such insurance for the dependent children of the employee.

SEC. 104. STATE ROLE.

(a) STATE CHILD SUPPORT ORDER REGISTRIES.—Section 466(a) (42 U.S.C. 666(a)) is amended by inserting after paragraph (11) the following:

"(12) Procedures under which the—

"(A) State child support enforcement agency shall—

"(i) establish and maintain a child support order registry which shall include—

"(I) a copy of each child support order issued or modified in the State on or after the effective date of this paragraph;

"(II) a copy of each child support order issued or modified in the State before the effective date of this paragraph that is being enforced under the State plan; and

"(III) a copy of each child support order issued or modified in the State before the enactment of this paragraph that a party to the order has requested be included in the Federal child support order registry established pursuant to section 101(a) of the Child Support Responsibility Act of 1994;

"(ii)(I) immediately upon receipt of a child support order referred to in subclause (I) or (II) of clause (i), transmit an abstract of the order to the Federal registry; and

"(II) beginning 2 years after such date of enactment, transmit to the Federal registry an abstract of each child support order referred to in clause (i)(III); and

"(iii) distribute in accordance with section 457(b) all amounts received from employers that have been deducted and withheld from the wages of employees for the payment of child support obligations, and all amounts received from the Internal Revenue Service pursuant to section 7524(f) of the Internal Revenue Code of 1986, within 3 days after receipt;

"(B) allow any individual owed support pursuant to a child support order issued or modified in the State who alleges that an employer has failed to comply subsection (b)(11)(B)(ii) with respect to the order, or that a State official has failed to comply with subparagraph (A)(iii) of this paragraph with respect to amounts withheld from wages pursuant to the order and paid to the State, to bring an action against the employer or the official (in the official's personal capacity), as the case may be, in any State court and recover damages, including interest; and

"(C) the State agency referred to in section 402(a)(3) shall notify the State child support enforcement agency of the commencement or termination of aid under the State plan approved under part A to any individual or family, within 10 days after such commencement or termination.".

(b) DIRECT WAGE WITHHOLDING.—Section 466(b) (42 U.S.C. 666(b)) is amended by adding at the end the following:

"(11)(A)(i) Upon the issuance or modification by a State court or administrative agency of an order imposing a child support obligation on an individual, the State shall transmit to any employer of the individual a wage withholding order developed under section 452(a)(12) directing the employer to withhold amounts from the wages of the individual pursuant to the order, or such greater amount as the State child support order registry established pursuant to subsection (a)(12)(A) of this section may determine is the total amount of the child support obligations of the individual.

"(ii) Clause (i) shall not apply to an order upon agreement of the parties to the order and the court or administrative agency that issued or modified the order.

"(iii) An agreement referred to in clause (ii) may be unilaterally rescinded only by the individual to whom child support is payable under the order.

"(B) Any individual or entity engaged in commerce, as a condition of doing business in the State, shall, on receipt of a wage withholding order developed under section 452(a)(12) that is regular on its face and has been issued by a court of any State—

"(i) comply with the order by forwarding to the State registry established pursuant to subsection (a)(12)(A) of this section, within 5

days after the end of each payroll period ending after receipt of the order, the greater of—

"(I) the amount required to be withheld pursuant to the order; or

"(II) the amount that the State registry has notified the employer is the amount required to be withheld from the wages of the employee for payment of child support obligations of the employee; and

"(ii) keep records of the amounts so withheld.

"(C) Such an order may be served on the income source directly or by first-class mail.

"(D) An individual or entity who complies with subparagraph (B)(i) with respect to such an order may not be held liable for wrongful withholding of income from the employee subject to the order.

"(E) The State shall impose a civil fine of $1,000 on any individual or entity who receives such an order for each failure to comply with subparagraph (B)(i) with respect to the order.

"(F) The State shall have in effect procedures for carrying out this paragraph in cases involving an employee who has 2 or more employers or child support obligations.

"(12) If the State transmits to an individual or entity engaged in commerce only outside the State a wage withholding order issued by the State with respect to an employee of the individual or entity, and the individual or entity contests or refuses to comply with the order, the State shall send an informational copy of the order to the registry established under subsection (a)(12)(A) of any other State in which the individual or entity is engaged in commerce.

"(13) If an employee requests a hearing to contest wage withholding based on claim of a mistake of fact, the hearing may be held in the State from which the income is paid or in which the employee is employed, and, within 45 days after the income source receives the withholding order, the entity conducting the hearing must adjudicate the claim. The State in which the hearing is held shall provide appropriate services in cases enforced under the State plan to ensure that the interests of the individual to whom the withheld income is to be paid are adequately represented.".

(c) PRIORITIES IN APPLICATION OF WITHHELD WAGES.—Section 466(b) (42 U.S.C. 666(b)), as amended by subsection (b) of this section, is amended by inserting after paragraph (13) the following:

"(14) Procedures under which the amounts withheld pursuant to a child support or wage withholding order are to be applied in the following order:

"(A) To payments of support due during the month of withholding.

"(B) To payments of premiums for health care insurance coverage for dependent children.

"(C) To payments of support due before the month of withholding, and of unreimbursed health-care expenses.".

(d) ACCESS TO VARIOUS DATA BASES.—Section 466(a) (42 U.S.C. 666(a)), as amended by subsection (a) of this section, is amended by inserting after paragraph (12) the following:

"(13) Procedures under which the State child support enforcement agency shall have automated on-line or batch access (or, if necessary, nonautomated access) to information regarding residential addresses, employers and employer addresses, income and assets, and medical insurance benefits with respect to absent parents that is available through any data base maintained by—

"(A) any agency of the State or any political subdivision thereof, that contains information on residential addresses, or on employers and employer addresses, as the State deems appropriate;

"(B) any publicly regulated utility company located in the State; and

"(C) any credit reporting agency located in the State.".

(e) EXPANDED INTERACTION WITH THE NATIONAL PARENT LOCATOR NETWORK.—Section 454(16) (42 U.S.C. 654(16)) is amended—

(1) by striking "and (E)" and inserting "(E)"; and

(2) by striking "enforcement;" and inserting "enforcement, and (F) to provide access to the national network developed pursuant to section 453(g);".

SEC. 105. RECONCILIATION OF CHILD SUPPORT OBLIGATION AND PAYMENTS ON INCOME TAX RETURN.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7524. RECONCILIATION OF CHILD SUPPORT OBLIGATION AND PAYMENTS ON INCOME TAX RETURN.

"(a) IN GENERAL.—Each applicable child support obligation of any individual for months ending with or within any taxable year shall be paid—

"(1) not later than the last date (determined without regard to extensions) prescribed for filing the individual's return of tax imposed by chapter 1 for such taxable year, and

"(2)(A) if such return is filed not later than such date, with such return, or

"(B) in any case not described in subparagraph (A), in such manner as the Secretary may by regulations prescribe.

"(b) OFFSET FOR WITHHELD CHILD SUPPORT, ETC.—There shall be allowed as a credit against the amount required to be paid under subsection (a) by an individual the sum of—

"(1) the amount (if any) deducted and withheld pursuant to State law from the wages received by such individual during the taxable year,

"(2) the amount (if any) paid by such individual under section 6654 by reason of subsection (f)(3) thereof for such taxable year, and

"(3) the amount paid by such individual directly to the person to whom the obligation is owed (or, if such person has assigned to a State the right to collect the obligation, the State).

"(c) CREDIT OR REFUND FOR PAYMENTS IN EXCESS OF ACTUAL OBLIGATION.—There shall be allowed as a credit against the tax imposed by subtitle A for the taxable year an amount equal to the excess (if any) of—

"(1) the aggregate of the amounts described in paragraphs (1), (2), and (3) of subsection (a) for such taxable year, over

"(2) the aggregate of the child support obligations of the taxpayer for such taxable year.

The credit allowed by this subsection shall be treated for purposes of this title as allowed by subpart C of part IV of subchapter A of chapter 1.

"(d) FAILURE TO PAY AMOUNT OWING.—If an individual fails to pay the full amount required to be paid under subsection (a) on or before due date for such payment, the Secretary shall assess and collect the unpaid amount in the same manner, with the same powers, and subject to the same limitations applicable to a tax imposed by subtitle C the collection of which would be jeopardized by delay.

"(e) APPLICABLE CHILD SUPPORT OBLIGATION.—For purposes of this section, the term 'applicable child support obligation' means a legal obligation to provide child support (as defined in section 462(b) of the Social Security Act).

"(f) AMOUNTS COLLECTED BY SECRETARY PAID TO STATE REGISTRIES.—Amounts collected under this section and section 6654 by reason of an applicable child support obligation shall be paid by the Secretary to the appropriate State registry established pursuant to section 466(a)(12)(A)(i) of the Social Security Act.".

(b) WITHHELD CHILD SUPPORT TO BE SHOWN ON W-2.—Subsection (a) of section 6051 of such Code is amended by striking "and" at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting ", and", and by inserting after paragraph (9) the following new paragraph:

"(10) the total amount of child support obligations withheld pursuant to State law.".

(c) APPLICATION OF ESTIMATED TAX PENALTY.—

(1) Subsection (f) of section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by striking "minus" at the end of paragraph (2) and inserting "plus", by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) the aggregate applicable child support obligation (as defined in section 7524(a)) of the taxpayer for months ending with or within the taxable year, minus".

(2) Paragraph (1) of section 6654(d) of such Code is amended by adding at the end the following new subparagraph:

"(D) DETERMINATION OF REQUIRED ANNUAL PAYMENT FOR TAXPAYERS REQUIRED TO PAY CHILD SUPPORT.—In the case of a taxpayer who is required under section 7524 to pay an applicable child support obligation (as defined in section 7524) for any month ending with or within the taxable year, the required annual payment shall be the sum of—

"(i) the amount determined under subparagraph (B) without regard to subsection (f)(3), plus

"(ii) the aggregate amount of such obligation for all months ending with or within the taxable year.".

(3) CREDIT FOR WITHHELD AMOUNTS, ETC.—Subsection (g) of section 6654 of such Code is amended by adding at the end the following new paragraph:

"(3) CHILD SUPPORT.—For purposes of applying this section, the sum of—

"(A) amounts deducted and withheld under State law for applicable child support obligations, and

"(B) amounts paid by the individual directly to the person to whom the obligation is owed (or, if such person has assigned to a State the right to collect the obligation, the State),

shall be deemed to be a payment of the amount described in subsection (f)(3) on the date such amounts were actually withheld or paid, as the case may be.".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 77 of such Code is amended by adding at the end thereof the following new item:

"Sec. 7524. Reconciliation of child support obligation and payments on income tax return.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

TITLE II—ESTABLISHMENT

SEC. 201. SERVICE OF PROCESS ON FEDERAL EMPLOYEES AND MEMBERS OF THE ARMED SERVICES IN CONNECTION WITH PROCEEDINGS RELATING TO CHILD SUPPORT AND PARENTAGE OBLIGATIONS.

Part D of title IV (42 U.S.C. 651–670) is amended by inserting after section 460 the following:

"SEC. 460A. SERVICE OF PROCESS ON FEDERAL EMPLOYEES AND MEMBERS OF THE ARMED SERVICES IN CONNECTION WITH PROCEEDINGS RELATING TO CHILD SUPPORT AND PARENTAGE OBLIGATIONS.

"(a) IN GENERAL.—The head of each Government agency shall, in accordance with applicable regulations under subsection (b), designate an agent for receipt of service of process, for any Federal employee or member of the Armed Forces serving in or under such agency, in connection with an action, brought in a court of competent jurisdiction within any State, territory, or possession of the United States, for obtaining a child support order or for establishing parentage.

"(b) REGULATIONS.—Regulations governing the implementation of this section with respect to the executive, legislative, or judicial branch of the Government shall be promulgated by the authority or authorities responsible for promulgating regulations under section 461 with respect to the branch of Government involved.

"(c) INTERPRETIVE RULE.—This section shall not be construed to prevent any otherwise eligible individual from requesting or being granted a stay or continuance in any judicial proceeding, including under the Soldiers' and Sailors' Civil Relief Act of 1940.

"(d) GOVERNMENT AGENCY DEFINED.—For purposes of this section, the term 'Government agency' means each agency of the Federal Government, including—

"(1) an Executive agency (as defined by section 105 of title 5, United States Code);

"(2) the Department of Defense, to the extent that any Federal employee serving in or under that agency or any member of the armed services is involved;

"(3) the United States Postal Service and the Postal Rate Commission;

"(4) the government of the District of Columbia;

"(5) an agency within the legislative or judicial branch of the Government; and

"(6) an advisory committee to which the Federal Advisory Committee Act applies.".

SEC. 202. PRESUMED ADDRESS OF OBLIGOR AND OBLIGEE.

Section 466(a) (42 U.S.C. 666(a)), as amended by section 104 of this Act, is amended by inserting after paragraph (13) the following:

"(14) Procedures under which the State shall—

"(A) require the court or administrative agency with authority to issue the final order in a child support or parentage case to require each party subject to the order to file with the court or administrative agency, on or before the date the order is issued—

"(i) the party's residential address or addresses;

"(ii) the party's mailing address or addresses;

"(iii) the party's home telephone number or numbers;

"(iv) the party's driver's license number;

"(v) the party's social security account number;

"(vi) the name of each employer of the party;

"(vii) the addresses of each place of employment of the party; and

"(viii) the party's work telephone number or numbers;

"(B) require the court or administrative agency in any action related to child support to presume, for the purpose of providing sufficient notice (other than the initial notice in an action to establish parentage or a child support order), that the noncustodial parent resides at the last residential address given by the noncustodial parent to the court or agency; and

"(C) ensure that information concerning the location of a custodial parent or a child of the custodial parent is not released to a noncustodial parent if a court order has been issued against the noncustodial parent for the physical protection of the custodial parent or the child.".

SEC. 203. FAIR CREDIT REPORTING ACT AMENDMENT.

Section 604 of the Consumer Credit Protection Act (15 U.S.C. 1681b) is amended by adding at the end the following:

"(4) To a State agency administering a State plan under section 454 of the Social Security Act, for use to establish or modify a child support award.".

SEC. 204. NATIONAL CHILD SUPPORT GUIDELINE COMMISSION.

(a) ESTABLISHMENT.—There is hereby established a commission to be known as the National Child Support Guidelines Commission (in this section referred to as the "Commission").

(b) GENERAL DUTIES.—The Commission shall convene a conference to study the desirability of a national child support guideline, and if such guideline is advisable, the Commission shall develop for congressional consideration a national child support guideline that is based on the conference's study of various guideline models, the deficiencies of such models and any needed improvements.

(c) MEMBERSHIP.—

(1) NUMBER; APPOINTMENT.—

(A) IN GENERAL.—The Commission shall be composed of 9 individuals appointed jointly by the Secretary of Health and Human Services and the Congress, not later than January 15, 1995.

(B) QUALIFICATIONS OF MEMBERS.—Members of the Commission shall be appointed from among those who are able to provide expertise and experience in the evaluation and development of child support guidelines. At least 2 of the members shall represent parent child support advocacy groups.

(2) TERMS OF OFFICE.—Each member shall be appointed for a term of 1 year. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(d) COMMISSION POWERS, COMPENSATION, ACCESS TO INFORMATION, AND SUPERVISION.—The first sentence of subparagraph (C), the first and third sentences of subparagraph (D), subparagraph (F) (except with respect to the conduct of medical studies), clauses (ii) and (iii) of subparagraph (G), and subparagraph (H) of section 1886(e)(6) of the Social Security Act shall apply to the Commission in the same manner in which such provisions apply to the Prospective Payment Assessment Commission.

(e) REPORT.—Not later than 1 year after the appointment of members, the Commission shall report to the President and the Congress on the results of the study described in subsection (b) and the final assessment by the Commission of issues relating to a national child support guideline.

(f) TERMINATION.—The Commission shall terminate upon the submission of the report described in subsection (e).

SEC. 205. DURATION OF SUPPORT.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104 and 202 of this Act, is amended by inserting after paragraph (14) the following:

"(15) Procedures under which the State—

"(A) imposes on 1 or both parents of a child an obligation to continue to provide support for the child until not earlier than the later of the date the child attains 18 years of age or the date the child is graduated from or is no longer enrolled in secondary school or its equivalent, unless the child is married or is otherwise emancipated by a court of competent jurisdiction or by operation of State law;

"(B) provides that courts with jurisdiction over child support cases may, in accordance with criteria established by the State, order—

"(i) child support, payable to an adult child, at least up to the age of 22 years for a child enrolled in an accredited postsecondary or vocational school or college who is a student in good standing; and

"(ii) either or both parents to pay for postsecondary school support based on each parent's financial ability to pay; and

"(C) provides for child support to continue beyond the child's minority if the child is disabled, unable to be self-supportive, and the disability arose during the child's minority.".

SEC. 206. EVIDENCE.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104 and 205 of this Act, is amended by inserting after paragraph (15) the following:

"(16) Procedures under which—

"(A) a certified copy of an out-of-State order, decree, or judgment related to child support or parentage shall be admitted once offered in the courts of the State if the order, decree, or judgment is regular on its face; and

"(B) electronically transmitted information and documents faxed to a court or administrative agency that contain information related to the amount of a child support obligation and the terms of the order imposing the obligation may be offered as evidence of the amount and the terms, and electronically transmitted records of payment of a child support agency that are regular on their face shall be admissible as evidence in a child support or parentage proceeding to prove the truth of the matter asserted in the records.".

SEC. 207. TELEPHONIC APPEARANCE IN INTERSTATE CASES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, and 206 of this Act, is amended by inserting after paragraph (16) the following:

"(17) Procedures under which the parties to an interstate parentage or child support administrative or judicial proceeding may appear and participate by telephonic means in lieu of appearing personally.".

SEC. 208. UNIFORM TERMS IN ORDERS.

(a) IN GENERAL.—Section 452(a) (42 U.S.C. 652(a)) is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of the 2nd sentence of paragraph (10) and inserting "; and"; and

(3) by adding at the end the following:

"(11) not later than 12 months after the date of the enactment of this paragraph, develop, in conjunction with State executive and judicial organizations, a uniform abstract of a child support order, for use by all State courts to record, with respect to each

child support order in the child support order registry established under section 466(a)(12)—

"(A) the date support payments are to begin under the order;

"(B) the circumstances upon which support payments are to end under the order;

"(C) the amount of child support payable pursuant to the order expressed as a sum certain to be paid on a monthly basis, arrearages expressed as a sum certain as of a certain date, and any payback schedule for the arrearages;

"(D) whether the order awards support in a lump sum (nonallocated) or per child;

"(E) if the award is in a lump sum, the event causing a change in the support award and the amount of any change;

"(F) other expenses covered by the order;

"(G) the names of the parents subject to the order;

"(H) the social security account numbers of the parents;

"(I) the name, date of birth, and social security account number (if any) of each child covered by the order;

"(J) the identification (FIPS code, name, and address) of the court that issued the order;

"(K) any information on health care support required by the order; and

"(L) the party to contact if additional information is obtained.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 209. SOCIAL SECURITY NUMBERS ON MARRIAGE LICENSES, DIVORCE DECREES, PARENTAGE DECREES, AND BIRTH CERTIFICATES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, and 207 of this Act, is amended by inserting after paragraph (17) the following:

"(18) Procedures under which the social security account number (if any) of—

"(A) each individual applying for a marriage license is to be listed by the individual's name on the license;

"(B) each party granted a divorce decree is to be listed by the party's name on the decree, if any party to the decree is pregnant or a parent;

"(C) each individual determined to be a parent of a child in an action to establish parentage is to be listed by the individual's name on the decree containing the determination; and

"(D) each parent of a child is to be listed by the parent's name on the child's birth certificate, except that, if the State agency determines (in accordance with standards prescribed by the Secretary which shall take into consideration the best interests of the child) that there is good cause for not so listing the social security account number of a parent.".

SEC. 210. ADMINISTRATIVE SUBPOENA POWER.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, and 209 of this Act, is amended by inserting after paragraph (18) the following:

"(19) Procedures under which the State child support enforcement agency may issue a subpoena which—

"(A) requires the individual served to produce and deliver documents to, or to appear at, a court or administrative agency on a certain date; and

"(B) penalizes an individual for failing to comply with the subpoena.".

SEC. 211. SUPPORT ORDERS OUTREACH AND DEMONSTRATIONS.

(a) STATES REQUIRED TO CONDUCT SURVEYS OF UNDERSERVED POPULATIONS.—

(1) IN GENERAL.—Part D of title IV (42 U.S.C. 651–669) is amended by adding at the end the following:

"SEC. 470. STATE SURVEYS OF UNDERSERVED POPULATIONS.

"Each State, as a condition for having a State plan approved under this part, must conduct surveys to identify populations underserved by child support services, and develop outreach programs to serve such populations in places such as child care centers, parenting classes, prenatal classes, and unemployment offices.".

(2) FEDERAL FINANCIAL PARTICIPATION.—Section 455(a)(1) (42 U.S.C. 655(a)(1)) is amended—

(A) in subparagraph (B), by striking "and" at the end;

(B) in subparagraph (C) by adding "and" at the end; and

(C) by inserting after subparagraph (C) the following:

"(D) equal to 90 percent of so much of the sums expended during such quarter as are attributable to operating programs described in section 470,".

(b) MATERIALS TO ASSIST PERSONS WITH LOW LITERACY LEVELS.—The Secretary of Health and Human Services shall fund demonstration projects and technical assistance grants to States to develop applications and informational materials directed to individuals with low literacy levels or difficulties reading English.

(c) REVIEW OF WRITTEN MATERIALS.—The Secretary of Health and Human Services shall review all written materials provided to persons served by the Office of Child Support Enforcement to ensure that any requirement contained in the materials is presented clearly and in a manner that is easily understandable by such persons.

(d) DEMONSTRATION PROJECTS TO IMPROVE COORDINATION BETWEEN CERTAIN STATE PUBLIC ASSISTANCE AGENCIES.—The Secretary of Health and Human Services shall make grants to States to conduct demonstration projects to test various methods for improving the coordination of services and case processing between the State agency referred to in section 402(a)(3) of the Social Security Act and the State agency referred to in section 454(3) of such Act.

(e) REFERRAL OF CUSTODIAL PARENTS TO COMMUNITY RESOURCES TO COMBAT DOMESTIC VIOLENCE.—Section 454 (42 U.S.C. 654) is amended—

(1) by striking "and" at the end of paragraph (23);

(2) by striking the period at the end of paragraph (24) and inserting "; and"; and

(3) by inserting after paragraph (24) the following:

"(25) provide that the agency administering the plan must refer to appropriate community resources custodial parents against whom or whose children violence has been threatened as a result of cooperation with a State agency in establishing or enforcing a child support order, in accordance with procedures developed by the State to reduce the risk of violence, such as exempting the custodial parent from any requirement of face-to-face meetings with persons other than from the agency.".

SEC. 212. HEALTH CARE SUPPORT.

(a) INCLUSION IN CHILD SUPPORT ORDERS.—

(1) STATE GUIDELINES.—Section 467 (42 U.S.C. 667) is amended by adding at the end the following:

"(d)(1) Not later than the beginning of the 9th calendar month that begins after the date the Secretary prescribes final regulations in accordance with paragraph (2), each State, as a condition for having its State plan approved under this part, must establish guidelines for the coverage of the health care costs of children pursuant to child support orders issued or modified in the State, which guidelines shall create a streamlined process that meets the minimum standards established by the Secretary in such regulations.

"(2)(A) The Secretary shall promulgate regulations which set forth minimum standards that any set of guidelines established pursuant to paragraph (1) must meet in providing for the coverage of the health care costs of children pursuant to child support orders issued or modified in the State, including—

"(i) the contents of such an order with respect to the coverage of such costs;

"(ii) the distribution of responsibility for such costs;

"(iii) to the extent that such costs are to be covered through health insurance—

"(I) the provision of such insurance;

"(II) the payment of insurance claims; and

"(III) the rights of the noncustodial parent and the custodial parent to insurance information;

"(iv) the circumstances under which a provider of health insurance may or may not deny coverage to a child who is the subject of such an order;

"(v) penalties to be imposed on providers of health insurance who fail to comply with the guidelines; and

"(vi) how changes in the circumstances of the noncustodial parent and the custodial parent are to be taken into account with respect to the coverage of such costs.

"(B) In developing such standards, the Secretary shall ensure that, in establishing guidelines pursuant to paragraph (1), the State considers the following matters in the following order of importance:

"(i) The best interests of the child.

"(ii) The financial and other circumstances of the parents of the child.

"(iii) Cost-effectiveness.

"(3) The preceding subsections of this section shall apply in like manner to the guidelines established pursuant to this subsection.".

(2) REGULATIONS.—

(A) PROPOSED REGULATIONS.—Within 9 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue proposed regulations to implement the amendments made by this subsection.

(B) FINAL REGULATIONS.—Within 14 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue final regulations to implement the amendments made by this subsection.

(b) INCLUSION IN INCENTIVE PAYMENTS PROGRAM OF DEPENDENT HEALTH INSURANCE PROVIDED DUE TO SUCCESSFUL ENFORCEMENT.—

(1) IN GENERAL.—Section 458(b) (42 U.S.C. 658(b)) is amended by adding at the end the following:

"(5)(A) For purposes of this section, the successful enforcement by the State of a provision of a support order requiring an absent parent to obtain health insurance for 1 or more children shall be considered the collection of support from the absent parent, without regard to the means by which such support is provided.

"(B) The amount of support collected in any case in which the State successfully enforces a provision of a support order requiring an absent parent to obtain health insurance for 1 or more children shall be the savings to the State from the provision of such

health insurance to such children, as determined in accordance with a health insurance savings methodology adopted by the State in accordance with regulations prescribed by the Secretary.".

(2) REGULATIONS.—Within 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall prescribe such regulations as may be necessary to implement the amendment made by paragraph (1).

(3) STUDY; REPORT.—

(A) STUDY.—The Secretary of Health and Human Services shall conduct a study to determine the incentives that should be provided to encourage States to enforce obligations of noncustodial parents to pay (and obtain medical insurance coverage with respect to) the reasonable and necessary health and dental expenses of the children to whom the noncustodial parents owe such obligations.

(B) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study required by subparagraph (A).

SEC. 213. RULES GOVERNING MODIFICATION OF CHILD SUPPORT ORDERS.

(a) IN GENERAL.—Chapter 115 of title 28, United States Code, is amended by inserting after section 1738A the following:

"§ 1738B. Rules governing modification of child support orders

"(a) IN GENERAL.—A court of a State may not modify a child support order issued or modified with respect to a child by a court of another State, unless—

"(1) the child does not reside in the other State;

"(2) an individual who is a party to the order (other than the party seeking modification of the order) does not reside in the other State; or

"(3) all parties to the order have consented in writing to the modification.

"(b) DEFINITIONS.—As used in this section:

"(1) CHILD.—The term 'child' means an individual for whom a child support order has been issued pursuant to the laws of a State.

"(2) CHILD SUPPORT ORDER.—The term 'child support order' means a judgment, decree, or order that requires child support (as defined in section 462(b) of the Social Security Act) to be provided with respect to a child.

"(3) COURT.—The term 'court' means a court or administrative agency of a State which is authorized by State law to establish or modify a child support order.

"(4) STATE.—The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country as defined in section 1151 of title 18.".

TITLE III—PARENTAGE

SEC. 301. PATERNITY ESTABLISHMENT.

(a) STATE PLAN REQUIREMENTS.—Section 454 (42 U.S.C. 654), as amended by section 211(e) of this Act, is amended—

(1) by striking "and" at the end of paragraph (25);

(2) by striking the period at the end of paragraph (26) and inserting "; and"; and

(3) by inserting after paragraph (26) the following:

"(27) in order to encourage voluntary paternity acknowledgement, provide for—

"(A) the development and distribution of material at schools, hospitals, agencies administering the programs under part A of this title and title XIX, prenatal health-care providers, WIC programs, health departments, clinics, and other appropriate locations that describe the benefits and responsibilities of paternity establishment and the process by which paternity services may be obtained,

"(B) outreach programs at hospitals and birthing facilities and programs for prenatal care, child birth, and parenting, and

"(C) the use of consent procedures.".

(b) REQUIRED PROCEDURES.—Section 466(a)(5)(C) (42 U.S.C. 666(a)(5)(C)) is amended—

(1) by redesignating the 1st sentence as clause (i)(I);

(2) by inserting after such clause the following:

"(II) Such procedures must provide that any such explanation to a mother include the following information:

"(aa) Signing a paternity acknowledgment affidavit is voluntary.

"(bb) Once paternity of a child is established, the father of the child has the right to seek custody of the child or visitation rights with respect to the child.

"(cc) Once paternity of a child is established, the mother of the child has the right to seek from the father of the child financial and medical support for the child.

"(dd) The effect that the courts of the State will give to a signed paternity acknowledgment affidavit.

"(III) Such procedures must provide that any such explanation to a possible father include the following information:

"(aa) Signing a paternity acknowledgment affidavit is voluntary.

"(bb) Genetic testing is available and will be provided upon request.

"(cc) The policy of the State with respect to payment for the cost of genetic testing.

"(dd) Once paternity of a child is established, the father of the child has the right to seek custody of the child or visitation rights with respect to the child.

"(ee) Once paternity of a child is established, the mother of the child has the right to seek from the father of the child financial and medical support for the child.

"(ff) The effect that the courts of the State will give to a signed paternity acknowledgment affidavit.

"(IV) Such procedures must provide that the information required to be provided under subclause (II) or (III) must be provided—

"(aa) orally and in writing;

"(bb) where appropriate, in the language of the individual to whom the information is required to be provided; and

"(cc) if the individual is blind or hearing-impaired, in a manner accessible to the individual.";

(3) by indenting the 2nd sentence 2 ems and redesignating such sentence as clause (ii); and

(4) by inserting after such clause (ii) the following:

"(iii) Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

"(iv) Such procedures must require the State to use only the affidavit developed under section 452(a)(7) for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State.

"(v) The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by entities other than hospitals, which shall include a requirement that any State agency that provides such services must use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as hospital-based voluntary paternity establishment programs.".

(c) NATIONAL PATERNITY ACKNOWLEDGMENT AFFIDAVIT.—Section 452(a)(7) (42 U.S.C. 652(a)(7)) is amended by inserting ", and develop an affidavit to be used for the voluntary acknowledgment of paternity" before the semicolon.

(d) SIGNED PATERNITY ACKNOWLEDGMENT AFFIDAVIT CONCLUSIVELY PRESUMED TO ESTABLISH PATERNITY.—Section 466(a)(5)(D) (42 U.S.C. 666(a)(5)(D)) is amended—

(1) by inserting "(i)" after "(D)"; and

(2) by adding at the end the following:

"(ii)(I) Such procedures shall provide that the written voluntary acknowledgment of the paternity of a child shall, upon the expiration of the challenge period, create a legal finding of paternity that has the effect of a final judgment at law which can be revised, or which can be set aside based on criteria established by the State for setting aside judgments, other than by reason of the minority of the person who executed the acknowledgment—

"(aa) without any further action; or

"(bb) at the option of the State, after a court or administrative agency with which the document containing the acknowledgment has been filed within 5 business days after the expiration of the challenge period issues an order establishing such paternity.

"(II) As used in subclause (I), the term 'challenge period' means, with respect to an acknowledgment of paternity—

"(aa) the 30-day period that begins on the date of the acknowledgment; or

"(bb) if the person who executed the acknowledgment undergoes genetic testing within 30 days after the date of the acknowledgment, the 30-day period that begins with the date the person is notified of the results of the genetic testing.".

TITLE IV—ENFORCEMENT

SEC. 401. DIRECT WAGE WITHHOLDING.

(a) STATE LAW.—Section 466(b) (42 U.S.C. 666(b)), as amended by section 104 of this Act, is amended by adding at the end the following:

"(15)(A) Upon the issuance or modification by a State court or administrative agency of an order imposing a child support obligation on an individual, the State shall transmit to any employer of the individual a wage withholding order developed under section 452(a)(12) directing the employer to withhold amounts from the wages of the individual pursuant to the order.

"(B) Any individual or entity engaged in commerce, as a condition of doing business in the State, shall, on receipt of a wage withholding order developed under section 452(a)(12) that is regular on its face and has been issued by a court of any State—

"(i) within 3 days after receipt of the order, comply with the order;

"(ii) forward the amount withheld pursuant to the order to the State or custodial parent specified in the order; and

"(iii) keep records of the amounts so withheld.

"(C) Such an order may be served on the income source directly or by first-class mail.

"(D) An individual or entity who complies with such an order may not be held liable for wrongful withholding of income from the employee subject to the order.

"(E) The State shall impose a civil fine of $1,000 on any individual or entity who receives such an order, and fails to comply with the order within 10 days after receipt. The preceding sentence shall not be construed to affect the authority of any court to stay the effectiveness of the fine.

"(16) If the State transmits to an individual or entity engaged in commerce in another State a wage withholding order issued by the State with respect to an employee of the individual or entity, and the individual or entity contests or refuses to comply with the order, the State shall send an informational copy of the order to the registry established under subsection (a)(12) of such other State or of the State from which the income of the employee is paid.

"(17) If an employee requests a hearing to contest wage withholding based on claim of a mistake of fact, the hearing may be held in the State from which the income is paid or in which the employee is employed, and, within 45 days after the income source receives the withholding order, the entity conducting the hearing must adjudicate the claim. The State in which the hearing is held shall provide appropriate services in cases enforced under the State plan to ensure that the interests of the individual to whom the withheld income is to be paid are adequately represented.".

(b) UNIFORM WITHHOLDING ORDER.—Section 452(a) (42 U.S.C. 652(a)), as amended by section 208(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (10);

(2) by striking the period at the end of paragraph (11) and inserting "; and"; and

(3) by inserting after paragraph (11) the following:

"(12) develop a uniform order to be used in all cases in which income is to be withheld for the payment of child support, which shall contain the name of the individual whose income is to be withheld, the number of children covered by the order, and the individual or State to whom the withheld income is to be paid, and be generic to allow for the service of the order on all sources of income.".

SEC. 402. PRIORITIES IN APPLICATION OF WITHHELD WAGES.

Section 466(b) (42 U.S.C. 666(a)), as amended by section 401(a) of this Act, is amended by inserting after paragraph (13) the following:

"(14) Procedures under which the amounts withheld pursuant to a child support or wage withholding order are to be applied in the following order:

"(A) To payments of support due during the month of withholding.

"(B) To payments of premiums for health care insurance coverage for dependent children.

"(C) To payments of support due before the month of withholding, and of unreimbursed health-care expenses.".

SEC. 403. ADDITIONAL BENEFITS SUBJECT TO GARNISHMENT.

(a) FEDERAL DEATH BENEFITS, BLACK LUNG BENEFITS, AND VETERANS BENEFITS.—Section 462(f)(2) (42 U.S.C. 662(f)(2)) is amended by striking "(not including" and all that follows through "compensation)".

(b) WORKERS' COMPENSATION.—Section 462(f) (42 U.S.C. 662(f)) is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ", or"; and

(3) by adding at the end the following:

"(3) workers' compensation benefits.".

SEC. 404. CONSUMER CREDIT PROTECTION ACT AMENDMENTS.

(a) PREEMPTION OF STATE LAWS.—Section 307 of the Consumer Credit Protection Act (15 U.S.C. 1677) is amended—

(1) by striking "This" and inserting "(a) IN GENERAL.—Subject to subsection (b), this";

(2) by striking "or" at the end of paragraph (1);

(3) by striking the period at the end of paragraph (2) and inserting ", or"; and

(4) by adding at the end the following:

"(3) providing a cause of action, either by the State or a private individual, to enforce a Federal or State law related to garnishment for the purpose of securing child support.

"(b) EXCEPTION.—Subsection (a)(1) shall not apply to the laws of any State that prohibit or restrict garnishments for the purpose of securing support for any person.".

(b) OTHER FORMS OF INCOME.—Title III of such Act (15 U.S.C. 1671 et seq.) is amended by adding at the end the following:

"SEC. 308. OTHER FORMS OF INCOME.

"This title does not apply to forms of income that are not earnings within the definition contained in section 302(a).".

(c) PRIORITY OF DEBTS.—Title III of such Act (15 U.S.C. 1671 et seq.) is further amended by adding after section 308, as added by subsection (b) of this section, the following:

"SEC. 309. PRIORITY OF DEBTS.

"If an individual's disposable earnings are not sufficient to pay—

"(1) a garnishment intended to satisfy a debt owed to the Federal Government; and

"(2) a garnishment intended to satisfy a debt related to the support of any child,

the debt owed to the Federal Government shall be satisfied through garnishment only after the debt related to child support has first been satisfied.".

(d) ADDITIONAL INDEBTEDNESS IN ANTI-DISCHARGE SECTION.—Section 304 of such Act (16 U.S.C. 1674) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) in subsection (c) (as so redesignated) by striking "subsection (a) of"; and

(3) by inserting after subsection (a) the following:

"(b) No employer may discharge any employee by reason of the fact that the earnings of the employee have been subjected to garnishment for more than one indebtedness, if not more than one indebtedness arises from a debt other than an order for the support of a child.".

(e) CLERICAL AMENDMENT.—The table of sections at the beginning of the title III of the Truth in Lending Act (15 U.S.C. 1671 et seq.) is amended by adding at the end the following:

"308. Other forms of income.

"309. Priority of debts.".

SEC. 405. PROHIBITION AGAINST USE OF ELECTION OF REMEDIES DOCTRINE TO PREVENT COLLECTION OF CHILD SUPPORT.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, and 212 of this Act, is amended by inserting after paragraph (20) the following:

"(21) Procedures which prohibit any State court from applying the doctrine of election of remedies to prevent a custodial parent from collecting or seeking to collect child support from a noncustodial parent.".

SEC. 406. HOLD ON OCCUPATIONAL, PROFESSIONAL, AND BUSINESS LICENSES.

(a) STATE HOLD BASED ON WARRANT OR SUPPORT DELINQUENCY.—Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, and 405 of this Act, is amended by inserting after paragraph (21) the following:

"(22) Procedures under which the State occupational licensing and regulating departments and agencies may not issue or renew any occupational, professional, or business license of—

"(A) a noncustodial parent who is the subject of an outstanding failure to appear warrant, capias, or bench warrant related to a child support proceeding that appears on the State's crime information system, until removed from the system; and

"(B) an individual who is delinquent in the payment of child support, until the obligee or a State prosecutor responsible for child support enforcement consents to, or a court that is responsible for the order's enforcement orders, the release of the hold on the license, or an expedited inquiry and review is completed while the individual is granted a 60-day temporary license.".

(b) FEDERAL HOLD BASED ON SUPPORT DELINQUENCY.—A Federal agency may not issue or renew any occupational, professional, or business license of an individual who is delinquent in the payment of child support, until the obligee, the obligee's attorney or a State prosecutor responsible for child support enforcement consents to, or a court that is responsible for the order's enforcement orders, the release of the hold on the license, or an expedited inquiry and review is completed while the individual is granted a 60-day temporary license.

SEC. 407. DRIVER'S LICENSES AND VEHICLE REGISTRATIONS DENIED TO PERSONS FAILING TO APPEAR IN CHILD SUPPORT CASES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, and 406(a) of this Act, is amended by inserting after paragraph (22) the following:

"(23) Procedures under which the State motor vehicle department—

"(A) may not issue or renew the driver's license or any vehicle registration (other than temporary) of any noncustodial parent who is the subject of an outstanding failure to appear warrant, capias, or bench warrant related to a child support proceeding that appears on the State's crime information system, until removed from the system;

"(B) upon receiving notice that an individual to whom a State driver's license or vehicle registration has been issued is the subject of a warrant related to a child support proceeding, shall issue a show cause order to the individual requesting the individual to demonstrate why the individual's driver's license or vehicle registration should not be suspended until the warrant is removed by the State responsible for issuing the warrant; and

"(C) in any case in which a show cause order has been issued as described in subparagraph (B), may grant a temporary license or vehicle registration to the individual pending the show cause hearing or the removal of the warrant, whichever occurs first.".

SEC. 408. LIENS ON CERTIFICATES OF VEHICLE TITLE.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), and 407 of this Act, is amended by inserting after paragraph (23) the following:

"(24) Procedures under which the State shall systematically place liens on vehicle titles for child support arrearages determined under a court order or an order of an administrative process established under State law, using a method for updating the

value of the lien on a regular basis or allowing for an expedited inquiry to and response from a governmental payee for proof of the amount of arrears, with an expedited method for the titleholder or the individual owing the arrearage to contest the arrearage or to request a release upon fulfilling the support obligation, and under which such a lien has precedence over all other encumbrances on a vehicle title other than a purchase money security interest, and that the individual owed the arrearage may execute on, seize, and sell the property in accordance with State law.".

SEC. 409. ATTACHMENT OF BANK ACCOUNTS.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, and 408 of this Act, is amended by inserting after paragraph (24) the following:

"(25) Procedures under which—

"(A) amounts on deposit in a bank account may be seized to satisfy child support arrearages determined under a court order or an order of an administrative process established under State law, solely through an administrative process, pending notice to and an expedited opportunity to be heard from the account holder or holders; and

"(B) if the account holder or holders fail to successfully challenge the seizure (as determined under State law), the bank may be required to pay from the account to the entity with the right to collect the arrearage the lesser of—

"(i) the amount of the arrearage; or

"(ii) the amount on deposit in the account.".

SEC. 410. SEIZURE OF LOTTERY WINNINGS, SETTLEMENTS, PAYOUTS, AWARDS, AND BEQUESTS, AND SALE OF FORFEITED PROPERTY, TO PAY CHILD SUPPORT ARREARAGES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, and 409 of this Act, is amended by inserting after paragraph (25) the following:

"(26) Procedures, in addition to other income withholding procedures, under which a lien is imposed against property with the following effect:

"(A) The distributor of the winnings from a State lottery or State-sanctioned or tribal-sanctioned gambling house or casino shall—

"(i) suspend payment of the winnings from the person otherwise entitled to the payment until an inquiry is made to and a response is received from the State child support enforcement agency as to whether the person owes a child support arrearage; and

"(ii) if there is such an arrearage, withhold from the payment the lesser of the amount of the payment or the amount of the arrearage, and pay the amount withheld to the agency for distribution.

"(B) The person required to make a payment under a policy of insurance or a settlement of a claim made with respect to the policy shall—

"(i) suspend the payment until an inquiry is made to and a response received from the agency as to whether the person otherwise entitled to the payment owes a child support arrearage; and

"(ii) if there is such an arrearage, withhold from the payment the lesser of the amount of the payment or the amount of the arrearage, and pay the amount withheld to the agency for distribution.

"(C) The payor of any amount pursuant to an award, judgment, or settlement in any action brought in Federal or State court shall—

"(i) suspend the payment of the amount until an inquiry is made to and a response is received from the agency as to whether the person otherwise entitled to the payment owes a child support arrearage; and

"(ii) if there is such an arrearage, withhold from the payment the lesser of the amount of the payment or the amount of the arrearage, and pay the amount withheld to the agency for distribution.

"(D) If the State seizes property forfeited to the State by an individual by reason of a criminal conviction, the State shall—

"(i) hold the property until an inquiry is made to and a response is received from the agency as to whether the individual owes a child support arrearage; and

"(ii) if there is such an arrearage, sell the property and, after satisfying the claims of all other private or public claimants to the property and deducting from the proceeds of the sale the attendant costs (such as for towing, storage, and the sale), pay the lesser of the remaining proceeds or the amount of the arrearage directly to the agency for distribution.

"(E) Any person required to make a payment in respect of a decedent shall—

"(i) suspend the payment until an inquiry is made to and a response received from the agency as to whether the person otherwise entitled to the payment owes a child support arrearage; and

"(ii) if there is such an arrearage, withhold from the payment the lesser of the amount of the payment or the amount of the arrearage, and pay the amount withheld to the agency for distribution.".

SEC. 411. FRAUDULENT TRANSFER PURSUIT.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, and 410 of this Act, is amended by inserting after paragraph (26) the following:

"(27) Procedures requiring that, in any case related to child support, any transfer of property by an individual who owes a child support arrearage shall be presumed to be made with the intent to avoid payment of the arrearage, and may be rebutted by evidence to the contrary.".

SEC. 412. FULL IRS COLLECTION.

The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall by regulation simplify the full collection process under section 6305 of the Internal Revenue Code of 1986 and reduce the amount of child support arrearage needed before an individual may apply for collection under such section.

SEC. 413. TAX REFUND OFFSET PROGRAM EXPANDED TO COVER NON-AFDC POST-MINOR CHILDREN.

Section 464(c) (42 U.S.C. 664(c)) is amended—

(1) by striking "(1) Except as provided in paragraph (2), as" and inserting "As";

(2) by inserting "(whether or not a minor)" after "a child" each place such term appears; and

(3) by striking paragraphs (2) and (3).

SEC. 414. ATTACHMENT OF PUBLIC AND PRIVATE RETIREMENT FUNDS.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, 410, and 411 of this Act, is amended by inserting after paragraph (27) the following:

"(28) Procedures under which an individual owed a child support arrearage (determined under a court order or an order of an administrative process established under State law) may, notwithstanding section 401(a)(13) of the Internal Revenue Code of 1986, attach any interest in any public or private retirement plan of the individual who owes the support, without the requirement of a separate court order, and with notice and an expedited hearing provided if requested by the individual who owes the support.".

SEC. 415. REPORTING OF CHILD SUPPORT ARREARAGES TO CREDIT BUREAUS.

Section 466(a)(7)(A) (42 U.S.C. 666(a)(7)(A)) is amended by striking "$1,000" and inserting "the amount of the monthly support obligation".

SEC. 416. ELIMINATION OF STATUTES OF LIMITATIONS IN CHILD SUPPORT CASES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, 410, 411, and 414 of this Act, is amended by inserting after paragraph (28) the following:

"(29) Procedures which ensure that there is no limit to the period in which any court order, or order of an administrative process established under State law, for support or maintenance of a child, may be enforced.".

SEC. 417. INTEREST.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, 410, 411, 414, and 416 of this Act, is amended by inserting after paragraph (29) the following:

"(30) Procedures under which the State child support enforcement agency must assess and collect interest on all child support judgments, at the rate determined for interest on money judgments, in addition to any late payment fee imposed by the State under section 454(21).".

SEC. 418. BANKRUPTCY.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (12) the following:

"(12A) 'debt for child support' means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor;".

(b) EXCEPTION FROM AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) by inserting "(A)" after "(2);

(2) by inserting "or" after the semicolon; and

(3) by adding at the end the following:

"(B) under subsection (a) of the commencement or continuation of a civil action or administrative proceeding against the debtor—

"(i) to establish parentage;

"(ii) to establish, review, adjust, or modify a judgment or order creating a debt for child support; or

"(iii) to enforce such judgment or order to collect a debt for child support;".

(c) TREATMENT OF DEBT FOR CHILD SUPPORT IN PROCEEDINGS UNDER CHAPTERS 11, 12, AND 13.—

(1) CHAPTER 11.—Section 1123(a) of title 11, United States Code, is amended—

(A) by striking "and" at the end of paragraph (6);

(B) by striking the period at the end of paragraph (7) and inserting "; and"; and

(C) by adding at the end the following:

"(8) provide for the full payment when due of debts for child support unless the parent with custody, or the guardian, of the child agrees otherwise.".

(2) CHAPTER 12.—Section 1222(a) of title 11, United States Code, is amended—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following:

"(4) provide for the full payment when due of debts for child support unless the parent with custody, or the guardian, of the child agrees otherwise.".

(3) CHAPTER 13.—Section 1322(a) of title 11, United States Code, is amended—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following:

"(4) provide for the full payment when due of debts for child support unless the parent with custody, or the guardian, of the child agrees otherwise.".

(d) ASSERTION OF CLAIM FOR CHILD SUPPORT.—Subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"§ 511. Assertion of claim for child support

"(a) FEE.—No fee shall be charged for filing of claim for a debt for child support.

"(b) REQUIREMENTS FOR APPEARANCE.—A claim for a debt for child support may be made in any court by a individual appearing—

"(1) personally; or

"(2) through an attorney admitted to practice in any district court of the United States, without the attorney's being required to meet any admission requirements other than those applicable in the judicial district of the United States in which the attorney is admitted to practice.".

(e) CLARIFICATION OF THE NONDISCHARGEABILITY OF STATE PUBLIC DEBTS AND ASSIGNED CHILD SUPPORT BASED ON THE PROVISION OF EXPENDITURES UNDER PARTS A AND E OF TITLE IV OF THE SOCIAL SECURITY ACT.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

"(f) For the purposes of subsection (a)(5), a debt to a child of the debtor for maintenance for or support of the child includes State public debts and assigned child support based on the provision of expenditures under parts A and E of title IV of the Social Security Act.".

(f) PRIORITY OF CLAIMS.—(1) Section 507 of title 11, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (8) by striking "(8) Eighth" and inserting "(9) Ninth",

(ii) in paragraph (7) by striking "(7) Seventh" and inserting "(8) Eighth", and

(iii) by inserting after paragraph (6) the following:

"(7) Seventh, allowed unsecured claims due to a spouse, former spouse, or child of the debtor for maintenance for or support of a child, in connection with a separation agreement, divorce decree, or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit, or a property settlement agreement, but not to the extent that—

"(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

"(B) such debt includes a liability designated as maintenance or support unless such liability is actually in the nature of maintenance or support;", and

(B) in subsection (d) by striking "or (6)" and inserting "(6), or (7)".

(2) Title 11 of the United States Code is amended—

(A) in sections 502(i), 503(b)(1)(B)(i), 523(a)(1)(A), and 1123(a)(1) by striking "507(a)(7)" and inserting "507(a)(8)",

(B) in section 724(b)(2) by striking "or 507(a)(6)" and inserting "507(a)(6), or 507(a)(7)",

(C) in section 726(b) by striking "or (7)" and inserting ", (7), or (8)", and

(D) in section 1129(a)(9)—

(i) in subparagraph (B) by striking "or 507(a)(6)" and inserting ", 507(a)(6), or 507(a)(7)", and

(ii) in subparagraph (C) by striking "507(a)(7)" and inserting "507(a)(8)".

(g) PROTECTION OF LIENS.—Section 522(f)(1) of title 11, United States Code, is amended to read as follows:

"(1) a judicial lien (other than a judicial lien that secures a debt to a spouse, former spouse, or child of the debtor for maintenance for or support of a child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, to the extent that the debt—

"(A) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

"(B) includes a liability designated as maintenance or support, unless such liability is actually in the nature of maintenance or support).".

(h) EXCEPTION TO DISCHARGE.—Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (11) by striking "or" at the end,

(B) in paragraph (12) by inserting "or" after the semicolon at the end, and

(C) by adding at the end the following:

"(13) assumed or incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, unless—

"(A) excepting such debt from discharge under this paragraph would impose an undue hardship for the debtor; and

"(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a child of the debtor.", and

(2) in subsection (c)(1) by striking "or (6)" each place it appears and inserting ", or (13)".

(i) PROTECTION AGAINST TRUSTEE AVOIDANCE.—Section 547(c) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (6);

(2) by redesignating paragraph (7) as paragraph (8); and

(3) by inserting after paragraph (6) the following new paragraph:

"(7) to the extent that the transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor for maintenance for or support of such child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

"(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

"(B) includes a liability designated as maintenance or support, unless such liability is actually in the nature of maintenance or support; or".

SEC. 419. FEDERAL GOVERNMENT COOPERATION IN ENFORCEMENT OF SUPPORT OBLIGATIONS OF MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES.

(a) AVAILABILITY OF CURRENT LOCATOR INFORMATION.—

(1) MAINTENANCE OF ADDRESS INFORMATION.—Each worldwide personnel locator service of the Armed Forces and each personnel locator service of the Armed Forces maintained for a military installation shall include the residential address of each member of the Armed Forces listed in such service. Within 30 days after a change of duty station or residential address of a member listed in a locator service, the Secretary concerned shall update the locator service to indicate the new residential address of the member.

(2) AVAILABILITY OF INFORMATION.—The Secretary of Defense shall prescribe regulations to make information regarding the residential address of a member of the Armed Forces available, on request, to any authorized person for the purposes of part D of title IV of the Social Security Act.

(3) DEFINITIONS.—For purposes of this subsection:

(A) The term "authorized person" has the meaning given that term in section 453(c) of the Social Security Act (42 U.S.C. 653(c)).

(B) The term "Secretary concerned" has the meaning given that term in section 101(a)(9) of title 10, United States Code.

(b) FACILITATING THE GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS.—

(1) REGULATIONS REQUIRED.—The Secretary concerned shall prescribe regulations to facilitate the granting of a leave of absence to a member of the Armed Forces under the jurisdiction of that Secretary when necessary for the member to attend a hearing of a court that is conducted in connection with a civil action—

(A) to determine whether the member is a natural parent of a child; or

(B) to determine an obligation of the member to provide child support.

(2) WAIVER AUTHORITY.—The regulations prescribed under paragraph (1) may authorize a waiver of the applicability of the regulations to a member of the Armed Forces when—

(A) the member is serving in an area of combat operations; or

(B) such a waiver is otherwise necessary in the national security interest of the United States.

(3) DEFINITIONS.—For purposes of this subsection:

(A) The term "court" has the meaning given that term in section 1408(a) of title 10, United States Code.

(B) The term "child support" has the meaning given such term in section 462 of the Social Security Act (42 U.S.C. 662).

(C) The term "Secretary concerned" has the meaning given that term in section 101(a)(9) of title 10, United States Code.

(c) PAYMENT OF MILITARY RETIRED PAY IN COMPLIANCE WITH COURT ORDERS.—

(1) DATE OF CERTIFICATION OF COURT ORDER.—Section 1408 of title 10, United States Code, is amended—

(A) by redesignating subsection (i) as subsection (j); and

(B) by inserting after subsection (h) the following new subsection:

"(i) CERTIFICATION DATE.—It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt.".

(2) PAYMENTS CONSISTENT WITH ASSIGNMENTS OF RIGHTS TO STATES.—

(A) AUTHORITY.—Subsection (d)(1) of such section is amended by inserting after the first sentence the following: "In the case of a spouse or former spouse who, pursuant to section 402(a)(26) of the Social Security Act (42 U.S.C. 602(26)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with the assignment of rights.".

(B) RULE OF CONSTRUCTION.—Subsection (c)(2) of such section is amended—

(i) by inserting after the first sentence the following: "The second sentence of subsection (d)(1) shall not be construed to create any such right, title, or interest.";

(ii) by inserting "(A)" after "(2)"; and

(iii) by designating the last sentence as subparagraph (B) and conforming the margins accordingly.

(3) ARREARAGES OWED BY MEMBERS OF THE UNIFORMED SERVICES.—Part D of title IV (42 U.S.C. 651–669) is amended by inserting after section 465 the following:

"SEC. 465A. PAYMENT OF CHILD SUPPORT ARREARAGES OWED BY MEMBERS OF THE UNIFORMED SERVICES.

"Any authority, requirement, or procedure provided in this part or section 1408 of title 10, United States Code, that applies to the payment of child support owed by a member of the uniformed services (as defined in section 101 of title 37, United States Code) shall apply to the payment of child support arrearages as well as to amounts of child support that are currently due.".

SEC. 420. STATES REQUIRED TO ENACT THE UNIFORM INTERSTATE FAMILY SUPPORT ACT.

(a) IN GENERAL.—Section 466 (42 U.S.C. 666) is amended by adding at the end the following:

"(f) In order to satisfy section 454(20)(A), each State must have in effect laws which adopt the officially approved version of the Uniform Interstate Family Support Act adopted by the National Conference of Commissioners on Uniform State Laws in August 1992.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments under part D of title IV of the Social Security Act for calendar quarters ending 2 or more years after the date of the enactment of this Act.

SEC. 421. DENIAL OF PASSPORTS TO NONCUSTODIAL PARENTS SUBJECT TO STATE ARREST WARRANTS IN CASES OF NONPAYMENT OF CHILD SUPPORT.

The Secretary of State is authorized to refuse a passport or revoke, restrict, or limit a passport in any case in which the Secretary of State determines or is informed by competent authority that the applicant or passport holder is a noncustodial parent who is the subject of an outstanding State warrant of arrest for nonpayment of child support, where the amount in controversy is not less than $10,000.

SEC. 422. DENIAL OF FEDERAL BENEFITS, LOANS, GUARANTEES, AND EMPLOYMENT TO CERTAIN PERSONS WITH LARGE CHILD SUPPORT ARREARAGES.

(a) BENEFITS, LOANS, AND GUARANTEES.—Notwithstanding any other provision of law, each agency or instrumentality of the Federal Government may not, under any program that the agency or instrumentality supervises or administers, provide a benefit to, make a loan to, or provide any guarantee for the benefit of, any person—

(1) whose child support arrearages, determined under a court order or an order of an administrative process established under State law, exceed $1,000; and

(2) who is not in compliance with a plan or an agreement to repay the arrearages.

(b) EMPLOYMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, an individual shall be considered ineligible to accept employment in a position in the Federal Government if—

(A) such individual has child support arrearages, determined under a court order or an order of an administrative process established under State law, exceeding $1,000; and

(B) such individual is not in compliance with a plan or agreement to repay the arrearages.

(2) REGULATIONS.—Regulations to carry out paragraph (1) shall—

(A) with respect to positions in the executive branch, be prescribed by the President (or his designee);

(B) with respect to positions in the legislative branch, be prescribed jointly by the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees); and

(C) with respect to positions in the judicial branch, be prescribed by the Chief Justice of the United States (or his designee).

(3) CHILD SUPPORT DEFINED.—For purposes of this subsection, the term "child support" has the meaning given such term in section 462 of the Social Security Act.

SEC. 423. STATES REQUIRED TO ORDER COURTS TO ALLOW ASSIGNMENT OF LIFE INSURANCE BENEFITS TO SATISFY CHILD SUPPORT ARREARAGES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, 410, 411, 414, 416, and 417 of this Act, is amended by inserting after paragraph (30) the following:

"(31) Procedures allowing State courts to—

"(A) order the issuer of a life insurance policy to change the beneficiary provisions of the policy to effect an assignment of the benefits payable to a beneficiary under the policy, in whole or in part, to a child to satisfy a child support arrearage, determined under a court order or an order of an administrative process established under State law, owed by the beneficiary with respect to the child; and

"(B) prohibit the sale, assignment, or pledge as collateral of the policy, in whole or in part, by the beneficiary of the policy.".

SEC. 424. INTERESTS IN JOINTLY HELD PROPERTY SUBJECT TO ASSIGNMENT TO SATISFY CHILD SUPPORT ARREARAGES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, 410, 411, 414, 416, 417, and 423 of this Act, is amended by inserting after paragraph (31) the following:

"(32) Procedures allowing State courts to order the assignment of an interest in jointly held property to an individual owed a child support arrearage (determined under a court order or an order of an administrative process established under State law) by a holder of an interest in the property, to the extent of the arrearage.".

SEC. 425. INTERNATIONAL CHILD SUPPORT ENFORCEMENT.

(a) SENSE OF THE CONGRESS THAT THE UNITED STATES SHOULD RATIFY THE UNITED NATIONS CONVENTION OF 1956.—It is the sense of the Congress that the United States should ratify the United Nations Convention of 1956.

(b) TREATMENT OF INTERNATIONAL CHILD SUPPORT CASES AS INTERSTATE CASES.—Section 454 (42 U.S.C. 654), as amended by sections 211(e) and 301(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (25);

(2) by striking the period at the end of paragraph (26) and inserting "; and"; and

(3) by inserting after paragraph (26) the following:

"(27) provide that the State must treat international child support cases in the same manner as the State treats interstate child support cases.".

SEC. 426. NONLIABILITY FOR DEPOSITORY INSTITUTIONS PROVIDING FINANCIAL RECORDS TO STATE CHILD SUPPORT ENFORCEMENT AGENCIES IN CHILD SUPPORT CASES.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a depository institution shall not be liable under any Federal or State law to any person for disclosing any financial record of an individual to a State child support enforcement agency attempting to establish, modify, or enforce a child support obligation of such individual.

(b) PROHIBITION OF DISCLOSURE OF FINANCIAL RECORD OBTAINED BY STATE CHILD SUPPORT ENFORCEMENT AGENCY.—A State child support enforcement agency which obtains a financial record of an individual from a financial institution pursuant to subsection (a) may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation of such individual.

(c) CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE.—

(1) DISCLOSURE BY STATE OFFICER OR EMPLOYEE.—If any officer or employee of a State knowingly, or by reason of negligence, discloses a financial record of an individual in violation of subsection (b), such individual may bring a civil action for damages against the officer or employee in the personal capacity of the officer or employee, in a district court of the United States.

(2) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall arise under this subsection with respect to any disclosure which results from a good faith, but erroneous, interpretation of subsection (b).

(3) DAMAGES.—In any action brought under paragraph (1), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(A) the greater of—

(i) $1,000 for each act of unauthorized disclosure of a financial record with respect to which such defendant is found liable; or

(ii) the sum of—

(I) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure; plus

(II) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages; plus

(B) the costs of the action.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "depository institution" means—

(A) a depository institution, as defined by section 3(c) of the Federal Deposit Insurance Act;

(B) an institution-affiliated party, as defined by section 3(u) of such Act; and

(C) any Federal credit union or State credit union, as defined by section 101 of the Federal Credit Union Act, including an institution-affiliated party of such a credit union, as defined by section 206(r) of such Act.

(2) The term "financial record" has the meaning given such term by section 1101 of the Right to Financial Privacy Act of 1978.

(3) The term "State child support enforcement agency" means a State agency which administers a State program for establishing and enforcing child support obligations.

SEC. 427. COST-OF-LIVING ADJUSTMENT OF CHILD SUPPORT AWARDS.

Part D of title IV (42 U.S.C. 651-669) is amended by inserting after section 467 the following:

"SEC. 467A. COST-OF-LIVING ADJUSTMENT OF CHILD SUPPORT AWARDS.

"(a) IN GENERAL.—Each State, as a condition for having its State plan approved under this part, shall have in effect such laws and procedures as are necessary to ensure that each child support order issued or modified in the State after the effective date of this section shall provide that amount of any child support award specified in the order shall, on each anniversary of the 1st day of the calendar month in which the order is so issued or modified, increase by the percentage (if any) by which—

"(1) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the 12-month period that ends with the anniversary; exceeds

"(2) the average of the Consumer Price Index (as so defined) for the 12-month period that ends on such 1st day.

"(b) RULE OF INTERPRETATION.—Subsection (a) shall not be construed to eliminate other grounds for modifying a child support award.".

SEC. 428. ANNUAL EXCHANGE OF FINANCIAL INFORMATION BY PARTIES TO CHILD SUPPORT ORDER.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, 410, 411, 414, 416, 417, 423, and 424 of this Act, is amended by inserting after paragraph (32) the following:

"(33) Procedures to ensure that each party to a child support order issued or modified in the State discloses to the other party to the order a complete statement of the financial condition of the party.".

SEC. 429. CRIMINAL PENALTIES FOR FAILURE TO PAY CHILD SUPPORT.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, 410, 411, 414, 416, 417, 423, and 424 of this Act, is amended by inserting after paragraph (33) the following:

"(34) Procedures under which—

"(A) criminal penalties may be imposed for the failure to pay child support; and

"(B) use immunity may be granted to compel testimony in civil child support proceedings in which the defendant claims a Fifth Amendment privilege against self-incrimination, and if granted, bars Federal or other State criminal prosecution for failure to pay child support based on the testimony given in the civil proceeding with respect to which use immunity was granted.".

TITLE V—COLLECTION AND DISTRIBUTION

SEC. 501. PRIORITIES IN DISTRIBUTION OF COLLECTED CHILD SUPPORT.

(a) STATE DISTRIBUTION PLAN.—Section 457 (42 U.S.C. 657) is amended by adding at the end the following:

"(e) Beginning on September 1, 1995, the amounts that a State collects as child support (including interest) pursuant to a plan approved under this part, other than amounts so collected through a tax refund offset, shall (subject to subsection (d)) be paid—

"(1) first to the individual owed the support or (if the individual assigned to the State the payment of the support) to the State, to the extent necessary to satisfy the current month's support obligation;

"(2) then to the individual owed the support, to the extent necessary to satisfy any arrearage;

"(3) then, at the option of the State, to the State, to the extent necessary to reimburse the State for assistance provided with respect to the child under this title (without interest); and

"(4) then to other States, to the extent necessary to reimburse such other States for assistance provided with respect to the child under this title (without interest), in the order in which such assistance was provided.".

(b) STUDY AND PILOT PROJECTS.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct studies and pilot projects of systems under which States would be required to pay the child support collected pursuant to a State plan approved under part D of title IV of the Social Security Act to the individuals to whom the support is owed before making any payment to reimburse any State for assistance provided with respect to the child under part A of such title.

(2) REPORT TO THE CONGRESS.—Within 3 years after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on each study and pilot project conducted pursuant to paragraph (1), including a cost-benefit analysis and an analysis of the costs that would be avoided under the program of aid to families with dependent children under part A of title IV of the Social Security Act, the program of medical assistance under title XIX of such Act, and the food stamp program under the Food Stamp Act of 1977, if the various systems studied were implemented.

(c) REVISION OF FEDERAL INCOME TAX REFUND OFFSET.—Section 6402 of the Internal Revenue Code of 1986 (relating to authority to make credits or refunds) is amended—

(1) in subsection (c), by striking "after any other reductions allowed by law (but before" and inserting "before any other reductions allowed by law (and before"; and

(2) in subsection (d), by striking "with respect to past-due support collected pursuant to an assignment under section 402(a)(26) of the Social Security Act".

(d) $50 DISREGARDED FOR ALL MEANS-TESTED PROGRAMS.—Section 457(b)(1) (42 U.S.C. 657(b)(1)) is amended by inserting "under this part or under any other Federal program which determines eligibility for or the amount of assistance based on the income or assets of the applicant for or recipient of the assistance" after "during such month".

(e) FILL-THE-GAP POLICIES ALLOWED.—Section 402(a)(28) (42 U.S.C. 602(a)(28)) is amended by striking the open parenthesis and all that follows through the close parenthesis.

SEC. 502. STATE CLAIMS AGAINST NONCUSTODIAL PARENT LIMITED TO ASSISTANCE PROVIDED TO THE CHILD.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, 410, 411, 414, 416, 417, 423, 424, 428, and 429 of this Act, is amended by inserting after paragraph (34) the following:

"(35)(A) Procedures under which any claims the State may have against a noncustodial parent for a child's portion of the assistance provided under a State plan approved under part A shall not exceed the amount specified as child support under a court or administrative order.

"(B) As used in subparagraph (A), the term 'child's portion' means the assistance that would have been provided with respect to the child if the needs of the caretaker relative of the child had not been taken into account in making the determination with respect to the child's family under section 402(a)(7).".

SEC. 503. FEES FOR NON-AFDC CLIENTS.

(a) IN GENERAL.—Section 454(6) (42 U.S.C. 654(6)) is amended—

(1) in subparagraph (B), by striking "or recovered" and all that follows through "program)";

(2) in subparagraph (C), by inserting "on the parent who owes the child or spousal support obligation involved" after "imposed";

(3) in subparagraph (D), by striking "individual who" and inserting "the noncustodial parent if the child whose parentage is to be determined through the tests"; and

(4) in subparagraph (E), by striking all that follows "may be collected" and inserting "from the parent who owes the child or spousal support obligation involved, but only after all current and past-due support and interest charges have been collected".

(b) PUBLICATION OF FEE SCHEDULES.—Section 454(10) (42 U.S.C. 654(10)) is amended by inserting ", and shall publish guidelines and schedules of fees which may be imposed under paragraph (6), and which shall be reasonable" before the semicolon.

SEC. 504. COLLECTION AND DISBURSEMENT POINTS FOR CHILD SUPPORT.

Section 454 (42 U.S.C. 654), as amended by sections 211(e), 301(a), and 425 of this Act, is amended—

(1) by striking "and" at the end of paragraph (26);

(2) by striking the period at the end of paragraph (27) and inserting "; and"; and

(3) by inserting after paragraph (27) the following:

"(28) provide for only 1 location, or several local or regional locations for the collection of, accounting for, and disbursement of child support in cases enforced under the State plan under this part.".

TITLE VI—FEDERAL ROLE

SEC. 601. PLACEMENT AND ROLE OF THE OFFICE OF CHILD SUPPORT ENFORCEMENT.

Section 452(a) (42 U.S.C. 652(a)), as amended by sections 208(a) and 401(b) of this Act, is amended—

(1) in the matter preceding paragraph (1), by striking ", under the direction" and all that follows through "and who" and inserting "which shall be known as the Office of Child Support Enforcement, shall be under the direction of an Assistant Secretary appointed by the President with the advice and consent of the Senate, and shall have its own legal counsel. The Assistant Secretary shall report directly to the Secretary and";

(2) in paragraph (10)—

(A) in subparagraph (A), by inserting "using a methodology that reflects cost-avoidance as well as cost-recovery" after "the States and the Federal Government";

(B) by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively; and

(C) by inserting after subparagraph (G) the following:

"(H) the budgetary allocation of the $50 pass through equally between part A and this part;";

(3) by striking "and" at the end of paragraph (11);

(4) by striking the period at the end of paragraph (12) and inserting "; and"; and

(5) by inserting after paragraph (12) the following:

"(13) initiate and actively pursue with other Federal agencies, such as the Department of Defense, coordinated efforts on Federal legislation.".

SEC. 602. TRAINING.

(a) FEDERAL TRAINING ASSISTANCE.—Section 452(a)(7) (42 U.S.C. 652(a)(7)) is amended by inserting "and training" after "technical assistance".

(b) STATE TRAINING PROGRAM.—Section 454 (42 U.S.C. 654), as amended by sections 211(e), 301(a), 425, and 504 of this Act, is amended—

(1) by striking "and" at the end of paragraph (27);

(2) by striking the period at the end of paragraph (28) and inserting "; and"; and

(3) by inserting after paragraph (28) the following:

"(29) provide that the State will develop and implement a training program under which training is to be provided not less frequently than annually to all personnel performing functions under the State plan.".

(c) REPORT.—Section 452(a)(10) (42 U.S.C. 652(a)(10)), as amended by section 601(2) of this Act, is amended by redesignating subparagraphs (I) and (J) as subparagraphs (J) and (K), respectively, and by inserting after subparagraph (H) the following:

"(I) the training activities at the Federal and State levels, the training audit, and the amounts expended on training;".

SEC. 603. STAFFING.

(a) METHODOGY.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall develop the methodology to be used to determine the staffing requirements of each State program operated under part D of title IV of the Social Security Act, including each agency and court involved in the program.

(b) IMPLEMENTATION.—Not later than 2 years after the date of the enactment of this Act, each State with a plan approved under part D of title IV of the Social Security Act shall—

(1) use the methodology developed pursuant to subsection (a) to determine the staffing requirements of the State program operated under the plan, including each agency and court involved in the program; and

(2) staff the program, and each agency and court involved in the program, in accordance with the staffing requirements determined pursuant to paragraph (1).

(c) IMPLEMENTATION.—The Secretary of Health and Human Services shall reduce by 2 percent the amount otherwise payable to a State pursuant to section 455(a)(1)(A) of the Social Security Act for any calendar quarter ending 2 or more years after the date of the enactment of this Act, if the Secretary determines that, during the quarter, the State is not in substantial compliance with subsection (b)(2).

SEC. 604. CHILD SUPPORT DEFINITION.

(a) IN GENERAL.—Section 452 (42 U.S.C. 652) is amended by adding at the end the following:

"(j) For purposes of this part, the term 'child support' shall have the meaning given such term in section 462(b).".

(b) CONFORMING AMENDMENTS.—Section 462(b) (42 U.S.C. 662(b)) is amended—

(1) by inserting "and lump sum" after "periodic", and

(2) by inserting "child care," after "clothing,".

SEC. 605. TECHNICAL CORRECTION TO ERISA DEFINITION OF MEDICAL CHILD SUPPORT ORDER.

(a) IN GENERAL.—Section 609(a)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(a)(2)(B)) is amended—

(1) by striking "issued by a court of competent jurisdiction";

(2) by striking the period at the end of clause (ii) and inserting a comma; and

(3) by adding, after and below clause (ii), the following:

"if such judgment, decree, or order (I) is issued by a court of competent jurisdiction or (II) is issued by an administrative adjudicator and has the force and effect of law under applicable State law.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1995.—Any amendment to a plan required to be made by an amendment made by this section shall not be required to be made before the first plan year beginning on or after January 1, 1995, if—

(A) during the period after the date before the date of the enactment of this Act and before such first plan year, the plan is operated in accordance with the requirements of the amendments made by this section, and

(B) such plan amendment applies retroactively to the period after the date before the date of the enactment of this Act and before such first plan year.

A plan shall not be treated as failing to be operated in accordance with the provisions of the plan merely because it operates in accordance with this paragraph.

SEC. 606. AUDITS.

(a) STUDY.—

(1) CONTRACT AUTHORITY.—The Secretary of Health and Human Services shall enter into a contract for a study of the audit process of the Office of Child Support Enforcement to develop criteria and methodology for auditing the activities of State child support enforcement agencies pursuant to part D of title IV of the Social Security Act.

(2) DESIGN OF STUDY.—The study shall be designed to—

(A) identify ways to improve the auditing process, including by—

(i) reducing the resources required to perform the audit;

(ii) simplifying procedures for States to follow in obtaining samples;

(iii) studying the feasibility of sampling cases for needed action rather than requiring sampling plans for each audit criterion; and

(iv) a more timely audit period of review; and

(B) develop a penalty process which—

(i) focuses on improving the delivery of child support services and not harming families;

(ii) uses a penalty not tied to any reduction of funds payable to States under part A of title IV of the Social Security Act; and

(iii) should include the escrowing of funds withheld as penalties for use by States to improve their child support programs in a manner approved by the Secretary of Health and Human Services.

(b) REPORT.—Not later than 90 days after completion of the study required by subsection (a), the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of the study.

(c) LIMITATION ON CASES INCLUDED IN AUDITS.—Section 452(a)(4) (42 U.S.C. 652(a)(4)) is amended—

(1) by inserting "(A)" after "(4)";

(2) by adding "and" at the end; and

(3) by adding after and below the end the following:

"(B) notwithstanding subparagraph (A), each audit under subparagraph (A) shall be limited to cases open on the date the audit begins and cases closed within 180 days before such date, unless the Secretary has determined, in accordance with regulations, that there is a need for a longitudinal review of case handling that includes cases that have been closed for more than 180 days;".

SEC. 607. ESTABLISHMENT OF CHILD SUPPORT ASSURANCE DEMONSTRATION PROJECTS.

(a) IN GENERAL.—In order to encourage States to provide a guaranteed minimum level of child support for every eligible child not receiving such support, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to 4 qualified States to conduct demonstration projects for the purpose of establishing or improving a system of assured minimum child support payments in accordance with this section.

(b) CONTENTS OF APPLICATION.—An application for grants under this section shall be submitted by the Governor of a State and shall—

(1) contain a description of the proposed child support assurance project to be established, implemented, or improved using amounts provided under this section, including the level of the assured benefit to be provided, the specific activities to be undertaken, and the agencies that will be involved;

(2) specify that the project will be carried out throughout the State;

(3) estimate the number of children who will be eligible for assured minimum child support payments under the project, and the amounts to which they will be entitled on average as individuals and in the aggregate;

(4) describe the child support guidelines and review procedures which are in use in the State and any expected modifications;

(5) contain a commitment by the State to carry out the project during a period of not less than 3 and not more than 5 consecutive fiscal years beginning with fiscal year 1996;

(6) contain assurances that the State—

(A) is currently at or above the national median paternity establishment rate (as defined in section 452(g)(2) of the Social Security Act),

(B) will improve the performance of the agency designated by the State to carry out the requirements under part D of title IV of the Social Security Act by at least 4 percent each year in which the State operates a child support assurance project under this section in—

(i) the number of cases in which paternity is established when required;

(ii) the number of cases in which child support orders are obtained; and

(iii) the number of cases with child support orders in which collections are made; and

(C) to the maximum extent possible under current law, will use Federal, State, and local job training assistance to assist individuals who have been determined to be unable to meet such individuals' child support obligations;

(7) describe the extent to which multiple agencies, including those responsible for administering the Aid to Families With Dependent Children Program under part A of title IV of the Social Security Act and child support collection, enforcement, and payment under part D of such title, will be involved in the design and operation of the child support assurance project; and

(8) contain such other information as the Secretary may require by regulation.

(c) USE OF FUNDS.—A State shall use amounts provided under a grant awarded under this section to carry out a child support assurance project designed to provide a minimum monthly child support benefit for each eligible child in the State to the extent that such minimum child support is not paid in a month by the noncustodial parent.

(d) REQUIREMENTS.—(1) A child support assurance project funded under this section shall provide that—

(A) any child (as defined in paragraph (2)) with a living noncustodial parent for whom a child support order has been sought (as defined in paragraph (3)) or obtained and any child who meets "good cause" criteria for not seeking or enforcing a support order is eligible for the assured child support benefit;

(B) the assured child support benefit shall be paid promptly to the custodial parent at least once a month and shall be—

(i) an amount determined by the State which is—

(I) not less than $1,500 per year for the first child, $1,000 per year for the second child, and $500 per year for the third and each subsequent child, and

(II) not more than $3,000 per year for the first child and $1,000 per year for the second and each subsequent child;

(ii) offset and reduced to the extent that the custodial parent receives child support in a month from the noncustodial parent;

(iii) indexed and adjusted for inflation; and

(iv) in the case of a family of children with multiple noncustodial parents, calculated in the same manner as if all such children were full siblings, but any child support payment from a particular noncustodial parent shall only be applied against the assured child support benefit for the child or children of that particular noncustodial parent;

(C) for purposes of determining the need of a child or relative and the level of assistance, one-half of the amount received as a child support payment shall be disregarded from income until the total amount of child support and Aid to Families With Dependent Children benefit received under part A of title IV of the Social Security Act equals the Federal poverty level for a family of comparable size;

(D) in the event that the family as a whole becomes ineligible for Aid to Families With Dependent Children under part A of the Social Security Act due to consideration of assured child support benefits, the continuing eligibility of the caretaker for Aid to Families With Dependent Children under such title shall be calculated without consideration of the assured child support benefit; and

(E) in order to participate in the child support assurance project, the child's caretaker shall apply for services of the State's child support enforcement program under part D of title IV of the Social Security Act.

(2) For purposes of this section, the term "child" means an individual who is of such an age, disability, or educational status as to be eligible for child support as provided for by the law of the State in which such individual resides.

(3) For purposes of this section, a child support order shall be deemed to have been "sought" where an individual has applied for services from the State agency designated by the State to carry out the requirements of part D of title IV of the Social Security Act or has sought a child support order through representation by private or public counsel or pro se.

(e) CONSIDERATION AND PRIORITY OF APPLICATIONS.—(1) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this section and shall approve not more than 4 applications which appear likely to contribute significantly to the achievement of the purpose of this section. In selecting States to conduct demonstration projects under this section, the Secretary shall—

(A) ensure that the applications selected represent a diversity of minimum benefits distributed throughout the range specified in subsection (d)(1)(B)(i);

(B) consider the geographic dispersion and variation in population of the applicants;

(C) give priority to States the applications of which demonstrate—

(i) significant recent improvements in—

(I) establishing paternity and child support awards,

(II) enforcement of child support awards, and

(III) collection of child support payments;

(ii) a record of effective automation; and

(iii) that efforts will be made to link child support systems with other service delivery systems;

(D) ensure that the proposed projects will be of a size sufficient to obtain a meaningful measure of the effects of child support assurance;

(E) give priority, first, to States intending to operate a child support assurance project on a statewide basis, and, second, to States that are committed to phasing in an expansion of such project to the entire State, if interim evaluations suggest such expansion is warranted; and

(F) ensure that, if feasible, the States selected use a variety of approaches for child support guidelines.

(2) Of the States selected to participate in the demonstration projects conducted under this section, the Secretary shall require, if feasible—

(A) that at least 2 provide intensive integrated social services for low-income participants in the child support assurance project, for the purpose of assisting such participants in improving their employment, housing, health, and educational status; and

(B) that at least 2 have adopted the Uniform Interstate Family Support Act.

(f) DURATION.—(1) During fiscal year 1995, the Secretary shall develop criteria, select the States to participate in the demonstration, and plan for the evaluation required under subsection (h). The demonstration projects conducted under this section shall commence on October 1, 1995, and shall be conducted for not less than 3 and not more than 5 consecutive fiscal years, except that the Secretary may terminate a project before the end of such period if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section, and the Secretary may authorize the continuation of a project if the Secretary determines that the project has been successful.

(g) COST SAVINGS RECOVERY.—The Secretary shall develop a methodology to identify any State cost savings realized in connection with the implementation of a child support assurance project conducted under this Act. Any such savings realized as a result of the implementation of a child support assurance project shall be utilized for child support enforcement improvements or expansions and improvements in the Aid to Families With Dependent Children Program conducted under part A of title IV of the Social Security Act within the participating State.

(h) EVALUATION AND REPORT TO CONGRESS.—(1) The Secretary shall conduct an evaluation of the effectiveness of the demonstration projects funded under this section. The evaluation shall include an assessment of the effect of an assured benefit on—

(A) income from nongovernment sources and the number of hours worked;

(B) the use and amount of government supports;

(C) the ability to accumulate resources;

(D) the well-being of the children, including educational attainment and school behavior; and

(E) the State's rates of establishing paternity and support orders and of collecting support.

(2) Three and 5 years after commencement of the demonstration projects, the Secretary shall submit an interim and final report based on the evaluation to the Committee on Finance and the Committee on Labor and Human Resources of the Senate, and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives concerning the effectiveness of the child support assurance projects funded under this section.

(i) STATE REPORTS.—The Secretary shall require each State that conducts a demonstration project under this section to annually report such information on the project's operation as the Secretary may require, except that all such information shall be reported according to a uniform format prescribed by the Secretary.

(j) RESTRICTIONS ON MATCHING AND USE OF FUNDS.—(1) A State conducting a demonstration project under this section shall be required—

(A) except as provided in paragraph (2), to provide not less than 20 percent of the total amounts expended in each calendar year of the project to pay the costs associated with the project funded under this section;

(B) to maintain its level of expenditures for child support collection, enforcement, and payment at the same level, or at a higher level, than such expenditures were prior to such State's participation in a demonstration project provided by this section; and

(C) to maintain the Aid to Families With Dependent Children benefits provided under part A of title IV of the Social Security Act at the same level, or at a higher level, as the level of such benefits on the date of the enactment of this Act.

(2) A State participating in a demonstration project under this section may provide no less than 10 percent of the total amounts expended to pay the costs associated with the project funded under this section in years after the first year such project is conducted in a State if the State meets the improvements specified in subsection (b)(6)(B).

(k) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—For purposes of—

(1) the United States Housing Act of 1937;

(2) title V of the Housing Act of 1949;

(3) section 101 of the Housing and Urban Development Act of 1965;

(4) sections 221(d)(3), 235, and 236 of the National Housing Act;

(5) the Food Stamp Act of 1977;

(6) title XIX of the Social Security Act; and

(7) child care assistance provided through part A of title IV of the Social Security Act, the Child Care and Development Block Grant, or title XX of the Social Security Act,

any payment made to an individual within the demonstration project area for child support up to the amount which an assured

child support benefit would provide shall not be treated as income and shall not be taken into account in determining resources for the month of its receipt and the following month.

(l) TREATMENT OF CHILD SUPPORT BENEFIT.—Any assured child support benefit received by an individual under this Act shall be considered child support for purposes of the Internal Revenue Code of 1986.

(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary in each of the fiscal years 1995, 1996, 1997, 1998, 1999, and 2000 to carry out the purposes of this section.

SEC. 608. CHILDREN'S TRUST FUND.

(a) DESIGNATION OF CONTRIBUTIONS.—

(1) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end thereof the following new part:

"PART IX—CONTRIBUTIONS TO CHILDREN'S TRUST FUND

"Sec. 6097. Amounts for Children's Trust Fund.

"SEC. 6097. AMOUNTS FOR CHILDREN'S TRUST FUND.

"Each taxpayer may include with such taxpayer's return of tax imposed by chapter 1 for any taxable year a contribution by the taxpayer to the Children's Trust Fund.".

(2) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new item:

"Part IX—Contributions for Children's Trust Fund.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1995.

(b) ESTABLISHMENT OF CHILDREN'S TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to the trust fund code) is amended by adding at the end thereof the following new section:

"SEC. 9512. CHILDREN'S TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Children's Trust Fund', consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFER TO CHILDREN'S TRUST FUND OF AMOUNTS DESIGNATED.—There is hereby appropriated to the Children's Trust Fund amounts equivalent to the amounts contributed to such Trust Fund under section 6097.

"(c) EXPENDITURES FROM TRUST FUND.—

"(1) IN GENERAL.—Amounts in the Children's Trust Fund shall be available as provided by appropriation Acts for making expenditures for programs regarding child support and the specific mandates described in part D of title IV of the Social Security Act, especially such mandates established by the amendments made by the Child Support Responsibility Act of 1994.

"(2) ADMINISTRATIVE EXPENSES.—Amounts in the Children's Trust Fund shall be available to pay the administrative expenses of the Department of the Treasury directly allocable to—

"(A) modifying the individual income tax return forms to carry out section 6097,

"(B) carrying out this chapter with respect to such Trust Fund, and

"(C) processing amounts received under section 6097 and transferring such amounts to such Trust Fund.".

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new item:

"Sec. 9512. Children's Trust Fund.".

SEC. 609. STUDY OF REASONS FOR NONPAYMENT OF CHILD SUPPORT; REPORT.

(a) STUDY.—The Comptroller General of the United States shall—

(1) conduct a study of the causes of delinquency in the payment of child support, including the nonpayment of child support by noncustodial parents and failure of custodial parents to cooperate in the collection of child support; and

(2) if a sufficient number of studies of this matter are available, review the studies.

(b) REPORT TO THE CONGRESS.—Within 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and to the Office of Child Support Enforcement, a report that contains the results of the study required by subsection (a), and a consolidated summary of the studies described in subsection (a)(2).

SEC. 610. STUDY OF EFFECTIVENESS OF ADMINISTRATIVE PROCESSES; REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the effectiveness of the processing of child support and parentage cases in States that use administrative processes as compared with States that use judicial or quasi-judicial processes.

(b) REPORT TO THE CONGRESS.—Within 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that contains the results of the study required by subsection (a).

SEC. 611. COMPENDIUM OF STATE CHILD SUPPORT STATUTES.

The Office of Child Support Enforcement shall produce and update the compendium entitled "A Guide To State Child Support And Paternity Laws", published by the National Conference of State Legislatures.

SEC. 612. ESTABLISHMENT OF PERMANENT CHILD SUPPORT ADVISORY COMMITTEE.

(a) IN GENERAL.—The Office of Child Support Enforcement shall establish an advisory committee on child support matters composed of Federal and State legislators, State child support officials, and representatives of custodial and noncustodial parents.

(b) FUNCTIONS.—The advisory committee established pursuant to subsection (a) shall—

(1) provide oversight of the implementation of Federal laws and regulations affecting child support, and the operation of Federal, State, and local child support programs; and

(2) provide a forum through which child support problems experienced by parents, State agencies, the courts, and the private bar may be identified, and from which recommendations on how to solve such problems may be reported to the Secretary of Health and Human Services and to the Congress.

(c) PERMANENCY.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory committee established pursuant to subsection (a) of this section.

TITLE VII—STATE ROLE

SEC. 701. ADVOCATION OF CHILDREN'S ECONOMIC SECURITY.

Section 454 (42 U.S.C. 654), as amended by sections 211(e), 301(a), 425, 504, and 602 of this Act, is amended—

(1) by striking "and" at the end of paragraph (28);

(2) by striking the period at the end of paragraph (29) and inserting "; and"; and

(3) by inserting after paragraph (29) the following:

"(30) provide that the agency administering the plan shall advocate to promote the greatest economic security possible for children, consistent with the ability of any individual who owes child support with respect to the child to provide the support.".

SEC. 702. DUTIES OF STATE CHILD SUPPORT AGENCIES.

Section 454 (42 U.S.C. 654), as amended by sections 211(e), 301(a), 425, 504, 602, and 701 of this Act, is amended—

(1) by striking "and" at the end of paragraph (29);

(2) by striking the period at the end of paragraph (30) and inserting "; and"; and

(3) by inserting after paragraph (30) the following:

"(31) provide that the agency administering the plan shall provide to each custodial parent—

"(A) a written description of the services available under the plan, and a statement describing the priorities applied in distributing collected child support and the rules governing confidentiality of information in child support matters;

"(B) a statement that at least 30 days before the agency consents to the dismissal of a child support case with prejudice or a reduction of arrearages, the agency must provide notice to the custodial parent at the last known address of the custodial parent;

"(C) written quarterly reports on the status of any case involving the custodial parent;

"(D) a statement that the State is required to provide services under the plan to any custodial parent who is eligible for aid under the State plan approved under part A; and

"(E) a statement that any custodial parent who applies for services under the plan is eligible for such services, and that any application fee for such services is deferred pending determination of the eligibility of the custodial parent for aid under the State plan approved under part A.".

SEC. 704. ADMINISTRATIVE PROCESS FOR CHANGE OF PAYEE IN IV-D CASES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 104, 205, 206, 207, 209, 210, 212, 405, 406(a), 407, 408, 409, 410, 411, 414, 416, 417, 423, 424, 428, 429, and 502 of this Act, is amended by inserting after paragraph (35) the following:

"(36) Procedures under which only administrative procedures are required to change the payee under a child support order in a case under this part, if a statement by an official of the State child support enforcement agency is included in the court or administrative file documenting the change.".

SEC. 705. FINANCIAL INCENTIVES.

(a) ONLY CHILD SUPPORT ENFORCEMENT FUNDS SUBJECT TO REDUCTION FOR SUBSTANTIAL NONCOMPLIANCE.—

(1) IN GENERAL.—Subsection (h) of section 403 (42 U.S.C. 603(h)) is hereby transferred to section 455 of the Social Security Act, redesignated as subsection (f) of such section 455, and amended—

(A) in paragraph (1)—

(i) by striking "Act" and inserting "part";

(ii) by striking "part D" and inserting "this part"; and

(iii) by striking "such part" and inserting "this part"; and

(B) in paragraph (3), by striking "this part" and inserting "part A".

(2) CONFORMING AMENDMENTS.—

(A) Section 452(a)(4) (42 U.S.C. 652(a)(4)) is amended by striking "403(h)" each place such term appears and inserting "455(f)".

(B) Subsections (d)(3)(A), (g)(1), and (g)(3)(A) of section 452 (42 U.S.C. 652) are each amended by striking "403(h)" and inserting "455(f)".

(b) PAYMENTS TO STATES INCREASED.—

(1) IN GENERAL.—Section 455(a) (42 U.S.C. 655(a)) is amended—

(A) in paragraph (1)—

(i) by striking "(a)(1)" and inserting "(a)"; and

(ii) in subparagraph (A), by striking "the percent specified in paragraph (2)" and inserting "90 percent"; and

(iii) in each of subparagraphs (B) and (C), by striking "(rather than the percentage specified in subparagraph (A))";

(B) by striking paragraph (2); and

(C) by redesignating subparagraphs (A), (B), and (C) of paragraph (1) as paragraphs (1), (2), and (3), respectively.

(2) CONFORMING AMENDMENTS.—Paragraphs (1)(B), (2)(A), and (2)(B) of section 452(d) (42 U.S.C. 652(d)) are each amended by striking "455(a)(1)(B)" and inserting "455(a)(2)".

(c) REPEAL OF INCENTIVE PAYMENTS TO STATES.—Section 458 (42 U.S.C. 658) is hereby repealed.

SEC. 706. AVOIDANCE OF CONFLICTS OF INTEREST.

Section 454 (42 U.S.C. 654), as amended by sections 211(e), 301(a), 425, 504, 602, 701, and 702 of this Act, is amended—

(1) by striking "and" at the end of paragraph (30);

(2) by striking the period at the end of paragraph (31) and inserting "; and"; and

(3) by inserting after paragraph (31) the following:

"(32) provide that the State may not seek to modify a child support order on behalf of a party to the order if the State has provided services under the State plan to another party to the order.".

Mr. SASSER. Mr. President, I rise today to talk about an issue that is critical for the future of many children in this country; too many children are growing up in poverty because noncustodial parents refuse to provide financial support for them. As a result, millions are growing up in financially unstable families. While we do have a child support enforcement program, it is inadequate to meet the needs of many of these children. That is why I am joining Senator FEINSTEIN in introducing the Child Support Responsibility Act of 1994.

SINGLE-PARENT FAMILIES AND POVERTY

An increasing number of children are growing up in families with just one parent—usually the mother—living in the same household. The percentage of children in one-parent families has increased from 8 percent in 1960 to 25 percent in 1990. Contributing to this is the rise in out-of-wedlock births; the number of children born to unwed mothers increased by 75 percent between 1980 and 1990. Nearly one-third of all children born in 1991 were born to unmarried mothers. More than half of children receiving benefits under the AFDC program now have parents who have never been married. Some researchers estimate that more than half of all children born in the last decade will live at some point during their childhood with only one parent.

Now, most single parents do their very best to raise those children in loving and supportive homes. Unfortunately, however, there is a high correlation between single parent families and poverty. More than half of all children in mother-only families live in poverty compared to only 11 percent of children in two-parent families. Nearly 75 percent of children who spend at least some time in a single-parent family will live in poverty at some point during their first 10 years of life and are likely to remain poor longer than children in two-parent families. Children of unmarried teenage mothers are particularly likely to experience poverty.

Financial instability can put children at a tremendous disadvantage. Yet, today 65 percent of absent fathers provide no support at all for their children. This is why we must demand that noncustodial parents take more responsibility for providing financial support for their children. It is true that some fathers are not able to provide financial support for their children. But the system needs to reach these fathers to encourage them to be a part of their children's lives, to provide emotional support, and, when they are able, to contribute financially to the child's well-being.

INADEQUACIES OF THE CURRENT SYSTEM

Child support laws, which are part of family law, are generally under the purview of the States. Federal legislation was first enacted in 1950 to respond to the increasing cost of the Aid to Families with Dependent Children program. The Child Support Enforcement [CSE] Act was enacted in 1975, and has been modified a number of times. The Federal Government provides funding and assistance to States to operate child support programs to help both AFDC and non-AFDC parents.

While aspects of the child support system are improving, it is still inadequate. Of the 10.8 million single-mother families in this country, only 60 percent have child support orders—and there has been no improvement in that figure over the past decade. Just over one quarter of potentially eligible women have child support awards and received the full amount. In addition, the value of child support awards declined by 10 percent in real terms between 1978 and 1989. Those with child support orders receive, on average, only 60 percent of what is owed them per year. The Federal Child Support Enforcement Program, which handles only about half of all child support cases, obtained collections for less than 20 percent of these families.

Research by the Urban Institute suggests that if child support orders were established in all cases, or brought up to date, and fully enforced, $47 billion would be paid in child support every year. However, only a total of $20 billion in child support orders have been established and, of that, less than $14 billion is currently collected. This leaves a gap of nearly $34 billion owed to both non-AFDC and AFDC parents.

There are many reasons for this gap. Some 21 percent, or $7 billion, is due to a failure to collect what has been ordered. This can occur either because a noncustodial parent cannot pay, or refuses to pay. In some cases, the location of the noncustodial parent may not be known.

Another factor contributing to the gap is that existing child support awards are frequently inadequate. Many have not been updated to reflect inflation or the ability of the noncustodial parent to pay. If all AFDC mothers had child support awards reflective of current award levels and received full payment, another $7.2 billion could be collected.

But fully 57 percent, or $19 billion, of the gap occurs because many potentially eligible custodial parents do not have a legal child support award or order. About 42 percent of the 10 million single-mother households do not have child support orders. Half of these parents are unable to obtain an award because paternity has not been legally established.

There are many reasons why we should be concerned about the failure of noncustodial parents to support their children. We know that children tend to fare better if they have the support—emotional and financial—of both parents. But taxpayers have a legitimate reason to be angry about the refusal of individuals to take responsibility for providing financial support for their children; one estimate suggests that there could be an 8-percent reduction in the AFDC caseload if just the awards that have already been ordered were collected. More people could get off of welfare if they have adequate child support orders in place.

This is why I believe that we need to do more to improve child support enforcement at the Federal level. The bill we are introducing today is the same as legislation introduced by Congresswoman SCHROEDER on behalf of the Congressional Women's Caucus in the House of Representatives. That legislation now has 77 cosponsors.

HIGHLIGHTS

This bill would improve Federal and State systems to locate absent parents through a number of mechanisms. A Federal registry of all child support orders would be established. The Federal W-4 form would be modified to include

information about child support obligations. Access to the National Parent Locator Network would be expanded. States would be required to maintain child support order registries, using a uniform abstract, and transmit copies of those abstracts to the Federal registry. Development of interstate online access to information on child support orders would be encouraged.

This bill would strengthen programs to establish legal paternity as soon as possible after a child is born. This is essential if more single mothers are to obtain enforceable child support orders. Information would be made available to prospective parents about the rights as well as the responsibilities conveyed by legal recognition and about the means that are available to establish paternity. Legal procedures for establishing paternity would be simplified.

The bill would also strengthen mechanisms to increase the number of families with child support orders, improve the uniformity of those orders, and provide for annual updates so that children receive a fair amount of support from noncustodial parents.

The bill would help States increase collection of child support payments. Wage withholding requirements would be strengthened to improve collections from those who change jobs or move frequently, and penalties imposed if employers failed to comply. States would be allowed to restrict professional, occupational, and business licenses as well as drivers' licenses and auto registration for nonpayment of child support. Payments on Lottery winnings, legal settlements, payouts, awards, and bequests could be delayed until a determination can be made whether the person is in arrears on child support payments. Delinquent child support payments would be reported to credit bureaus. Passports could be denied or revoked for noncustodial parents who are the subject of outstanding State warrants of arrest for nonpayment of child support exceeding $10,000. We must get the word out that nonpayment of child support is not acceptable.

Mr. President, I do think it is important to acknowledge that some parents may not always be in a position to provide financial support for their children, because they have lost their jobs or cannot find work. This is one reason why we must continue to work to have a strong, vibrant, and job-producng economy that will provide decent wages and why we must have strong education and job training systems.

Our world has changed in many ways over the last 30 years. The change in family structure is one such change that has profound implications for the future of our Nation's children. We cannot turn back the clock. But our Nation's children need financial and emotional security if they are to participate fully in this country's future. And the first place to turn is to the parents of those children. We can and should adopt these measures to make sure that parents take financial responsibility for the children they bring into this world. We must get the message out that the children come first.

By Mr. GRAHAM:

S. 2529. A bill to amend title XI of the Social Security Act with respect to certain criminal penalties for acts involving the Medicare Program or State health care programs; to the Committee on Finance.

HEALTH CARE LEGISLATION

• Mr. GRAHAM. Mr. President, today I am introducing a bill to clarify that the intent of the 1977 antikickback statute is not to jeopardize every State or Federal health plan which already uses, or which seeks to use, Federal funding to pay for private health insurance for citizens. Unfortunately, a recent interpretation of that statute by the Department of Justice and the Department of Health and Human Services have placed at risk innovative Government programs to increase health insurance coverage through the purchase of private health insurance or the use of managed care in either Medicaid or Medicare. That interpretation came as part of Florida's waiver request for a Medicaid demonstration project.

On February 9, 1994, Florida submitted its Florida Health Security waiver to the Department of Health and Human Services [HHS] and the Health Care Financing Administration [HCFA]. This Medicaid waiver request would, if enacted, provide 1.1 million additional Floridians with insurance coverage up to 250 percent of the poverty level. FHS participants would buy a standard benefit package offered through a Community Health Purchasing Alliance and receive, according to their income, a premium discount to make the package affordable.

On September 14, 1994, after 7 long months of negotiations, HHS granted a conditional waiver approval to allow Florida to implement the State's proposed reforms. By granting this important request, Florida would be allowed to use Medicaid funds to provide insurance premium discounts to working, uninsured Floridians traditionally ineligible for Medicaid.

There are many positive aspects of Florida Health Security. First and foremost, let me reemphasize that this waiver program would allow an additional 1.1 million Floridians obtain health insurance coverage—thereby reducing the State's uninsured rate by over 40 percent. Moreover, of the 2.7 million Floridians presently without health insurance, 1 million are children. With the plan's requirement that 80 percent of the enrollment spaces be reserved for lower income, uninsured families, children will disproportionately benefit from this initiative.

In addition, this waiver would eliminate the all or none approach of Medicaid by creating a sliding scale of contributions for those above the Medicaid poverty threshold and up to 250 percent of poverty. At present, Medicaid's all or none approach creates the perverse incentive of encouraging people to remain unemployed and in poverty in order to continue to have health care coverage. Florida's approach would clearly help get people off welfare and be a much fairer system than what we have now.

The waiver also allows Florida and the Federal Government better control over the costs of the Medicaid Program. Since 1982, Florida has had its Medicaid Program increase from $1 billion to $7 billion. In the years from 1990 through 1993, Florida saw its Medicaid budget expand by 30 percent, 26 percent, and 19 percent, respectively. Instead, over the 5-year period of Florida's waiver program, costs would be controlled and managed through the increased use of case management and managed care in the private sector. Through these savings, the State and the Federal Government will be able to provide coverage to over 1 million previously uninsured Floridians without spending additional revenue.

In short, Florida's Health Security Program would expand access and health coverage without raising taxes, control costs and break the categorical link between health care and welfare.

To implement this program, Florida Health Security will utilize the already successfully established Community Health Purchasing Alliances, which have reduced premiums for participating small businesses by 10 to 50 percent this year. As a result of this, private health plans will be integrally involved in this Florida Health Security Program.

In fact, under Florida Health Security, accountable health partnerships would submit bids on premium rates for the standard benefit plan, with a portion of the premium to be paid by Medicaid. Insurance agents would be directly involved in the process due to the fact that they are an integral part of any system relying in whole or in part on private health insurance coverage.

Unfortunately, HHS and the Department of Justice have expressed concern that payments to insurance agents by accountable health plans might violate the Social Security antikickback statute. Clearly, the 1977 antikickback statute was not intended or was even contemplated to apply to programs like Florida's demonstration project.

In fact, there are already numerous and widespread examples where Medicare and Medicaid funds are used for the payment, directly or indirectly, to insurance agents. These include Medicaid revisions in the Family Support

Act of 1988, which creates a Medicaid wrap-around option allowing States to use Medicaid funds to pay a family's expenses for premiums, deductibles, and coinsurance for any health care coverage offered by the employer.

As the State argued while pursuing the waiver, since insurance companies use insurance agents, the purchase of insurance and the payment of premiums of necessity results in the payment of a commission to an insurance agent. This is also true when Medicaid funds health maintenance organizations [HMO's], the Medicare Risk Program and various State plans relating to areas such as the enrollment of Medicaid eligibles in group health plans.

Through the section 1115 Medicaid demonstration project waiver process, Florida is attempting to, for the first time, use Medicaid funds to purchase private health insurance on a wide scale. However, by mistakenly applying the antikickback statute beyond its intended scope to insurance agent commissions, the Departments of Justice and Health and Human Service would effectively kill the demonstration. As noted before, insurance agents are an integral part of the existing health insurance system.

As a result, this legislation focuses narrowly on clarifying that the 1977 antikickback statute would not be unnecessarily applied to Medicaid demonstration projects and Medicaid managed care programs, which were initiatives that were not anticipated in the original adoption of the statute. Failure to adopt this language, with Justice's and HHS's present interpretation of the statute, would very well jeopardize every State or Federal health plan which already uses, or which seeks to use, Federal moneys to fund private health insurance coverage.

I urge my colleagues to support this legislation and ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2529

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CRIMINAL PENALTIES FOR ACTS INVOLVING THE MEDICARE PROGRAM OR STATE HEALTH CARE PROGRAMS.

Section 1128B(b)(3) of the Social Security Act (42 U.S.C. 1320a-7(b)(3)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(F)(i) any premium payment made to a health insurer or health maintenance organization by a State agency in connection with a demonstration project operated under the State Mmedicaid program pursuant to section 1115 with respect to individuals participating in such project; or

"(ii) any payment made by a health insurer or a health maintenance organization to a sales representative or a licensed insurance agent for the purpose of servicing, marketing, or enrolling individuals participating in such demonstration project in a health plan offered by such an insurer or organization.".●

By Mr. METZENBAUM:

S. 2531. A bill to amend the Employee Retirement Income Security Act of 1974 to improve the pension and welfare benefits of working men and women, and for other purposes; to the Committee on Labor and Human Resources.

THE PENSION BILL OF RIGHTS ACT OF 1994

● Mr. METZENBAUM. Mr. President, today I am introducing the Pension Bill of Rights Act of 1994. I wish that I had introduced this bill many years earlier. Unfortunately, we spend so much time fighting the most pressing crises of the day, and defending against efforts to weaken our laws, we have little time to address the long-term needs of our citizens and our country. Even when we try to put forth comprehensive proposals to help people, the obstacles are many. We have spent decades trying to establish a decent and uniform health care system for all of our citizens with little to show for our efforts. Access to meaningful health care remains a basic and pressing need; Congress must keep trying to pass a comprehensive solution no matter how long it takes.

Increasingly, there is anxiety about the adequacy of our retirement system as well. Although Social Security remains a fairly stable program to provide a minimum level of income to retired individuals, additional funds and reforms are likely to be needed to strengthen this floor of retirement protection. In addition, we need to reexamine and strengthen our private supplemental pension system. It was 20 years ago that the Congress enacted our Federal pension law, known as the Employee Retirement Income Security Act or ERISA. While ERISA has led to numerous protections and improvements in our supplemental system, it also has an increasingly apparent number of flaws. Over the years, the Senate Subcommittee on Labor, which I chair, has received thousands of letters and held innumerable hearings on the problems which exist in our private pension system.

First, for too many Americans, our private system is failing to provide a supplement to Social Security. More than half the work force is not covered by a private pension at work. Many full-time workers are covered, but more and more employers are hiring part-time, temporary, or other contingent employees who are ineligible for pension benefits. In fact, today contingent workers account for one-quarter of our work force as a whole.

Second, the funds being set aside for retirement, both by employers and employees are increasingly inadequate to meet the needs of retirees. Traditionally, employers made initial contributions to workers' pensions and then allowed workers to set aside additional employee savings. More and more, employers have turned pension plans around so that employees must first contribute funds, and only then will employers match some or all of the employee's contributions. While this change may be an attractive incentive for employees to save more than they ordinarily would, it is turning our pension system into one that works for those who are already better off financially, and it is setting lower paid workers further and further behind. Those without discretionary income lose two times; first, because they do not earn enough to save their own funds, and second because they therefore receive little or nothing from the employer in matching pension contributions.

Third, there is still too much gameplaying in our private pension system. Too many employers make the rules of the plan so complicated and rifled with caveats and loopholes, that the promise of retirement benefits proves illusory for many workers. Pension plans should be fair. Employers should design and operate their plans fairly. Employees should be afforded a fair opportunity to earn pension benefits based on their years of service to the company.

We need a healthy retirement system, both in Social Security and in our supplemental private system. The bill I am introducing today seeks to improve and simplify our current supplemental system. It does not solve every problem that our system faces. But I hope it does clean out many of the known cobwebs, and, I believe that it will make our system simpler and fairer. I hope it will lay the groundwork for future reform. We all have an interest in ensuring a decent and adequate retirement system for all of our citizens.●

By Mr. ROTH (for himself, Mr. BOREN, Mr. SIMON, and Mr. COATS):

S. 2532. A bill to amend the Internal Revenue Code of 1986 to allow for the establishment of medical savings accounts for individuals covered by certain high deductible health plans; to the Committee on Finance.

THE MEDICAL SAVINGS ACCOUNT TAX INCENTIVE ACT

● Mr. ROTH. Mr. President, I join my friend from Oklahoma to introduce this legislation to create a medical savings account option for American families—an option that will help our families save money on health care expenses—an option that will create incentives to lower health care costs—an option that will allow our families to choose their own physicians and their own health care plans.

Let me explain how the medical savings accounts will work.

Looking at an average family health policy that costs $5,000 a year, today that family might have to pay the first $250 of their own health costs, and then pay some 20 percent of any health costs after that. Under our legislation, that family could instead spend the same $5,000 to buy a high deductible policy for $2,500 and place $2,500 in their medical savings account. As long as that family spends less than $2,500 for health costs during the year, all of their health expenses will be paid with Pretax dollars from their medical savings account provided by their employer. If they spend more, then their high deductible health insurance policy will begin paying their health costs once they exceed $3,000.

It's that simple!

After a few years of relatively low health expenses, excess funds in that family's medical savings account would be available to pay for unexpectedly high health costs, for long-term health insurance, or to make health insurance payments to extend coverage in the case of unemployment. This last feature offers something that Americans have been desiring for years—portability.

All of this means that many Americans no longer will be forced to stay in a job that they do not want, nor do they have to fear losing their insurance if they lose their job. They will most likely have the comfort of knowing that the money has been provided by their employer, free of tax, and is in their account where it can be used to pay for their insurance premiums, as well as their routine doctor visits.

What makes this legislation work is the fact that Americans will know that whatever they do not spend on health care expenses, they can keep for themselves. This also helps to improve the Nation's poor savings rate—the worst in the industrialized world.

Mr. President, for all these reasons, I encourage my colleagues to support Senator BOREN and me in this effort. It is good for our families. It is good for our health care delivery system. It is good for our country.

SUPPORT ORGANIZATIONS

Mr. President, I would like to point out that there is a large coalition supporting medical savings accounts. We have had very strong support from the small business community and from agriculture organizations. I would like to mention a few supporters: the American Farm Bureau, the American Soybean Association, the National Association of Wheat Growers, the National Federation of Independent Businesses, the Small Business Council of America, the American Small Business Association, the National American Wholesale Grocers' Association, the U.S. Business and Industrial Council, the American Health Care Association, the Small Business Survival Committee, the Washington Policy Associates, the Independent Bakers Association, the Council for Affordable Health Insurance—which includes over 40 insurance companies, many doctors and health providers, and the Business Coalition for Affordable Health Care—which represents over 900,000 American business, mostly small ones.

We feel that this is an impressive list of supporters from diverse areas and particularly with the farm and small businesses, this is an important alternative that the Congress ought to allow for family's health care.

PHYSICIAN CHOICE

Under this legislation, you can go to any doctor, nurse, or other health care provider of your choice without worrying about whether or not your insurance is going to cover the bill. The reason is simple, you will be using the money that your employer has placed into your medical savings account before paying taxes, to pay the doctor. If your using your own money, then of course you are free to go to whatever health provider you want.

Of course, not only will taxpayers be allowed to go to the doctor of their choice, but the hospital, nurse, the midwife, the chiropractor, or the optometrist of your choice as well. For working poor Americans, I believe medical savings accounts will be especially beneficial. That's because they will have the money to pay for health costs in their account, and in addition, they will not have to meet a deductible or a copayment problem that may prove prohibitively expensive for some workers.

So to summarize, one of the great things about this bill is that no Government bureaucrat will get in the way of you and your doctor, or you and your hospital, or you and your nurse. There is no health junta in my legislation. No one to approve whether you spend the money on a second opinion or not, or get that extra test done. There is no standard plan that lays out a one-size-fits-all Government system for you to leap through. The money is yours, and so you are the one in control. But, because the money is yours, and because you will get to keep it if you do not waste it, I believe taxpayers will make smarter, more informed, and better decisions about when, how, and where to seek their health advice.

LONG-TERM CARE AND COBRA PAYMENTS

Two of the best provisions of this bill are the ones that add flexibility for consumers to purchase insurance in the event they lose their job, or if they want to buy long-term insurance. Under this bill, taxpayers will be able to use money in their medical savings account to make COBRA payments to continue their catastrophic health insurance policy in the event that their employer goes out of business, or if they are let go. This portability feature is something that is high on the list of most Americans in the context of health reform, and this bill helps address the problem.

Second, many Americans know that if they are faced with a serious illness for a long period of time, they will need long-term care insurance. Those who receive their care from nursing homes understand exactly what I am talking about. Often, people's regular insurance does not cover this kind of expense, and a long-term care insurance policy becomes essential. Government cannot afford to pay the costs of this kind of benefit, but it can encourage it through the use of medical savings accounts, and the equal tax treatment I am advocating in this legislation.

COST CONTAINMENT

Beyond offering patients choice, medical savings accounts will help control health care costs. The reason why is simple: it will encourage consumers of medical care to shop wisely, reject unnecessary treatment, and conserve scarce medical resources because it is the consumer, not some third party, such as an insurance company or the Government, who will be paying the bills.

We already know about the success of medical savings accounts because they already exist. Many businesses and their employees have learned that they can offer these plans today. It is done by offering a high deductible health insurance policy to employees, and depositing the savings from buying these low cost plans into the employees' bank accounts.

The problem, however, with the current medical savings accounts in effect, is that employees are treated worse under the tax laws by electing this self-insurance option for their health care coverage. You see, at the end of each year, the employee has to include the full amount of the money deposited into his or her medical savings account in taxable income. That is a grossly unfair result. Since most taxpayers cannot deduct their health service costs because they do not exceed the 7½ percent of adjusted gross income test, this often results in a tax penalty of between 15 and over 40 percent, after taking into account State taxes.

Still, many, many taxpayers are electing on their own to choose these medical saving accounts rather than an ordinary health insurance plan from their employers. Why? The answer is simple; they know that they have the catastrophic insurance to cover them in the event of an emergency, and they have the money provided by their employer to pay for routine visits to the doctor for their family. These same taxpayers know that if they are good consumers, learn about competition in the health care industry, and shop wisely, then they will get to keep the savings from being a prudent

consumer. Even with the dramatic tax penalty now imposed on these health accounts, taxpayers all over the country are choosing this method to pay for their health care. I will just mention a few employers with programs now in place, and hope the Senate will continue to look at their successes: Forbes, the United Mine Workers, Dominion Resources, DuPont, Golden Rule Insurance Co., Quaker Oats, and the Council for Affordable Health Insurance.

STATE LEGISLATION

Already, seven States have passed legislation enacting tax-favored medical savings accounts: Arizona, Colorado, Idaho, Illinois, Michigan, Mississippi, and Missouri. Dozens of other States are working to pass similar legislation. Jersey City has implemented them as an alternative for their city employees, and the State of Ohio is moving to implement a test program next year for State employees. Clearly medical savings accounts offer Americans a choice about their health care that should be fundamental in a country built on free market principles. It is the Federal Government that must now move ahead with this new idea.

I want to point out a few other things about efforts at the local levels of government to use medical savings accounts to reform health care. I have letters here from three Governors endorsing my proposal and pointing out how important it is that we pass their reform at the Federal level. Kirk Fordice, from Mississippi writes that he signed legislation earlier this year to establish medical savings accounts in that State. The State law provides tax exemptions for medical savings accounts spent on health care, and he states that a Federal exemption would strengthen this incentive, and give employers a viable option for providing cost effective health care coverage for their employees. He also points out that because medical savings accounts preserve and encourage the doctor-patient relationship, they are far more likely to produce wise health care choices than an enhanced bureaucracy.

Another Governor, John Engler from Michigan, writes that he signed legislation on July 13, 1994, "making Michigan the first large industrial State to encourage the creation and use of medical savings accounts." He points out that "the injection of the consumer in the purchase of health care will work to make the individual much more sensitive to the true cost of care."

Another letter I received from Governor Edgar in Illinois also advocates that we adopt medical savings accounts. Governor Edgar points out that Illinois will soon have a new law that will allow employees and employers to contribute up to $3,000 to a medical savings account, from which withdrawals for health costs can be made free of Illinois income tax. He says that the Illinois General Assembly agreed unanimously to this proposal, and he agrees that the "accounts just make good sense."

In addition to the seven States that have actually enacted medical savings account legislation, there are seven more that have asked the Federal Government to enact medical savings accounts. These resolutions at the State level are intended to encourage us to enact just the kind of legislation that is in my bill. Those States enacting resolutions supporting medical savings accounts, and therefore a bill like mine, are: Arizona, Colorado, Montana, South Carolina, Texas, Utah, and Virginia.

I should also mention that there are quite a number of other States that have taken steps toward enacting medical savings accounts. In Oklahoma, the Oklahoma Family Choice Health Plan was proposed by Governor Walters and that plan is under study. That plan, includes a form of medical savings accounts, and even forces most individuals by 1995 to use them to buy insurance and pay doctor's bills. Under a study by the respected firm of KPMG Peat Marwick, it was estimated that health costs would be reduced by 1 percent in 1997. In 1998 and beyond, savings are "expected to be even greater."

In Minnesota, New Jersey, and South Carolina, the Governors have all signed legislation to enact in-depth studies of medical savings accounts. Mississippi has already concluded their study, and were so pleased by the results that they enacted medical savings account legislation.

Other States have pending legislation, some of which have passed through some part of the legislative process. These States include: California, Kansas, New Mexico, New York, and Pennsylvania. Of these, the Kansas and New Mexico legislation has moved the furthest.

I hope that the encouragement that the States have offered to us here in the Senate serve as a strong incentive for Members to support this legislation.

CLOSING

Clearly, strong efforts have been made to defeat any medical savings account legislation by those who have a vested interest in the current system.

The real winners when my legislation passes will be hundreds of thousands of consumers who will have more control over the their own life and the health care they need.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2532

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Medical Savings Account Tax Incentive Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. DEDUCTION FOR CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.

"(a) DEDUCTION ALLOWED.—In the case of an eligible individual, the amounts paid in cash during the taxable year by such individual to a medical savings account for the benefit of such individual or for the benefit of such individual and any spouse or dependent of such individual who is an eligible individual shall be treated for purposes of sections 162(1) and 213 as amounts paid for insurance which constitutes medical care.

"(b) LIMITATIONS.—

"(1) ONLY 1 ACCOUNT PER FAMILY.—Except as provided in regulations prescribed by the Secretary, no amount shall be treated as paid for insurance by reason of subsection (a) for amounts paid to any medical savings account if the account beneficiary, or such beneficiary's spouse or dependent, is a beneficiary of any other medical savings account.

"(2) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The aggregate amount which may be treated as paid for insurance under subsection (a) with respect to any account beneficiary shall not exceed the excess (if any) of—

"(i) the premium determined under subparagraph (B) for the same class of enrollment as the high deductible health plan described in subsection (c)(1)(A), over

"(ii) the cost of such high deductible health plan.

"(B) PREMIUM.—Not later than January 1 of each calendar year, the Secretary shall determine and publish the premium (for each class of enrollment) for the preceding calendar year for the health benefits plan offered under chapter 89 of title 5, United States Code, with the highest enrollment (determined on the basis of the annual open enrollment period).

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means any individual—

"(A) who is covered under a high deductible health plan during any portion of the calendar year with or within which the taxable year begins, and

"(B) who is not eligible during such calendar year—

"(i) to participate in an employer-subsidized health plan maintained by an employer of the individual, the individual's spouse, or any dependent of either, or

"(ii) to receive any employer contribution to a medical savings account.

For purposes of subparagraph (B), a self-employed individual (within the meaning of section 401(c)) shall not be treated as his own employer.

"(2) HIGH DEDUCTIBLE HEALTH PLAN.—

"(A) IN GENERAL.—The term 'high deductible health plan' means a health plan which—

"(i) has an annual deductible limit for each individual covered by the plan which is not less than $1,000 or more then $3,000, and

"(ii) has an annual limit on the aggregate amount of deductibles required to be paid with respect to all individuals covered by the plan which is not less than $2,000 or more than $5,500.

"(B) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 1996, each dollar amount contained in subparagraph (A) shall be increased by an amount equal to the product of—

"(i) such dollar amount, and

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that such section shall be applied by substituting 'the medical component of the CPI' for 'the CPI' each place it appears and by substituting '1995' for '1992' in subparagraph (B).

If any amount under this paragraph is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

"(3) MEDICAL SAVINGS ACCOUNT.—The term 'medical savings account' has the meaning given such term by section 7705.

"(4) TIME WHEN CONTRIBUTIONS DEEMED MADE.—A contribution shall be deemed to be made on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof)."

(b) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new item:

"Sec. 220. Contributions to medical savings accounts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 3. EXCLUSION FROM INCOME OF EMPLOYER CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Section 106 (relating to contributions by employers to accident and health plans) is amended by adding at the end the following new subsection:

"(b) CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—

"(1) TREATMENT OF CONTRIBUTIONS.—

"(A) IN GENERAL.—Gross income of an employee who is covered by a high deductible health plan of an employer shall not include any employer contribution to a medical savings account on behalf of the employee or the employee's spouse or dependents.

"(B) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions described in subparagraph (A) and employer contributions to a health plan of the employer.

"(2) DOLLAR LIMITATION.—The amount which may be excluded under paragraph (1) for any taxable year shall not exceed the high deductible health plan differential.

"(3) HIGH DEDUCTIBLE HEALTH PLAN DIFFERENTIAL.—For purposes of paragraph (2)(B), the high deductible health plan differential with respect to any employee is the amount by which the cost of the high deductible health plan in which the employee is enrolled is less than the lesser of—

"(A) the cost (for the same class of enrollment) of the health plan which—

"(i) the employee is eligible to enroll in through the employer, and

"(ii) has the highest cost of all health plans in which the employee may enroll in through the employer, or

"(B) the amount determined under section 220(b)(2)(B).

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) HIGH DEDUCTIBLE HEALTH PLAN.—The term 'high deductible health plan' has the meaning given such term by section 220(c)(2).

"(B) MEDICAL SAVINGS ACCOUNT.—The term 'medical savings account' has the meaning given such term by section 7705."

(b) EMPLOYER PAYMENTS EXCLUDED FROM EMPLOYMENT TAX BASE.—

(1) SOCIAL SECURITY TAXES.—

(A) Subsection (a) of section 3121 is amended by striking "or" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting "; or", and by inserting after paragraph (21) the following new paragraph:

"(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(B) Subsection (a) of section 209 of the Social Security Act is amended by striking "or" at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting "; or", and by inserting after paragraph (19) the following new paragraph:

"(20) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b) of the Internal Revenue Code of 1986."

(2) RAILROAD RETIREMENT TAX.—Subsection (e) of section 3231 is amended by adding at the end the following new paragraph:

"(10) MEDICAL SAVINGS ACCOUNT CONTRIBUTIONS.—The term 'compensation' shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(3) UNEMPLOYMENT TAX.—Subsection (b) of section 3306 is amended by striking "or" at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting "; or", and by inserting after paragraph (16) the following new paragraph:

"(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(4) WITHHOLDING TAX.—Subsection (a) of section 3401 is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by inserting after paragraph (20) the following new paragraph:

"(21) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)."

(c) CONFORMING AMENDMENT.—Section 106 is amended by striking "Gross income" and inserting:

"(a) GENERAL RULE.—Gross income".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 4. MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Chapter 79 is amended by adding at the end the following new section:

"SEC. 7705. MEDICAL SAVINGS ACCOUNTS.

"(a) GENERAL RULE.—The term 'medical savings account' means a trust created or organized in the United States for the exclusive benefit of the beneficiaries of the trust, but only if the written governing instrument creating the trust meets the following requirements:

"(1) Except in the case of a rollover contribution described in subsection (c)(4)—

"(A) no contribution will be accepted unless—

"(i) it is in cash, and

"(ii) it is made for a period during which the individual on whose behalf it is made is covered under a high deductible health plan, and

"(B) contributions will not be accepted for any calendar year in excess of the amount determined under section 220(b)(2)(B).

"(2) The trustee is a bank (as defined in section 408(n)), insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(3) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(4) No part of the trust assets will be invested in life insurance contracts.

"(5) The interest of an individual in the balance in the individual's account is nonforfeitable.

"(b) TAX TREATMENT OF ACCOUNTS.—

"(1) ACCOUNT TAXED AS GRANTOR TRUST.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the account beneficiary of a medical savings account shall be treated for purposes of this title as the owner of such account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

"(B) TREATMENT OF CAPITAL LOSSES.—With respect to assets held in a medical savings account, any capital loss for a taxable year from the sale or exchange of such an asset shall be allowed only to the extent of capital gains from such assets for such taxable year. Any capital loss which is disallowed under the preceding sentence shall be treated as a capital loss from the sale or exchange of such an asset in the next taxable year.

"(2) ACCOUNT TERMINATIONS.—

"(A) PROHIBITED TRANSACTIONS; EXCESS WITHDRAWALS.—If, during any taxable year of the account beneficiary—

"(i) such beneficiary engages in any transaction prohibited by section 4975 with respect to the account, or

"(ii) there is a distribution out of the account any portion of which is includible in the income of the account beneficiary under subsection (c)(1)(A), and after such distribution the balance in the account is less than the annual aggregate deductible limit for all individuals covered by the high deductible health plan,

the account shall cease to be a medical savings account as of the first day of such taxable year.

"(B) FAILURE TO REMAIN IN HEALTH PLAN.—

"(i) IN GENERAL.—If, at any time during the 2-taxable year period beginning with the taxable year of the account beneficiary in which the medical savings account was established, the account beneficiary becomes a participant in a health plan which has a lower individual (or aggregate) deductible

limit than the lowest individual (or aggregate) limit permitted under a high deductible health plan, the account shall cease to be a medical savings account as of the first day of the taxable year in which the individual ceases to be so covered.

"(ii) EXCEPTION.—This subparagraph shall not apply to any account beneficiary who becomes a participant in a plan described in such subparagraph by reason of separation from employment.

"(C) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be a medical savings account by reason of subparagraph (A) or (B) on the first day of any taxable year, subsection (c) shall be applied as if—

"(i) there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day), and

"(ii) no portion of such distribution were used to pay qualified medical expenses.

"(D) CORRECTION WITHIN 60 DAYS.—Subparagraph (A)(ii) shall not apply to any distribution if, within 60 days of the 1st date the account beneficiary knew (or exercising reasonable diligence would have known) of a failure to meet the requirements of subparagraph (A)(ii), the account beneficiary repays to the account the amount of the excess distribution. Such repayment shall not be treated as a contribution to the account.

"(3) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—If, during any taxable year, the account beneficiary uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed and not used to pay qualified medical expenses.

"(c) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—Any amount paid or distributed out of a medical savings account which is not used exclusively to pay the qualified medical expenses of the account beneficiary or of the spouse or dependents of such beneficiary shall be included in the gross income of such beneficiary to the extent such amount does not exceed the excess of—

"(i) the aggregate contributions to such account which were not includible in gross income by reason of section 106(b) or which were deductible under section 220, over

"(ii) the aggregate prior payments or distributions from such account which were includible in gross income under this paragraph.

"(B) SPECIAL RULES.—For purposes of subparagraph (A)—

"(i) all payments and distributions during any taxable year shall be treated as 1 distribution, and

"(ii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

"(2) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (1) shall not apply to the distribution of any contribution paid during a taxable year to a medical savings account to the extent that such contribution exceeds the amount under subsection (a)(2) if—

"(A) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

"(B) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (B) shall be included in the gross income of the individual for the taxable year in which it is received.

"(3) PENALTY FOR DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The tax imposed by chapter 1 on the account beneficiary for any taxable year in which there is a payment or distribution from a medical savings account of such beneficiary which is includible in gross income under paragraph (1) shall be increased by 10 percent of the amount which is so includible.

"(B) EXCEPTION FOR DISABILITY OR DEATH.—Subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

"(C) EXCEPTION FOR DISTRIBUTIONS AFTER AGE 59½.—Subparagraph (A) shall not apply to any payment or distribution after the date on which the account beneficiary attains age 59½.

"(4) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

"(A) IN GENERAL.—Paragraph (1) shall not apply to any amount paid or distributed from a medical savings account to the account beneficiary to the extent the amount received is paid into a medical savings account for the benefit of such beneficiary not later than the 60th day after the day on which the beneficiary receives the payment or distribution.

"(B) LIMITATION.—This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from a medical savings account if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from a medical savings account which was not includible in the individual's gross income because of the application of this paragraph.

"(5) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—For purposes of section 213, any payment or distribution out of a medical savings account for qualified medical expenses shall not be treated as an expense paid for medical care to the extent of the amount of such payment or distribution which is excludable from gross income solely by reason of paragraph (1)(A).

"(6) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in a medical savings account to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer shall be treated as a medical savings account of such spouse, and not of such individual. Any such account or annuity shall, for purposes of this subtitle, be treated as maintained for the benefit of the spouse to whom the interest was transferred.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED MEDICAL EXPENSES.—

"(A) IN GENERAL.—The term 'qualified medical expenses' means any expense for—

"(i) medical care (as defined in section 213(d)), or

"(ii) qualified long-term care services.

"(B) EXCEPTION FOR INSURANCE.—

"(i) IN GENERAL.—Such term shall not include any expense for insurance.

"(ii) EXCEPTIONS.—Clause (i) shall not apply to any expense for—

"(I) coverage under a health plan during a period of continuation coverage described in section 4980B(f)(2)(B),

"(II) coverage under a medicare supplemental policy (as defined in section 1882(g)(1) of the Social Security Act), or

"(III) payment of premiums under part A or B of title XVIII of the Social Security Act, or

"(IV) coverage under a policy providing qualified long-term care services.

"(C) QUALIFIED LONG-TERM CARE SERVICES.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified long-term care services' means necessary diagnostic, preventive, therapeutic, rehabilitative, and maintenance (including personal care) services—

"(I) which are required by an individual during any period during which such individual is a functionally impaired individual,

"(II) which have as their primary purpose the provision of needed assistance with 1 or more activities of daily living which a functionally impaired individual is certified as being unable to perform under clause (ii)(I), and

"(III) which are provided pursuant to a continuing plan of care prescribed by a licensed health care practitioner (other than a relative of such individual).

"(ii) FUNCTIONALLY IMPAIRED INDIVIDUAL.—

"(I) IN GENERAL.—The term 'functionally impaired individual' means any individual who is certified by a licensed health care practitioner (other than a relative of such individual) as being unable to perform, without substantial assistance from another individual (including assistance involving verbal reminding, physical cueing, or substantial supervision), at least 3 activities of daily living described in clause (iii).

"(II) SPECIAL RULE FOR HOME HEALTH CARE SERVICES.—In the case of services which are provided during any period during which an individual is residing within the individual's home (whether or not the services are provided within the home), subclause (I) shall be applied by substituting '2' for '3'. For purposes of this subclause, a nursing home or similar facility shall not be treated as a home.

"(iii) ACTIVITIES OF DAILY LIVING.—Each of the following is an activity of daily living:

"(I) Eating.

"(II) Transferring.

"(III) Toileting.

"(IV) Dressing.

"(V) Bathing.

"(D) LICENSED HEALTH CARE PRACTITIONER.—For purposes of subparagraph (C)—

"(i) IN GENERAL.—The term 'licensed health care practitioner' means—

"(I) a physician or registered professional nurse,

"(II) a qualified community care case manager (as defined in clause (ii)), or

"(III) any other individual who meets such requirements as may be prescribed by the Secretary after consultation with the Secretary of Health and Human Services.

"(ii) QUALIFIED COMMUNITY CARE CASE MANAGER.—The term 'qualified community care case manager' means an individual or entity which—

"(I) has experience or has been trained in providing case management services and in preparing individual care plans;

"(II) has experience in assessing individuals to determine their functional and cognitive impairment;

"(III) is not a relative of the individual receiving case management services; and

"(IV) meets such requirements as may be prescribed by the Secretary after consultation with the Secretary of Health and Human Services.

"(E) RELATIVE.—For purposes of this paragraph, the term 'relative' means an individual bearing a relationship to another individual which is described in paragraphs (1) through (8) of section 152(a).

"(2) ACCOUNT BENEFICIARY.—The term 'account beneficiary' means the individual for whose benefit the medical savings account is maintained.

"(e) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if—

"(1) the assets of such account are held by a bank (as defined in section 408(n)), insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the account will be consistent with the requirements of this section, and

"(2) the custodial account would, except for the fact that it is not a trust, constitute a medical savings account described in subsection (a).

For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(f) REPORTS.—The trustee of a medical savings account shall make such reports regarding such account to the Secretary and to the individual for whose benefit the account is maintained with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations."

(b) TAX ON EXCESS CONTRIBUTIONS.—Section 4973 (relating to tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities) is amended—

(1) by inserting "medical savings accounts," after "accounts," in the heading of such section,

(2) by striking "or" at the end of paragraph (1) of subsection (a),

(3) by redesignating paragraph (2) of subsection (a) as paragraph (3) and by inserting after paragraph (1) the following:

"(2) a medical savings account (within the meaning of section 7705(a)), or", and

(4) by adding at the end the following new subsection:

"(d) EXCESS CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—For purposes of this section, in the case of a medical savings account (within the meaning of section 7705(a)), the term 'excess contributions' means the amount by which the amount contributed for the taxable year to the account exceeds the amount which may be contributed to the account under section 7705(a)(1)(B) for such taxable year. For purposes of this subsection, any contribution which is distributed out of the medical savings account in a distribution to which section 7705(c)(2) applies shall be treated as an amount not contributed."

(c) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 (relating to prohibited transactions) is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

"(4) SPECIAL RULE FOR MEDICAL SAVINGS ACCOUNTS.—An individual for whose benefit a medical savings account (within the meaning of section 7705(a)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 7705(b)(2)(A)(i) to such account.", and

(2) by inserting "or a medical savings account described in section 7705(a)" in subsection (e)(1) after "described in section 408(a)".

(d) FAILURE TO PROVIDE REPORTS ON MEDICAL SAVINGS ACCOUNTS.—Section 6693 (relating to failure to provide reports on individual retirement accounts or annuities) is amended—

(1) by inserting "or on medical savings accounts" after "annuities" in the heading of such section, and

(2) by adding at the end of subsection (a) the following: "The person required by section 7705(f) to file a report regarding a medical savings account at the time and in the manner required by such section shall pay a penalty of $50 for each failure unless it is shown that such failure is due to reasonable cause."

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for chapter 43 is amended by striking the item relating to section 4973 and inserting the following:

"Sec. 4973. Tax on excess contributions to individual retirement accounts, medical savings accounts, certain 403(b) contracts, and certain individual retirement annuities."

(2) The table of sections for subchapter B of chapter 68 is amended by inserting "or on medical savings accounts" after "annuities" in the item relating to section 6693.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.•

By Mr. SMITH (for himself and Mr. FAIRCLOTH):

S. 2533. A bill to amend the Immigration and Nationality Act to protect Americans against criminal activity by aliens, to defend against acts of international terrorism, and to relieve pressure on public services by enhancing border security and diminishing legal immigration into the United States; to the Committee on the Judiciary.

THE IMMIGRATION CONTROL AND REFORM ACT

Mr. SMITH. Mr. President, as the recent Haitian and Cuban refugee crises dramatically demonstrate, the immigration issue remains one of our most urgent national priorities. On behalf of myself and Senator FAIRCLOTH, today I am introducing a bill that combines the best of the approaches that I have studied to controlling illegal immigration and reforming legal immigration. My bill is entitled the "Immigration Control and Reform Act of 1994."

Nearly 8 years after the passage of the landmark Immigration Reform and Control Act of 1986, our Nation still has not secured its borders. Illegal immigration remains out of control. The Immigration and Naturalization Service apprehends about 1 million illegal aliens every year as they seek to enter our country. About three times that many illegal aliens evade the INS each year and enter the country. The INS estimates that at least 4 million illegal aliens reside permanently in the United States and that number grows by at least 300,000 per year.

The best—and most comprehensive—approach that I have found to addressing this continuing crisis is the result of the stellar work of the Task Force on Illegal Immigration of the House Republican Research Committee. The Immigration Control and Reform Act of 1994 incorporates, with some revisions, many of the proposals set forth by the task force. In doing so, the bill introduced by myself and Senator FAIRCLOTH seeks to blunt the effects of two of the most powerful magnets that draw illegal aliens into our country—the hope of employment and the allure of the welfare state.

As my colleagues know, the employer sanctions provisions of the 1986 act are the principal means by which the current immigration laws seek to neutralize the employment magnet drawing illegal aliens to the United States. The 1986 act requires job applicants to prove that they are either U.S. citizens or legal immigrants who are authorized to work here. But the proof can come from 29 separate documents—ranging from passports to driver's licenses. Numerous studies indicate widespread fraud through counterfeiting.

In keeping with the general approach adopted by the House task force and recommended in principle recently by the U.S. Commission on Immigration Reform, my bill would establish Social Security numbers as the sole means by which employment authorization would be verified. Under the new system established by my bill, prospective employers would call a national employment verification telephone number to check a person's eligibility for employment in much the same manner in which retailers now verify credit cards. Such a system, I am convinced, will obviate the need for a national identification card, which I think would be an infringement on privacy.

In order to address the welfare magnet aspect of the illegal immigration problem, my bill includes strict new prohibitions on welfare benefits to illegal aliens. Dr. Don Huddle, of Rice University, estimates that the nationwide cost for providing health care alone to illegal aliens is $2.5 billion per year. That is just health care. A Congressional Research Service study indicates that illegal aliens can get on the rolls of more than 100 Federal benefits programs. My bill puts a stop to this deplorable state of affairs by explicitly barring illegal aliens from receiving any such benefits.

My bill also addresses the illegal immigration crisis by taking steps toward improving significantly our illegal immigration control efforts at the Nation's land borders, at her ports of

entry, and at overseas airports. In addition, my bill takes aim at the increasing problem of alien smuggling.

The Immigration Control and Reform Act of 1994 also remedies a significant weakness in the House Republican Immigration Task Force approach—the fact that it does not address the current astronomical levels of legal immigration. While it is true that ours is proudly a nation of immigrants, we simply cannot afford the luxury of legal immigration levels of almost 900,000—about three times the historical levels—at a time when illegal immigration remains out of control. Public opinion polls repeatedly demonstrate that overwhelming majorities of the American people want legal immigration levels brought down dramatically. A recent ABC News poll, for example, found that 73 percent of respondents agreed with the statement that "the U.S. Government is allowing too many immigrants to enter this country these days."

In order to bring legal immigration down to more reasonable levels, my bill proposes a reduction of total legal immigration from the current annual level of approximately 880,000 to 300,000 persons per year. the 300,000 figure represents the approximate historical average of annual immigration rates for the period of 1820 through the modern liberalization of legal immigration levels in 1965. Although a reduction of nearly two-thirds in our annual legal immigration levels is a major step, it is hardly a radical one. Indeed, the old U.S. Select Commission on Immigration and Refugee Policy, the chairman of which was Father Theodore Hesburgh, recommended an annual legal immigration cap of 325,000 when it issued its report nearly 15 years ago.

Finally, Mr. President, my Immigration Control and Reform Act proposal incorporates the Smith-Simpson amendment to the Senate-passed version of the crime bill. As my colleagues will recall, the Smith-Simpson amendment provided for a new procedure to enable the Justice Department to secure the deportation of terrorist aliens through the use of classified information. Although the Smith-Simpson amendment passed the Senate unanimously and the Clinton administration acknowledged that the measure is both necessary and fully constitutional, senior liberal members of the House Judiciary Committee insisted upon its removal from the conference report on the crime bill. I am confident that we can and will get the Smith-Simpson amendment enacted into law. I just hope that we can do so before another alien terrorist commits another barbaric act like the World Trade Center bombing.

Mr. President, I ask unanimous consent that the full text of my bill, as well as a section-by-section analysis, be printed in the RECORD.

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

(See exhibit 1.)

Mr. SMITH. Mr. President, I am pleased that the distinguished Senator from North Carolina, Senator FAIRCLOTH, has joined me as an original cosponsor of the Immigration Control and Reform Act of 1994. I invite my colleagues to study our proposal and to join us as cosponsors when the bill is reintroduced in the 104th Congress next year.

S. 2533

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Immigration Control and Reform Act of 1994.".

SEC. 2. TABLE OF CONTENTS.

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TITLE I—LEGAL IMMIGRATION REFORM

Subtitle A—Admission of Legal Immigrants

SEC. 101. REDUCTION IN ANNUAL LEGAL IMMIGRATION CEILINGS.

(a) FAMILY-SPONSORED IMMIGRATION.—Section 201(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1151) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—(1) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to—

"(A) 300,000, minus

"(B) the number computed under paragraph (2), plus

"(C) the number computed under paragraph (3).".

(b) EMPLOYMENT-BASED IMMIGRATION.—Section 201(d)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1151(d)(1)(A)) is amended by striking "140,000" and inserting "30,000".

(c) DIVERSITY IMMIGRATION.—Section 201(e) of the Immigration and Nationality Act (8 U.S.C. 1151(e)) is amended by striking "55,000" and inserting "35,000".

SEC. 102. REDEFINITION OF IMMEDIATE RELATIVES.

Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by striking "children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age" and inserting "children and spouses of a citizen of the United States".

SEC. 103. REVISION OF PREFERENCE ALLOCATIONS FOR FAMILY-SPONSORED IMMIGRANTS.

Paragraphs (1) through (4) of section 203(a) of the Immigration and Nationality Act are amended to read as follows:

"(1) SPOUSES AND CHILDREN OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence shall be allocated visas in a number equal to 40 percent of the difference between such worldwide level and the number of immediate relative visas required, plus any visas not required for the class specified in paragraph (1).

"(2) PARENTS OF ADULT UNITED STATES CITIZENS.—Qualified immigrants who are the parents of citizens of the United States who are at least 21 years of age shall be allocated visas in a number equal to 60 percent of the difference between such worldwide level and the number of immediate relative visas required, plus any visas not required for the class specified in paragraph (1).

"(3) SONS AND DAUGHTERS OF UNITED STATES CITIZENS.—Qualified immigrants holding priority dates as of the effective date of this paragraph who are the sons and daughters of citizens of the United States shall be allocated visas in a number equal to 75 percent of the maximum number of visas available but not issued under paragraphs (1) and (2).

"(4) SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants holding priority dates as of the effective date of this paragraph who are the sons and daughters of permanent resident aliens shall be allocated visas in a number equal to 25 percent of the maximum number of visas available but not issued under paragraphs (1) and (2).

"(5) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants holding priority dates as of the effective date of this paragraph who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number equal to the number of visas not required for the classes specified in paragraphs (3) and (4).".

SEC. 104. REVISION OF PREFERENCE ALLOCATIONS FOR EMPLOYMENT-BASED IMMIGRANTS.

(a) ADJUSTMENT IN ALLOCATIONS AS PERCENTAGE OF WORLDWIDE LEVEL.—(1) Section 203(b)(1) of such Act is amended by striking "28.6 percent" and inserting "50 percent".

(2) Section 203(b)(2)(A) of such Act is amended by striking "28.6 percent" and inserting "50 percent".

(3) Section 203(b)(1) of such Act is amended by striking ", plus any visas not required for the classes specified in paragraphs (4) and (5),".

(b) ALLOCATIONS FOR BACKLOGGED PREVIOUS PREFERENCES.—(1) Section 203(b)(3)(A) of such Act (8 U.S.C. 1153(b)(3)(A)), in the text above clause (i), is amended to read as follows:

"(A) IN GENERAL.—Visas shall be made available in a number equal to the number of visas not required for the classes specified in paragraphs (1) and (2) to the following classes of aliens not described in paragraph (2) who are qualified immigrants holding priority dates as of the effective date of this paragraph:".

(2) Section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4)) is amended by striking "in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants" and inserting "in a number equal to the number of visas not required for the classes specified in paragraphs (1) through (3), to qualified special immigrants holding priority dates as of the effective date of this Act who are".

(3) Section 203(b)(5)(A) of such Act (8 U.S.C. 1153(b)(5)(A)), in the text above clause (i), is amended to read as follows:

"(A) IN GENERAL.—Visas shall be made available in a number equal to the number of visas not required for paragraphs (1) through (4) to qualified immigrants holding priority dates as of the effective date of this paragraph who are seeking to enter the United States for the purpose of engaging in a new commercial enterprise—".

(4) Section 203(b)(6) of such Act (8 U.S.C. 1153(b)(6)) is repealed.

SEC. 105. CONFORMING AMENDMENTS.

Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A), by striking "paragraph (1), (3), or (4)" and inserting "paragraph (1) or (3)";

(B) in subparagraph (D), by striking "203(b)(2), or 203(b)(3)" and inserting "or 203(b)(2)";

(C) by redesignating subparagraph (E)(ii) as subparagraph (E);

(D) by striking subparagraph (E)(i);

(E) by striking subparagraph (F); and

(F) by redesignating subparagraph (G) as subparagraph (F); and

(2) in subsection (b), by striking "or 203(b)(3)".

SEC. 106. TRANSITION.

(a) PARENTS OF CITIZENS; UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Any petition filed under section 204(a) of the Immigration and Nationality Act before the effective date of this Act for—

(1) immediate relative status as a parent of a United States citizen who is at least 21 years of age,

(2) preference status under section 203(a)(1) of such Act (as in effect before such date),

(3) preference status under section 203(a)(2) by virtue of being the spouse or child of a permanent resident alien, or

(4) preference status under section 203(a)(2) by virtue of being the son or daughter of a permanent resident alien,

shall be deemed, as of such date, to be a petition filed under such section for preference status under section 203(a)(2), section 203(a)(3), 203(a)(1), or 203(a)(4), respectively, of such Act (as amended by this Act).

(b) ELIMINATED PREFERENCE CLASSIFICATIONS.—Beginning on the effective date of this Act—

(1) the Attorney General may not accept any petition filed under section 204(a) for classification under section 203(a)(4), 203(b)(3), 203(b)(4), or 203(b)(5), as in effect before the effective date of this Act; and

(2) each priority date established before the effective date of this Act shall be maintained with respect to any petition filed under section 204(a) of the Immigration and Nationality Act before such date for preference status under paragraph (1), (2), (3), or (4) of section 203(a) (as in effect before such date) or paragraph (3), (4), or (5) of section 203(b) of such Act (as in effect before such date).

SEC. 107. REPEAL.

Section 301 of the Immigration Act of 1990 (Public Law 101-649) (relating to admission of dependents of legalized aliens) is hereby repealed.

Subtitle B—Admission of Refugees

SEC. 111. NUMBER OF ADMISSIONS.

Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) is amended by striking subsection (a) and inserting the following:

"(a) Except as provided in subsection (b), the number of refugees who may be admitted under this section in any fiscal year may not exceed 35,000. Admissions under this subsection shall be allocated by the President among refugees of special humanitarian concern to the United States.".

TITLE II—ILLEGAL IMMIGRATION CONTROL

Subtitle A—Land Borders Control

SEC. 201. PLACEMENT OF ADDITIONAL PHYSICAL BARRIERS.

After consultation with the Commissioner of Immigration and Naturalization, but not later than 6 months after the date of enactment of this Act, the Attorney General shall submit a report to the chairmen of the Committees on the Judiciary of the House of Representatives and the Senate on the feasibility and cost of the placement of substantial numbers of additional physical barriers at appropriate points on the border between the United States and Mexico to deter and prevent unauthorized crossings into the United States.

SEC. 202. ESTABLISHMENT OF INTERIOR REPATRIATION PROGRAM.

Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Commissioner of Immigration and Naturalization, shall develop and implement a program in which aliens who entered the United States illegally not less than three times before such date and were deported or returned to a country that is contiguous to the United States shall be returned to locations that are not less than five hundred kilometers from that country's border with the United States.

Subtitle B—Ports of Entry Control

SEC. 211. REQUIREMENT OF 24 HOURS' NOTICE OF ARRIVALS BY SHIPS.

The Attorney General is authorized to require, by regulation, not less than 24 hours of advance notice to the Immigration and Naturalization Service of the intention of any seagoing vessel to arrive at any port of entry of the United States.

Subtitle C—Overseas Airports Control

SEC. 221. ESTABLISHMENT OF ADDITIONAL PREINSPECTION STATIONS.

(a) PREINSPECTION STATIONS.—(1) After consultation with the Secretary of State and the Commissioner of Immigration and Naturalization, but not later than 6 months after the date of enactment of this Act, the Attorney General shall submit a report to the chairmen of the Committees on the Judiciary of the House of Representatives and the Senate on the feasibility and cost of the establishment and maintenance of preinspection stations in at least 10 of the foreign airports that the Attorney General determines to be serving as the last points of departure for the greatest numbers of passengers who arrive from abroad by air at ports of entry within the United States. Such preinspection stations shall be in addition to any preinspection stations that are established before the date of enactment of this section.

(2) Not later than November 1 of each year, the Attorney General shall compile data identifying—

(A) the foreign airports that served as the last points of departure for aliens who arrived by air at ports of entry into the United States without valid documentation during the preceding fiscal year,

(B) the number and nationality of such aliens arriving from each such foreign airport, and

(C) the primary routes that such aliens followed from their countries of origin to the United States.

(3) Prior to the establishment of a preinspection station, the Attorney General, in consultation with the Secretary of State, shall ensure that—

(A) employees of the United States stationed at the preinspection station and their accompanying family members will receive appropriate protection,

(B) such employees and their families will not be subject to unreasonable risks to their welfare and safety, and

(C) the country in which the preinspection station is to be established maintains practices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees (done at Geneva on July 28, 1951) or the Protocol Relating to the Status of Refugees (done at New York on January 31, 1967).

(b) ESTABLISHMENT OF CARRIER CONSULTANT PROGRAM.—After consultation with the Secretary of State and the Commissioner of Immigration and Naturalization, but not later than 6 months after the date of enactment of this Act, the Attorney General shall submit a report to the chairmen of the Committees on the Judiciary of the House of Representatives and the Senate on the feasibility and cost of the assignment of substantial numbers of additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports that, based on the records that are maintained in accordance with subsection (a)(2), served as the points of departure for a significant number of the aliens arriving at ports of entry into the United States without valid documentation, but where no preinspection station exists.

SEC. 222. TRAINING OF AIRLINE PERSONNEL IN DETECTION OF FRAUD.

(a) USE OF FUNDS.—Section 286(h)(2)(A) (8 U.S.C. 1356(h)(2)(A)) is amended—

(1) in clause (iv), by inserting ", including training of, and technical assistance to, commercial airline personnel on such detection" after "United States", and

(2) by adding at the end the following:

"The Attorney General shall provide for expenditures for training and assistance described in clause (iv) in an amount, for any fiscal year, not less than five percent of the total of the expenses incurred that are described in the preceding sentence.".

(b) COMPLIANCE WITH DETECTION REGULATIONS.—Section 212(f) (8 U.S.C. 1182(f)) is amended by adding at the end the following: "Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents that are used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall apply to expenses incurred on or after October 1, 1994.

(2) The Attorney General first shall issue, in proposed form, regulations referred to in the second sentence of section 212(f) of the Immigration and Nationality Act, as added by the amendment made by subsection (b), by not later than 90 days after the date of enactment of this Act.

Subtitle D—Alien Smuggling Control

SEC. 231. EXPANSION OF ALIEN SMUGGLING ASSET FORFEITURE PROGRAM.

(a) IN GENERAL.—Paragraph (1) of section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended to read as follows:

"(1)(A) Except as provided in subparagraph (B), the following property shall be subject to seizure and forfeiture:

"(i) Any conveyance, including any vessel, vehicle, or aircraft, which has been or is being used in the commission of a violation of subsection (a).

"(ii) Any property, real or personal, which—

"(I) constitutes, or is derived from or traceable to, the proceeds obtained directly or indirectly from the commission of a violation of subsection (a), or

"(II) is used to facilitate, or is intended to be so used in the commission of, a violation of subsection (a)(1)(A).

"(B)(i) No property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this section, unless the owner or other person with lawful custody of the property was a consenting party to or privy to the violation of subsection (a) or of paragraphs (1) and (2) of subsection (a) of section 274A.

"(ii) No property shall be forfeited under the provisions of this section by reason of any act or omission established by the owner to have been committed or omitted by a person other than the owner while the property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

"(iii) No property shall be forfeited under the provisions of this section to the extent of an interest of the owner, by reason of any act or omission established by the owner to have been committed or omitted without the knowledge, consent, or willful disregard of the owner, unless the act or omission was committed or omitted by an employee or agent of the owner or other person with lawful custody of the property with the intent of furthering the business interests of, or to confer any other benefit upon, the owner or other person with lawful custody of the property.".

(b) CONFORMING AMENDMENTS.—Section 274(b) of such Act (8 U.S.C. 1324(b)) is amended—

(1) in paragraph (2)—

(A) by striking "conveyance" and inserting "property" in each place in which it appears, and

(B) by striking "is being used in" and inserting "is being used in, is facilitating, has facilitated, is facilitating or was intended to facilitate"; and

(2) in paragraphs (4) and (5), by striking "a conveyance", "any conveyance", and "conveyance" and inserting "property" in each place in which it appears.

SEC. 232. INCLUSION OF ALIEN SMUGGLING IN RICO ACT.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(E) any act", and

(2) by inserting before the period at the end the following: ", or (F) any act that is indictable under section 274(a)(1) of the Immigration and Nationality Act (relating to alien smuggling)".

SEC. 233. ENHANCED PENALTIES FOR ALIEN SMUGGLING AND EMPLOYMENT.

Section 274(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)) is amended—

(1) by striking "or" at the end of subparagraph (C),

(2) by striking the comma at the end of subparagraph (D) and inserting "; or",

(3) by inserting after subparagraph (D) the following:

"(E) contracts or agrees with another party for that party to provide, for employment by the person or another, an alien who is not authorized to be employed in the United States, knowing that such party intends to cause such alien to be brought into the United States in violation of the laws of the United States,", and

(4) by striking "five years" and inserting "ten years".

SEC. 234. PROVISION OF WIRETAP AUTHORITY FOR INVESTIGATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) in subparagraph (c), by inserting after "weapons)," the following: "or a felony violation of section 1028 (relating to production of false identification documentation), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents),";

(2) by striking out "or" after paragraph (l);

(3) by redesignating paragraphs (m), (n), and (o) as paragraphs (n), (o), and (p), respectively;

(4) by inserting after paragraph (l) the following new paragraph:

"(m) a violation of section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) (relating to alien smuggling), of section 277 of the Immigration and Nationality Act (8 U.S.C. 1327) (relating to the smuggling of aliens convicted of aggravated felonies or of aliens subject to exclusion on grounds of national security), or of section 278 of the Immigration and Nationality Act (8 U.S.C. 1328) (relating to smuggling of aliens for the purpose of prostitution or other immoral purpose);"; and

(5) by striking "and" at the end of paragraph (o) (as redesignated) and inserting "or".

Subtitle E—Employer Sanctions Enforcement

SEC. 241. IMPROVEMENT OF WORK ELIGIBILITY VERIFICATION SYSTEMS.

(a) WORK ELIGIBILITY DOCUMENTS AND VERIFICATION OF ELIGIBILITY TO WORK.—Section 274A(b) of the Immigration and Nationality Act is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) ATTESTATION AFTER EXAMINATION AND VERIFICATION OF DOCUMENTATION.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has been confirmed that the individual is not an unauthorized alien by verifying the individual's Social Security account number through the verification system established pursuant to subsection (d)(1).";

(2) by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively;

(3) by inserting after paragraph (1) the following:

"(2) VERIFICATION OF CONTINUED WORK ELIGIBILITY FOR ALIENS WITH LIMITED WORK AUTHORIZATION.—In the case of an alien whose work authorization has an expiration date, a person or entity who continues to employ such an alien after the date on which the employment authorization expires must verify, through the verification system established pursuant to subsection (d)(1), that the alien's work authorization has been extended."; and

(4) by adding at the end the following new paragraph:

"(7) RULE OF STATUTORY CONSTRUCTION.—Notwithstanding any other provision of law, a person or entity may not be considered to discriminate by requesting the production of the documentation required under this subsection in the hiring, recruiting, or referring of an individual for employment in the United States.".

(b) EFFECTIVE DATES.—(1) The amendment made by subsection (a)(1) shall take effect on July 1, 1995.

(2) The amendments made by paragraphs (2), (3), and (4) of subsection (a) shall take effect on the date of enactment of this Act.

(c) ESTABLISHMENT OF EMPLOYMENT VERIFICATION SYSTEM.—Section 274A(d) of the Immigration and Nationality Act is amended to read as follows:

"(d) EMPLOYMENT VERIFICATION SYSTEM.—

"(1) ESTABLISHMENT OF VERIFICATION SYSTEM.—

"(A) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Attorney General, shall make such modifications and improvements as are necessary to current data bases and systems to develop and implement a verification system that a person or entity can access by telephone or other electronic means. Such system shall permit verification that an individual's Social Security number—

"(i) has been issued,

"(ii) was issued to an individual authorized to work in the United States, and

"(iii) is not a number that was issued to an individual who now is deceased and that has not been reissued to a living individual.

The system shall also provide any other information that the Attorney General and the Secretary of Health and Human Services determine is needed to verify that the number provided to the employer is the number that was issued properly to that individual, that such individual is authorized to work in the United States, and that the individual providing the Social Security number to the employer is the same person to whom the number is assigned.

"(B) ACCESS FEE.—A fee, not to exceed $2 plus any line charges payable to a telephone carrier or equivalent entity, shall be charged for each use of the verification system in order to pay for the costs of operating the system.

"(C) EFFECTIVE DATE.—The verification system required by this paragraph shall be operational not later than July 1, 1995.

"(2) PRIVACY PROTECTIONS.—

"(A) Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

"(B) The system must protect the privacy and security of personal information and identifiers utilized in the system.

"(C) A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

"(D) The system may not be used for law enforcement purposes, other than for the enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

"(E) Unauthorized use or disclosure of the information or identifiers contained in the employment verification system shall be punishable by civil and criminal penalties.

"(3) MONITORING AND IMPROVEMENTS IN THE VERIFICATION SYSTEM.—(A) The Attorney General shall provide for the monitoring and evaluation of the degree to which the employment verification system established under this section provides an accurate, efficient, and secure system by which to determine employment eligibility in the United States.

"(B) To the extent that the system established under this section is found not to be an accurate, efficient, and secure system by which to determine employment eligibility in the United States, the Attorney General shall recommend such changes or enhancements in the system as may be necessary to achieve such a system.".

(d) CONFORMING AMENDMENTS.—(1) Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(A) in subsection (b), by striking "following three paragraphs" and inserting "following four paragraphs", and

(B) by striking subsections (i), (j), (k), (l), (m), and (n).

(2) The amendments made by this subsection shall take effect on July 1, 1995.

Subtitle F—Prohibition on Welfare Benefits to Illegal Aliens

SEC. 251. PROHIBITION OF WELFARE BENEFITS TO ILLEGAL ALIENS.

(a) DIRECT FEDERAL FINANCIAL BENEFITS.—Subject to subsection (b) and the Immigration and Nationality Act, and notwithstanding any other provision of law, an alien who is not lawfully within the United States as a permanent resident, a refugee, an asylee, or a parolee is not eligible for any direct Federal financial benefit or social insurance benefit (whether through grant, loan, guarantee, or otherwise) as such benefits are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of the Federal Government.

(b) EMERGENCY MEDICAL CARE.—Subsection (a) shall not apply with respect to the Federal reimbursement of emergency medical care for aliens, as determined by the Secretary of Health and Human Services by regulation.

SEC. 252. PROHIBITION OF UNEMPLOYMENT BENEFITS TO ILLEGAL ALIENS.

(a) PROHIBITION.—An alien who has not been granted employment authorization pursuant to the Immigration and Nationality Act or other Federal law shall be ineligible for unemployment compensation under an unemployment compensation law of a State or the United States.

(b) AMOUNT OF COMPENSATION.—An alien who has been granted temporary work authorization shall be eligible only for such unemployment compensation under a law of a State or the United States as accrued during the time in which the alien was authorized to work.

(c) DEFINITION.—As used in this section, the term "State" means any of the several States of the United States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

SEC. 253. PROHIBITION OF HOUSING BENEFITS TO ILLEGAL ALIENS.

(a) LIMITATION.—Notwithstanding section 251 or any other provision of law, no alien who is not a permanent resident, a refugee, an asylee, or a parolee shall be eligible for benefits under the following provisions of law:

(1) The program of rental assistance on behalf of low-income families provided under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(2) The program of assistance to public housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).

(3) The loan program under section 502 of the Housing Act of 1949 (42 U.S.C. 1472).

(4) The program of interest reduction payments pursuant to contracts entered into by the Secretary of Housing and Urban Development under section 236 of the National Housing Act (12 U.S.C. 1715z-1).

(5) The program of loans for rental and cooperative housing under section 515 of the Housing Act of 1949 (42 U.S.C. 1485).

(6) The program of rental assistance payments pursuant to contracts entered into under section 521(a)(2)(A) of the Housing Act of 1949 (42 U.S.C. 1490a(a)(2)(A)).

(7) The program of assistance payments on behalf of homeowners under section 235 of the National Housing Act (12 U.S.C. 1715z).

(8) The program of rent supplement payments on behalf of qualified tenants pursuant to contracts entered into under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

(9) The loan and grant programs under section 504 of the Housing Act of 1949 (42 U.S.C. 1474) for repairs and improvements to rural dwellings.

(10) The loan and assistance programs under sections 514 and 516 of the Housing Act of 1949 (42 U.S.C. 1484, 1486) for housing for farm labor.

(11) The program of grants for preservation and rehabilitation of housing under section 533 of the Housing Act of 1949 (42 U.S.C. 1490m).

(12) The program of grants and loans for mutual and self-help housing and technical assistance under section 523 of the Housing Act of 1949 (42 U.S.C. 1490c).

(13) The program of site loans under section 524 of the Housing Act of 1949 (42 U.S.C. 1490d).

(b) REGULATIONS.—Not later than January 1, 1995, the Secretary of Housing and Urban Development shall issue final regulations to carry out subsection (a).

SEC. 254. ENHANCEMENT OF LEGAL ALIEN ENTITLEMENT VERIFICATION.

There are authorized to be appropriated for each of the fiscal years 1995, 1996, 1997, 1998, and 1999 such sums as may be necessary to carry out the purposes of the automated System for Alien Verification of Eligibility (SAVE) that was established under section 121 of the Immigration Reform and Control Act of 1986 (Public Law 99-603).

Subtitle G—State and Local Cooperation in Immigration Enforcement

SEC. 261. PROHIBITION ON FINANCIAL ASSISTANCE.

(a) IN GENERAL.—No State or local government or agency that the Attorney General determines has an official policy of refusing to cooperate with officers or employees of the Immigration and Naturalization Service with respect to the identification, location, arrest, prosecution, detention, or deportation of aliens who are not lawfully present within the United States, shall be eligible for any Federal funds from appropriations made to the Department of Justice for as long as the policy of noncooperation remains in effect.

(b) REIMBURSEMENT PROHIBITED.—No State or local government (or any agency thereof) that is ineligible for assistance under subsection (a) may be reimbursed for such assistance after the termination of such ineligibility.

SEC. 262. ESTABLISHMENT OF PROGRAM FOR UNIFORM VITAL STATISTICS.

(a) PILOT PROGRAM.—The Secretary of Health and Human Services shall consult with each State agency that is responsible for the registration and certification of

births and deaths and, within 3 years of the date of enactment of this Act, shall establish a pilot program for 3 of the 5 States with the largest number of undocumented aliens that creates an electronic network linking the vital statistics records of such States. The network shall provide, where practical, for the matching of deaths with births and shall enable the confirmation of births and deaths of citizens of such States, or of aliens within such States, by any Federal or State agency or official in the performance of official duties. The Secretary and participating State agencies shall institute measures to achieve uniform and accurate reporting of vital statistics into the pilot program network, to protect the integrity of the registration and certification process, and to prevent fraud against the Government and other persons through the use of false birth or death certificates.

(b) REPORT.—Not later than 180 days after the establishment of the pilot program under subsection (a), the Secretary shall submit a report to Congress containing recommendations on how the pilot program could be instituted effectively as a national network for the United States.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE III—EXCLUSION AND DEPORTATION REFORM

Subtitle A—Criminal Aliens

SEC. 301. REGISTRATION OF ALIENS ON PROBATION AND PAROLE.

Section 263(a) of the Immigration and Nationality Act (8 U.S.C. 1303(a)) is amended by striking "and (5)" and inserting "(5) aliens who are or have been on criminal probation or parole pursuant to the laws of the United States or of any State, and (6)".

SEC. 302. EXPANSION OF DEFINITION OF AGGRAVATED FELONY.

(a) EXPANSION IN DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

"(A) murder;

"(B) any illicit trafficking in any controlled substance (as defined in section 102 of the Controlled Substances Act), including any drug trafficking crime as defined in section 924(c) of title 18, United States Code;

"(C) any illicit trafficking in any firearms or destructive devices as defined in section 921 of title 18, United States Code, or in explosive materials as defined in section 841(c) of title 18, United States Code;

"(D) any offense described in sections 1951 through 1963 of title 18, United States Code;

"(E) any defense described in—

"(i) subsections (h) or (i) of section 842, title 18, United States Code, or subsection (d), (e), (f), (g), (h), or (i) of section 844 of title 18, United States Code (relating to explosive materials offenses),

"(ii) paragraph (1), (2), (3), (4), or (5) of section 922(g), or section 922(j), section 922(n), section 922(o), section 922(p), section 922(r), section 924(b), or section 924(h) of title 18, United States Code (relating to firearms offenses), or

"(iii) section 5861 of title 26, United States Code (relating to firearms offenses);

"(F) any crime of violence (as defined in section 16 of title 18, United States Code) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

"(G) any theft offense (including receipt of stolen property) or any burglary offense, where a sentence of 5 years of imprisonment or more may be imposed;

"(H) any offense described in section 875, section 876, section 877, or section 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

"(I) any offense described in section 2251, section 2251A or section 2252 of title 18, United States Code (relating to child pornography);

"(J) any offense described in section 1084 of title 18, United States Code, where a sentence of 5 years of imprisonment or more may be imposed;

"(K) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered, where a sentence of 5 years of imprisonment or more may be imposed;

"(L) any offense—

"(i) relating to the owning, controlling, managing or supervising of a prostitution business,

"(ii) described in section 2421 through 2424 of title 18, United States Code, for commercial advantage, or

"(iii) described in sections 1581 through 1585, or section 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

"(M) any offense relating to perjury or subornation of perjury where a sentence of 5 years of imprisonment or more may be imposed;

"(N) any offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), section 798 (relating to disclosure of classified information), section 2153 (relating to sabotage) or section 2381 or section 2382 (relating to treason) of title 18, United States Code, or

"(ii) section 421 of title 50, United States Code (relating to protecting the identity of undercover intelligence agents);

"(O) any offense—

"(i) involving fraud or deceit where the loss to the victim or victims exceeded $200,000; or

"(ii) described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion), where the tax loss to the Government exceeds $200,000;

"(P) any offense described in section 274(a)(1) of the Immigration and Nationality Act (relating to alien smuggling) for the purpose of commercial advantage;

"(Q) any violation of section 1546(a) of title 18, United States Code (relating to document fraud), for the purpose of commercial advantage; or

"(R) any offense relating to failing to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony, where a sentence of 2 years or more may be imposed,

or any attempt or conspiracy to commit any such act. Such term applies to offenses described in this paragraph whether in violation of Federal or State law and applies to such offenses in violation of the laws of a foreign country for which the term of imprisonment was completed within the previous 15 years.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to all convictions entered before, on, or after the date of enactment of this Act.

SEC. 303. AUTHORIZATION OF JUDICIAL DEPORTATION ORDERS.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is further amended by adding at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

"(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 242(a)(2)(A)(iii) (relating to conviction of an aggravated felony), if such an order has been requested prior to sentencing by the United States Attorney with the concurrence of the Commissioner.

"(2) PROCEDURE.—(A) The United States Attorney shall provide notice of intent to request judicial deportation promptly after the entry in the record of an adjudication of guilt or guilty plea. Such notice shall be provided to the court, to the alien, and to the alien's counsel of record.

"(B) Notwithstanding section 242B, the United States Attorney, with the concurrence of the Commissioner, shall file at least 20 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and satisfaction by the defendant of the definition of aggravated felony.

"(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from deportation under section 212(c), the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief under such section. The court shall either grant or deny the relief sought.

"(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her behalf, and to cross-examine any witnesses that are presented by the Government.

"(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings that are conducted pursuant to section 242(b).

"(iii) Nothing in this subsection shall limit the information that a court of the United States may receive or consider for the purpose of imposing an appropriate sentence.

"(iv) The court may order the alien deported if the Attorney General demonstrates by clear and convincing evidence that the alien is deportable under this Act.

"(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDERS OF DEPORTATION.—(A)(i) A judicial order of deportation, or the denial of such an order, may be appealed by either party to the court of appeals for the circuit in which the district court is located.

"(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements that are described in section 106.

"(iii) Upon the execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of deportation is based, the expiration of the period that is described in section 106(a)(1), or the final dismissal of an appeal from such a conviction, the order of deportation shall become final and shall be executed at the end of the prison term in accordance with the terms of the order.

"(B) As soon as is practicable after the entry of a judicial order of deportation, the Commissioner shall provide the defendant with a written notice of the order of deportation, which shall designate the defendant's country of choice for deportation and any alternate country pursuant to section 243(a).

"(4) DENIAL OF JUDICIAL ORDER.—The denial of a request for a judicial order of deportation shall not preclude the Attorney General

from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability that is provided under section 241(a).".

(b) TECHNICAL AND CONFORMING CHANGES.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking out "The" and inserting in lieu thereof, "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudications of guilt or guilty pleas are entered in the record after the date of enactment of this Act.

SEC. 304. RESTRICTIONS ON DEFENSES TO DEPORTATION BY CRIMINALS.

(a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESIDENCE.—The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking out "has served for such felony or felonies" and all that follows through the period and inserting in lieu thereof "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, if the time for appealing such a conviction or sentence has expired and the sentence has become final.".

(b) DEFENSES BASED ON THE WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (9 U.S.C. 1253(h)(2)) is amended—

(1) by striking out the "or" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; or";

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) the alien has been convicted of an aggravated felony."; and

(4) by striking the last sentence.

SEC. 305. ESTABLISHMENT OF ALIEN PRISONER TRANSFER TREATY STUDY.

(a) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Secretary of State and the Attorney General shall submit to the Congress a report that describes the use and effectiveness of the Prisoner Transfer Treaty with Mexico (in this section referred to as the "Treaty") to remove from the United States aliens who have been convicted of crimes in the United States.

(b) USE OF TREATY.—The report under subsection (a) shall include the following information:

(1) The number of aliens who have been convicted of a criminal offense in the United States since November 30, 1977, who have been, or are, eligible for transfer pursuant to the Treaty.

(2) The number of aliens who are described in paragraph (1) who have been transferred pursuant to the Treaty.

(3) The number of aliens who are described in paragraph (2) who have been incarcerated in full compliance with the Treaty.

(4) The number of aliens who are incarcerated in a penal institution in the United States who are eligible for transfer pursuant to the Treaty.

(5) The number of aliens who are described in paragraph (4) who are incarcerated in State and local penal institutions.

(c) EFFECTIVENESS OF TREATY.—The report under subsection (a) shall include the recommendations of the Secretary of State and the Attorney General to increase the effectiveness and use of, and full compliance with, the Treaty. In considering the recommendations under this subsection, the Secretary and the Attorney General shall consult with such State and local officials in areas that are disproportionately harmed by aliens who have been convicted of criminal offenses as the Secretary and the Attorney General consider to be appropriate. Such recommendations shall address the following areas:

(1) Changes in Federal laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed criminal offenses in the United States.

(2) Changes in State and local laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed criminal offenses in the United States.

(3) Changes in the Treaty that may be necessary in order to increase the number of aliens who have been convicted of crimes who may be transferred pursuant to the Treaty.

(4) Methods for preventing the unlawful reentry into the United States of aliens who have been convicted of criminal offenses in the United States and transferred pursuant to the Treaty.

(5) Any recommendations of appropriate officials of the Mexican Government on programs to achieve the goals of, and ensure full compliance with, the Treaty.

(6) An assessment of whether the recommendations under this subsection require the renegotiation of the Treaty.

(7) The additional funds required to implement each recommendation under this subsection.

(d) DEFINITION.—As used in this section, the term "Prisoner Transfer Treaty with Mexico" refers to the Treaty Between the United States of America and the United Mexican States on the Execution of Penal Sentences, done at Mexico City on November 25, 1976 (28 U.S.T. 7399).

Subtitle B—Terrorist Aliens

SEC. 311. REMOVAL OF ALIEN TERRORISTS.

(a) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 242B the following new section:

"REMOVAL OF ALIEN TERRORISTS

"SEC. 242C. (a) DEFINITIONS.—As used in this section—

"(1) the term 'alien terrorist' means any alien who is described in section 241(a)(4)(B);

"(2) the term 'classified information' has the same meaning as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(3) the term 'national security' has the same meaning as defined in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(4) the term 'special court' means the court described in subsection (c) of this section; and

"(5) the term 'special removal hearing' means the hearing described in subsection (e) of this section.

"(b) APPLICATION FOR USE OF PROCEDURES.—The provisions of this section shall apply whenever the Attorney General certifies under seal to the special court established under subsection (c) that—

"(1) the Attorney General or Deputy Attorney General has approved of the proceeding under this section;

"(2) an alien terrorist is physically present in the United States; and

"(3) removal of such alien terrorist by deportation proceedings described in section 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information.

"(c) SPECIAL COURT.—(1) The Chief Justice of the United States shall publicly designate up to 7 district court judges who shall constitute a special court to hear and decide cases that arise under this section, in a manner consistent with the designation of judges described in section 103(a) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1803(a)).

"(2) The Chief Justice may, in the Chief Justice's discretion, designate the same judges under this section as are designated for service on the Foreign Intelligence Surveillance Court pursuant to section 103(a) of that Act (50 U.S.C. 1803(a)).

"(d) INVOCATION OF SPECIAL COURT PROCEDURE.—(1) When the Attorney General makes the application described in subsection (b), a single judge of the special court shall consider the application in camera and ex parte.

"(2) The judge shall invoke the procedures of subsection (e), if the judge determines that there is probable cause to believe that—

"(A) the alien who is the subject of the application has been correctly identified;

"(B) a deportation proceeding under section 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information; and

"(C) the threat posed by the alien's physical presence is immediate and involves the risk of death or serious bodily harm.

"(e) SPECIAL REMOVAL HEARING.—(1) Except as provided in paragraph (4), the special removal hearing authorized by a showing of probable cause described in subsection (d)(2) shall be open to the public.

"(2) The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien who is financially unable to obtain counsel shall be entitled to have counsel assigned to represent such alien. Counsel may be appointed as described in section 3006A of title 18, United States Code.

"(3) The alien shall have a right to introduce evidence on his own behalf and, except as provided in paragraph (4), shall have a right to cross-examine any witness or request that the judge issue a subpoena for the presence of a named witness.

"(4) The judge shall authorize the introduction in camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

"(5) With respect to any evidence described in paragraph (4), the judge shall cause to be delivered to the alien either—

"(A) the substitution for such evidence of—

"(i) a statement admitting relevant facts that the specific evidence would tend to prove, or

"(ii) a summary of the specific evidence; or

"(B) if disclosure of even the substituted evidence described in subparagraph (A) would create a substantial risk of death or serious bodily harm to any person, a statement informing the alien that no such summary is possible.

"(6) If the judge determines—

"(A) that the substituted evidence described in paragraph (4)(B) will provide the alien with substantially the same ability to make his defense as would disclosure of the specific evidence, or

"(B) that disclosure of even the substituted evidence described in paragraph (5)(A) would create a substantial risk of death or serious bodily harm to any person,

then the determination of deportability (described in section (f)) may be made pursuant to this section.

"(f) DETERMINATION OF DEPORTABILITY.—(1) If the determination in subsection (e)(6)(A) has been made, then the judge shall, considering the evidence on the record as a whole, require that the alien be deported if the Attorney General has proven, by clear and convincing evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(2) If the determination in subsection (e)(6)(B) has been made, then the judge shall, considering the evidence received (in camera and otherwise), require that the alien be deported if the Attorney General proves, by clear, convincing, and unequivocal evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(g) APPEALS.—(1) The alien may appeal a determination under subsection (f) to the Court of Appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under such subsection.

"(2)(A) The Attorney General may appeal a determination under subsection (d), (e), or (f) to the Court of Appeals for the Federal Circuit, by filing a notice of appeal with such court within twenty days of the determination under any one of such subsections.

"(B) When requested by the Attorney General, the entire record of the proceeding under this section shall be transmitted to the Court of Appeals under seal. The Court of Appeals shall consider such appeal in camera and ex parte.".

(b) CONFORMING AMENDMENT.—Section 1295(a) of title 28, United States Code, is amended—

(1) by striking "and" at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(15) of an appeal under section 242C(g) of the Immigration and Nationality Act.".

(c) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 242B the following new item:

"Sec. 242C. Removal of alien terrorists.".

SEC. 312. MANDATORY EXCLUSION FOR MEMBERSHIP IN TERROR GROUP.

Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)(II), by inserting "or" at the end;

(2) by adding after clause (i)(II) the following:

"(III) is a member of an organization that engages in, or has engaged in, terrorist activity or who actively supports or advocates terrorist activity,"; and

(3) by adding at the end the following new clause:

"(iv) TERRORIST ORGANIZATION DEFINED.—As used in this subparagraph, the term 'terrorist organization' means an organization that engages in terrorist activity as determined by the Attorney General, in consultation with the Secretary of State.".

Subtitle C—Enforcement of Deportation Orders

SEC. 321. LIMITATIONS ON COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDERS.

Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding at the end the following new subsection:

"(c) In any criminal proceeding under this section, no alien may challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates—

"(1) that the alien exhausted the administrative remedies (if any) that may have been available to seek relief against such order,

"(2) that the deportation proceedings at which such order was issued improperly deprived the alien of the opportunity for judicial review, and

"(3) that the entry of such order was fundamentally unfair.".

Subtitle D—Expedited Asylum Review at Ports of Entry

SEC. 331. ESTABLISHMENT OF EXPEDITED ASYLUM REVIEW PROGRAM.

(a) IN GENERAL.—Section 235(b) (8 U.S.C. 1225 (b)) is amended to read as follows:

"(b) INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.—(1) An immigration officer shall inspect each alien who is seeking entry to the United States.

"(2)(A) If the examining immigration officer determines that an alien seeking entry—

"(i) does not present the documentation required (if any) to obtain legal entry to the United States; and

"(ii) does not indicate either an intention to apply for provisional asylum (under section 208) or a fear of persecution, the officer shall order the alien excluded from the United States without further hearing or review.

"(B) The examining immigration officer shall refer for immediate inspection at the port of entry by an asylum officer under subparagraph (C) any alien who (i) does not present the documentation required (if any) to obtain legal entry to the United States, and (ii) has indicated an intention to apply for provisional asylum or a fear of persecution. Such an alien shall not be considered to have been inspected and admitted for the purposes of this Act.

"(C)(i) If an asylum officer determines that an alien has a credible fear of persecution, then the alien shall be entitled to apply for provisional asylum under section 208.

"(ii)(I) Subject to subclause (II), if an asylum officer determines that an alien does not have a credible fear of persecution, then the officer shall order the alien excluded from the United States without further hearing or review.

"(II) The Attorney General shall promulgate regulations to provide for the immediate review by another asylum officer at the port of entry of a decision under subclause (I).

"(iii) For the purposes of this subparagraph, the term 'credible fear of persecution' means (I) that it is more probable than not that the statements made by the alien in support of his or her claim are true, and (II) that there is a significant possibility, in light of such statements and of such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.

"(iv) Notwithstanding any other provision of law, no court shall have jurisdiction to review, except by petition for habeas corpus, any determination made with respect to an alien found excludable pursuant to this paragraph. In any such case, review by habeas corpus shall be limited to examination of whether the petitioner (I) is an alien, and (II) was ordered excluded from the United States pursuant to this paragraph.

"(v) Notwithstanding any other provision of law, no court shall have jurisdiction (I) to review the procedures established by the Attorney General for the determination of exclusion pursuant to this paragraph, or (II) to enter declaratory or injunctive relief with respect to the implementation of this paragraph. Regardless of the nature of the suit or claim, no court shall have jurisdiction except by habeas corpus petition as provided in clause (iv) to consider the validity of any adjudication or determination under this paragraph or to provide declaratory or injunctive relief with respect to the exclusion of any alien pursuant to this paragraph.

"(vi) In any action brought for the assessment of penalties for improper entry or reentry of an alien under sections 275 or 276, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion or deportation entered under section 235, 236, or 242.

"(3)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

"(B) The provisions of subparagraph (A) shall not apply—

"(i) to an alien crewman,

"(ii) to an alien described in paragraph (2)(A) or (2)(B), or

"(iii) if the conditions described in section 273(d) exist.

"(4) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to enter is so challenged, before a special inquiry officer for a hearing on the exclusion of the alien.

"(5) An alien has not entered the United States for the purposes of this Act unless and until such alien has been inspected and admitted by an immigration officer pursuant to this subsection.".

(b) CONFORMING AMENDMENTS.—Section 237(a) (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1) by striking "Deportation" and inserting "Subject to section 235(b)(2), deportation"; and

(2) in the first sentence of paragraph (2) by striking "If" and inserting "Subject to section 235(b)(2), if".

Subtitle E—Asylum Reform

SEC. 341. ASYLUM.

(a) IN GENERAL.—Section 208 (8 U.S.C. 1158) is amended to read as follows:

"SEC. 208. ASYLUM.

"(a) PROVISIONAL ASYLUM.—

"(1) RIGHT TO APPLY.—The Attorney General shall establish a procedure for an alien who is physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for provisional asylum in accordance with this section.

"(2) CONDITIONS FOR GRANTING.—

"(A) MANDATORY CASES.—The Attorney General shall grant provisional asylum to an alien if the alien applies for provisional asylum in accordance with the requirements of this section and establishes that it is more likely than not that in the alien's country of nationality (or, in the case of a person having no nationality, the country in which such alien last habitually resided) such alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(B) DISCRETIONARY CASES.—The Attorney General may grant provisional asylum to an alien if the alien applies for provisional asylum in accordance with the requirements of

this section and establishes that the alien is a refugee within the meaning of section 101(a)(42).

"(C) EXCEPTIONS.—(i) Subparagraphs (A) and (B) shall not apply to an alien if the Attorney General determines that—

"(I) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

"(II) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

"(III) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

"(IV) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

"(V) a country willing to accept the alien has been identified (other than the country described in subparagraph (A)) to which the alien can be deported or returned and the alien does not establish that it is more likely than not that the alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(ii)(I) For the purposes of clause (i)(II), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime.

"(II) The Attorney General shall promulgate regulations that specify additional crimes that will be considered to be crimes that are described in clauses (i)(II) or (i)(III).

"(III) The Attorney General shall promulgate regulations establishing such additional limitations and conditions as the Attorney General considers to be appropriate under which an alien shall be ineligible for provisional asylum under subparagraph (B).

"(3) PROVISIONAL ASYLUM STATUS.—In the case of any alien who is granted provisional asylum under paragraph (2)(A), the Attorney General, in accordance with this section—

"(A) shall not deport or return the alien to the country described under paragraph (2)(A);

"(B) shall authorize the alien to engage in employment in the United States and to provide the alien with an 'employment authorized' endorsement or other appropriate work permit; and

"(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

"(4) TERMINATION.—Provisional asylum granted under paragraph (2) may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that—

"(A) the alien no longer meets the conditions described in paragraph (2) owing to a change in the circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided;

"(B) the alien meets a condition described in paragraph (2)(C); or

"(C) a country willing to accept the alien has been identified (other than the country described in paragraph (2)) to which the alien can be deported or returned and the alien cannot establish that it is more likely than not that the alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(5) ACCEPTANCE BY ANOTHER COUNTRY.—In the case of an alien who is described in paragraph (2)(C)(i)(V) or paragraph (4)(C), the alien's deportation or return shall be directed, at the discretion of the Attorney General, to any country that is willing to accept the alien into its territory (other than the country that is described in paragraph (2)(A)).

"(b) PROVISIONAL ASYLUM APPLICATIONS.—

"(1) IN GENERAL.—

"(A) DEADLINE.—Subject to subparagraph (B), an alien's application for provisional asylum shall not be considered under this section unless—

"(i) the alien has filed, not later than 30 days after entering or coming to the United States, notice of intention to file such an application, and

"(ii) such application is actually filed not later than 60 days after entering or arriving in the United States.

"(B) EXCEPTION.—An application for provisional asylum may be considered, notwithstanding that the requirements of subparagraph (A) have not been met, only if the alien demonstrates by clear and convincing evidence changed circumstances in the alien's country of nationality (or in the case of an alien with no nationality, in the country where the alien last habitually resided) affecting eligibility for provisional asylum.

"(2) REQUIREMENTS.—An application for provisional asylum shall not be considered unless the alien submits to the taking of fingerprints and a photograph in a manner determined by the Attorney General.

"(3) PREVIOUS DENIAL OF ASYLUM.—An application for provisional asylum shall not be considered if the alien has been denied asylum by a country in which the alien has had access to a full and fair procedure for determining his or her asylum claim in accordance with a bilateral or multilateral agreement between that country and the United States.

"(4) FEES.—In the discretion of the Attorney General, the Attorney General may impose reasonable fees for the consideration of an application for provisional asylum, for employment authorization under this section, and for adjustment of status under section 209(b). The Attorney General is authorized to provide for the assessment and payment of any such fee over a period of time or by installments.

"(5) EMPLOYMENT.—An applicant for provisional asylum is not entitled to engage in employment in the United States. The Attorney General may authorize an alien who has filed an application for provisional asylum to engage in employment in the United States, in the discretion of the Attorney General.

"(6) NOTICE OF CONSEQUENCES OF FRIVOLOUS APPLICATIONS.—At the time of the filing a notice of his or her intention to apply for provisional asylum, the alien shall be advised of the consequences, under subsection (e), of filing a frivolous application for provisional asylum.

"(c) SANCTIONS FOR FAILURE TO APPEAR.—

"(1) Subject to paragraph (2), the application for provisional asylum of an alien who does not appear for a hearing on such application shall be summarily dismissed unless the alien can show exceptional circumstances (as defined in section 242B(f)(2)) as determined by an asylum officer or an immigration judge.

"(2) Paragraph (1) shall not apply if written and oral notice were not provided to the alien of the time and place at which the asylum hearing was to be held, and in the case of any change or postponement in such time or place, written and oral notice were provided to the alien of the new time or place of the hearing.

"(d) ASYLUM.—

"(1) ADJUSTMENT OF STATUS.—Under such regulations as the Attorney General may prescribe, the Attorney General shall adjust to the status of an alien granted asylum the status of any alien granted provisional asylum under subsection (a)(2)(A) or (a)(2)(B) who—

"(A) applies for such adjustment;

"(B) has been physically present in the United States for at least 1 year after being granted provisional asylum;

"(C) continues to be eligible for provisional asylum under this section; and

"(D) is admissible under this Act at the time of his or her examination for adjustment of status under this subsection.

"(2) TREATMENT OF SPOUSES AND CHILDREN.—A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E)) of an alien whose status is adjusted to that of an alien granted asylum under paragraph (a)(2) may be granted the same status as the alien if he or she is accompanying, or following to join, such an alien.

"(3) APPLICATION FEES.—The Attorney General may impose a reasonable fee for the filing of an application for asylum under this subsection.

"(e) DENIAL OF IMMIGRATION BENEFITS FOR FRIVOLOUS APPLICATIONS.—

"(1) IN GENERAL.—If the Attorney General determines that an alien has made a frivolous application for provisional asylum under this section and the alien has received the notice under subsection (b)(5), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such an application.

"(2) TREATMENT OF MATERIAL MISREPRESENTATIONS.—For the purposes of this subsection, an application considered to be 'frivolous' includes, but is not limited to, an application that contains a willful misrepresentation or concealment of a material fact.".

(b) CLERICAL AMENDMENT.—The item in the table of contents relating to section 208 is amended to read as follows:

"Sec. 208. Asylum.".

SEC. 342. FAILURE TO APPEAR FOR ASYLUM HEARING; JUDICIAL REVIEW.

(a) FAILURE TO APPEAR FOR PROVISIONAL ASYLUM HEARING.—Section 242B(e)(4) (8 U.S.C. 1252b(e)(4)) is amended—

(1) in the heading, by striking "ASYLUM" and inserting "PROVISIONAL ASYLUM";

(2) by striking "asylum" each place it appears and inserting "provisional asylum"; and

(3) in subparagraph (A), by striking all after clause (iii) and inserting "shall not be eligible for any benefits under this Act.".

(b) JUDICIAL REVIEW.—Section 106 (8 U.S.C. 1105a) is amended by adding at the end the following subsection:

"(d) The procedure prescribed by, and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders granting or denying provisional asylum, except that—

"(1) a petition for review may be filed not later than 90 days after the date of the issuance of the final order granting or denying provisional asylum;

"(2) the venue of any petition for review under this subsection shall be in the judicial circuit in which the administrative proceedings were conducted in whole or in part, or

in the judicial circuit wherein is the residence, as defined in this Act, of the petitioner, but not in more than one circuit; and

"(3) notwithstanding any other provision of law, a determination granting or denying provisional asylum based on changed circumstances pursuant to section 208(b)(1)(A)(ii) shall be in the sole discretion of the officer conducting the administrative proceeding.".

SEC. 343. CONFORMING AMENDMENTS.

(a) LIMITATION ON DEPORTATION.—Section 243 (8 U.S.C. 1253) is amended by striking subsection (h).

(b) ADJUSTMENT OF STATUS.—Section 209(b) (8 U.S.C. 1159(b)) is amended—

(1) in paragraph (2), by striking "one year" and inserting "2 years"; and

(2) by amending paragraph (3) to read as follows:

"(3) continues to be eligible for provisional asylum under section 208,".

(c) ALIENS INELIGIBLE FOR TEMPORARY PROTECTED STATUS.—Section 244A(c)(2)(B)(ii) (8 U.S.C. 1254a(c)(2)(B)(ii)) is amended by striking "section 243(h)(2)" and inserting "section 208(a)(2)(C)".

(d) ELIGIBILITY FOR NATURALIZATION.—Section 316(f)(1) (8 U.S.C. 1427(f)(1)) is amended by striking "subparagraphs (A) through (D) of paragraph 243(h)(2)" and inserting "section 208(a)(2)(C).".

(e) FAMILY UNITY.—Section 301(e) of the Immigration Act of 1990 (Public Law 101-649) is amended by striking "section 243(h)(2)" and inserting "section 208(a)(2)(C).".

SEC. 344. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, the amendments made by this title shall take effect on the date of enactment of this Act.

(b) EXCEPTIONS.—(1) The amendments made by this title shall not apply to applications for asylum or the withholding of deportation made before the first day of the first month that begins more than 180 days after the date on which this Act becomes law and no application for provisional asylum under section 208 of the Immigration and Nationality Act (as amended by section 331 of this title) shall be considered before such first day.

(2) In applying section 208(b)(1)(A) of the Immigration and Nationality Act (as amended by this title) in the case of an alien who has entered or arrived in the United States before the first day described in paragraph (1), notwithstanding the deadlines specified in such section—

(A) the deadline for the filing of a notice of intention to file an application for provisional asylum is 30 days after such first day, and

(B) the deadline for the filing of the application for provisional asylum is 30 days after the date of the filing of such a notice.

(3) The amendment made by section 342(b) (relating to adjustment of status) shall not apply to aliens who are granted asylum under section 208 of the Immigration and Nationality Act, as in effect before the date of enactment of this Act.

Subtitle F—Miscellaneous Provisions

SEC. 351. AUTHORIZATION OF TELEPHONIC DEPORTATION HEARINGS.

The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with or without the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien.".

SEC. 352. CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.

No amendment made by this Act, and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)), may be construed to create any right or benefit, substantive or procedural, which is legally enforceable by any party against the United States, its agencies, its officers or any other person.

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act, this Act, and the amendments made by this Act, shall take effect on October 1, 1994.

EXHIBIT 1

SECTION-BY-SECTION ANALYSIS

TITLE I—LEGAL IMMIGRATION REFORM

IMMIGRANTS

SUBTITLE A—ADMISSION OF LEGAL

Sec. 101. Reduction in Annual Legal Immigration Ceilings.

This section sets a comprehensive ceiling on legal immigration of 300,000 persons per year. It would represent a substantial reduction from the current level of approximately 880,000 persons per year. The 300,000-person annual limit also is consistent with the average yearly immigration figure for the period of 1820 until the modern era of high legal immigration began in 1965.

Under the new ceiling, this section provides that employers may petition for up to 30,000 priority workers per year. It also sets a limit of 35,000 on "diversity" immigrants under an immigration category that was established by the Immigration Act of 1990 to increase the number of immigrants from countries that have been under-represented as sources of immigration in recent decades.

Sec. 102. Redefinition of Immediate Relatives.

This section provides that U.S. citizens may petition for immigrant visas on behalf of only their spouses and children. It provides that other relatives may be admitted only if they are on existing waiting lists. By contrast, under current law, U.S. citizens also may file petitions on behalf of their parents and siblings, and aliens may petition for their spouses and children.

Sec. 103. Revision of Preference Allocations for Family-Sponsored Immigrants.

This section conforms applicable parts of the Immigration and Nationality Act (INA) to the changes in law made by Sections 101 and 102.

Sec. 104. Revision of Preference Allocations for Employment-Based Immigrants.

This section conforms applicable parts of the INA to the changes in law made by the previous sections of this Subtitle.

Sec. 105. Conforming Amendments.

This section makes further conforming changes to the INA.

Sec. 106. Transition.

This section provides a short transition period to the new limits.

Sec. 107. Repeal.

This section repeals Section 301 of the Immigration Act of 1990, relating to the admission of dependents of legalized aliens.

SUBTITLE B—ADMISSION OF REFUGEES

Sec. 111. Number of Admissions.

Within the overall ceiling set forth in section 101, this section limits the annual number of refugee admissions to 35,000. Under current law, there is no limit on the number of refugee admissions. In Fiscal Year 1992, 117,000 refugees were admitted to the U.S.

TITLE II—ILLEGAL IMMIGRATION CONTROL

SUBTITLE A—LAND BORDERS CONTROL

Sec. 201. Placement of Additional Physical Barriers.

This section requires the Attorney General to report to the Chairmen of the Senate and House Judiciary Committees within six months after enactment on the feasibility and cost of the placement of substantial numbers of physical barriers, such as fences and ditches, at appropriate points on the border between the U.S. and Mexico to deter and prevent unauthorized crossings into the U.S.

Sec. 202. Establishment of Interior Repatriation Program.

In order to deter the "revolving door" effect of reentries by aliens who have been deported from a border area, this section requires that illegal entrants from Canada or Mexico who have entered the U.S. illegally on at least three previous occasions must be repatriated to locations that are not less than five hundred kilometers from that country's border with the United States.

SUBTITLE B—PORTS OF ENTRY CONTROL

Sec. 211. Requirement of 24 Hours of Notice of Arrivals by Ships.

This section would require that 24 hours of advance notice must be given to the INS by ships with respect to their arrivals at ports of entry so that they may be inspected for immigration purposes. Such notice already is given to the U.S. Customs Service.

SUBTITLE C—OVERSEAS AIRPORTS CONTROL

Sec. 221. Establishment of Additional Inspection Stations.

Recognizing that preinspection combats illegal immigration by preventing undocumented aliens from reaching the U.S., this section requires the Attorney General to report to the Chairmen of the Senate and House Judiciary Committees within six months of enactment regarding the feasibility and cost of the establishment of additional preinspection stations in at least 10 of the overseas airports with the heaviest U.S.-bound passenger traffic.

Sec. 222. Training or Airline Personnel in Detection of Fraud.

This section requires the INS to use at least 5% of the funds in the Inspection Fees Account in order to train airline personnel in the detection of fraudulent documents. If an airline fails to participate in INS training programs with regard to the detection of fraudulent documents, then the section provides that the Attorney General may suspend that airline's landing rights in the U.S.

SUBTITLE D—ALIEN SMUGGLING CONTROL

Sec. 231. Expansion of Alien Smuggling Asset Forfeiture Program.

This section expands the INS's current seizure and forfeiture authority with respect to conveyance used in the smuggling or harboring of illegal aliens to include the seizure and forfeiture of all property in such cases.

Sec. 232. Inclusion of Alien Smuggling in Rico Act.

This section adds alien smuggling as a prohibited activity under the Racketeering Influenced Corrupt Organizations (RICO) Act.

Sec. 233. Enhanced Penalties for Alien Smuggling and Employment.

This section provides enhanced penalties for any person who knowingly contracts or agrees with another party to provide employment to an illegal alien.

Sec. 234. Provision of Wiretap Authority for Investigations.

This section provides authority for the U.S. Department of Justice to use wiretaps

to assist in the investigation of alien smuggling and fraud in connection with visas, permits, and other travel documents.

SUBTITLE E—EMPLOYER SANCTIONS ENFORCEMENT

Sec. 241. Improvement of Work Eligibility Verification Systems.

In order to eliminate the widespread fraud that is crippling the employer sanctions provisions of the Immigration Reform and Control Act of 1986 (IRCA), this section provides for the use of Social Security numbers as the primary means by which employment eligibility will be verified. The section provides for the establishment of a telephonic verification system for use by employers to determine employment eligibility. The Attorney General is directed to monitor the verification system and to recommend any statutory changes that she deems necessary for the full achievement of the objective of this section.

SUBTITLE F—PROHIBITION OF WELFARE BENEFITS TO ILLEGAL ALIENS

Sec. 251. Prohibition of Welfare Benefits to Illegal Aliens.

This section prohibits the payment of Federally-funded welfare benefits to aliens other than those who are lawfully admitted as permanent residents, refugees, asylees or parolees. The section also provides an exception with respect to the Federal reimbursement of emergency medical care for aliens, as determined by the Secretary of Health and Human Services by regulation.

Sec. 252. Prohibition of Unemployment Benefits to Illegal Aliens.

This section prohibits the payment of unemployment compensation to aliens who have not been granted employment authorization pursuant to the INA.

Sec. 253. Prohibition of Housing Benefits to Illegal Aliens.

This section prohibits the provision of Federally-subsidized housing to aliens other than those who are admitted as permanent residents, asylees, refugees, or parolees.

Sec. 254. Enhancement of Legal Alien Entitlement Verification.

This section authorizes augmentation of the automated Systematic Alien Verification of Entitlements (SAVE) program, which is used to verify the immigration status of aliens who apply for Federal benefits.

SUBTITLE G—LOCAL COOPERATION IN IMMIGRATION ENFORCEMENT

Sec. 261. Prohibition on Financial Assistance.

This section requires the suspension of all Justice Department grant assistance to so-called "sanctuary cities," which have an official policy of refusing to cooperate with the INS in the detection, arrest, and detention of illegal aliens. The provision also applies to any States that adopt such policies.

Sec. 262. Establishment of Program for Uniform Vital Statistics.

This section establishes a pilot program for the development of a data base on birth and death records to prevent fraud against the government through the use of counterfeit birth or death certificates.

TITLE III—EXCLUSION AND DEPORTATION REFORM

SUBTITLE A—CRIMINAL ALIENS

Sec. 301. Registration of Aliens on Probation and Parole.

This section authorizes the registration of aliens on criminal probation or criminal parole with the INS. It is intended to assist the INS in keeping track of criminal aliens.

Sec. 302. Expansion of Definition of Aggravated Felony.

This section expands the definition of "aggravated felony" for purposes of the INA. The crimes that currently fall within that category are murder, drug trafficking, trafficking in firearms or explosives, money laundering, and violent crimes for which the sentence is over 5 years. This section adds firearms violations, failure to appear before a court to answer a felony charge, demanding or receiving ransom money, unlawful conduct as set forth under the RICO Act, immigration-related offenses including alien smuggling and the sale of fraudulent documents, child pornography, owning or operating a prostitution business, treason, and tax evasion exceeding $200,000.

Sec. 303. Authorization of Judicial Deportation Orders.

This section authorizes United States District Judges to issue orders of deportation during the sentencing phases of criminal trials of aliens who are convicted of aggravated felonies. It could apply to all criminal aliens, including those who are permanent residents of the U.S.

Under this provision, judicial deportation orders must be requested by the U.S. Attorney involved, with the concurrence of the Commissioner of the INS. The U.S. Attorney would be required to provide the alien with a notice of intent to seek such an order following an adjudication of criminal guilt or the entry of a guilty plea. The government would be responsible for demonstrating that the defendant is an alien who is subject to deportation and that the crime of which the alien has been convicted meets the statutory definition of "aggravated felony."

Judicial deportation would replace ordinary administrative deportation procedures in those cases in which it is sought. Aliens who are found to be deportable under this process would continue to have the right to seek judicial review of their deportation orders in the United States Courts of Appeals. In addition, this section would not require the consideration of judicial deportation orders in every trial of an alien who is charged with an aggravated felony. Finally, under this section the Attorney General would retain her right to seek an administrative determination of deportability if the U.S. District Court were to deny a government motion for a judicial deportation order.

Sec. 304. Restrictions on Defenses to Deportation by Criminals.

This section would restrict defenses to deportation for aliens who have been convicted of aggravated felonies. As the result of amendments made to the INA by this section, the only such aliens who would qualify for discretionary relief from deportation would be those permanent residents who have lived in the U.S. under that immigration status for at least seven years and have been sentenced to less than five years of imprisonment upon conviction of an aggravated felony.

Under current law, permanent resident aliens who have lived in the U.S. for seven years are ineligible for relief from deportation if they have *served* five years or more upon conviction of an aggravated felony. This section would amend the law to make such aliens who have been *sentenced* to serve five years or more in prison ineligible for such relief.

The new proposed standard is more relevant to assessing the seriousness of an offense, since dangerous criminals sometimes are released prematurely due to prison overcrowding or for other reasons that are unrelated to the seriousness of the crimes for which they were convicted. Moreover, the current standard presents a serious logistical obstacle to the speedy commencement of deportation proceedings because it may not be known until the alien has served five years in prison whether the alien will be eligible for relief from deportation.

Sec. 305. Establishment of Alien Prisoner Transfer Treaty Study.

This section requires the Attorney General, together with the Secretary of State, to report on the use and effectiveness of the Prisoner Transfer Treaty with Mexico. That treaty provides for the removal of aliens who are Mexican nationals from the U.S. when they have been convicted of crimes here.

SUBTITLE B—TERRORIST ALIENS

Sec. 311. Removal of Alien Terrorists.

This section incorporates a legislative proposal first made by the Justice Department under the Reagan Administration in 1988. It was resubmitted to the Congress by the Bush Administration in 1989. The Senate adopted it unanimously as a part of the crime bill in the fall of 1993. The provision was dropped, however, from the conference report on the bill.

Under this section, a special Article III court is established in which, under limited circumstances, classified information may be used to establish the deportability of alien terrorists as defined under the Immigration Act of 1990. The special Article III court is based on that which was created by the Foreign Intelligence Surveillance Act nearly twenty years ago.

Under current law [Section 235(c) of the INA], classified information may be used to establish the excludability of aliens. Those cases are heard before INS officials sitting as special adjudicatory officers. In recognition of the fact that aliens are accorded greater constitutional due process protections in deportation proceedings, this section places cases in which the government seeks to use classified information to establish deportability before Article III life-tenured judges. In addition, this section requires that either the Attorney General or the Deputy Attorney General of the United States must personally approve the invocation of this procedure by the Justice Department.

Under this section, aliens may appeal from adverse decisions by the special Article III court to the United States Court of Appeals for the Federal Circuit. They may seek review of adverse appellate decisions by filing petitions for writs of *certiorari* to the United States Supreme Court.

Sec. 312. Mandatory Exclusion for Membership in Terror Group.

This section provides that membership in a terrorist organization is sufficient cause for the exclusion of aliens who are attempting to enter the United States.

SUBTITLE C—ENFORCEMENT OF DEPORTATION ORDERS

Sec. 321. Limitations on Collateral Attacks on Underlying Deportation Orders.

In a criminal proceeding against a deported alien who reenters the United States illegally, this section would allow a U.S. District Court to examine the validity of the original deportation order only if the alien demonstrates (1) that he/she exhausted all available administrative remedies, (2) that the deportation proceedings improperly deprived the alien of the opportunity for judicial review, and (3) that the entry of the order of deportation was "fundamentally unfair. This language, which is taken directly

from the U.S. Supreme Court case of *United States* v. *Mendoza-Lopez*, 481 U.S 828 (1987), is intended to ensure that minimum due process is followed in the original deportation proceeding while preventing wholesale, time-consuming attack on underlying deportation orders.

SUBTITLE D—EXPEDITED ASYLUM REVIEW AT PORTS OF ENTRY

Sec. 331. Establishment of Expedited Asylum Review Program.

Aliens who seek to immigrate to the United States increasingly are using commercial international airline flights in order to circumvent U.S. immigration laws. The number of such aliens who arrive at U.S. airports with fraudulent documents, or without any travel papers at all, has grown markedly in recent years. Severely limited detention space requires the INS to parole most such aliens into the U.S. with instructions to report several months later for a hearing before an immigration judge. Many of those aliens fail to appear for their hearings, however, and take other actions to make INS efforts to locate them quite difficult.

This section revises Section 235(b) of the INA, which governs the inspection and exclusion of aliens. It provides for an expedited exclusion procedure for aliens who (1) arrive either at points of entry or elsewhere in the U.S., (2) do not have proper documentation, and (3) do not have a credible claim for asylum. Under its terms, if the examining immigration officer determines that an alien seeking entry to the U.S. does not present the requisite documentation to enter the U.S. and doesn't indicate that he/she has a fear of persecution in his/her home country, the officer may exclude the alien without further hearing or review.

Special protections, however, are provided under this section to aliens who do profess fear of persecution. Such aliens are immediately referred to an INS asylum officer at the port of entry. If the asylum officer determines that the alien has a credible fear of persecution, then the alien is entitled to apply for provisional asylum. On the other hand, if the INS asylum officer finds that the alien does not have a credible fear of persecution, then the officer can order the alien excluded from the United States, subject to immediate supervisory review.

Under this section, a finding that an alien has a "credible fear of persecution" requires a judgment that (1) it is more probable than not that the statements made in support of the claim are true and that (2) there is a significant possibility that the alien could establish eligibility for provisional asylum based upon them.

This section provides only for quite limited judicial review. An alien who is found to be excludable under the expedited exclusion procedure would be permitted to file a petition for a writ of *habeas corpus* in a United States District Court. Such review by the Court would be limited to (1) a determination that the petitioner is an alien and (2) a finding of whether the petitioner was ordered excluded under the expedited exclusion procedure.

SUBTITLE E—ASYLUM REFORM

Sec. 341. Asylum.

Under current law, the adjudication of asylum claims through many levels of administrative and judicial review typically is extremely slow. Undeserving applicants have taken advantage of the present massive backlog of 300,000 cases, as well as all of their rights to review and appeal, to delay for many years the final resolutions of their cases. In response to that problem, this section rewrites Section 208 of the INA, which establishes the asylum process.

Current law provides that an alien who fears persecution can apply for either asylum under Section 208 or withholding of deportation under Section 243(h), or both. In order to be granted asylum, an alien must prove that he/she has a "well-founded fear of persecution," whereas to be granted withholding of deportation an alien must demonstrate that his/her life or freedom "would be threatened" if he/she were to return to his/her home country. The courts have interpreted "would be threatened" to mean "more likely than not" and "well-founded fear" to mean "good reason to fear." The judgment of whether to grant asylum to an alien who qualifies is left to the discretion of the Attorney General, while the grant of the withholding of deportation is mandatory for aliens who meet the statutory requirements.

Under Section 208 as revised by this section, an alien who fears persecution in his/her homeland would be allowed to apply only for provisional asylum. This section would preserve the existing burdens of proof, such that the Attorney General would be required to grant provisional asylum to an alien who establishes that it is "more likely than not" that he/she would be persecuted in his/her home country and (2) the Attorney General is given the discretion to grant provisional asylum to an alien who establishes a "good reason to fear" persecution. Reflecting current law, the Attorney General would be precluded from granting provisional asylum to aliens who are found to have participated in persecution, who have been convicted of a particularly serious crime, or who are dangerous to the security of the U.S.

This section also addresses another deficiency in current law with respect to asylum, which is that there are no deadlines by which asylum applications must be filed. An undocumented alien who has been in the U.S. for many years, for example, may claim asylum at any time. This allows such aliens to use asylum as a defense to deportation.

Accordingly, this section establishes deadlines for provisional asylum applications. Under the new requirements, aliens would be required to file a notice of intent to file a provisional asylum application within 30 days after arriving in the U.S. The application itself then must be filed within 60 days. An applicant who misses these deadlines is allowed to apply only if he/she can demonstrate that circumstances changed in his/her home country after the deadlines passed.

In addition, this section provides that reasonable fees may be charged for asylum applications and that employment authorizations in connection therewith only will be granted at the discretion of the Attorney General. The asylum applications of aliens who do not appear at their hearings will be dismissed, unless the alien involved can demonstrate exceptional circumstances.

This section also allows aliens who have been granted provisional asylum to receive full asylum status. In order to do so, the alien must be present in the U.S. in provisional asylum status for one year, continue to be eligible for provisional asylum, and admissible for adjustment under the INA.

Finally, under this section, any alien who has received notice of the consequences of the filing of a frivolous provisional asylum application, and nevertheless files such an application, will not be eligible ever again for any immigration benefits under the INA. An application will be considered frivolous if it includes willful and material misrepresentations of fact.

Sec. 342. Failure to Appear for Asylum Hearing; Judicial Review.

Under this section, an alien who has received proper notice and nevertheless fails to appear for a provisional asylum hearing will not be eligible in the future for any immigration benefit under the INA. This section also provides that judicial review of provisional asylum cases will take place in the U.S. Courts of Appeals. Determinations granting or denying provisional asylum on the basis of claims of changed circumstances, however, will rest in the sole discretion of the Attorney General.

Sec. 343. Conforming Amendments.

This section includes conforming amendments to the INA.

Sec. 344. Effective Dates.

This section provides for effective dates. Although most amendments made by the bill will take effect on the date on which the bill becomes law, some effective dates are set afterwards in order to allow the INS more time in which to prepare for the changes made thereby.

SUBTITLE E—MISCELLANEOUS PROVISIONS

Sec. 351. Authorization of Telephonic Deportation Hearings.

In response to the 1989 decision of the U.S. Court of Appeals for the Ninth Circuit in *Purba v. INS*, 884 F. 2d 516 (9th Cir. 1989), this section provides authority for deportation proceedings to be heard by immigration judges telephonically and, where waived or agreed to by the parties, in the absence of the alien.

Sec. 352. Construction of Expedited Deportation Requirements.

In response to another recent ruling by the Court of Appeals for the Ninth Circuit, this section makes clear that the provision in the INA that requires the Attorney General to begin deportation proceedings as expeditiously as possible cannot be construed to create a legally enforceable right or benefit.

By Mr. CHAFEE:

S.J. Res. 231. A joint resolution prohibiting funds for diplomatic relations with Vietnam at the ambassadorial level unless a report on United States servicemen who remain unaccounted for from the Vietnam War is submitted to the Senate; to the Committee on Foreign Relations.

VIETNAM DIPLOMATIC RELATIONS JOINT RESOLUTION

• Mr. CHAFEE. Mr. President, at the beginning of this session, the Senate debated and approved a resolution urging the President to lift the trade embargo against Vietnam. It was an emotional and hard-fought debate. All Senators agreed as to our primary policy objective: to obtain continued cooperation from Vietnam in our efforts to account for the more than 2,000 servicemen who never returned from the War. The question was, how best to meet that objective.

At the time, many argued very passionately that the cooperation we have received from Vietnam on the POW-MIA question has been reluctant at best, and that lifting the embargo would remove any incentive that the

Vietnamese might have to continue to work with us. Others argued that if we did not lift the embargo, the Vietnamese would decide that continuing to cooperate was pointless and would cease to do so.

After much consideration, I sided with the proponents of lifting the embargo. I felt that we should trust the judgment of our on-the-ground investigators, virtually all of whom gave high marks to the Vietnamese for their cooperation, and that the best way to maintain that cooperation would be to advance our relationship through the lifting of the trade embargo.

Since the Senate approved that resolution on January 27 and the President lifted the embargo accordingly on February 3, many in the Vietnam veterans community in my State of Rhode Island have expressed the understandable concern that, in doing so, we had let the camel's nose under the tent. Now that we have taken this important step forward, they fear that we will rush headlong toward normalizing our relations with Vietnam without any further reflection on the POW-MIA question.

I stated during the debate on the Kerry-McCain amendment that I did not advocate establishing normal diplomatic ties with Vietnam. I believed then, as I believe now, that any further progress toward normalization must continue to be linked to Vietnamese cooperation on the POW-MIA issue. The legislation I introduce today—and plan to reintroduce when we return next year—is intended to let our Vietnam veterans, as well as the comrades and families of those who never returned, know that we will not sever that link.

Quite simply, my joint resolution states that Congress shall appropriate no funds to maintain diplomatic relations with Vietnam at the ambassadorial level unless, prior to Senate confirmation of any U.S. ambassador to Vietnam, the President submits to the Senate a comprehensive report assessing the progress to date of United States-Vietnamese efforts to resolve cases involving U.S. servicemen still unaccounted for.

This legislation would not undermine the President's ability to conduct diplomacy. Clearly, we cannot formulate foreign policy with 535 Secretaries of State. Instead, my legislation focuses on the Senate's Constitutional responsibility to confirm ambassadorial appointments and the Congress' control over the Federal purse strings. It says to the President, we will not tie your hands, but before we vote on sending an ambassador to Vietnam and before we appropriate any funds to support an American embassy in Vietnam, we want, at the very least, a thorough update on the accounting of American POW-MIA.

Mr. President, sadly, we will never recover every American who remains unaccounted for from the Vietnam War. The destructive nature of war and the particular challenges of recovery work in the jungle make resolution of these cases very slow and painstaking, and in some instances, impossible. That does not mean, however, that we should abandon our efforts to achieve the best accounting we can. The families and friends of our missing servicemen have been waiting more than 20 years for answers about what happened to their loved ones. We must continue to do everything possible to provide those answers.

I want to thank the Rhode Island chapter of the Vietnam Veterans of America and in particular Mr. Ernie DiRocco and Mr. Ken Osborne for their hard work on this issue and their invaluable assistance in crafting this joint resolution.•

By Mr. MURKOWSKI (for himself, Mr. STEVENS, Mr. AKAKA, Mr. BIDEN, Mr. BOND, Mr. BOREN, Mr. BRYAN, Mr. CHAFEE, Mr. COATS, Mr. COCHRAN, Mr. CRAIG, Mr. D'AMATO, Mr. DECONCINI, Mr. DURENBERGER, Mr. GLENN, Mr. GRASSLEY, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mr. LAUTENBERG, Mr. MATHEWS, Ms. MIKULSKI, Mr. PACKWOOD, Mr. PRESSLER, Mr. ROCKEFELLER, Mr. ROTH, Mr. SIMON, Mr. SPECTER, Mr. THURMOND, Mr. WARNER and Mr. WOFFORD):

S.J. Res. 232. A joint resolution designating October 23, 1994, through October 31, 1994, as "National Red Ribbon Week for a Drug-Free America; to the Committee on the Judiciary.

NATIONAL RED RIBBON WEEK FOR A DRUG-FREE AMERICA

• Mr. MURKOWSKI. Mr. President, on behalf of myself, Senator STEVENS, and 29 of our colleagues, I introduce a Senate Resolution designating October 23–October 31, 1994, as "National Red Ribbon Week for a Drug-Free America." I am proud to be the Senate's original sponsor of this seventh annual recognition of this week, and I invite my colleagues to support this important resolution.

Illegal and addictive drugs, Mr. President, are a scourge on our society and, if not stemmed, could virtually destroy our American way of life. The human misery and violence that surround the drug culture are among the most dangerous threats to a free society. I cannot—and know we will not—stand by and allow the cancer of drug addiction to imperil the future of this country.

The National Family Partnership is an important organization fighting drug abuse in our country. This group of volunteers is dedicated to freeing our Nation from dependence on illegal drugs. The Partnership orchestrates educational activities throughout American communities that are designed to promote broad public awareness on the perils of drug addiction. The campaign primarily targets school-age children—those most vulnerable to the dangers of drugs. Red Ribbon Week is as much a celebration of the success and effectiveness of the Family Partnership as it is a collective statement about the dangers of drug abuse.

Since its inception in 1988, the National Red Ribbon Celebration has made a positive impact on more and more people each year. In 1993, over 120 million people in the United States participated in Red Ribbon activities.

The National Red Ribbon Celebration originated when Drug Enforcement Administration agent Enrique Camarena was murdered by drug traffickers in 1985. Angered by the killing and destruction caused by illegal drugs in America, the National Family Partnership and affiliated non-profit organizations began wearing red ribbons as a symbol of their commitment to a healthy, drug-free lifestyle—No use of illegal drugs and no illegal use of legal drugs.

Mr. President, a Senate Joint Resolution on this vital topic lends both credence and seriousness to the purposes of Red Ribbon Week, a true national grassroots initiative.

Mr. President, I urge all my colleagues to support this important legislation.•

ADDITIONAL COSPONSORS

S. 51

At the request of Mr. GRASSLEY, his name was added as a cosponsor of S. 51, a bill to consolidate overseas broadcasting services of the United States Government, and for other purposes.

S. 340

At the request of Mr. HEFLIN, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 340, a bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the Act with respect to alternate uses of new animal drugs and new drugs intended for human use, and for other purposes.

S. 600

At the request of Mrs. HUTCHISON, her name was added as a cosponsor of S. 600, a bill to amend the Internal Revenue Code of 1986 to extend and modify the targeted jobs credit.

S. 993

At the request of Mr. KEMPTHORNE, the names of the Senator from Nebraska [Mr. EXON] and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of S. 993, a bill to end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

S. 1288

At the request of Mr. AKAKA, the names of the Senator from North Dakota [Mr. DORGAN], and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of S. 1288, a bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture commercialization research program, and for other purposes.

S. 1376

At the request of Mr. GRASSLEY, his name was added as a cosponsor of S. 1376, a bill to repeal the Helium Act, to require the Secretary of the Interior to sell Federal real and personal property held in connection with activities carried out under the Helium Act, and for other purposes.

S. 1772

At the request of Mr. GRASSLEY, his name was added as a cosponsor of S. 1772, a bill to reduce federal employment to the levels proposed in the Vice President's Report of the National Performance Review.

S. 1843

At the request of Mr. GRASSLEY, his name was added as a cosponsor of S. 1843, a bill to downsize and improve the performance and accountability of the Federal Government.

S. 1887

At the request of Mr. PELL, his name was added as a cosponsor of S. 1887, a bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

S. 1933

At the request of Mr. MCCAIN, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 1933, a bill to repeal the Medicare and Medicaid Coverage Data Bank, and for other purposes.

S. 2071

At the request of Mr. LIEBERMAN, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 2071, a bill to provide for the application of certain employment protection and information laws to the Congress and for other purposes.

S. 2140

At the request of Mr. DASCHLE, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 2140, a bill to permit an individual to be treated by a health care practitioner with any method of medical treatment such individual requests, and for other purposes.

S. 2337

At the request of Mr. LOTT, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 2337, a bill to extend benefits for qualified service to certain merchant mariners who served during World War II, and for other purposes.

S. 2360

At the request of Mr. BREAUX, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 2360, a bill to amend the Magnuson Fishery Conservation and Management Act of 1976, and for other purposes.

S. 2427

At the request of Mr. HEFLIN, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 2427, a bill to require the Secretary of Agriculture to offer to enter into an agreement with the National Academy of Sciences to coordinate the development of recommendations to carry out an improved inspection program for meat and poultry products, and for other purposes.

S. 2437

At the request of Mr. CONRAD, the names of the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 2437, a bill to amend the Food Security Act of 1985 to extend, improve, increase flexibility, and increase conservation benefits of the conservation reserve program, and for other purposes.

S. 2456

At the request of Mr. GORTON, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 2456, a bill to direct the Secretary of Agriculture to carry out activities on certain federally owned lands to address the adverse effects of 1994 wildfires in the western portion of the United States, and for other purposes.

S. 2460

At the request of Mr. CHAFEE, the names of the Senator from Minnesota [Mr. WELLSTONE], and the Senator from Indiana [Mr. COATS] were added as cosponsors of S. 2460, a bill to extend for an additional two years the period during which medicare select policies may be issued.

S. 2478

At the request of Mr. KERRY, the names of the Senator from New Mexico [Mr. DOMENICI], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 2478, a bill to amend the Small Business Act to enhance the business development opportunities of small business concerns owned and controlled by socially and economically disadvantaged individuals, and for other purposes.

S. 2491

At the request of Mrs. FEINSTEIN, the names of the Senator from California [Mrs. BOXER], the Senator from Arizona [Mr. DECONCINI], and the Senator from Colorado [Mr. CAMPBELL] were added as cosponsors of S. 2491, a bill to amend the Defense Authorization Amendments and Defense Base Closure and Realignment Act and the Defense Base Closure and Realignment Act of 1990 to improve the base closure process, and for other purposes.

S. 2508

At the request of Mr. PACKWOOD, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 2508, a bill to amend the fishing endorsement issued to a vessel owned by Ronnie C. Fisheries, Inc.

SENATE JOINT RESOLUTION 181

At the request of Mr. SIMON, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Arkansas [Mr. BUMPERS], the Senator from California [Mrs. FEINSTEIN], the Senator from Maine [Mr. COHEN], the Senator from Arizona [Mr. MCCAIN], the Senator from Rhode Island [Mr. CHAFEE], the Senator from New Hampshire [Mr. GREGG], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of Senate Joint Resolution 181, a joint resolution to designate the week of May 8, 1994, through May 14, 1994, as "United Negro College Fund Week."

SENATE JOINT RESOLUTION 184

At the request of Mr. THURMOND, the names of the Senator from Ohio [Mr. GLENN], the Senator from Connecticut [Mr. LIEBERMAN], and the Senator from Missouri [Mr. BOND] were added as cosponsors of Senate Joint Resolution 184, a joint resolution designating September 18, 1994, through September 24, 1994, as "Iron Overload Diseases Awareness Week."

SENATE JOINT RESOLUTION 186

At the request of Mr. PACKWOOD, the names of the Senator from New Hampshire [Mr. GREGG], the Senator from South Dakota [Mr. DASCHLE], and the Senator from Kansas [Mr. DOLE] were added as cosponsors of Senate Joint Resolution 186, a joint resolution to designate February 2, 1995, and February 1, 1996, as "National Women and Girls in Sports Day."

SENATE JOINT RESOLUTION 219

At the request of Mr. LEAHY, the names of the Senator from South Carolina [Mr. THURMOND], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of Senate Joint Resolution 219, a joint resolution to commend the United States rice industry, and for other purposes.

SENATE JOINT RESOLUTION 224

At the request of Mr. SIMON, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of Senate Joint Resolution 224, a joint resolution designating November 1, 1994, as "National Family Literacy Day".

SENATE CONCURRENT RESOLUTION 66

At the request of Ms. MIKULSKI, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from South Carolina [Mr. THURMOND], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of Senate Concurrent Resolution 66, a concurrent resolution to recognize and encourage the convening of a National Silver Haired Congress.

SENATE CONCURRENT RESOLUTION 80—RELATIVE TO S. 349

Mr. LEVIN (for himself, Mr. COHEN, Mr. MITCHELL, Mr. WELLSTONE, and Mr. LAUTENBERG) submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 80

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 349) an Act to provide for the disclosure of lobbying activities to influence the Federal Government, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) Strike out section 103(2) and insert in lieu thereof the following:

"(2) CLIENT.—The term 'client' means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.".

(2) Strike out section 103(8).

(3) In section 103(9)(A), in the second sentence insert "and communications with members, as described in section 4911(d)(1)(A) and (3) of the Internal Revenue Code of 1986" after "include grassroots lobbying communications".

(4) In section 103(9)(B) strike out all after "the Internal Revenue Code of 1986" and insert in lieu thereof a period.

(5) Strike out section 103(10)(B)(xviii)(II) and insert in lieu thereof the following:

"(II) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033(a); and".

(6) In section 103 redesignate paragraphs (9) through (17) as paragraphs (8) through (16), respectively.

(7) In section 104(b)—

(A) strike out paragraph (5); and

(B) redesignate paragraphs (6) and (7) as paragraph (5) and (6), respectively.

(8) In section 105(b)(2)—

(A) in subparagraph (C) add "and" after the semicolon;

(B) in subparagraph (D) strike out "and" after the semicolon; and

(C) strike out subparagraph (E).

(9) In section 105(b)—

(A) in paragraph (3) add "and" after the semicolon;

(B) in paragraph (4) strike out the semicolon and insert in lieu thereof a period; and

(C) strike out paragraphs (5) and (6).

(10) In section 105(c)(4) strike out "subsections (b)(4) and (b)(6)" and insert in lieu thereof "subsection (b)(4)".

(11) In section 107(d)(14) strike out "section 103(17)" and insert in lieu thereof "section 103(16)".

(12) In section 121(g)(2), in the first sentence strike out "section 103(12)" and insert in lieu thereof "section 103(11)".

(13) In section 121(g)(2)(A) strike out "sections 104(a)(3), 105(a)(2), 105(b)(4), and 105(b)(6)" and insert in lieu thereof "sections 104(a)(3), 105(a)(2), and 105(b)(4)".

(14) In section 121(g)(2)(A) strike out "section 103(9)" and insert in lieu thereof "section 103(8)".

(15) In section 121(g)(2)(B) strike out "section 103(9), consider as lobbying" and insert in lieu thereof "section 103(8), consider as lobbying".

(16) In section 121(g)(2)(B)(iii) strike out "section 103(9)" and insert in lieu thereof "section 103(8)".

(17) In section 121(g)(3)(A) strike out "section 103(9)" and insert in lieu thereof "section 103(8)".

SENATE RESOLUTION 274—TO AMEND THE STANDING RULES OF THE SENATE

Mr. DOLE (for himself, Mr. SIMPSON, Mr. NICKLES, Mr. COCHRAN, Mr. MCCONNELL, Mr. SMITH, Mr. D'AMATO, Mr. DOMENICI, Mr. Coats, Mr. LOTT, Mrs. HUTCHISON, Mr. BENNETT, Mr. SHELBY, MR. GREGG, Mr. COVERDELL, Mr. Durenberger, Mr. PACKWOOD, Mr. GORTON, Mr. KEMPTHORNE, Mr. THURMOND, Mrs. KASSEBAUM, Mr. BROWN, Mr. MACK, Mr. WARNER, Mr. FAIRCLOTH, Mr. GRAMM, Mr. HATCH, Mr. BURNS, Mr. HELMS, Mr. MCCAIN, Mr. GRASSLEY, Mr. LUGAR, Mr. BOND, Mr. GRAIG, Mr. ROTH, Mr. COHEN, Mr. CHAFEE, and Mr. PRESSLER) submitted the following resolution, which was referred to the Committee on Rules and Administration:

S. RES. 274

GIFT RULES

AMENDMENTS TO SENATE RULES

Resolved, Rule XXXV of the Standing Rules of the Senate is amended to read as follows:

"1. No Member, officer, or employee of the Senate shall accept a gift, knowing that such gift is provided by a lobbyist, a registered lobbyist under the Federal Regulation of Lobbying Act, a lobbying firm, or an agent of a foreign principal.

(a) GIFTS.—A prohibited gift includes the following:

(1) Anything provided by a lobbyist or a foreign agent which is paid for, charged to, or reimbursed by a client or firm of such lobbyist or foreign agent.

(2) Anything provided by a lobbyist, a lobbying firm, or a foreign agent to an entity that is maintained or controlled by Member, officer, or employee of the Senate.

(3) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent on the basis of a designation, recommendation, or other specification of a Member, officer, or employee of the Senate (not including a mass mailing or other solicitation directed to a broad category of persons or entities).

(4) A contribution or other payment by a lobbyist, a lobbying firm, or a foreign agent to a legal expense fund established for the benefit of a Member, officer, or employee of the Senate.

(5) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent in lieu of an honorarium to a Member, officer, or employee of the Senate.

(6) A financial contribution or expenditure made by a lobbyist, a lobbying firm, or a foreign agent relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of a Member, officer, or employee of the Senate.

(b) NOT GIFTS.—The following are not gifts subject to the prohibition:

(1) Anything for which the recipient pays the market value, or does not use and promptly returns to the donor.

(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

(3) Food or refreshments of nominal value offered other than as part of a meal.

(4) Benefits resulting from the business, employment, or Member, officer, or employee of the Senate, if such benefits are customarily provided to others in similar circumstances.

(5) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(6) Informational materials that are sent to the office of a Member, officer, or employee of the Senate in the form of books, articles, periodicals, other written materials, audio tapes, videotapes, or other forms of communication.

(c) GIFTS GIVEN FOR A NONBUSINESS PURPOSE AND MOTIVATED BY FAMILY RELATIONSHIP OR CLOSE PERSONAL FRIENDSHIP.—

(1) IN GENERAL.—A gift given by an individual under circumstances which make it clear that the gift is given for a nonbusiness purpose and is motivated by a family relationship or close personal friendship and not by the position of the Member, officer, or employee of the Senate, shall not be subject to the prohibition in subsection (a).

(2) NONBUSINESS PURPOSE.—A gift shall not be considered to be given for a nonbusiness purpose if the individual giving the gift seeks—

(A) to deduct the value of such gift as a business expense on the individual's Federal income tax return, or

(B) direct or indirect reimbursement or any other compensation for the value of the gift from a client or employer of such lobbyist or foreign agent.

(3) FAMILY RELATIONSHIP OR CLOSE PERSONAL FRIENDSHIP. In determining if the giving of a gift is motivated by a family relationship or close personal friendship, at least the following factors shall be considered:

(A) The history of the relationship between the individual giving the gift and the recipient of the gift, including whether or not gifts have previously been exchanged by such individuals.

(B) Whether the gift was purchased by the individual who gave the item.

(C) Whether the individual who gave the gift also at the same time gave the same or similar gifts to any other Member, officer, or employee of the Senate.

"2. (a) In addition to the restriction on receiving gifts from lobbyists, registered lobbyists under the Federal Regulation of Lobbying Act, lobbying firms, and agents of foreign principles provided by paragraph 1 and except as provided in this Rule, no Member, officer, or employee of the Senate shall knowingly accept a gift from any other person.

"(b)(1) For the purpose of this Rule, the term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"(2) A gift to the spouse or dependent of a Member, officer, or employee (or a gift to any other individual based on that individual's relationship with the Member, officer, or employee) shall be considered a gift to the Member, officer, or employee if it is given with the knowledge and acquiescence of the Member, officer, or employee and the Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee.

"(c) The restrictions in subparagraph (a) shall not apply to the following:

"(1) Anything for which the Member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

"(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

"(3) Anything provided by an individual on the basis of a personal or family relationship unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal or family relationship. The Select Committee on Ethics shall provide guidance on the applicability of this clause and examples of circumstances under which a gift may be accepted under this exception.

"(4) A contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee, that is otherwise lawfully made, if the person making the contribution or payment is identified for the Select Committee on Ethics.

"(5) Any food or refreshments which the recipient reasonably believes to have a value of less than $20.

"(6) Any gift from another Member, officer, or employee of the Senate or the House of Representatives.

"(7) Food, refreshments, lodging, and other benefits—

"(A) resulting from the outside business or employment activities (or other outside activities that are not connected to the duties of the Member, officer, or employee as an officeholder) of the Member, officer, or employee, or the spouse of the Member, officer, or employee, if such benefits have not been offered or enhanced because of the official position of the Member, officer, or employee and are customarily provided to others in similar circumstances;

"(B) customarily provided by a prospective employer in connection with bona fide employment discussions; or

"(C) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such an organization.

"(8) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

"(9) Informational materials that are sent to the office of the Member, officer, or employee in the form of books, articles, periodicals, other written materials, audio tapes, videotapes, or other forms of communication.

"(10) Awards or prizes which are given to competitors in contests or events open to the public, including random drawings.

"(11) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

"(12) Donations of products from the State that the Member represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

"(13) Food, refreshments, and entertainment provided to a Member or an employee of a Member in the Member's home State, subject to reasonable limitations, to be established by the Committee on Rules and Administration.

"(14) An item of little intrinsic value such as a greeting card, baseball cap, or a T shirt.

"(15) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a Member, officer, or employee, if such training is in the interest of the Senate.

"(16) Bequests, inheritances, and other transfers at death.

"(17) Any item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

"(18) Anything which is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

"(19) A gift of personal hospitality of an individual, as defined in section 109(14) of the Ethics in Government Act.

"(20) Free attendance at a widely attended event permitted pursuant to subparagraph (d).

"(21) Opportunities and benefits which are—

"(A) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

"(B) offered to members of a group or class in which membership is unrelated to congressional employment;

"(C) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

"(D) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

"(E) in the form of loans from banks and other financial institutions on terms generally available to the public; or

"(F) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

"(22) A plaque, trophy, or other memento of modest value.

"(23) Anything for which, in an unusual case, a waiver is granted by the Select Committee on Ethics.

"(d)(1) Except as prohibited by paragraph 1, a Member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

"(A) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, officer's, or employee's official position; or

"(B) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

"(2) A Member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

"(3) Except as prohibited by paragraph 1, a Member, officer, or employee, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event.

"(4) For purposes of this paragraph, the term 'free attendance' may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, or food or refreshments taken other than in a group setting with all or substantially all other attendees.

"(e) No Member, officer or employee may accept a gift the value of which exceeds $250 under circumstances which make it clear that the gift is given for a nonbusiness purpose and is motivated by a close personal friendship and not by the position of the Member, officer, or employee of the Senate unless the Select Committee on Ethics issues a written determination that one of such exceptions applies.

"(f)(1) The Committee on Rules and Administration is authorized to adjust the dollar amount referred to in subparagraph (c)(5) on a periodic basis, to the extent necessary to adjust for inflation.

"(2) The Select Committee on Ethics shall provide guidance setting forth reasonable steps that may be taken by Members, officers, and employees, with a minimum of paperwork and time, to prevent the acceptance of prohibited gifts from lobbyists.

"(3) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

"3. (A)(1) Except as prohibited by paragraph 1, a reimbursement (including payment in kind) to a Member, officer, or employee for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, fact-finding trip or similar event in connection with the duties of the Members, officer, or employee as an officeholder shall be deemed to be a reimbursement to the Senate and not a gift prohibited by this rule, if the Member, officer, or employee—

"(A) in the case of an employee, receives advance authorization, from the Member or officer under whose direct supervision the employee works, to accept reimbursement, and

"(B) discloses the expenses reimbursed or to be reimbursed and the authorization to the Secretary of the Senate within 30 days after the travel is completed.

"(2) For purposes of clause (1), events, the activities of which are substantially recreational in nature, shall not be consider to be in connection with the duties of a Member, officer, or employee as an officeholder.

"(b) Each advance authorization to accept reimbursement shall be signed by the Member of officer under whose direct supervision the employee works and shall include—

"(1) the name of the employee;

"(2) the name of the person who will make the reimbursement;

"(3) the time, place, and purpose of the travel; and

"(4) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

"(c) Each disclosure made under subparagraph (a)(1) of expenses reimbursed or to be reimbursed shall be signed by the Member or officer (in the case of travel by that Member or officer) or by the Member or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

"(1) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

"(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

"(3) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

"(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

"(5) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in this paragraph; and

"(6) in the case of a reimbursement to a Member or officer, a determination that the travel was in connection with the duties of the Member or officer as an officeholder and would not create the appearance that the Member or officer is using public office for private gain.

"(d) For the purposes of this paragraph, the term 'necessary transportation, lodging, and related expenses'—

"(1) includes reasonable expenses that are necessary for travel for a period not exceeding 3 days exclusive of traveltime within the United States or 7 days exclusive of traveltime outside of the United States unless approved in advance by the Select Committee on Ethics;

"(2) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in clause (1);

"(3) does not include expenditures for recreational activities, or entertainment other than that provided to all attendees as an integral part of the event; and

"(4) may include travel expenses incurred on behalf of either the spouse or a child of the Member, officer, or employee, subject to a determination signed by the Member or officer (or in the case of an employee, the Member or officer under whose direct supervision the employee works) that the attendance of the spouse or child is appropriate to assist in the representation of the Senate.

"(e) The Secretary of the Senate shall make available to the public all advance authorizations and disclosures of reimbursement filed pursuant to subparagraph (a) as soon as possible after they are received.".

3. DEFINITIONS.—

(a) Lobbyist means any individual who is employed or retained by a client for financial or other compensation for services that include one or more lobbying contacts, other than an individual whose lobbying activities constitute less than 10 percent of the time engaged in the services provided by such individual to that client.

(b) Lobbying firm means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity including a self-employed individual who is a lobbyist.

(c) Agent of a foreign principal means the definition contained in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.)

4. MISCELLANEOUS SENATE PROVISIONS.—

(1) AUTHORITY OF THE COMMITTEE ON RULES AND ADMINISTRATION.—The Senate Committee on Rules and Administration, on behalf of the Senate, may accept gifts provided they do not involve any duty, burden, or condition, or are not made dependent upon some future performance by the United States. The Committee on Rules and Administration is authorized to promulgate regulations to carry out this section.

(2) FOOD, REFRESHMENTS, AND ENTERTAINMENT.—The rules on acceptance of food, refreshments, and entertainment provided to a Member of the Senate or an employee of such a Member in the Member's home State before the adoption of reasonable limitations by the Committee on Rules and Administration shall be the rules in effect on the day before the effective date of this title.

5. EFFECTIVE DATE.—This rule change shall take effect May 31, 1995.

SENATE RESOLUTION 275—TO AMEND THE SENATE GIFT RULE

Mr. WELLSTONE (for himself, Mr. FEINGOLD, and Mr. LAUTENBERG) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 275

Resolved, That rule XXXV of the Standing Rules of the Senate is amended by inserting the following:

SEC. ___. AMENDMENTS TO SENATE RULES.

The text of rule XXXV of the Standing Rules of the Senate is amended to read as follows:

"1. No member, officer, or employee of the Senate shall accept a gift, knowing that such gift is provided by a lobbyist, a lobbying firm, or an agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.) in violation of this rule.

"2. (a) In addition to the restriction on receiving gifts from registered lobbyists, lobbying firms, and agents of foreign principals provided by paragraph 1 and except as provided in this rule, no member, officer, or employee of the Senate shall knowingly accept a gift from any other person.

"(b)(1) For the purpose of this rule, the term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"(2) A gift to the spouse or dependent of a member, officer, or employee (or a gift to any other individual based on that individual's relationship with the member, officer, or employee) shall be considered a gift to the member, officer, or employee if it is given with the knowledge and acquiescence of the member, officer, or employee and the member, officer, or employee has reason to believe the gift was given because of the official position of the member, officer, or employee.

"(c) The restrictions in subparagraph (a) shall apply to the following:

"(1) Anything provided by a lobbyist or a foreign agent which is paid for, charged to, or reimbursed by a client or firm of such lobbyist or foreign agent.

"(2) Anything provided by a lobbyist, a lobbying firm, or a foreign agent to an entity that is maintained or controlled by a member, officer, or employee of the Senate.

"(3) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent on the basis of a designation, recommendation, or other specification of a member, officer, or employee of the Senate (not including a mass mailing or other solicitation directed to a broad category of persons or entities).

"(4) A contribution or other payment by a lobbyist, a lobbying firm, or a foreign agent to a legal expense fund established for the benefit of a member, officer, or employee of the Senate.

"(5) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent in lieu of an honorarium to a member, officer, or employee of the Senate.

"(6) A financial contribution or expenditure made by a lobbyist, a lobbying firm, or a foreign agent relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of members, officers, or employees of the Senate.

"(d) The restrictions in subparagraph (a) shall not apply to the following:

"(1) Anything for which the member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

"(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

"(3) Anything provided by an individual on the basis of a personal or family relationship unless the member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the member, officer, or employee and not because of the personal or family relationship. The Select Committee on Ethics shall provide guidance on the applicability of this clause and examples of circumstances under which a gift may be accepted under this exception.

"(4) A contribution or other payment to a legal expense fund established for the benefit of a member, officer, or employee, that is otherwise lawfully made, if the person making the contribution or payment is identified for the Select Committee on Ethics.

"(5) Any food or refreshments which the recipient reasonably believes to have a value of less than $20.

"(6) Any gift from another member, officer, or employee of the Senate or the House of Representatives.

"(7) Food, refreshments, lodging, and other benefits—

"(A) resulting from the outside business or employment activities (or other outside activities that are not connected to the duties of the member, officer, or employee as an officeholder) of the member, officer, or employee, or the spouse of the member, officer, or employee, if such benefits have not been offered or enhanced because of the official position of the member, officer, or employee and are customarily provided to others in similar circumstances;

"(B) customarily provided by a prospective employer in connection with bona fide employment discussions; or

"(C) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such an organization.

"(8) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

"(9) Informational materials that are sent to the office of the member, officer, or employee in the form of books, articles, periodicals, other written materials, audio tapes, videotapes, or other forms of communication.

"(10) Awards or prizes which are given to competitors in contests or events open to the public, including random drawings.

"(11) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

"(12) Donations of products from the State that the member represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

"(13) Food, refreshments, and entertainment provided to a member or an employee of a member in the member's home State, subject to reasonable limitations, to be established by the Committee on Rules and Administration.

"(14) An item of little intrinsic value such as a greeting card, baseball cap, or a T shirt.

"(15) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a member, officer, or employee, if such training is in the interest of the Senate.

"(16) Bequests, inheritances, and other transfers at death.

"(17) Any item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

"(18) Anything which is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

"(19) A gift of personal hospitality of an individual, as defined in section 109(14) of the Ethics in Government Act.

"(20) Free attendance at a widely attended event permitted pursuant to subparagraph (e).

"(21) Opportunities and benefits which are—

"(A) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

"(B) offered to members of a group or class in which membership is unrelated to congressional employment;

"(C) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

"(D) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

"(E) in the form of loans from banks and other financial institutions on terms generally available to the public; or

"(F) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

"(22) A plaque, trophy, or other memento of modest value.

"(23) Anything for which, in an unusual case, a waiver is granted by the Select Committee on Ethics.

"(e)(1) Except as prohibited by paragraph 1, a member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

"(A) the member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the member's, officer's, or employee's official position; or

"(B) attendance at the event is appropriate to the performance of the official duties or representative function of the member, officer, or employee.

"(2) A member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

"(3) Except as prohibited by paragraph 1, a member, officer, or employee, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event.

"(4) For purposes of this paragraph, the term 'free attendance' may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, or food or refreshments taken other than in a group setting with all or substantially all other attendees.

"(f)(1) No member, officer, or employee may accept a gift the value of which exceeds $250 on the basis of the personal relationship exception in subparagraph (d)(3) or the close personal friendship exception in clause (2) unless the Select Committee on Ethics issues a written determination that one of such exceptions applies.

"(2)(A) A gift given by an individual under circumstances which make it clear that the gift is given for a nonbusiness purpose and is motivated by a family relationship or close personal friendship and not by the position of the member, officer, or employee of the Senate shall not be subject to the prohibition in clause (1).

"(B) A gift shall not be considered to be given for a nonbusiness purpose if the individual giving the gift seeks—

"(i) to deduct the value of such gift as a business expense on the individual's Federal income tax return, or

"(ii) direct or indirect reimbursement or any other compensation for the value of the gift from a client or employer of such lobbyist or foreign agent.

"(C) In determining if the giving of a gift is motivated by a family relationship or close personal friendship, at least the following factors shall be considered:

"(i) The history of the relationship between the individual giving the gift and the recipient of the gift, including whether or not gifts have previously been exchanged by such individuals.

"(ii) Whether the gift was purchased by the individual who gave the item.

"(iii) Whether the individual who gave the gift also at the same time gave the same or similar gifts to other members, officers, or employees of the Senate.

"(g)(1) The Committee on Rules and Administration is authorized to adjust the dollar amount referred to in subparagraph (d)(5) on a periodic basis, to the extent necessary to adjust for inflation.

"(2) The Select Committee on Ethics shall provide guidance setting forth reasonable steps that may be taken by members, officers, and employees, with a minimum of paperwork and time, to prevent the acceptance of prohibited gifts from lobbyists.

"(3) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

"3. (a)(1) Except as prohibited by paragraph 1, a reimbursement (including payment in kind) to a member, officer, or employee for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, factfinding trip or similar event in connection with the duties of the member, officer, or employee as an officeholder shall be deemed to be a reimbursement to the Senate and not a gift prohibited by this rule, if the member, officer, or employee—

"(A) in the case of an employee, receives advance authorization, from the member or officer under whose direct supervision the employee works, to accept reimbursement, and

"(B) discloses the expenses reimbursed or to be reimbursed and the authorization to the Secretary of the Senate within 30 days after the travel is completed.

"(2) For purposes of clause (1), events, the activities of which are substantially recreational in nature, shall not be considered to be in connection with the duties of a member, officer, or employee as an officeholder.

"(b) Each advance authorization to accept reimbursement shall be signed by the member or officer under whose direct supervision the employee works and shall include—

"(1) the name of the employee;

"(2) the name of the person who will make the reimbursement;

"(3) the time, place, and purpose of the travel; and

"(4) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

"(c) Each disclosure made under subparagraph (a)(1) of expenses reimbursed or to be reimbursed shall be signed by the member or officer (in the case of travel by that Member or officer) or by the member or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

"(1) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

"(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

"(3) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

"(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

"(5) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in this paragraph; and

"(6) in the case of a reimbursement to a member or officer, a determination that the travel was in connection with the duties of the member or officer as an officeholder and would not create the appearance that the member or officer is using public office for private gain.

"(d) For the purposes of this paragraph, the term 'necessary transportation, lodging, and related expenses'—

"(1) includes reasonable expenses that are necessary for travel for a period not exceeding 3 days exclusive of traveltime within the United States or 7 days exclusive of traveltime outside of the United States unless approved in advance by the Select Committee on Ethics;

"(2) is limited to reasonable expenditures for transportation, lodging, conference fees

and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in clause (1);

"(3) does not include expenditures for recreational activities, or entertainment other than that provided to all attendees as an integral part of the event; and

"(4) may include travel expenses incurred on behalf of either the spouse or a child of the member, officer, or employee, subject to a determination signed by the member or officer (or in the case of an employee, the member or officer under whose direct supervision the employee works) that the attendance of the spouse or child is appropriate to assist in the representation of the Senate.

"(e) The Secretary of the Senate shall make available to the public all advance authorizations and disclosures of reimbursement filed pursuant to subparagraph (a) as soon as possible after they are received.

"4. In this rule:

"(a) The term "client" means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is—

"(1) the coalition or association and not its individual members when the lobbying activities are conducted on behalf of its membership and financed by the coalition's or association's dues and assessments; or

"(2) an individual member or members, when the lobbying activities are conducted on behalf of, and financed separately by, 1 or more individual members and not by the coalition's or association's dues and assessments.

"(b)(1) The term "lobbying contact" means any oral or written communication (including an electronic communication) to a member, officer, or employee of the Senate that is made on behalf of a client with regard to the formulation, modification, or adoption of Federal legislation (including legislative proposals) or the nomination or confirmation of a person for a position subject to confirmation by the Senate.

"(2) The term "lobbying contact" does not include a communication that is—

"(A) made by a public official acting in the public official's official capacity;

"(B) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

"(C) made in a speech, article, publication or other material that is widely distributed to the public, or through radio, television, cable television, or other medium of mass communication;

"(D) made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);

"(E) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a member, officer, or employee of the Senate;

"(F) made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act;

"(G) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;

"(H) information provided in writing in response to a written request by a member, officer, or employee of the Senate for specific information;

"(I) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency;

"(J) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this subclause does not apply to any communication with a member, officer, or employee of the Senate (other than the individual's elected Senators or employees who work under such Senators' direct supervision) with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;

"(K) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989, under the Inspector General Act of 1978, or under another provision of law; or

"(L) made by—

"(i) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986, or

"(ii) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033(a),

if the communication constitutes the free exercise of religion or is for the purpose of protecting the right to the free exercise of religion.

"(c)(1) The term "lobbying firm"—

"(A) means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity; and

"(B) includes a self-employed individual who is a lobbyist; but

"(C) does not include a person or entity whose—

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed $2,500; or

(ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed $5,000,

(as estimated in accordance with standards issued by the Committee on Rules and Administration) in the preceding semiannual period of January through June or July through December.

"(2) The dollar amounts in clause (1) shall be adjusted—

"(A) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since the date of enactment of this title; and

"(B) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period,

rounded to the nearest $500.

"(d)(1) The term "lobbyist"—

"(A) means any individual who is employed or retained by a client for financial or other compensation for services that include one or more lobbying contacts, other than an individual whose lobbying activities constitute less than 10 percent of the time engaged in the services provided by such individual to that client; but

"(B) does not include an individual whose—

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed $2,500; or

(ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed $5,000,

(as estimated in accordance with standards issued by the Committee on Rules and Administration) in the preceding semiannual period of January through June or July through December.

"(2) The dollar amounts in clause (1) shall be adjusted—

"(A) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since the date of enactment of this title; and

"(B) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period,

rounded to the nearest $500.

"(e) The term "public official" means any elected official, appointed official, or employee of—

"(1) a Federal, State, or local unit of government in the United States other than—

"(A) a college or university;

"(B) a government-sponsored enterprise (as defined in section 3(8) of the Congressional Budget and Impoundment Control Act of 1974);

"(C) a public utility that provides gas, electricity, water, or communications;

"(D) a guaranty agency (as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1085(j))), including any affiliate of such an agency; or

"(E) an agency of any State functioning as a student loan secondary market pursuant to section 435(d)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1085(d)(1)(F));

"(2) a Government corporation (as defined in section 9101 of title 31, United States Code);

"(3) an organization of State or local elected or appointed officials other than officials of an entity described in aubclause (A), (B), (C), (D), or (E) of clause (1);

"(4) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

"(5) a national or State political party or any organizational unit thereof; or

"(6) a national, regional, or local unit of any foreign government.

"(f) The term "State" means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SENATE RESOLUTION 276—RELATIVE TO APPOINTMENTS TO COMMISSIONS, COMMITTEES, BOARDS, OR CONFERENCES

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 276

Resolved, That notwithstanding the sine die adjournment of the present session of the Congress, the President of the Senate, the

President pro tempore, the Majority leader of the Senate, and the Minority leader of the Senate be, and they are hereby, authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

AMENDMENTS SUBMITTED

THE FEDERAL MANDATE ACCOUNTABILITY AND REFORM ACT OF 1994

SIMON (AND OTHERS) AMENDMENT NO. 2621

Mr. SIMON (for himself, Mr. MCCAIN, and Ms. MOSELEY-BRAUN) proposed an amendment to the bill (S. 993) to end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; as follows:

At the end of the pending amendment, insert the following:

DIVISION 2—NATIONAL AFRICAN AMERICAN MUSEUM ACT

SECTION 1. SHORT TITLE.

This division may be cited as the "National African American Museum Act".

SEC. 2. FINDINGS.

(a) FINDINGS.—The Congress finds that—

(1) the presentation and preservation of African American life, art, history, and culture within the National Park System and other Federal entities are inadequate;

(2) the inadequate presentation and preservation of African American life, art, history, and culture seriously restrict the ability of the people of the United States, particularly African Americans, to understand themselves and their past;

(3) African American life, art, history, and culture include the varied experiences of Africans in slavery and freedom and the continued struggles for full recognition of citizenship and treatment with human dignity;

(4) in enacting Public Law 99-511, the Congress encouraged support for the establishment of a commemorative structure within the National Park System, or on other Federal lands, dedicated to the promotion of understanding, knowledge, opportunity, and equality for all people;

(5) the establishment of a national museum and the conducting of interpretive and educational programs, dedicated to the heritage and culture of African Americans, will help to inspire and educate the people of the United States regarding the cultural legacy of African Americans and the contributions made by African Americans to the society of the United States; and

(6) the Smithsonian Institution operates 15 museums and galleries, a zoological park, and 5 major research facilities, none of which is a national institution devoted solely to African American life, art, history, or culture.

SEC. 3. ESTABLISHMENT OF THE NATIONAL AFRICAN AMERICAN MUSEUM.

(a) ESTABLISHMENT.—There is established within the Smithsonian Institution a Museum, which shall be known as the "National African American Museum".

(b) PURPOSE.—The purpose of the Museum is to provide—

(1) a center for scholarship relating to African American life, art, history, and culture;

(2) a location for permanent and temporary exhibits documenting African American life, art, history, and culture;

(3) a location for the collection and study of artifacts and documents relating to African American life, art, history, and culture;

(4) a location for public education programs relating to African American life, art, history, and culture; and

(5) a location for training of museum professionals and others in the arts, humanities, and sciences regarding museum practices related to African American life, art, history, and culture.

SEC. 4. LOCATION AND CONSTRUCTION OF THE NATIONAL AFRICAN AMERICAN MUSEUM.

The Board of Regents is authorized to plan, design, reconstruct, and renovate the Arts and Industries Building of the Smithsonian Institution to house the Museum.

SEC. 5. BOARD OF TRUSTEES OF MUSEUM.

(a) ESTABLISHMENT.—There is established in the Smithsonian Institution the Board of Trustees of the National African American Museum.

(b) COMPOSITION AND APPOINTMENT.—The Board of Trustees shall be composed of 23 members as follows:

(1) The Secretary of the Smithsonian Institution.

(2) An Assistant Secretary of the Smithsonian Institution, designated by the Board of Regents.

(3) Twenty-one individuals of diverse disciplines and geographical residence who are committed to the advancement of knowledge of African American art, history, and culture appointed by the Board of Regents, of whom 9 members shall be from among individuals nominated by African American museums, historically black colleges and universities, and cultural or other organizations.

(c) TERMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), members of the Board of Trustees shall be appointed for terms of 3 years. Members of the Board of Trustees may be reappointed.

(2) STAGGERED TERMS.—As designated by the Board of Regents at the time of initial appointments under paragraph (3) of subsection (b), the terms of 7 members shall expire at the end of 1 year, the terms of 7 members shall expire at the end of 2 years, and the terms of 7 members shall expire at the end of 3 years.

(d) VACANCIES.—A vacancy on the Board of Trustees shall not affect its powers and shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of the term.

(e) NONCOMPENSATION.—Except as provided in subsection (f), members of the Board of Trustees shall serve without pay.

(f) EXPENSES.—Members of the Board of Trustees shall receive per diem, travel, and transportation expenses for each day, including traveltime, during which they are engaged in the performance of the duties of the Board of Trustees in accordance with section 5703 of title 5, United States Code, with respect to employees serving intermittently in the Government service.

(g) CHAIRPERSON.—The Board of Trustees shall elect a chairperson by a majority vote of the members of the Board of Trustees.

(h) MEETINGS.—The Board of Trustees shall meet at the call of the chairperson or upon the written request of a majority of its members, but shall meet not less than 2 times each year.

(i) QUORUM.—A majority of the Board of Trustees shall constitute a quorum for purposes of conducting business, but a lesser number may receive information on behalf of the Board of Trustees.

(j) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Board of Trustees may accept for the Board of Trustees voluntary services provided by a member of the Board of Trustees.

SEC. 6. DUTIES OF THE BOARD OF TRUSTEES OF THE MUSEUM.

(a) IN GENERAL.—The Board of Trustees shall—

(1) recommend annual budgets for the Museum;

(2) consistent with the general policy established by the Board of Regents, have the sole authority to—

(A) loan, exchange, sell, or otherwise dispose of any part of the collections of the Museum, but only if the funds generated by such disposition are used for additions to the collections of the Museum or for additions to the endowment of the Museum;

(B) subject to the availability of funds and the provisions of annual budgets of the Museum, purchase, accept, borrow, or otherwise acquire artifacts and other property for addition to the collections of the Museum;

(C) establish policy with respect to the utilization of the collections of the Museum; and

(D) establish policy regarding programming, education, exhibitions, and research, with respect to the life and culture of African Americans, the role of African Americans in the history of the United States, and the contributions of African Americans to society;

(3) consistent with the general policy established by the Board of Regents, have authority to—

(A) provide for restoration, preservation, and maintenance of the collections of the Museum;

(B) solicit funds for the Museum and determine the purposes to which those funds shall be used;

(C) approve expenditures from the endowment of the Museum, or of income generated from the endowment, for any purpose of the Museum; and

(D) consult with, advise, and support the Director in the operation of the Museum;

(4) establish programs in cooperation with other African American museums, historically black colleges and universities, historical societies, educational institutions, cultural and other organizations for the education and promotion of understanding regarding African American life, art, history, and culture;

(5) support the efforts of other African American museums, historically black colleges and universities, and cultural and other organizations to educate and promote understanding regarding African American life, art, history, and culture, including—

(A) development of cooperative programs and exhibitions;

(B) identification, management, and care of collections;

(C) participation in the training of museum professionals; and

(D) creating opportunities for—

(i) research fellowships; and

(ii) professional and student internships;

(6) adopt bylaws to carry out the functions of the Board of Trustees; and

(7) report annually to the Board of Regents on the acquisition, disposition, and display of African American objects and artifacts and on other appropriate matters.

SEC. 7. DIRECTOR AND STAFF.

(a) IN GENERAL.—The Secretary of the Smithsonian Institution, in consultation with the Board of Trustees, shall appoint a Director who shall manage the Museum.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Secretary of the Smithsonian Institution may—

(1) appoint the Director and 5 employees of the Museum, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(2) fix the pay of the Director and such 5 employees, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

SEC. 8. DEFINITIONS.

For purposes of this Act:

(1) The term "Board of Regents" means the Board of Regents of the Smithsonian Institution.

(2) The term "Board of Trustees" means the Board of Trustees of the National African American Museum established in section 5(a).

(3) The term "Museum" means the National African American Museum established under section 3(a).

(4) The term "Arts and Industries Building" means the building located on the Mall at 900 Jefferson Drive, S.W. in Washington, the District of Columbia.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary only for costs directly relating to the operation and maintenance of the Museum.

THE CONGRESSIONAL ACCOUNTABILITY ACT

WELLSTONE (AND OTHERS) AMENDMENT NO. 2622

(Ordered to lie on the table.)

Mr. WELLSTONE (for himself, Mr. FEINGOLD, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by them to the bill (H.R. 4822) to make certain laws applicable to the legislative branch of the Federal Government.

NOTICE OF INTENTION TO AMEND THE STANDING RULES OF THE SENATE

Mr. WELLSTONE. Mr. President, pursuant to Rule 5, paragraph 1 of the Standing Rules of the Senate, I hereby submit notice to amend Rule 35 of the Standing Rules of the Senate; as follows:

SEC. ___. AMENDMENTS TO SENATE RULES.

The text of rule XXXV of the Standing Rules of the Senate is amended to read as follows:

"1. No member, officer, or employee of the Senate shall accept a gift, knowing that such gift is provided by a lobbyist, a lobbying firm, or an agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.) in violation of this rule.

"2. (a) In addition to the restriction on receiving gifts from registered lobbyists, lobbying firms, and agents of foreign principals provided by paragraph 1 and except as provided in this rule, no member, officer, or employee of the Senate shall knowingly accept a gift from any other person.

"(b)(1) For the purpose of this rule, the term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"(2) A gift to the spouse or dependent of a member, officer, or employee (or a gift to any other individual based on that individual's relationship with the member, officer, or employee) shall be considered a gift to the member, officer, or employee if it is given with the knowledge and acquiescence of the member, officer, or employee and the member, officer, or employee has reason to believe the gift was given because of the official position of the member, officer, or employee.

"(c) The restrictions in subparagraph (a) shall apply to the following:

"(1) Anything provided by a lobbyist or a foreign agent which is paid for, charged to, or reimbursed by a client or firm of such lobbyist or foreign agent.

"(2) Anything provided by a lobbyist, a lobbying firm, or a foreign agent to an entity that is maintained or controlled by a member, officer, or employee of the Senate.

"(3) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent on the basis of a designation, recommendation, or other specification of a member, officer, or employee of the Senate (not including a mass mailing or other solicitation directed to a broad category of persons or entities).

"(4) A contribution or other payment by a lobbyist, a lobbying firm, or a foreign agent to a legal expense fund established for the benefit of a member, officer, or employee of the Senate.

"(5) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent in lieu of an honorarium to a member, officer, or employee of the Senate.

"(6) A financial contribution or expenditure made by a lobbyist, a lobbying firm, or a foreign agent relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of members, officers, or employees of the Senate.

"(d) The restrictions in subparagraph (a) shall not apply to the following:

"(1) Anything for which the member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

"(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

"(3) Anything provided by an individual on the basis of a personal or family relationship unless the member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the member, officer, or employee and not because of the personal or family relationship. The Select Committee on Ethics shall provide guidance on the applicability of this clause and examples of circumstances under which a gift may be accepted under this exception.

"(4) A contribution or other payment to a legal expense fund established for the benefit of a member, officer, or employee, that is otherwise lawfully made, if the person making the contribution or payment is identified for the Select Committee on Ethics.

"(5) Any food or refreshments which the recipient reasonably believes to have a value of less than $20.

"(6) Any gift from another member, officer, or employee of the Senate or the House of Representatives.

"(7) Food, refreshments, lodging, and other benefits—

"(A) resulting from the outside business or employment activities (or other outside activities that are not connected to the duties of the member, officer, or employee as an officeholder) of the member, officer, or employee, or the spouse of the member, officer, or employee, if such benefits have not been offered or enhanced because of the official position of the member, officer, or employee and are customarily provided to others in similar circumstances;

"(B) customarily provided by a prospective employer in connection with bona fide employment discussions; or

"(C) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such an organization.

"(8) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

"(9) Informational materials that are sent to the office of the member, officer, or employee in the form of books, articles, periodicals, other written materials, audio tapes, videotapes, or other forms of communication.

"(10) Awards or prizes which are given to competitors in contests or events open to the public, including random drawings.

"(11) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

"(12) Donations of products from the State that the member represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

"(13) Food, refreshments, and entertainment provided to a member or an employee of a member in the member's home State, subject to reasonable limitations, to be established by the Committee on Rules and Administration.

"(14) An item of little intrinsic value such as a greeting card, baseball cap, or a T shirt.

"(15) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a member, officer, or employee, if such training is in the interest of the Senate.

"(16) Bequests, inheritances, and other transfers at death.

"(17) Any item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

"(18) Anything which is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

"(19) A gift of personal hospitality of an individual, as defined in section 109(14) of the Ethics in Government Act.

"(20) Free attendance at a widely attended event permitted pursuant to subparagraph (e).

"(21) Opportunities and benefits which are—

"(A) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

"(B) offered to members of a group or class in which membership is unrelated to congressional employment;

"(C) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

"(D) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

"(E) in the form of loans from banks and other financial institutions on terms generally available to the public; or

"(F) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

"(22) A plaque, trophy, or other memento of modest value.

"(23) Anything for which, in an unusual case, a waiver is granted by the Select Committee on Ethics.

"(e)(1) Except as prohibited by paragraph 1, a member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

"(A) the member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the member's, officer's, or employee's official position; or

"(B) attendance at the event is appropriate to the performance of the official duties or representative function of the member, officer, or employee.

"(2) A member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

"(3) Except as prohibited by paragraph 1, a member, officer, or employee, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event.

"(4) For purposes of this paragraph, the term 'free attendance' may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, or food or refreshments taken other than in a group setting with all or substantially all other attendees.

"(f)(1) No member, officer, or employee may accept a gift the value of which exceeds $250 on the basis of the personal relationship exception in subparagraph (d)(3) or the close personal friendship exception in clause (2) unless the Select Committee on Ethics issues a written determination that one of such exceptions applies.

"(2)(A) A gift given by an individual under circumstances which make it clear that the gift is given for a nonbusiness purpose and is motivated by a family relationship or close personal friendship and not by the position of the member, officer, or employee of the Senate shall not be subject to the prohibition in clause (1).

"(B) A gift shall not be considered to be given for a nonbusiness purpose if the individual giving the gift seeks—

"(i) to deduct the value of such gift as a business expense on the individual's Federal income tax return, or

"(ii) direct or indirect reimbursement or any other compensation for the value of the gift from a client or employer of such lobbyist or foreign agent.

"(C) In determining if the giving of a gift is motivated by a family relationship or close personal friendship, at least the following factors shall be considered:

"(i) The history of the relationship between the individual giving the gift and the recipient of the gift, including whether or not gifts have previously been exchanged by such individuals.

"(ii) Whether the gift was purchased by the individual who gave the item.

"(iii) Whether the individual who gave the gift also at the same time gave the same or similar gifts to other members, officers, or employees of the Senate.

"(g)(1) The Committee on Rules and Administration is authorized to adjust the dollar amount referred to in subparagraph (d)(5) on a periodic basis, to the extent necessary to adjust for inflation.

"(2) The Select Committee on Ethics shall provide guidance setting forth reasonable steps that may be taken by members, officers, and employees, with a minimum of paperwork and time, to prevent the acceptance of prohibited gifts from lobbyists.

"(3) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

"3. (a)(1) Except as prohibited by paragraph 1, a reimbursement (including payment in kind) to a member, officer, or employee for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, factfinding trip or similar event in connection with the duties of the member, officer, or employee as an officeholder shall be deemed to be a reimbursement to the Senate and not a gift prohibited by this rule, if the member, officer, or employee—

"(A) in the case of an employee, receives advance authorization, from the member or officer under whose direct supervision the employee works, to accept reimbursement, and

"(B) discloses the expenses reimbursed or to be reimbursed and the authorization to the Secretary of the Senate within 30 days after the travel is completed.

"(2) For purposes of clause (1), events, the activities of which are substantially recreational in nature, shall not be considered to be in connection with the duties of a member, officer, or employee as an officeholder.

"(b) Each advance authorization to accept reimbursement shall be signed by the member or officer under whose direct supervision the employee works and shall include—

"(1) the name of the employee;

"(2) the name of the person who will make the reimbursement;

"(3) the time, place, and purpose of the travel; and

"(4) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

"(c) Each disclosure made under subparagraph (a)(1) of expenses reimbursed or to be reimbursed shall be signed by the member or officer (in the case of travel by that Member or officer) or by the member or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

"(1) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

"(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

"(3) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

"(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

"(5) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in this paragraph; and

"(6) in the case of a reimbursement to a member or officer, a determination that the travel was in connection with the duties of the member or officer as an officeholder and would not create the appearance that the member or officer is using public office for private gain.

"(d) For the purposes of this paragraph, the term 'necessary transportation, lodging, and related expenses'—

"(1) includes reasonable expenses that are necessary for travel for a period not exceeding 3 days exclusive of traveltime within the United States or 7 days exclusive of traveltime outside of the United States unless approved in advance by the Select Committee on Ethics;

"(2) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in clause (1);

"(3) does not include expenditures for recreational activities, or entertainment other than that provided to all attendees as an integral part of the event; and

"(4) may include travel expenses incurred on behalf of either the spouse or a child of the member, officer, or employee, subject to a determination signed by the member or officer (or in the case of an employee, the member or officer under whose direct supervision the employee works) that the attendance of the spouse or child is appropriate to assist in the representation of the Senate.

"(e) The Secretary of the Senate shall make available to the public all advance authorizations and disclosures of reimbursement filed pursuant to subparagraph (a) as soon as possible after they are received.

"4. In this rule:

"(a) The term "client" means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is—

"(1) the coalition or association and not its individual members when the lobbying activities are conducted on behalf of its membership and financed by the coalition's or association's dues and assessments; or

"(2) an individual member or members, when the lobbying activities are conducted on behalf of, and financed separately by, 1 or more individual members and not by the coalition's or association's dues and assessments.

"(b)(1) The term "lobbying contact" means any oral or written communication (including an electronic communication) to a member, officer, or employee of the Senate that is made on behalf of a client with regard to the formulation, modification, or adoption of Federal legislation (including legislative proposals) or the nomination or confirmation of a person for a position subject to confirmation by the Senate.

"(2) The term "lobbying contact" does not include a communication that is—

"(A) made by a public official acting in the public official's official capacity;

"(B) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

"(C) made in a speech, article, publication or other material that is widely distributed to the public, or through radio, television, cable television, or other medium of mass communication;

"(D) made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);

"(E) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a member, officer, or employee of the Senate;

"(F) made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act;

"(G) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;

"(H) information provided in writing in response to a written request by a member, officer, or employee of the Senate for specific information;

"(I) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency;

"(J) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this subclause does not apply to any communication with a member, officer, or employee of the Senate (other than the individual's elected Senators or employees who work under such Senators' direct supervision) with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;

"(K) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989, under the Inspector General Act of 1978, or under another provision of law; or

"(L) made by—

"(i) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986, or

"(ii) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033(a),

if the communication constitutes the free exercise of religion or is for the purpose of protecting the right to the free exercise of religion.

"(c)(1) The term "lobbying firm"—

"(A) means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity; and

"(B) includes a self-employed individual who is a lobbyist; but

"(C) does not include a person or entity whose—

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed $2,500; or

(ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed $5,000,

(as estimated in accordance with standards issued by the Committee on Rules and Administration) in the preceding semiannual period of January through June or July through December.

"(2) The dollar amounts in clause (1) shall be adjusted—

"(A) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since the date of enactment of this title; and

"(B) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period,

rounded to the nearest $500.

"(d)(1) The term "lobbyist"—

"(A) means any individual who is employed or retained by a client for financial or other compensation for services that include one or more lobbying contacts, other than an individual whose lobbying activities constitute less than 10 percent of the time engaged in the services provided by such individual to that client; but

"(B) does not include an individual whose—

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed $2,500; or

(ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed $5,000,

(as estimated in accordance with standards issued by the Committee on Rules and Administration) in the preceding semiannual period of January through June or July through December.

"(2) The dollar amounts in clause (1) shall be adjusted—

"(A) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since the date of enactment of this title; and

"(B) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period,

rounded to the nearest $500.

"(e) The term "public official" means any elected official, appointed official, or employee of—

"(1) a Federal, State, or local unit of government in the United States other than—

"(A) a college or university;

"(B) a government-sponsored enterprise (as defined in section 3(8) of the Congressional Budget and Impoundment Control Act of 1974);

"(C) a public utility that provides gas, electricity, water, or communications;

"(D) a guaranty agency (as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1085(j))), including any affiliate of such an agency; or

"(E) an agency of any State functioning as a student loan secondary market pursuant to section 435(d)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1085(d)(1)(F));

"(2) a Government corporation (as defined in section 9101 of title 31, United States Code);

"(3) an organization of State or local elected or appointed officials other than officials of an entity described in aubclause (A), (B), (C), (D), or (E) of clause (1);

"(4) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

"(5) a national or State political party or any organizational unit thereof; or

"(6) a national, regional, or local unit of any foreign government.

"(f) The term "State" means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

THE FEDERAL MANDATE ACCOUNTABILITY AND REFORM ACT OF 1994

MOSELEY-BRAUN AMENDMENT NO. 2623

Ms. MOSELEY-BRAUN proposed an amendment to amendment No. 2621 proposed by Mr. SIMON to the bill S. 993, supra; as follows:

Strike all in the amendment and insert the following:

2—NATIONAL AFRICAN AMERICAN MUSEUM ACT

SECTION 1. SHORT TITLE.

This division may be cited as the "National African American Museum Act".

SEC. 2. FINDINGS.

(a) FINDINGS.—The Congress finds that—

(1) the presentation and preservation of African American life, art, history, and culture within the National Park System and other Federal entities are inadequate;

(2) the inadequate presentation and preservation of African American life, art, history, and culture seriously restrict the ability of the people of the United States, particularly African Americans, to understand themselves and their past;

(3) African American life, art, history, and culture include the varied experiences of Africans in slavery and freedom and the continued struggles for full recognition of citizenship and treatment with human dignity;

(4) in enacting Public Law 99-511, the Congress encouraged support for the establishment of a commemorative structure within the National Park System, or on other Federal lands, dedicated to the promotion of understanding, knowledge, opportunity, and equality for all people;

(5) the establishment of a national museum and the conducting of interpretive and educational programs, dedicated to the heritage and culture of African Americans, will help to inspire and educate the people of the United States regarding the cultural legacy of African Americans and the contributions made by African Americans to the society of the United States; and

(6) the Smithsonian Institution operates 15 museums and galleries, a zoological park, and 5 major research facilities, none of which is a national institution devoted solely to African American life, art, history, or culture.

SEC. 3. ESTABLISHMENT OF THE NATIONAL AFRICAN AMERICAN MUSEUM.

(a) ESTABLISHMENT.—There is established within the Smithsonian Institution a Museum, which shall be known as the "National African American Museum".

(b) PURPOSE.—The purpose of the Museum is to provide—

(1) a center for scholarship relating to African American life, art, history, and culture;

(2) a location for permanent and temporary exhibits documenting African American life, art, history, and culture;

(3) a location for the collection and study of artifacts and documents relating to African American life, art, history, and culture;

(4) a location for public education programs relating to African American life, art, history, and culture; and

(5) a location for training of museum professionals and others in the arts, humanities, and sciences regarding museum practices related to African American life, art, history, and culture.

SEC. 4. LOCATION AND CONSTRUCTION OF THE NATIONAL AFRICAN AMERICAN MUSEUM.

The Board of Regents is authorized to plan, design, reconstruct, and renovate the Arts and Industries Building of the Smithsonian Institution to house the Museum.

SEC. 5. BOARD OF TRUSTEES OF MUSEUM.

(a) ESTABLISHMENT.—There is established in the Smithsonian Institution the Board of Trustees of the National African American Museum.

(b) COMPOSITION AND APPOINTMENT.—The Board of Trustees shall be composed of 23 members as follows:

(1) The Secretary of the Smithsonian Institution.

(2) An Assistant Secretary of the Smithsonian Institution, designated by the Board of Regents.

(3) Twenty-one individuals of diverse disciplines and geographical residence who are committed to the advancement of knowledge of African American life, art, history, and culture appointed by the Board of Regents, of whom 11 members shall be from among individuals nominated by African American museums, historically black colleges and universities, and cultural or other organizations.

(c) TERMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), members of the Board of Trustees shall be appointed for terms of 3 years. Members of the Board of Trustees may be reappointed.

(2) STAGGERED TERMS.—As designated by the Board of Regents at the time of initial appointments under paragraph (3) of subsection (b), the terms of 7 members shall expire at the end of 1 year, the terms of 7 members shall expire at the end of 2 years, and the terms of 7 members shall expire at the end of 3 years.

(d) VACANCIES.—A vacancy on the Board of Trustees shall not affect its powers and shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of the term.

(e) NONCOMPENSATION.—Except as provided in subsection (f), members of the Board of Trustees shall serve without pay.

(f) EXPENSES.—Members of the Board of Trustees shall receive per diem, travel, and transportation expenses for each day, including traveltime, during which they are engaged in the performance of the duties of the Board of Trustees in accordance with section 5703 of title 5, United States Code, with respect to employees serving intermittently in the Government service.

(g) CHAIRPERSON.—The Board of Trustees shall elect a chairperson by a majority vote of the members of the Board of Trustees.

(h) MEETINGS.—The Board of Trustees shall meet at the call of the chairperson or upon the written request of a majority of its members, but shall meet not less than 2 times each year.

(i) QUORUM.—A majority of the Board of Trustees shall constitute a quorum for purposes of conducting business, but a lesser number may receive information on behalf of the Board of Trustees.

(j) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Board of Trustees may accept for the Board of Trustees voluntary services provided by a member of the Board of Trustees.

SEC. 6. DUTIES OF THE BOARD OF TRUSTEES OF THE MUSEUM.

(a) IN GENERAL.—The Board of Trustees shall—

(1) recommend annual budgets for the Museum;

(2) consistent with the general policy established by the Board of Regents, have the sole authority to—

(A) loan, exchange, sell, or otherwise dispose of any part of the collections of the Museum, but only if the funds generated by such disposition are used for additions to the collections of the Museum or for additions to the endowment of the Museum;

(B) subject to the availability of funds and the provisions of annual budgets of the Museum, purchase, accept, borrow, or otherwise acquire artifacts and other property for addition to the collections of the Museum;

(C) establish policy with respect to the utilization of the collections of the Museum; and

(D) establish policy regarding programming, education, exhibitions, and research, with respect to the life and culture of African Americans, the role of African Americans in the history of the United States, and the contributions of African Americans to society;

(3) consistent with the general policy established by the Board of Regents, have authority to—

(A) provide for restoration, preservation, and maintenance of the collections of the Museum;

(B) solicit funds for the Museum and determine the purposes to which those funds shall be used;

(C) approve expenditures from the endowment of the Museum, or of income generated from the endowment, for any purpose of the Museum; and

(D) consult with, advise, and support the Director in the operation of the Museum;

(4) establish programs in cooperation with other African American museums, historically black colleges and universities, historical societies, educational institutions, cultural and other organizations for the education and promotion of understanding regarding African American life, art, history, and culture;

(5) support the efforts of other African American museums, historically black colleges and universities, and cultural and other organizations to educate and promote understanding regarding African American life, art, history, and culture, including—

(A) development of cooperative programs and exhibitions;

(B) identification, management, and care of collections;

(C) participation in the training of museum professionals; and

(D) creating opportunities for—

(i) research fellowships; and

(ii) professional and student internships;

(6) adopt bylaws to carry out the functions of the Board of Trustees; and

(7) report annually to the Board of Regents on the acquisition, disposition, and display of African American objects and artifacts and on other appropriate matters.

SEC. 7. DIRECTOR AND STAFF.

(a) IN GENERAL.—The Secretary of the Smithsonian Institution, in consultation with the Board of Trustees, shall appoint a Director who shall manage the Museum.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Secretary of the Smithsonian Institution may—

(1) appoint the Director and 5 employees of the Museum, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(2) fix the pay of the Director, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

SEC. 8. DEFINITIONS.

For purposes of this Act:

(1) The term "Board of Regents" means the Board of Regents of the Smithsonian Institution.

(2) The term "Board of Trustees" means the Board of Trustees of the National African American Museum established in section 5(a).

(3) The term "Museum" means the National African American Museum established under section 3(a).

(4) The term "Arts and Industries Building" means the building located on the Mall at 900 Jefferson Drive, S.W. in Washington, the District of Columbia.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary only for costs directly relating to the operation and maintenance of the Museum.

GRAMM AMENDMENT NO. 2624

Mr. GRAMM proposed an amendment to the bill S. 993, supra; as follows:

At the appropriate place, insert:

SEC. ___. REPEAL OF 1993 TAX INCREASE ON SOCIAL SECURITY BENEFITS.

(a) IN GENERAL.—Section 13215 of the Revenue Reconciliation Act of 1993 (relating to

tax on social security and tier 1 railroad retirement benefits) is hereby repealed.

(b) APPLICATION OF INTERNAL REVENUE CODE.—The Internal Revenue Code of 1986 shall be applied and administered as if the provisions of, and the amendments made by, section 13215 of the Revenue Reconciliation Act of 1993 had not been enacted.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning after December 31, 1993.

WOFFORD AMENDMENT NO. 2625

(Ordered to lie on the table.)

Mr. WOFFORD submitted an amendment intended to be proposed by him to the bill S. 993, supra; as follows:

At the appropriate place, insert the following:

SEC. ___. DISQUALIFICATION OF MEMBERS OF CONGRESS FROM PARTICIPATING IN THE FEDERAL EMPLOYEE HEALTH BENEFITS PROGRAM.

(a) FINDINGS.—The Congress finds that—

(1) the Congress has failed to enact legislation that extends health insurance to all Americans and reduces inflation in health care costs;

(2) Members of Congress may obtain health insurance through the Federal Employees Health Benefits Program, which provides Members of Congress with guaranteed and affordable private health insurance, choice of health plans and choice of doctor, and no exclusions for preexisting medical conditions; and

(3) Members of Congress currently receive on average a 72 percent contribution of their health insurance premiums from their employer, the taxpayers.

(b) PURPOSE.—The purpose of this section is to provide that Members of Congress shall not obtain taxpayer-financed health insurance under the favorable conditions established through the Federal Employees Health Benefits Program unless Congress enacts health reform legislation that gives the American people the type of affordable, guaranteed health insurance that Members of Congress have provided for themselves.

(c) LIMITATION ON FEDERAL EMPLOYEE HEALTH BENEFITS PLAN COVERAGE FOR MEMBERS OF CONGRESS.—Effective on January 1, 1995.—

(1) the Office of Personnel Management shall—

(A) terminate the enrollment of any Member of Congress in a health benefits plan under chapter 89 of title 5, United States Code; and

(B) prohibit the original enrollment, re-enrollment, or change of enrollment of any Member of Congress in such a plan; and

(2) the Secretary of the Senate and the Clerk of the House of Representatives shall cease making applicable employee withholdings and Government contributions under section 8906 of title 5, United States Code, for any Member of Congress.

(d) CONTINUED COVERAGE.—A Member of Congress who is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, on December 31, 1994, may receive continued coverage under section 8905a of such title.

NATIONALITY AND NATURALIZATION AMENDMENTS ACT

CONRAD (AND OTHERS) AMENDMENT NO. 2626

Mr. FORD (for Mr. CONRAD for himself, Mr. BURNS, Mr. JOHNSTON, Mr. DECONCINI, and Mr. DORGAN) proposed an amendment to the amendment of the House to the amendment of the Senate to the bill (H.R. 783) to amend title III of the Immigration and Nationality Act to make changes in the laws relating to nationality and naturalization; as follows:

At the end of the matter proposed to be inserted by the House amendment, add the following:

SEC. ___. WAIVER OF FOREIGN COUNTRY RESIDENCE REQUIREMENT WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

(a) WAIVER.—Section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) is amended—

(1) in the first proviso by inserting "(or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent)" after "interested United States Government agency"; and

(2) by inserting after "public interest" the following: "except that in the case of a waiver requested by a State Department of Public Health, or its equivalent the waiver shall be subject to the requirements of section 214(k)".

(b) RESTRICTIONS ON WAIVER.—Section 214 of such Act (8 U.S.C. 1184) is amended by adding at the end the following:

"(k)(1) In the case of a request by an interested State agency for a waiver of the two-year foreign residence requirement under section 212(e) with respect to an alien described in clause (iii) of that section, the Attorney General shall not grant such waiver unless—

"(A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver;

"(B) the alien demonstrates a bona fide offer of full-time employment at a health facility and agrees to begin employment at such facility within 90 days of receiving such waiver and agrees to continue to work in accordance with paragraph (2) at the health care facility in which the alien is employed for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances such as the closure of the facility or hardship to the alien would justify a lesser period of time);

"(C) the alien agrees to practice medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

"(D) the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed twenty.

"(2)(A) Notwithstanding section 248(2), the Attorney General may change the status of an alien that qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(H)(i)(b).

"(B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the terms of a contract with a health facility shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States.

"(3) Notwithstanding any other provision of this subsection, the two-year foreign residence requirement under section 212(e) shall apply with respect to an alien described in clause (iii) of that section, who has not otherwise been accorded status under section 101(a)(27)(H), if at any time the alien practices medicine in an area other than an area described in paragraph (1)(C).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to aliens admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act, or acquiring such status after admission to the United States, before, on, or after the date of enactment of this Act and before June 1, 1996.

BROWN (AND OTHERS) AMENDMENT NO. 2627

Mr. FORD (for Mr. BROWN for himself, Mr. SIMON, Mr. MURKOWSKI, and Mr. LIEBERMAN) proposed an amendment to the amendment of the House to the amendment of the Senate to the bill H.R. 783, supra; as follows:

At the appropriate place in the bill, add the following new section—

"SEC. . VISAS FOR OFFICIALS OF TAIWAN.

"Whenever, the president of Taiwan or any other high-level official of Taiwan shall apply to visit the United States for the purposes of discussions with United States federal or state government officials concerning:

"(i) Trade or business with Taiwan that will reduce the U.S.-Taiwan trade deficit;

"(ii) Prevention of nuclear proliferation;

"(iii) Threats to the national security of the United States;

"(iv) The protection of the global environment;

"(v) The protection of endangered species; or

"(vi) Regional humanitarian disasters.

"The official shall be admitted to the United States, unless the official is otherwise excludable under the immigration laws of the United States.".

SIMPSON AMENDMENT NO. 2628

Mr. FORD (for Mr. SIMPSON) proposed an amendment to the amendment of the House to the amendment of the Senate to the bill (H.R. 783) to amend title III of the Immigration and Nationality Act to make changes in the laws relating to nationality and naturalization; as follows:

At the end of the matter proposed to be inserted by the House amendment, add the following:

SEC. ___. EXPANSION OF DEFINITION OF AGGRAVATED FELONY.

(a) EXPANSION OF DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

"(A) murder;

"(B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);

"(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of

title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);

"(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $100,000;

"(E) an offense described in—

"(i) section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

"(ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or

"(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

"(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;

"(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

"(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

"(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

"(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations) for which a sentence of 5 years' imprisonment or more may be imposed;

"(K) an offense that—

"(i) relates to the owning, controlling, managing, or supervising of a prostitution business; or

"(ii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

"(L) an offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code; or

"(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents);

"(M) an offense that—

"(i) involves fraud or deceit in which the loss to the victim or victims exceeds $200,000; or

"(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds $200,000;

"(N) an offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

"(O) an offense described in section 1546(a) of title 18, United States Code (relating to document fraud) which constitutes trafficking in the documents described in such section for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

"(P) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 15 years or more; and

"(Q) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to convictions entered on or after the date of enactment of this Act.

SEC. ___. SUMMARY DEPORTATION.

(a) EXPEDITED PROCEDURES.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended—

(1) in subsection (b)(4)(D), by striking "the determination of deportability is supported by clear, convincing, and unequivocal evidence and"; and

(2) in subsection (b)(4)(E), by striking "entered" and inserting "adjudicated".

(b) TECHNICAL CORRECTION.—Section 106(d)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended by striking "242A(b)(5)" and inserting "242A(b)(4)".

SEC. ___. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

"(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A), if such an order has been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.

"(2) PROCEDURE.—

"(A) The United States Attorney shall file with the United States district court, and serve upon the defendant and the Service, prior to commencement of the trial or entry of a guilty plea a notice of intent to request judicial deportation.

"(B) Notwithstanding section 242B, the United States Attorney, with the concurrence of the Commissioner, shall file at least 30 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and identifying the crime or crimes which make the defendant deportable under section 241(a)(2)(A).

"(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from deportation under this Act, the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief. The court shall either grant or deny the relief sought.

"(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

"(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 242(b).

"(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

"(iv) The court may order the alien deported if the Attorney General demonstrates that the alien is deportable under this Act.

"(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDER OF DEPORTATION.—

"(A)(i) A judicial order of deportation or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

"(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 106.

"(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of deportation is based, the expiration of the period described in section 106(a)(1), or the final dismissal of an appeal from such conviction, the order of deportation shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

"(B) As soon as is practicable after entry of a judicial order of deportation, the Commissioner shall provide the defendant with written notice of the order of deportation, which shall designate the defendant's country of choice for deportation and any alternate country pursuant to section 243(a).

"(4) DENIAL OF JUDICIAL ORDER.—Denial without a decision on the merits of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).".

(b) TECHNICAL AMENDMENT.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking "The" and inserting "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. ___. CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.

No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)) shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT

SIMON AMENDMENT NO. 2629

Mr. FORD (for Mr. SIMON) proposed an amendment to the House amendments to the bill (S. 2372) to reauthorize for three years the Commission on Civil Rights, and for other purposes; as follows:

On page 10, line 12, strike "September 30, 1995" and insert "September 30, 1996".

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QUINEBAUG AND SHETUCKET RIVERS VALLEY NATIONAL HERITAGE CORRIDOR ACT

WALLOP (AND OTHERS) AMENDMENT NO. 2630

Mr. FORD (for Mr. WALLOP for himself, Mr. LIEBERMAN and Mr. DODD) proposed an amendment to the bill (S. 1348) to establish the Quinebaug and Shetucket Rivers Valley National Heritage Corridor in the State of Connecticut, and for other purposes; as folows:

TITLE I—QUINEBAUG AND SHETUCKET RIVERS VALLEY NATIONAL HERITAGE CORRIDOR.

SECTION 101. SHORT TITLE.

This title may be cited as the "Quinebaug and Shetucket Rivers Valley National Heritage Corridor Act of 1994".

SEC. 102. FINDINGS.

The Congress finds that—

(1) the Quinebaug and Shetucket Rivers Valley in the State of Connecticut is one of the last unspoiled and undeveloped areas in the Northeastern United States and has remained largely intact, including important aboriginal archaeological sites, excellent water quality, beautiful rural landscapes, architecturally significant mill structures and mill villages, and large acreages of parks and other permanent open space;

(2) the State of Connecticut ranks last among the 50 States in the amount of federally protected park and open space lands within its borders and lags far behind the other Northeastern States in the amount of land set-aside for public recreation;

(3) the beautiful rural landscapes, scenic vistas and excellent water quality of the Quinebaug and Shetucket Rivers contain significant undeveloped recreational opportunities for people throughout the United States;

(4) the Quinebaug and Shetucket Rivers Valley is within a two-hour drive of the major metropolitan areas of New York City, Hartford, Providence, Worcester, Springfield, and Boston. With the President's Commission on Americans Outdoors reporting that Americans are taking shorter "closer-to-home" vacations, the Quinebaug and Shetucket Rivers Valley represents important close-by recreational opportunities for significant population;

(5) the existing mill sites and other structures throughout the Quinebaug and Shetucket Rivers Valley were instrumental in the development of the industrial revolution;

(6) the Quinebaug and Shetucket Rivers Valley contains a vast number of discovered and unrecovered Native American and colonial archaeological sites significant to the history of North America and the United States;

(7) the Quinebaug and Shetucket Rivers Valley represents one of the last traditional upland farming and mill village communities in the Northeastern United States;

(8) the Quinebaug and Shetucket Rivers Valley played a nationally significant role in the cultural evolution of the prewar colonial period, leading the transformation from Puritan to Yankee, the "Great Awakening" religious revival and early political development leading up to and during the War of Independence; and

(9) many local, regional and State agencies businesses, and private citizens and the New England Governors' Conference have expressed an overwhelming desire to combine forces: to work cooperatively to preserve and enhance resources region-wide and better plan for the future.

SEC. 103. ESTABLISHMENT OF QUINEBAUG AND SHETUCKET RIVERS VALLEY NATIONAL HERITAGE CORRIDOR; PURPOSE.

(a) ESTABLISHMENT.—There is hereby established in the State of Connecticut the Quinebaug and Shetucket Rivers Valley National Heritage Corridor.

(b) PURPOSE.—It is the purpose of this title to provide assistance to the State of Connecticut, its units of local and regional government and citizens in the development and implementation of integrated cultural, historical, and recreational land resource management programs in order to retain, enhance, and interpret the significant features of the lands, water, and structures of the Quinebaug and Shetucket Rivers Valley.

SEC. 104. BOUNDARIES AND ADMINISTRATION.

(a) BOUNDARIES.—The boundaries of the Corridor shall include the towns of Ashford, Brooklyn, Canterbury, Chaplin, Coventry, Eastford, Franklin, Griswold, Hampton, Killingly, Lebanon, Lisbon, Mansfield, Norwich, Plainfield, Pomfret, Preston, Putnam, Scotland, Sprague, Sterling, Thompson, Voluntown, Windham, and Woodstock. As soon as practical after the date of enactment of this Act, the Secretary shall publish in the Federal Register a detailed description and map of boundaries established under this subsection.

SEC. 105. STATE CORRIDOR PLAN.

(a) PREPARATION OF PLAN.—Within two years after the date of enactment of this title, the Governor of the State of Connecticut is encouraged to develop a Cultural Heritage and Corridor Management Plan. The plan shall be based on existing Federal, State, and local plans, but shall coordinate those plans and present a comprehensive historic preservation, interpretation, and recreational plan for the Corridor. The plan shall—

(1) recommend non-binding advisory standards and criteria pertaining to the construction, preservation, restoration, alteration and use of properties within the Corridor, including an inventory of such properties which potentially could be preserved, restored, managed, developed, maintained, or acquired based upon their historic, cultural or recreational significance;

(2) develop an historic interpretation plan to interpret the history of the Corridor;

(3) develop an inventory of existing and potential recreational sites which are developed or which could be developed within the Corridor;

(4) recommend policies for resource management which consider and detail application of appropriate land and water management techniques, including but not limited to, the development of intergovernmental cooperative agreements to protect the Corridor's historical, cultural, recreational, scenic, and natural resources in a manner consistent with supporting appropriate and compatible economic revitalization efforts:

(5) detail ways in which local, State, and Federal programs may best be coordinated to promote the purposes of this Title; and

(6) contain a program for implementation of the plan by the State and its political subdivisions.

(b) PUBLIC INVOLVEMENT IN PLAN DEVELOPMENT.—During development of the Plan, the Governor is encouraged to include:

(1) the participation of at least the following:

(A) local elected officials in the communities defined in Section 104;

(B) representatives of the three Regional Planning Agencies defined in Section 108;

(C) representatives of Northeast Connecticut Visitors District and Southeastern Connecticut Tourism District;

(D) the Commissioners, or their designees, of the Connecticut Department of Environmental Protection and the Connecticut Department of Economic Development;

(E) Director, or his designee of the Connecticut State Historical Commission; and

(F) residents of the communities within the Corridor as defined in Section 104.

(2) hold at least one public hearing in each of the following counties: Windham; Tolland, and New London; and

(3) consider, to the maximum extent practicable, the recommendations, comments, proposals and other information submitted at the public hearings when developing the final version of the plan. The Governor is encouraged to publish notice of hearings discussed in subparagraph (2) of this paragraph in newspapers of general circulation at least 30 days prior to the hearing date. The Governor is encouraged to use any other means authorized by Connecticut law to gather public input and/or involve members of the public in the development of the plan.

(c) IMPLEMENTATION OF PLAN.—After review of the plan by the Secretary as provided for in Section 106, the Governor shall implement the plan. Upon the request of the Governor, the Secretary may take appropriate steps to assist in the preservation and interpretation of historic resources, and to assist in the development of recreational resources within the Corridor. These steps may include, but need not be limited to—

(1) assisting the State and local governmental entities or regional planning organizations, and non-profit organizations in preserving the Corridor and ensuring appropriate use of lands and structures throughout the Corridor;

(2) assisting the State and local governmental entities or regional planning organizations, and non-profit organizations in establishing and maintaining visitor centers and other interpretive exhibits in the Corridor;

(3) assisting the State and local governmental entities or regional planning organizations, and nonprofit organizations in developing recreational programs and resources in the Corridor;

(4) assisting the State and local governmental entities or regional planning organizations, and nonprofit organizations in increasing public awareness of and appreciation for the historical and architectural resources and sites in the Corridor;

(5) assisting the State and local governmental or regional planning organizations and nonprofit organizations in the restoration of historic buildings within the Corridor identified pursuant to the inventory required in section 5(a)(1);

(6) encouraging by appropriate means enhanced economic and industrial development in the Corridor consistent with the goals of the plan;

(7) encouraging local governments to adopt land use policies consistent with the management of the Corridor and the goals of the plan; and

(8) assisting the State and local governmental entities or regional planning organizations to ensure that clear, consistent signs identifying access points and sites of interest are put in place throughout the Corridor.

SEC. 106. DUTIES OF THE SECRETARY.

(a) ASSISTANCE.—The Secretary and the heads of other Federal Agencies shall, upon

request of the Governor assist the Governor in the preparation and implementation of the plan.

(b) COMPLETION.—Upon completion of the plan the Governor shall submit such plan to the Secretary for review and comment. The Secretary shall complete such review and comment within 60 days. The Governor shall make such changes in the plan as he deems appropriate based on the Secretary's review and comment.

SEC. 107. DUTIES OF OTHER FEDERAL ENTITIES.

Any Federal entity conducting or supporting activities directly affecting the Corridor shall consult with the Secretary and the Governor with respect to such activities to minimize any adverse effect on the Corridor.

SEC. 108. DEFINITIONS.

For the purposes of this title:

(1) The term "State" means the State of Connecticut.

(2) The term "Corridor" means the Quinebaug and Shetucket Rivers Valley National Heritage Corridor under section 3.

(3) The term "Governor" means the Governor of the State of Connecticut.

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "regional planning organization" means each of the three regional planning organizations established by Connecticut State statute chapter 127 and chapter 50 (the Northeastern Connecticut Council of Governments, the Windham Regional Planning Agency or its successor, and the Southeastern Connecticut Regional Planning Agency or its successor).

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this title: *Provided*, That not more than $200,000 shall be appropriated for fiscal year 1995, and not more than $250,000 annually thereafter shall be appropriated for the Secretary to carry out his duties under this title for a period not to exceed seven years: *Provided further*, That the Federal funding for the Corridor shall not exceed 50 percent of the total annual costs for the Corridor.

SEC. 110. NATIONAL PARK SERVICE.

The Corridor shall not be deemed to be a unit of the National Park System.

TITLE II—WEIR FARM NATIONAL HISTORIC SITE ADDITIONS.

SEC. 201. SHORT TITLE.

This title may be cited as the "Weir Farm National Historic Site Expansion Act of 1994".

SEC. 202. PURPOSE.

The purpose of this title is to preserve the last remaining undeveloped parcels of the historic Weir Farm that remain in private ownership by including the parcels within the boundary of the Weir Farm National Historic Site.

SEC. 203. BOUNDARY ADJUSTMENT.

(a) ADJUSTMENT.—Section 4(b) of the Weir Farm National Historic Site Establishment Act of 1990 (Public Law 101-485; 104 Stat. 1171) is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the flush material below paragraph (2); and

(3) by adding at the end the following:

"(3) the approximately 2-acre parcel of land situated in the town of Wilton, Connecticut, designated as lot 18 on a map entitled 'Revised Map of Section I, Thunder Lake at Wilton, Connecticut, Scale 1' = 100', October 27, 1978, Ryan and Faulds Land Surveyors, Wilton, Connecticut', that is on file in the office of the town clerk of the town of Wilton, and therein numbered 3673; and

"(4) the approximately 0.9-acre western portion of a parcel of land situated in the town of Wilton, Connecticut, designated as Tall Oaks Road on the map referred to in paragraph (3).'.

(b) GENERAL DEPICTION.—Section 4 of such Act, as amended by subsection (a), is further amended by adding at the end the following:

(c) GENERAL DEPICTION.—The parcels referred to in paragraphs (1) through (4) of subsection (b) are all as generally depicted on a map entitled 'Boundary Map, Weir Farm National Historic Site, Fairfield County Connecticut', dated June, 1994. Such map shall be on file and available for public inspection in the appropriate offices of the National Park Service.'.

TITLE III—CANE RIVER CREOLE NATIONAL HISTORICAL PARK.

SECTION 301. SHORT TITLE.

Titles III and IV of this Act may be cited as the "Cane River Creole National Historical Park and National Heritage Area Act".

SEC. 302. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Natchitoches area along Cane River, established in 1714, is the oldest permanent settlement in the Louisiana Purchase territory;

(2) the Cane River area is the locale of the development of Creole culture, from French-Spanish interactions of the early 18th century to today's living communities;

(3) the Cane River, historically a segment of the Red River, provided the focal point for early settlement, serving as a transportation route upon which commerce and communication reached all parts of the colony;

(4) although a number of Creole structures, sites, and landscapes exist in Louisiana and elsewhere, unlike the Cane River area, most are isolated examples, and lack original outbuilding complexes or integrity;

(5) the Cane River area includes a great variety of historical features with original elements in both rural and urban settings and a cultural landscape that represents various aspects of Creole culture, providing the base for a holistic approach to understanding the broad continuum of history within the region;

(6) the Cane River region includes the Natchitoches National Historic Landmark District, composed of approximately 300 publicly and privately owned properties, four other national historic landmarks, and other structures and sites that may meet criteria for landmark significance following further study;

(7) historic preservation within the Cane River area has greatly benefitted from individuals and organizations that have strived to protect their heritage and educate others about their rich history; and

(8) because of the complexity and magnitude of preservation needs in the Cane River area, and the vital need for a culturally sensitive approach, a partnership approach is desirable for addressing the many preservation and educational needs.

(b) PURPOSES.—The purposes of titles III and IV of this Act are to—

(1) recognize the importance of the Cane River Creole culture as a nationally significant element of the cultural heritage of the United States;

(2) establish a Cane River Creole National Historical Park to serve as the focus of interpretive and educational programs on the history of the Cane River area and to assist in the preservation of certain historic sites along the river; and

(3) establish a Cane River National Heritage Area and Commission to be undertaken in partnership with the State of Louisiana, the City of Natchitoches, local communities and settlements of the Cane River area, preservation organizations, and private landowners, with full recognition that programs must fully involve the local communities and landowners.

SEC. 303. ESTABLISHMENT OF CANE RIVER CREOLE NATIONAL HISTORICAL PARK.

(a) IN GENERAL.—In order to assist in the preservation and interpretation of, and education concerning, the Creole culture and diverse history of the Natchitoches region, and to provide technical assistance to a broad range of public and private landowners and preservation organizations, there is hereby established the Cane River Creole National Historical Park in the State of Louisiana (hereinafter in titles III and IV of this Act referred to as the "historical park").

(b) AREA INCLUDED.—The historical park shall consist of lands and interests therein as follows:

(1) Lands and structures associated with the Oakland Plantation as depicted on map CARI, 80,002, dated January 1994.

(2) Lands and structures owned or acquired by Museum Contents, Inc. as depicted on map CARI, 80,001A, dated May 1994.

(3) Sites that may be the subject of cooperative agreements with the National Park Service for the purposes of historic preservation and interpretation including, but not limited to, the Melrose Plantation, the Badin-Roque site, the Cherokee Plantation, the Beau Fort Plantation, and sites within the Natchitoches National Historical Landmark District: *Provided*, That such sites may not be added to the historical park unless the Secretary of the Interior (hereinafter referred to as the "Secretary") determines, based on further research and planning, that such sites meet the applicable criteria for national historical significance, suitability, and feasibility, and notification of the proposed addition has been transmitted to the Committee on Energy and Natural Resources of the United States Senate and the appropriate committees of the House of Representatives.

(4) Not to exceed 10 acres of land that the Secretary may designate for an interpretive visitor center complex to serve the needs of the historical park and heritage area established in title IV of this Act.

SEC. 304. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the historical park in accordance with this title and with provisions of law generally applicable to units of the National Park System, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1935 (49 Stat. 535; 16 U.S.C. 1, 2-4); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461-467). The Secretary shall manage the historical park in such a manner as will preserve resources and cultural landscapes relating to the Creole culture of the Cane River and enhance public understanding of the important cultural heritage of the Cane River region."

(b) DONATIONS.—The Secretary may accept and retain donations of funds, property, or services from individuals, foundations, or other public or private entities for the purposes of providing programs, services, facilities, or technical assistance that further the purposes of titles III and IV of this Act. Any funds donated to the Secretary pursuant to this subsection may be expended without further appropriation.

(c) INTERPRETIVE CENTER.—The Secretary is authorized to construct, operate, and maintain an interpretive center on lands identified by the Secretary pursuant to section 303(b)(4). Such center shall provide for the general information and orientation needs of the historical park and the heritage area. The Secretary shall consult with the State of Louisiana, the City of Natchitoches, the Association for the Preservation of Historic Natchitoches, and the Cane River National Heritage Area Commission pursuant to section 402 of this Act in the planning and development of the interpretive center.

(d) COOPERATIVE AGREEMENTS AND TECHNICAL ASSISTANCE.—(1) The Secretary, after consultation with the Cane River National Heritage Area Commission established pursuant to section 402 of this Act, is authorized to enter into cooperative agreements with owners of properties within the heritage area and owners of properties within the historical park that provide important educational and interpretive opportunities relating to the heritage of the Cane River region. The Secretary may also enter into cooperative agreements for the purpose of facilitating the preservation of important historic sites and structures identified in the historical park's general management plan or other heritage elements related to the heritage of the Cane River region. Such cooperative agreements shall specify that the National Park Service shall have reasonable rights of access for operational and visitor use needs and that preservation treatments will meet the Secretary's standards for rehabilitation of historic buildings.

(2) The Secretary is authorized to enter into cooperative agreements with the City of Natchitoches, the State of Louisiana, and other public or private organizations for the development of the interpretive center, educational programs, and other materials that will facilitate public use of the historical park and heritage area.

(e) RESEARCH.—The Secretary, acting through the National Park Service, shall coordinate a comprehensive research program on the complex history of the Cane River region, including ethnography studies of the living communities along the Cane River, and how past and present generations have adapted to their environment, including genealogical studies of families within the Cane River area. Research shall include, but not be limited to, the extensive primary historic documents within the Natchitoches and Cane River areas, and curation methods for their care and exhibition. The research program shall be coordinated with Northwestern State University of Louisiana, and the National Center for Preservation Technology and Training in Natchitoches.

SEC. 305. ACQUISITION OF PROPERTY.

(a) GENERAL AUTHORITY.—Except as otherwise provided in this section, the Secretary is authorized to acquire lands and interests therein within the boundaries of the historical park by donation, purchase with donated or appropriated funds, or exchange.

(b) STATE AND LOCAL PROPERTIES.—Lands and interests therein that are owned by the State of Louisiana, or any political subdivision thereof, may be acquired only by donation or exchange.

(c) MUSEUM CONTENTS, INC.—Lands and structures identified in section 303(b)(2) may be acquired only by donation.

(d) COOPERATIVE AGREEMENT SITES.—Lands and interests therein that are the subject of cooperative agreements pursuant to section 303(b)(3) shall not be acquired except with the consent of the owner thereof.

SEC. 306. GENERAL MANAGEMENT PLAN.

Within 3 years after the date funds are made available therefor and in consultation with the Cane River Heritage Area Commission, the National Park Service shall prepare a general management plan for the historical park. The plan shall include but need not be limited to—

(1) a visitor use plan indicating programs and facilities that will be provided for public use, including the location and cost of an interpretive center;

(2) programs and management actions that the National Park Service will undertake cooperatively with the heritage area commission, including preservation treatments for important sites, structures, objects, and research materials. Planning shall address educational media, roadway signing, and brochures that could be coordinated with the Commission pursuant to section 403 of this Act; and

(3) preservation and use plans for any sites and structures that are identified for National Park Service involvement through cooperative agreements.

TITLE IV—CANE RIVER NATIONAL HERITAGE AREA

SEC. 401. ESTABLISHMENT OF THE CANE RIVER NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is hereby established the Cane River National Heritage Area (hereinafter in this title referred to as the "heritage area").

(b) PURPOSE.—In furtherance of the need to recognize the value and importance of the Cane River region and in recognition of the findings of section 302(a) of this Act, it is the purpose of this title to establish a heritage area to complement the historical park and to provide for a culturally sensitive approach to the preservation of the heritage of the Cane River region, and for other needs including—

(1) recognizing areas important to the Nation's heritage and identity;

(2) assisting in the preservation and enhancement of the cultural landscape and traditions of the Cane River region;

(3) providing a framework for those who live within this important dynamic cultural landscape to assist in preservation and educational actions; and

(4) minimizing the need for Federal land acquisition and management.

(c) AREA INCLUDED.—The heritage area shall include—

(1) an area approximately 1 mile on both sides of the Cane River as depicted on map CARI, 80,000A, dated May 1994;

(2) those properties within the Natchitoches National Historic Landmark District which are the subject of cooperative agreements pursuant to section 304(d) of this Act;

(3) the Los Adaes State Commemorative Area:

(4) the Fort Jesup State Commemorative Area;

(5) the Fort St. Jean Baptiste State Commemorative Area; and

(6) the Kate Chopin House.

A final identification of all areas and sites to be included in the heritage area shall be included in the heritage area management plan as required in section 403.

SEC. 402. CANE RIVER NATIONAL HERITAGE AREA COMMISSION.

(a) ESTABLISHMENT.—To assist in implementing the purposes of titles II and III of this Act and to provide guidance for the management of the heritage area, there is established the Cane River National Heritage Acra Commission (hereinafter in this title referred to as the "Commission").

(b) MEMBERSHIP.—The Commission shall consist of 19 members to be appointed no later than 6 months after the date of enactment of this title. The Commission shall be appointed by the Secretary as follows—

(1) one member from recommendations submitted by the Mayor of Natchitoches;

(2) one member from recommendations submitted by the Association for the Preservation of Historic Natchitoches;

(3) one member from recommendations submitted by the Natchitoches Historic Foundation, Inc.;

(4) two members with experience in and knowledge of tourism in the heritage area from recommendations submitted by the local business and tourism organizations;

(5) one member from recommendations submitted by the Governor of the State of Louisiana;

(6) one member from recommendations submitted by the Police Jury of Natchitoches Parish;

(7) one member from recommendations submitted by the Concerned Citizens of Cloutierville;

(8) one member from recommendations submitted by the St. Augustine Historical Society;

(9) one member from recommendations submitted by the Black Heritage Committee;

(10) one member from recommendations submitted by the Los Ades/Robeline Community;

(11) one member from recommendations submitted by the Natchitoches Historic District Commission;

(12) one member from recommendations submitted by the Cane River Waterway Commission;

(13) two members who are landowners in and residents of the heritage area;

(14) one member with experience and knowledge of historic preservation from recommendations submitted by Museum Contents, Inc.;

(15) one member with experience and knowledge of historic preservation from recommendations submitted by the President of Northwestern State University of Louisiana;

(16) one member with experience in and knowledge of environmental, recreational and conservation matters affecting the heritage area from recommendations submitted by the Natchitoches Sportsman Association and other local recreational and environmental organizations; and

(17) the Director of the National Park Service, or the Director's designee, ex officio.

(c) DUTIES OF THE COMMISSION.—The Commission shall—

(1) prepare a management plan for the heritage area in consultation with the National Park Service, the State of Louisiana, the City of Natchitoches, Natchitoches Parish, interested groups, property owners, and the public;

(2) consult with the Secretary on the preparation of the general management plan for the historical park;

(3) develop cooperative agreements with property owners, preservation groups, educational groups, the State of Louisiana, the City of Natchitoches, universities, and tourism groups, and other groups to further the purposes of titles III and IV of this Act; and

(4) identify appropriate entities, such as a non-profit corporation, that could be established to assume the responsibilities of the Commission following its termination.

(d) POWERS OF THE COMMISSION.—In furtherance of the purposes of titles III and IV of this Act, the Commission is authorized to—

(1) procure temporary and intermittent services to the same extent that is authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable;

(2) accept the services of personnel detailed from the State of Louisiana or any political subdivision thereof, and may reimburse the State or political subdivision for such services;

(3) upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties;

(4) appoint and fix the compensation of such staff as may be necessary to carry out its duties. Staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(5) enter into cooperative agreements with public or private individuals or entities for research, historic preservation, and education purposes;

(6) make grants to assist in the preparation of studies that identify, preserve, and plan for the management of the heritage area;

(7) notwithstanding any other provision of law, seek and accept donations of funds or services from individuals, foundations, or other public or private entities and expend the same for the purposes of providing services and programs in furtherance of the purposes of titles III and IV of this Act;

(8) assist others in developing educational, informational, and interpretive programs and facilities;

(9) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may consider appropriate; and

(10) use the United States mails in the same manner and under the same conditions as other departments or agencies of the United States.

(e) COMPENSATION.—Members of the Commission shall receive no compensation for their service on the Commission. While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(f) CHAIRMAN.—The Commission shall elect a chairman from among its members. The term of the chairman shall be for 3 years.

(g) TERMS.—The terms of Commission members shall be for 3 years. Any member of the Commission appointed by the Secretary for a 3-year term may serve after expiration of his or her term until a successor is appointed. Any vacancy shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor was appointed.

(h) ANNUAL REPORTS.—The Commission shall submit an annual report to the Secretary identifying its expenses and any income, the entities to which any grants or technical assistance were made during the year for which the report is made, and actions that are planned for the following year.

SEC. 403. PREPARATION OF THE PLAN.

(a) IN GENERAL.—Within 3 years after the Commission conducts its first meeting, it shall prepare and submit a heritage area management plan to the Governor of the State of Louisiana. The Governor shall, if the Governor approves the plan, submit it to the Secretary for review and approval. The Secretary shall provide technical assistance to the Commission in the preparation and implementation of the plan, in concert with actions by the National Park Service to prepare a general management plan for the historical park. The plan shall consider local government plans and shall present a unified heritage preservation and education plan for the heritage area. The plan shall include, but not be limited to—

(1) an inventory of important properties and cultural landscapes that should be preserved, managed, developed, and maintained because of their cultural, natural, and public use significance;

(2) an analysis of current land uses within the area and how they affect the goals of preservation and public use of the heritage area;

(3) an interpretive plan to address the cultural and natural history of the area, and actions to enhance visitor use. This element of the plan shall be undertaken in consultation with the National Park Service and visitor use plans for the historical park;

(4) recommendations for coordinating actions by local, State, and Federal governments within the heritage area, to further the purposes of titles III and IV of this Act; and

(5) an implementation program for the plan including desired actions by State and local governments and other involved groups and entities.

(b) APPROVAL OF THE PLAN.—The Secretary shall approve or disapprove the plan within 90 days after receipt of the plan from the Commission. The Commission shall notify the Secretary of the status of approval by the Governor of Louisiana when the plan is submitted for review and approval. In determining whether or not to approve the plan the Secretary shall consider—

(1) whether the Commission has afforded adequate opportunity, including public meetings and hearings, for public and governmental involvement in the preparation of the plan; and

(2) whether reasonable assurances have been received from the State and local governments that the plan is supported and that the implementation program is feasible.

(c) DISAPPROVAL OF THE PLAN.—If the Secretary disapproves the plan, he shall advise the Commission in writing of the reasons for disapproval, and shall provide recommendations and assistance in the revision of the plan. Following completion of any revisions to the plan, the Commission shall resubmit the plant to the Government or Louisiana for approval, and to the Secretary, who shall approve or disapprove the plan within 90 days after the date that the plan is revised.

SEC. 404. TERMINATION OF HERITAGE AREA COMMISSION.

(a) TERMINATION.—The Commission shall terminate on the day occurring 10 years after the first official meeting of the Commission.

(b) EXTENSION.—The Commission may petition to be extended for a period of not more than 5 years beginning on the day referred to in subsection (a), provided the Commission determines a critical need to fulfill the purposes of titles III and IV of this Act; and the Commission obtains approval from the Secretary, in consultation with the Governor of Louisiana.

(c) HERITAGE AREA MANAGEMENT FOLLOWING TERMINATION OF THE COMMISSION.—The national heritage area status for the Cane River region shall continue following the termination of the Commission. The management plan, and partnerships and agreements subject to the plan shall guide the future management of the heritage area. The Commission, prior to its termination, shall recommend to the Governor of the State of Louisiana and the Secretary, appropriate entities, including the potential for a nonprofit corporation, to assume the responsibilities of the Commission.

SEC. 405. DUTIES OF OTHER FEDERAL AGENCIES.

Any Federal entity conducting or supporting activities directly affecting the heritage area shall—

(1) consult with the Secretary and the Commission with respect to implementation of their proposed actions; and

(2) to the maximum extent practicable, coordinate such activities with the Commission to minimize potential impacts on the resources of the heritage area.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out titles III and IV of this Act.

OFFICE OF GOVERNMENT ETHICS AUTHORIZATION ACT

LEVIN AND COHEN AMENDMENT NO. 2631

Mr. FORD (for Mr. LEVIN for himself and Mr. COHEN) proposed an amendment to the bill (S. 1413) to amend the Ethics in Government Act of 1978, as amended, to extend the authorization of appropriations for the Office of Government Ethics for 8 years, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Office of Government Ethics Authorization Act of 1994".

SEC. 2. GIFT ACCEPTANCE AUTHORITY.

Section 403 of the Ethics in Government Act of 1978 (5 U.S.C. App. 5) is amended by—

(1) inserting "(a)" before "Upon the request"; and

(2) adding at the end thereof the following:

"(b)(1) The Director is authorized to accept and utilize on behalf of the United States, any gift, donation, bequest, or devise of money, use of facilities, personal property, or services for the purpose of aiding or facilitating the work of the Office of Government Ethics.

"(2) No gift may be accepted—

"(A) that attaches conditions inconsistent with applicable laws or regulations; or

"(B) that is conditioned upon or will require the expenditure of appropriated funds that are not available to the Office of Government Ethics.

"(3) The Director shall establish written rules setting forth the criteria to be used in determining whether the acceptance of contributions of money, services, use of facilities, or personal property under this subsection would reflect unfavorably upon the ability of the Office of Government Ethics or any employee to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.".

SEC. 3. EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.

The text of section 405 of the Ethics in Government Act of 1978 (5 U.S.C. App. 5) is amended to read as follows: "There are authorized to be appropriated to carry out the provisions of this title and for no other purpose not to exceed $14,000,000 for fiscal year 1995 and for each of the next 7 fiscal years thereafter.

SEC. 4. ASSISTANCE FROM OTHER AGENCIES.

Section 403(a) of the Ethics in Government Act of 1978 (5 U.S.C. App. 5), as designated by section 2, is amended—

(1) in paragraph (1) by striking "under this Act; and" and inserting "of the Office of Government Ethics; and"; and

(2) in paragraph (2) by striking "duties." and inserting "duties under this Act or any other Act.".

SEC. 5. LIMITATION ON POSTEMPLOYMENT RESTRICTIONS.

Section 207(j) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(7) POLITICAL PARTIES AND CAMPAIGN COMMITTEES.—(A) Except as provided in subparagraph (B), the restrictions contained in subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.

"(B) Subparagraph (A) shall not apply to—

"(i) any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or

"(ii) a communication or appearance made by a person who is subject to the restrictions contained in subsections (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than—

"(I) a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party; or

"(II) a person or entity who represents, aids, or advises only persons or entities described in subclause (I).

"(C) For purposes of this paragraph—

"(i) the term 'candidate' means any person who seeks nomination for election, or election, to Federal or State office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to Federal or State office;

"(ii) the term 'authorized committee' means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);

"(iii) the term 'national committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;

"(iv) the term 'national Federal campaign committee' means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

"(v) the term 'State committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level;

"(vi) the term 'political party' means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and

"(vii) the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

SEC. 6. REPEAL AND CONFORMING AMENDMENTS.

(a) REPEAL OF DISPLAY REQUIREMENT.—The Act entitled "An Act to provide for the display of the Code of Ethics for Government Service", approved July 3, 1980 (Public Law 96-303; 5 U.S.C. 7301 note) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) FDIA.—Section 12(f)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1822 (f)(3)) is amended by striking ", with the concurrence of the Office of Government Ethics,".

(2) ETHICS IN GOVERNMENT ACT OF 1978.—(A) The heading for section 401 of the Ethics in Government Act of 1978 is amended to read as follows:

"ESTABLISHMENT; APPOINTMENT OF DIRECTOR".

(B) Section 408 is amended by striking "March 31" and inserting "April 30".

SEC. 7. EFFECTIVE DATE.

This Act shall take effect on October 1, 1994, except section 5 shall take effect and apply to communications or appearances made on and after the date of enactment of this Act.

MOTOR CARRIERS REGULATIONS TECHNICAL CORRECTIONS ACT

FORD (AND OTHERS) AMENDMENT NO 2632

Mr. FORD (for himself, Mrs. MURRAY, Mr. BINGAMAN, Mr. GORTON, and Mrs. HUTCHISON) proposed an amendment to the bill (H.R. 5123) to make a technical correction to an act preempting State economic regulation of motor carriers; as follows:

SECTION 1. TECHNICAL CORRECTION OF 1994 FAA AUTHORIZATION ACT.

(a) IN GENERAL.—Section 11501(h)(2) of title 49, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and insert in lieu thereof a semicolon; and

(3) by adding at the end the following:

"(C) does not apply to the transportation of garbage and refuse;

"(D) does not apply to the transportation for collection of recyclable materials that are a part of a residential curbside recycling program; and

"(E) does not restrict the regulatory authority of a State, political subdivision of a State, or political authority of 2 or more States before January 1, 1997, insofar as such authority relates to tow trucks or wreckers providing for-hire service.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1995.

FEDERAL RAILROAD SAFETY AUTHORIZATION ACT

EXON AMENDMENT NO. 2633

Mr. FORD (for Mr. EXON) proposed an amendment to the bill (S. 2132) to authorize appropriations to carry out the Federal Railroad Safety Act of 1970, and for other purposes; as follows:

SUBTITLE A—HIGH-RISK AND ALCOHOL-IMPAIRED DRIVERS

SEC. 211. FINDINGS.

The Congress makes the following findings:

(1) The Nation's traffic fatality rate has declined from 5.5 deaths per 100 million vehicle miles traveled in 1966 to an historic low of an estimated 1.8 deaths per 100 million vehicle miles traveled during 1992. In order to further this desired trend, the safety programs and policies implemented by the Department of Transportation must be continued, and at the same time, the focus of these efforts as they pertain to high risk drivers of all ages must be strengthened.

(2) Motor vehicle crashes are the leading cause of death among teenagers, and teenage drivers tend to be at fault for their fatal crashes more often than older drivers. Drivers who are 16 to 20 years old comprised 7.4 percent of the United States population in 1991 but were involved in 15.4 percent of fatal motor vehicle crashes. Also, on the basis of crashes per 100,000 licensed drivers, young drivers are the highest risk group of drivers.

(3) During 1991, 6,630 teenagers from age 15 through 20 died in motor vehicle crashes. This tragic loss demands that the Federal Government intensify its efforts to promote highway safety among members of this high risk group.

(4) The consumption of alcohol, speeding over allowable limits or too fast for road conditions, inadequate use of occupant restraints, and other high risk behaviors are several of the key causes for this tragic loss of young drivers and passengers. The Department of Transportation, working cooperatively with the States, student groups, and other organizations, must reinvigorate its current programs and policies to address more effectively these pressing problems of teenage drivers.

(5) In 1991 individuals aged 70 years and older, who are particularly susceptible to injury, were involved in 12 percent of all motor vehicle traffic crash fatalities. These deaths accounted for 4,828 fatalities out of 41,462 total traffic fatalities.

(6) The number of older Americans who drive is expected to increase dramatically during the next 30 years. Unfortunately, during the last 15 years, the Department of Transportation has supported an extremely limited program concerning older drivers. Research on older driver behavior and licensing has suffered from intermittent funding at amounts that were insufficient to address the scope and nature of the challenges ahead.

(7) A major objective of United States transportation policy must be to promote the mobility of older Americans while at the same time ensuring public safety on our Nation's highways. In order to accomplish these two objectives simultaneously, the Department of Transportation must support a

vigorous and sustained program of research, technical assistance, evaluation, and other appropriate activities that are designed to reduce the fatality and crash rate of older drivers who have identifiable risk characteristics.

SEC. 212. DEFINITIONS.

For purposes of this subtitle—

(1) The term "high risk driver" means a motor vehicle driver who belongs to a class of drivers that, based on vehicle crash rates, fatality rates, traffic safety violation rates, and other factors specified by the Secretary, presents a risk of injury to the driver and other individuals that is higher than the risk presented by the average driver.

(2) The term "Secretary" means the Secretary of Transportation.

SEC. 213. POLICY AND PROGRAM DIRECTION.

(a) GENERAL RESPONSIBILITY OF SECRETARY.—The Secretary shall develop and implement effective and comprehensive policies and programs to promote safe driving behavior by young drivers, older drivers, and repeat violators of traffic safety regulations and laws.

(b) SAFETY PROMOTION ACTIVITIES.—The Secretary shall promote or engage in activities that seek to ensure that—

(1) cost effective and scientifically-based guidelines and technologies for the nondiscriminatory evaluation and licensing of high risk drivers are advanced;

(2) model driver training, screening, licensing, control, and evaluation programs are improved;

(3) uniform or compatible State driver point systems and other licensing and driver record information systems are advanced as a means of identifying and initially evaluating high risk drivers; and

(4) driver training programs and the delivery of such programs are advanced.

(c) DRIVER TRAINING RESEARCH.—The Secretary shall explore the feasibility and advisability of using cost efficient simulation and other technologies as a means of enhancing driver training; shall advance knowledge regarding the perceptual, cognitive, and decision making skills needed for safe driving and to improve driver training; and shall investigate the most effective means of integrating licensing, training, and other techniques for preparing novice drivers for the safe use of highway systems.

SUBTITLE B—YOUNG DRIVER PROGRAMS

SEC. 221. STATE GRANTS FOR YOUNG DRIVER PROGRAMS.

(a) ESTABLISHMENT OF GRANT PROGRAM.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 411. Programs for young drivers

"(a) GENERAL AUTHORITY.—Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement programs for young drivers which include measures, described in this section, to reduce traffic safety problems resulting from the driving performance of young drivers. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate estimated expenditures from all other sources for programs for young drivers at or above the average level of such expenditures in its 2 fiscal years preceding the fiscal year in which the High Risk Drivers Act of 1994 is enacted.

"(c) FEDERAL SHARE.—No State may receive grants under this section in more than 5 fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the young driver program adopted by the State pursuant to subsection (a);

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third, fourth, and fifth fiscal years the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) MAXIMUM AMOUNT OF BASIC GRANTS.—Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) shall equal 30 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title. A grant to a State under this section shall be in addition to the State's apportionment under section 402, and basic grants during any fiscal year may be proportionately reduced to accommodate an applicable statutory obligation limitation for that fiscal year.

"(e) ELIGIBILITY FOR BASIC GRANTS.—

"(1) GENERAL.—For purposes of this section, a State is eligible for a basic grant if such State—

"(A) establishes and maintains a graduated licensing program for drivers under 18 years of age that meets the requirements of paragraph (2); and

"(B)(i) in the first year of receiving grants under this section, meets three of the seven criteria specified in paragraph (3);

"(ii) in the second year of receiving such grants, meets four of such criteria;

"(iii) in the third year of receiving such grants, meets five of such criteria;

"(iv) in the fourth year of receiving such grants, meets six of such criteria; and

"(v) in fifth year of receiving such grants, meets six of such criteria. For purposes of subparagraph (B), a State shall be treated as having met one of the requirements of paragraph (3) for any year if the State demonstrates to the satisfaction of the Secretary that, for the 3 preceding years, the alcohol fatal crash involvement rate for individuals under the age of 21 has declined in that State and the alcohol fatal crash involvement rate for such individuals has been lower in that State than the average such rate for all States.

"(2) GRADUATED LICENSING PROGRAM.—

"(A) A State receiving a grant under this section shall establish and maintain a graduated licensing program consisting of the following licensing stages for any driver under 18 years of age:

"(i) An instructional license, valid for a minimum period determined by the Secretary, under which the licensee shall not operate a motor vehicle unless accompanied in the front passenger seat by the holder of a full driver's license.

"(ii) A provisional driver's license which shall not be issued unless the driver has passed a written examination on traffic safety and has passed a roadtest administered by the driver licensing agency of the State.

"(iii) A full driver's license which shall not be issued until the driver has held a provisional license for at least 1 year with a clean driving record.

"(B) For purposes of subparagraph (A)(iii), subsection (f)(1), and subsection (f)(6)(B), a provisional licensee has a clean driving record if the licensee—

"(i) has not been found, by civil or criminal process, to have committed a moving traffic violation during the applicable period;

"(ii) has not been assessed points against the license because of safety violations during such period; and

"(iii) has satisfied such other requirements as the Secretary may prescribe by regulation.

"(C) The Secretary shall determine the conditions under which a State shall suspend provisional driver's licenses in order to be eligible for a basic grant. At a minimum, the holder of a provisional license shall be subject to driver control actions that are stricter than those applicable to the holder of a full driver's license, including warning letters and suspension at a lower point threshold.

"(D) For a State s first 2 years of receiving a grant under this section, the Secretary may waive the clean driving record requirement of subparagraph (A)(iii) if the State submits satisfactory evidence of its efforts to establish such a requirement.

"(3) CRITERIA FOR BASIC GRANT.—The seven criteria referred to in paragraph (1)(B) are as follows:

"(A) The State requires that any driver under 21 years of age with a blood alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated for the purpose of (i) administrative or judicial sanctions or (ii) a law or regulation that prohibits any individual under 21 years of age with a blood alcohol concentration of 0.02 percent or greater from driving a motor vehicle.

"(B) The State has a law or regulation that provides a mandatory minimum penalty of at least $500 for anyone who in violation of State law or regulation knowingly, or without checking for proper identification, provides or sells alcohol to any individual under 21 years of age.

"(C) The State requires that the license of a driver under 21 years of age be suspended for a period specified by the State if such driver is convicted of the unlawful purchase or public possession of alcohol. The period of suspension shall be at least 6 months for a first conviction and at least 12 months for a subsequent conviction; except that specific license restrictions may be imposed as an alternative to such minimum periods of suspension where necessary to avoid undue hardship on any individual.

"(D) The State conducts youth-oriented traffic safety enforcement activities, and education and training programs—

"(i) with the participation of judges and prosecutors, that are designed to ensure enforcement of traffic safety laws and regulations, including those that prohibit drivers under 21 years of age from driving while intoxicated, restrict the unauthorized use of a motor vehicle, and establish other moving violations; and

"(ii) with the participation of student and youth groups, that are designed to ensure compliance with such traffic safety laws and regulations.

"(E) The State prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway; except as allowed in the passenger area, by persons (other than

the driver), of a motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers.

"(F) The State provides, to a parent or legal guardian of any provisional licensee, general information prepared with the assistance of the insurance industry on the effect of traffic safety convictions and at-fault accidents on insurance rates for young drivers.

"(G) The State requires that a provisional driver's license may be issued only to a driver who has satisfactorily completed a State-accepted driver education and training program that meets Department of Transportation guidelines and includes information on the interaction of alcohol and controlled substances and the effect of such interaction on driver performance, and information on the importance of motorcycle helmet use and safety belt use.

"(f) SUPPLEMENTAL GRANT PROGRAM.—

"(1) EXTENDED APPLICATION OF PROVISIONAL LICENSE REQUIREMENT.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State requires that a driver under 21 years of age shall not be issued a full driver's license until the driver has held a provisional license for at least 1 year with a clean driving record as described in subsection (e)(2)(B).

"(2) REMEDIAL DRIVER EDUCATION.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State requires, at a lower point threshold than for other drivers, remedial driver improvement instruction for drivers under 21 years of age and requires such remedial instruction for any driver under 21 years of age who is convicted of reckless driving, excessive speeding, driving under the influence of alcohol, or driving while intoxicated.

"(C) The driver shall be—

"(3) RECORD OF SERIOUS CONVICTIONS; HABITUAL OR REPEAT OFFENDER SANCTIONS.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State—

"(A) requires that a notation of any serious traffic safety conviction of a driver be maintained on the driver's permanent traffic record for at least 10 years after the date of the conviction; and

"(B) provides additional sanctions for any driver who, following conviction of a serious traffic safety violation, is convicted during the next 10 years of one or more subsequent serious traffic safety violations.

"(4) INTERSTATE DRIVER LICENSE COMPACT.—The State is a member of and substantially complies with the interstate agreement known as the Driver License Compact, promptly and reliably transmits and receives through electronic means interstate driver record information (including information on commercial drivers) in cooperation with the Secretary and other States, and develops and achieves demonstrable annual progress in implementing a plan to ensure that (i) each court of the State report expeditiously to the State driver licensing agency all traffic safety convictions, license suspensions, license revocations, or other license restrictions, and driver improvement efforts sanctioned or ordered by the court, and that (ii) such records be available electronically to appropriate government officials (including enforcement, officers, judges, and prosecutors) upon request at all times.

"(5) The State has a law or regulation that provides a minimum penalty of at least $100 for anyone who in violation of State law or regulation drives any vehicle through, around, or under any crossing, gate, or barrier at a railroad crossing while such gate or barrier is closed or being opened or closed.

"(6) VEHICLE SEIZURE PROGRAM.—The State ha a law or regulation that—

"(A) mandates seizure by the State or any political subdivision thereof of any vehicle driven by an individual in violation of an alcohol-related traffic safety law, if such violator has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period beginning after the date of enactment of this section, or has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for such an offense;

"(B) mandates that the vehicle be forfeited to the State or a political subdivision thereof if the vehicle was solely owned by such violator at the time of the violation;

"(C) requires that the vehicle be returned to the owner if the vehicle was a stolen vehicle at the time of the violation; and

"(D) authorizes the vehicle to be released to a member of such violator's family, the co-owner, or the owner, if the vehicle was not a stolen vehicle and was not solely owned by such violator at the time of the violation, and if the family member, co-owner, or owner, prior to such release, executes a binding agreement that the family member, co-owner, or owner will not permit such violator to drive the vehicle and that the vehicle shall be forfeited to the State or a political subdivision thereof in the event such violator drives the vehicle with the permission of the family member, co-owner or owner.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $9,000,000 for the fiscal year ending September 30, 1996, $12,000,000 for the fiscal year ending September 30, 1997, and $14,000,000 for the fiscal year ending September 30, 1998, $16,000,000 for the fiscal year ending September 30, 1999, and $18,000,000 for the fiscal year ending September 30, 2000.".

(b) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by inserting immediately after the item relating to section 410 the following new item:

"411. Programs for young drivers.".

(c) DEADLINES FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue and publish in the Federal Register proposed regulations to implement section 411 of title 23, United States Code (as added by this section), not later than 6 months after the date of enactment of this Act. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress not later than 12 months after such date of enactment.

SEC. 222. PROGRAM EVALUATION.

(a) EVALUATION BY SECRETARY.—The Secretary shall, under section 403 of title 23, United States Code, conduct an evaluation of the effectiveness of State provisional driver's licensing programs and the grant program authorized by section 411 of title 23, United States Code (as added by section 101 of this Act).

(b) REPORT TO CONGRESS.—By January 1, 1997, the Secretary shall transmit a report on the results of the evaluation conducted under subsection (a) and any related research to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives. The report shall include any related recommendations by the Secretary for legislative changes.

SUBTITLE C—OLDER DRIVER PROGRAMS

SEC. 231. OLDER DRIVER SAFETY RESEARCH.

(a) RESEARCH ON PREDICTABILITY OF HIGH RISK DRIVING.—

(1) The Secretary shall conduct a program that funds, within budgetary limitations, the research challenges presented in the Transportation Research Board's report entitled "Research and Development Needs for Maintaining the Safety and Mobility of Older Drivers" and the research challenges pertaining to older drivers presented in a report to Congress by the National Highway Traffic Safety Administration entitled "Addressing the Safety Issues Related to Younger and Older Drivers".

(2) To the extent technically feasible, the Secretary shall consider the feasibility and further the development of cost efficient, reliable tests capable of predicting increased risk of accident involvement or hazardous driving by older high risk drivers.

(b) SPECIALIZED TRAINING FOR LICENSE EXAMINERS.—The Secretary shall encourage and conduct research and demonstration activities to support the specialized training of license examiners or other certified examiners to increase their knowledge and sensitivity to the transportation needs and physical limitations of older drivers, including knowledge of functional disabilities related to driving, and to be cognizant of possible countermeasures to deal with the challenges to safe driving that may be associated with increasing age.

(c) COUNSELING PROCEDURES AND CONSULTATION METHODS.—The Secretary shall encourage and conduct research and disseminate information to support and encourage the development of appropriate counseling procedures and consultation methods with relatives, physicians, the traffic safety enforcement and the motor vehicle licensing communities, and other concerned parties. Such procedures and methods shall include the promotion of voluntary action by older high risk drivers to restrict or limit their driving when medical or other conditions indicate such action is advisable. The Secretary shall consult extensively with the American Association of Retired Persons, the American Association of Motor Vehicle Administrators, the American Occupational Therapy Association, the American Automobile Association, the Department of Health and Human Services, the American Public Health Association, and other interested parties in developing educational materials on the interrelationship of the aging process, driver safety, and the driver licensing process.

(d) ALTERNATIVE TRANSPORTATION MEANS.—The Secretary shall ensure that the agencies of the Department of Transportation overseeing the various modes of surface transportation coordinate their policies and programs to ensure that funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-

240; 105 Stat. 1914) and implementing Department of Transportation and Related Agencies Appropriation Acts take into account the transportation needs of older Americans by promoting alternative transportation means whenever practical and feasible.

(e) STATE LICENSING PRACTICES.—The Secretary shall encourage State licensing agencies to use restricted licenses instead of canceling a license whenever such action is appropriate and if the interests of public safety would be served, and to closely monitor the driving performance of older drivers with such licenses. The Secretary shall encourage States to provide educational materials of benefit to older drivers and concerned family members and physicians. The Secretary shall promote licensing and relicensing programs in which the applicant appears in person and shall promote the development and use of cost effective screening processes and testing of physiological, cognitive, and perception factors as appropriate and necessary. Not less than one model State program shall be evaluated in light of this subsection during each of the fiscal years 1996 through 1998. Of the sums authorized under subsection (i), $250,000 is authorized for each such fiscal year for such evaluation.

(f) IMPROVEMENT OF MEDICAL SCREENING.—The Secretary shall conduct research and other activities designed to support and encourage the States to establish and maintain medical review or advisory groups to work with State licensing agencies to improve and provide current information on the screening and licensing of older drivers. The Secretary shall encourage the participation of the public in these groups to ensure fairness and concern for the safety and mobility needs of older drivers.

(g) INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.—In implementing the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note), the Secretary shall ensure that the National Intelligent Vehicle-Highway Systems Program devotes sufficient attention to the use of intelligent vehicle-highway systems to aid older drivers in safely performing driver functions. Federally-sponsored research, development, and operational testing shall ensure the advancement of night vision improvement systems, technology to reduce the involvement of older drivers in accidents occurring at intersections, and other technologies of particular benefit to older drivers.

(h) TECHNICAL EVALUATIONS UNDER INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT.—In conducting the technical evaluations required under section 6055 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2192), the Secretary shall ensure that the safety impacts on older drivers are considered, with special attention being devoted to ensuring adequate and effective exchange of information between the Department of Transportation and older drivers or their representatives.

(i) AUTHORIZATION OF APPROPRIATIONS.—Of the funds authorized under section 403 of title 23, United States Code, $1,250,000 is authorized for each of the fiscal years 1995 through 1997, to support older driver programs described in subsections (a), (b), (c), (e), and (f).

SUBTITLE D—HIGH RISK DRIVERS

SEC. 241. STUDY ON WAYS TO IMPROVE TRAFFIC RECORDS OF ALL HIGH RISK DRIVERS.

(a) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Secretary shall complete a study to determine whether additional or strengthened Federal activities, authority, or regulatory actions are desirable or necessary to improve or strengthen the driver record and control systems of the States to identify high risk drivers more rapidly and ensure prompt intervention in the licensing of high risk drivers. The study, which shall be based in part on analysis obtained from a request for information published in the Federal Register, shall consider steps necessary to ensure that State traffic record systems are unambiguous, accurate, current, accessible, complete, and (to the extent useful) uniform among the States.

(b) SPECIFIC MATTERS FOR CONSIDERATION.—Such study shall at a minimum consider—

(1) whether specific legislative action is necessary to improve State traffic record systems;

(2) the feasibility and practicality of further encouraging and establishing a uniform traffic ticket citation and control system;

(3) the need for a uniform driver violation point system to be adopted by the States;

(4) the need for all the States to participate in the Driver License Reciprocity Program conducted by the American Association of Motor Vehicle Administrators;

(5) ways to encourage the States to cross-reference driver license files and motor vehicle files to facilitate the identification of individuals who may not be in compliance with driver licensing laws; and

(6) the feasibility of establishing a national program that would limit each driver to one driver's license from only one State at any time.

(c) EVALUATION OF NATIONAL INFORMATION SYSTEMS.—As part of the study required by this section, the Secretary shall consider and evaluate the future of the national information systems that support driver licensing. In particular, the Secretary shall examine whether the Commercial Driver's License Information System, the National Driver Register, and the Driver License Reciprocity program should be more closely linked or continue to exist as separate information systems and which entities are best suited to operate such systems effectively at the least cost. The Secretary shall cooperate with the American Association of Motor Vehicle Administrators in carrying out this evaluation.

SEC. 242. STATE PROGRAMS FOR HIGH RISK DRIVERS.

The Secretary shall encourage and promote State driver evaluation, assistance, or control programs for high risk drivers. These programs may include in-person license reexaminations, driver education or training courses, license restrictions or suspensions, and other actions designed to improve the operating performance of high risk drivers.

SUBTITLE E—FUNDING

SEC. 251. FUNDING FOR 23 USC 410 PROGRAM.

In addition to any amount otherwise appropriated or available for such use, there are authorized to be appropriated $15,000,000 for fiscal years 1995, 1996, and 1997 for the purpose of carrying out section 410 of title 23, United States Code.

MOYNIHAN AMENDMENT NO. 2634

Mr. FORD (for Mr. MOYNIHAN) proposed an amendment to the bill (S. 2132) to authorize appropriations to carry out the Federal Railroad Safety Act of 1970, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . AUTHORIZATION

There are authorized to be appropriated to the Secretary of Transportation for the benefit of Amtrak $40,000,000 for fiscal year 1995 and $50,000,000 for fiscal year 1996 to be used for engineering, design, and construction activities to enable the James A. Farley Post Office in New York, New York, to be used as a train station and commercial center and for necessary improvements and redevelopment of the existing Pennsylvania Station and associated service building in New York, New York.

INDIAN SELF-DETERMINATION CONTRACT REFORM ACT

MCCAIN AMENDMENT NO. 2635

Mr. SIMPSON (for Mr. MCCAIN) proposed an amendment to the bill (S. 2036) to specify the terms of contracts entered into by the United States and Indian tribal organizations under the Indian Self-Determination and Education Assistance Act, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Self-Determination Contract Reform Act of 1994".

SEC. 2. GENERAL AMENDMENTS.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended—

(1) in section 4—

(A) in subsection (g), by striking "indirect costs rate" and inserting "indirect cost rate";

(B) by striking "and" at the end of subsection (k);

(C) by striking the period at the end of subsection (l) and inserting "; and"; and

(D) by adding at the end the following new subsection:

"(m) 'construction contract' means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract—

"(1) that is limited to providing planning services and construction management services (or a combination of such services);

"(2) for the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

"(3) for the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.";

(2) by striking subsection (f) of section 5 and inserting the following new subsection:

"(f)(1) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract entered into, or grant made, under this Act, the tribal organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by chapter 75 of title 31, United States Code.

"(2) In addition to submitting a single-agency audit report pursuant to paragraph (1), a tribal organization referred to in such paragraph shall submit such additional information concerning the conduct of the program, function, service, or activity carried out pursuant to the contract or grant that is the subject of the report as the tribal organization may negotiate with the Secretary.

"(3) Any disagreement over reporting requirements shall be subject to the declination criteria and procedures set forth in section 102.";

(3) in section 7(a), by striking "of subcontractors" and inserting in lieu thereof "or subcontractors (excluding tribes and tribal organizations)";

(4) at the end of section 7, add the following new subsection:

"(c) Notwithstanding subsections (a) and (b), with respect to any self-determination contract, or portion of a self-determination contract, that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the contract or portion of the contract.";

(5) at the end of section 102(a)(1), add the following new flush sentence:

"The programs, functions, services, or activities that are contracted under this paragraph shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractable. The administrative functions referred to in the preceding sentence shall be contractable without regard to the organizational level within the Department that carries out such functions.";

(6) in section 102(a)—

(A) in paragraph (2)—

(i) in the first sentence, by inserting ", or a proposal to amend or renew a self-determination contract," before "to the Secretary for review";

(ii) in the second sentence—

(I) by striking "The" and inserting "Subject to the provisions of paragraph (4), the";

(II) by inserting "and award the contract" after "approve the proposal";

(III) by striking ", within sixty days of receipt of the proposal,"; and

(IV) by striking "a specific finding is made that" and inserting "the Secretary provides written notification to the applicant that contains a specific finding supported by clearly demonstrated evidence or a controlling legal authority that";

(iii) in subparagraph (B), by striking "or" after the semicolon;

(iv) in subparagraph (C), by striking the period at the end and inserting a semicolon;

(v) by adding at the end the following new subparagraphs:

"(D) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a); or

"(E) the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under paragraph (1) because the proposal includes activities that cannot lawfully be carried out by the contractor."; and

(vi) by adding at the end of the paragraph the following new flush material:

"Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period specified in the second sentence of this subsection, if before the expiration of such period, the Secretary obtains the voluntary and express written consent of the tribe or tribal organization to extend or otherwise alter such period. The contractor shall include in the proposal of the contractor the standards under which the tribal organization will operate the contracted program, service, function, or activity, including in the area of construction, provisions regarding the use of licensed and qualified architects, applicable health and safety standards, adherence to applicable Federal, State, local, or tribal building codes and engineering standards. The standards referred to in the preceding sentence shall ensure structural integrity, accountability of funds, adequate competition for subcontracting under tribal or other applicable law the commencement, performance, and completion of the contract, adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals), the use of proper materials or workmanship, necessary inspection and testing, and changes, modifications, stop work, and termination of the work when warranted."; and

(B) by adding at the end the following new paragraph:

"(4) The Secretary shall approve any severable portion of a contract proposal that does not support a declination finding described in paragraph (2). If the Secretary determines under such paragraph that a contract proposal—

"(A) proposes in part to plan, conduct, or administer a program, function, service, or activity that is beyond the scope of programs covered under paragraph (1), or

"(B) proposes a level of funding that is in excess of the applicable level determined under section 106(a),

subject to any alteration in the scope of the proposal that the Secretary and the tribal organization agree to, the Secretary shall, as appropriate, approve such portion of the program, function, service, or activity as is authorized under paragraph (1) or approve a level of funding authorized under section 106(a). If a tribal organization elects to carry out a severable portion of a contract proposal pursuant to this paragraph, subsection (b) shall only apply to the portion of the contract that is declined by the Secretary pursuant to this subsection.";

(7) in section 102(b)(3)—

(A) by inserting after "record" the following: "with the right to engage in full discovery relevant to any issue raised in the matter"; and

(B) by inserting before the period the following: ", except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 110(a)";

(8) in section 102(d), by striking "as provided in section 2671 of title 28)" and inserting "as provided in section 2671 of title 28, United States Code, and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service)";

(9) by adding at the end of section 102 the following new subsection:

"(e)(1) With respect to any hearing or appeal conducted pursuant to subsection (b)(3), the Secretary shall have the burden of proof to establish by clearly demonstrated evidence the validity of the grounds for declining the contract proposal (or portion thereof).

"(2) Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (referred to in this paragraph as the 'Department') that constitutes final agency action and that relates to an appeal within the Department that is conducted under subsection (b)(3) shall be made either—

"(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or

"(B) by an administrative judge.";

(10) by striking subsection (a) of section 105 and inserting the following new subsection:

"(a)(1) Notwithstanding any other provision of law, subject to paragraph (3), the contracts and cooperative agreements entered into with, and grants made to, tribal organizations pursuant to sections 102 and 103 shall not be subject to Federal contracting, discretionary grant or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian tribes.

"(2) Program standards applicable to a nonconstruction self-determination contract shall be set forth in the contract proposal and the final contract of the tribe or tribal organization.

"(3)(A) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations relating to acquisitions promulgated under such Act shall apply only to the extent that the application of such provision to the construction contract (or subcontract) is—

"(i) necessary to ensure that the contract may be carried out in a satisfactory manner;

"(ii) directly related to the construction activity; and

"(iii) not inconsistent with this Act.

"(B) A list of the Federal requirements that meet the requirements of clauses (i) through (iii) of subparagraph (A) shall be included in an attachment to the contract pursuant to negotiations between the Secretary and the tribal organization.

"(C)(i) Except as provided in subparagraph (B), no Federal law listed in clause (ii) or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal Government shall apply to a construction contract that a tribe or tribal organization enters into under this Act, unless expressly provided in such law.

"(ii) The laws listed in this paragraph are as follows:

"(I) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

"(II) Section 3709 of the Revised Statutes.

"(III) Section 9(c) of the Act of Aug. 2, 1946 (60 Stat. 809, chapter 744).

"(IV) Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393 et seq., chapter 288).

"(V) Section 13 of the Act of Oct. 3, 1944 (58 Stat. 770; chapter 479).

"(VI) Chapters 21, 25, 27, 29, and 31 of title 44, United States Code.

"(VII) Section 2 of the Act of June 13, 1934 (48 Stat 948, chapter 483).

"(VIII) Sections 1 through 12 of the Act of June 30, 1936 (49 Stat. 2036 et seq. chapter 881).

"(IX) The Service Control Act of 1965 (41 U.S.C. 351 et seq.).

"(X) The Small Business Act (15 U.S.C. 631 et seq.).

"(XI) Executive Order Nos. 12138, 11246, 11701 and 11758.";

(11) by striking subsection (e) and inserting the following new subsection:

"(e) If an Indian tribe, or a tribal organization authorized by a tribe, requests retrocession of the appropriate Secretary for any contract or portion of a contract entered into pursuant to this Act, unless the tribe or tribal organization rescinds the request for retrocession, such retrocession shall become effective on—

"(1) the earlier of—

"(A) the date that is 1 year after the date the Indian tribe or tribal organization submits such request; or

"(B) the date on which the contract expires; or

"(2) such date as may be mutually agreed by the Secretary and the Indian tribe.";

(12) by striking paragraph (2) of section 105(f) and inserting the following new paragraph:

"(2) donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that—

"(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

"(B) if property described in subparagraph (A) has a value in excess of $5,000 at the time of the retrocession, rescission, or termination of the self-determination contract or grant agreement, at the option of the Secretary, upon the retrocession, rescission, or termination, title to such property and equipment shall revert to the Department of the Interior or the Department of Health and Human Services, as appropriate; and

"(C) all property referred to in subparagraph (A) shall remain eligible for replacement on the same basis as if title to such property were vested in the United States; and";

(13) by adding at the end of section 105 the following new subsections:

"(i)(1) If a self-determination contract requires the Secretary to divide the administration of a program that has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract, including program redesign in consultation with the tribal organization and all affected tribes.

"(2) Nothing in this title shall be construed to limit or reduce in any way the funding for any program, project, or activity serving a tribe under this or other applicable Federal law. Any tribe or tribal organization that alleges that a self-determination contract is in violation of this section may apply the provisions of section 110.

"(j) Upon providing notice to the Secretary, a tribal organization that carries out a nonconstruction self-determination contract may propose a redesign of a program, activity, function, or service carried out by the tribal organization under the contract, including any nonstatutory program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health, and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any proposal to redesign any program, activity, function, or service provided under the contract. With respect to declining to approve a redesigned program, activity, function, or service under this subsection, the Secretary shall apply the criteria and procedures set forth in section 102.

"(k) For purposes of section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)) (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), a tribal organization carrying out a contract, grant, or cooperative agreement under this Act shall be deemed an executive agency when carrying out such contract, grant, or agreement and the employees of the tribal organization shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access.

"(l)(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this Act.

"(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

"(m)(1) Each construction contract requested, approved, or awarded under this Act shall be subject to—

"(A) except as otherwise provided in this Act, the provisions of this Act, other than sections 102(a)(2), 106(m), 108 and 109; and

"(B) section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (104 Stat. 1959).

"(2) In providing technical assistance to tribes and tribal organizations in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe or tribal organization, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, and archaeological reports.

"(3) Prior to finalizing a construction contract proposal pursuant to section 102(a), and upon request of the tribe or tribal organization that submits the proposal, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal. Such phase shall include, at a minimum, the following elements:

"(A) The provision of technical assistance pursuant to section 103 and paragraph (2).

"(B) A joint scoping session between the Secretary and the tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.

"(C) An opportunity for the Secretary to revise the plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the tribe or tribal organization.

"(D) A negotiation session during which the Secretary and the tribe or tribal organization shall seek to develop a mutually agreeable contract proposal.

"(E) Upon the request of the tribe or tribal organization, the use of an alternative dispute resolution mechanism to seek resolution of all remaining areas of disagreement pursuant to the dispute resolution provisions under subchapter IV of chapter 5 of title 5, United States Code.

"(F) The submission to the Secretary by the tribe or tribal organization of a final contract proposal pursuant to section 102(a).

"(4)(A) Subject to subparagraph (B), in funding a fixed-price construction contract pursuant to section 106(a), the Secretary shall provide for the following:

"(i) The reasonable costs to the tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract.

"(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract and other relevant considerations.

"(B) In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components described in clauses (i) and (ii) of subparagraph (A).

"(C) The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties, including the following costs:

"(i) The reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of this Act and any other applicable law.

"(ii) The costs of preparing the contract proposal and supporting cost data.

"(iii) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract.

"(iv) In the case of a fixed-price contract, a fair profit determined by taking into consideration the relevant risks and local market conditions.

"(v) If the Secretary and the tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal pursuant to the procedures set forth in this subsection, the tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving such final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during such period the Secretary declines the proposal pursuant to sections 102(a)(2) and 102(b) of section 102 (including providing opportunity for an appeal pursuant to section 102(b)).

"(n) Notwithstanding any other provision of law, the rental rates for housing provided to an employee by the Federal Government in Alaska pursuant to a self-determination contract shall be determined on the basis of—

"(1) the reasonable value of the quarters and facilities (as such terms are defined under section 5911 of title 5, United States Code) to such employee, and

"(2) the circumstances under which such quarters and facilities are provided to such employee,

as based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.";

(14) in section 106(a)—

(A) in paragraph (1), by inserting before the period at the end the following: ", without regard to any organizational level within

the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated";

(B) in paragraph (2), by inserting after "consist of" the following: "an amount for"; and

(C) by striking paragraph (3) and inserting the following new paragraphs:

"(3)(A) The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of—

"(i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

"(ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

except that such funding shall not duplicate any funding provided under section 106(a)(1).

"(B) On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this Act, the tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

"(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program, function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract) shall—

"(A) be used to provide additional services or benefits under the contract; or

"(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 8.

"(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include start-up costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary—

"(A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and

"(B) to ensure compliance with the terms of the contract and prudent management.

"(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.";

(15) in section 106(c)—

(A) by striking "March 15" and inserting "May 15";

(B) in paragraphs (1) and (2), by striking "indirect costs" each place it appears and inserting "contract support costs";

(C) in paragraph (4), by striking "and" at the end;

(D) in paragraph (5), by striking the period at the end and inserting "; and"; and

(E) by adding at the end the following new paragraph:

"(6) an accounting of any deficiency of funds needed to maintain the preexisting level of services to any tribes affected by contracting activities under this Act, and a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle to a different accounting cycle, as authorized by section 105(d).";

(16) in section 106(f), by inserting immediately after the second sentence the following new sentence: "For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31, United States Code, or noncompliance with any other applicable law.";

(17) by striking subsection (g) of section 106 and inserting the following new subsection:

"(g) Upon the approval of a self-determination contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under section 106(a), subject to adjustments for each subsequent year that such tribe or tribal organization administers a Federal program, function, service, or activity under such contract.";

(18) by striking subsection (i) of section 106 and inserting the following new subsection:

"(i) On an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).''; and

(19) by adding at the end of section 106 the following new subsections:

"(j) Notwithstanding any other provision of law, a tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

"(k) Without intending any limitation, a tribal organization may, without the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

"(1) Depreciation and use allowances not otherwise specifically prohibited by law, including the depreciation of facilities owned by the tribe or tribal organization.

"(2) Publication and printing costs.

"(3) Building, realty, and facilities costs, including rental costs or mortgage expenses.

"(4) Automated data processing and similar equipment or services.

"(5) Costs for capital assets and repairs.

"(6) Management studies.

"(7) Professional services, other than services provided in connection with judicial proceedings by or against the United States.

"(8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.

"(9) Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.

"(10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.

"(11) Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under this Act.

"(12) Costs associated with the management of pension funds, self-insurance funds, and other funds of the tribal organization that provide for participation by the Federal Government.

"(l) The Secretary may only suspend, withhold, or delay the payment of funds for a period of 30 days beginning on the date the Secretary makes a determination under this paragraph to a tribal organization under a self-determination contract, if the Secretary determines that the tribal organization has failed to substantially carry out the contract without good cause. In any such case, the Secretary shall provide the tribal organization with reasonable advance written notice, technical assistance (subject to available resources) to assist the tribal organization, a hearing on the record not later than 10 days after the date of such determination or such later date as the tribal organization shall approve, and promptly release any funds withheld upon subsequent compliance.

"(2) With respect to any hearing or appeal conducted pursuant to this subsection, the Secretary shall have the burden of proof to establish by clearly demonstrated evidence the validity of the grounds for suspending, withholding, or delaying payment of funds.

"(m) The program income earned by a tribal organization in the course of carrying out a self-determination contract—

"(1) shall be used by the tribal organization to further the general purposes of the contract; and

"(2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

"(n) To the extent that programs, functions, services, or activities carried out by tribal organizations pursuant to contracts entered into under this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under subsection (a), the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

"(o) Notwithstanding any other provision of law (including any regulation), a tribal organization that carries out a self-determination contract may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have an adverse effect on the performance of the contract.".

SEC. 3. CONTRACT SPECIFICATIONS.

The Indian Self-Determination Education Assistance Act (25 U.S.C. 450 et seq.) is amended by inserting after section 107 the following new section:

"SEC. 108. CONTRACT OR GRANT SPECIFICATIONS.

"(a) Each self-determination contract entered into under this Act shall—

"(1) contain, or incorporate by reference, the provisions of the model agreement described in subsection (c) (with modifications

where indicated and the blanks appropriately filled in), and

"(2) contain such other provisions as are agreed to by the parties.

"(b) Notwithstanding any other provision of law, the Secretary may make payments pursuant to section 1(b)(6) of such model agreement. As provided in section 1(b)(7) of the model agreement, the records of the tribal government or tribal organization specified in such section shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

"(c) The model agreement referred to in subsection (a)(1) reads as follows:

"'SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND THE ___ TRIBAL GOVERNMENT.

"'(a) AUTHORITY AND PURPOSE.—

"'(1) AUTHORITY.—This agreement, denoted a Self-Determination Contract (referred to in this agreement as the "Contract"), is entered into by the Secretary of the Interior or the Secretary of Health and Human Services (referred to in this agreement as the "Secretary"), for and on behalf of the United States pursuant to title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and by the authority of the ___ tribal government or tribal organization (referred to in this agreement as the "Contractor"). The provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.

"'(2) PURPOSE.—Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractable under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor: (List functions, services, activities, and programs).

"'(b) TERMS, PROVISIONS, AND CONDITIONS.—

"'(1) TERM.—Pursuant to section 105(c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(1)), the term of this contract shall be ___ years. Pursuant to section 105(d)(1) of such Act (25 U.S.C. 450j(d)), upon the election by the Contractor, the period of this Contract shall be determined on the basis of a calendar year, unless the Secretary and the Contractor agree on a different period in the annual funding agreement incorporated by reference in subsection (f)(2).

"'(2) EFFECTIVE DATE.—This Contract shall become effective upon the date of the approval and execution by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph.

PATENT APPLICATION AMENDMENTS ACT

DECONCINI (AND OTHERS) AMENDMENT NO. 2636

Mr. FORD (for Mr. DECONCINI for himself, Mr. HATCH, and Mr. KENNEDY) proposed an amendment to the bill (H.R. 4307) to amend title 35, United States Code, with respect to applications for process patents; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—PROCESS PATENT APPLICATIONS

SECTION 101. EXAMINATION OF PROCESS PATENT APPLICATIONS FOR OBVIOUSNESS.

Section 103 of title 35, United States Code, is amended—

(1) by designating the first paragraph as subsection (a);

(2) by designating the second paragraph as subsection (c); and

(3) by inserting after the first paragraph

"(b)(1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a 'biotechnological process' using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—

"(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effect filing date; and

"(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

"(2) A patent issued on a process under paragraph (1)—

"(A) shall also contain the claims to the composition of matter used in or made by that process, or

"(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.".

For purposes of subsection (b), the term "biotechnological process" means a process of genetically altering or otherwise inducing a cell or a living organism to express an exogenous nucleotide sequence or to express specific physiological characteristics. Such process include genetic alteration of a cell to express an exogenous nucleotide sequence, cell fusion procedures yielding a cell line that expresses a specific protein, including a monoclonal antibody, and genetic alteration of a multicellular organism to include said organism to express an exogenous nucleotide sequence or to express predefined physiological characteristics.

SEC. 102. RESUMPTION OF VALIDITY; DEFENSES.

Section 282 of title 35, United States Code, is amended by inserting after the second sentence of the first paragraph the following: "Notwithstanding the proceding sentence, if a claim to a composition of matter is held invalid and that claim was the basis of a determination of nonobviousness under section 103(b)(1), the process shall no longer be considered nonobvious solely on the basis of section 103(b)(1).".

SEC. 103. EFFECTIVE DATE.

The amendments made by section 101 shall apply to any application for patent filed on or after the date of the enactment of this Act and to any application for patent pending on such date of enactment, including (in either case) an application for the reissue of a patent.

HATCH AMENDMENT NO. 2637

Mr. FORD (for Mr. HATCH) proposed an amendment to amendment No. 2636 proposed by Mr. DECONCINI to the bill (H.R. 4307) to amend title 35, United States Code, with respect to applications for process patents, as follows:

On page ___, insert between lines ___ and ___ the following:

SEC. ___. JURISDICTION OF UNITED STATES COURT OF FEDERAL CLAIMS RELATING TO CERTAIN SOFTWARE AND SERVICE CLAIMS.

(a) JURISDICTION.—Jurisdiction is conferred upon the United States Court of Federal Claims to hear, determine, and render conclusions that are sufficient to inform the Congress of the amount, if any, legally or equitably due upon the claims of Inslaw, Inc., a Delaware Corporation (hereinafter referred to as "Inslaw") and William A. Hamilton and Nancy Burke Hamilton, individually against the United States which claims arise out of the furnishing of computer software and services to the United States Department of Justice. The hearings and proceedings conducted, determinations and conclusions made, and report submitted to the Congress under this subsection shall be conducted in accordance with the provisions of section 2509 of title 28, United States Code.

(b) WAIVER OF SOVEREIGN IMMUNITY AND DEFENSES.—For purposes of the report submitted under subsection (a), any available defense relating to statute of limitations, any form of estoppel, laches, res judicata, failure to exhaust all remedies, and any available defense of sovereign immunity of the United States, the Department of Justice, or any other United States Government agency is specifically waived as to the respective claims of Inslaw, William A. Hamilton, and Nancy Burke Hamilton.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT

ROCKEFELLER AMENDMENT NO. 2638

Mr. FORD (for Mr. ROCKEFELLER) proposed an amendment to the bill (S. 1927) to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; as follows:

In lieu of the matter inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Compensation Cost-of-Living Adjustment Act of 1994".

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 1994, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b)

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under section 1115(1) of such title.

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES.—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) ADDITIONAL DIC FOR DISABILITY.—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(7) DIC FOR DEPENDENT CHILDREN.—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF PERCENTAGE INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 1994. Each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1994, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(2) In the computation of increased dollar amounts pursuant to paragraph (1), any amount which as so computed is not an even multiple of $1 shall be rounded to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 3. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1994, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in section 2(b), as increased pursuant to section 2.

NOTICE OF HEARING

Mr. LEVIN. Mr. President, I wish to announce that on Wednesday, October 12, 1994, at 9:30 a.m., in room 342 of the Dirksen Senate Office Building, the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, will hold a hearing on "Navy's Mismanagement of the Sealift Tanker Program."

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, October 6, 1994, at 9 a.m., in room 226 Senate Dirksen Office Building to consider the nominations of James A. Beaty, Jr. to be United States District Judge for the Middle District of North Carolina, David Briones to be United States District Judge for the Western District of Texas, Okla Jones, II to be United States District Judge for the Eastern District of Louisiana, Kathleen M. O'Malley to be United States District Judge for the Northern District of Ohio, G. Thomas Porteous to be United States District Judge for the Eastern District of Louisiana, James Robertson to be United States District Judge for the District of Columbia and Thomas B. Russell to be United States District Judge for the Western District of Kentucky.

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

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, October 6, 1994.

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

COMMITTEE ON SMALL BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Small Business be permitted to meet today during the Senate session in order to consider the nomination of Mr. Philip Lader to be Administrator of the Small Business Administration.

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

NOTICE OF INTENTION TO AMEND THE STANDING RULES OF THE SENATE

Mr. DOLE. Mr. President, pursuant to rule 5, paragraph 1 of the Standing Rules of the Senate, I hereby submit notice to amend rule 35 of the Standing Rules of the Senate, as follows:

GIFT RULES

AMENDMENTS TO SENATE RULES

Resolved, Rule XXXV of the Standing Rules of the Senate is amended to read as follows:

"1. No Member, officer, or employee of the Senate shall accept a gift, knowing that such gift is provided by a lobbyist, a registered lobbyist under the Federal Regulation of Lobbying Act, a lobbying firm, or an agent of a foreign principal.

(a) GIFTS.—A prohibited gift includes the following:

(1) Anything provided by a lobbyist or a foreign agent which is paid for, charged to, or reimbursed by a client or firm of such lobbyist or foreign agent.

(2) Anything provided by a lobbyist, a lobbying firm, or a foreign agent to an entity that is maintained or controlled by Member, officer, or employee of the Senate.

(3) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent on the basis of a designation, recommendation, or other specification of a Member, officer, or employee of the Senate (not including a mass mailing or other solicitation directed to a broad category of persons or entities).

(4) A contribution or other payment by a lobbyist, a lobbying firm, or a foreign agent to a legal expense fund established for the benefit of a Member, officer, or employee of the Senate.

(5) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent in lieu of an honorarium to a Member, officer, or employee of the Senate.

(6) A financial contribution or expenditure made by a lobbyist, a lobbying firm, or a foreign agent relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of a Member, officer, or employee of the Senate.

(b) NOT GIFTS.—The following are not gifts subject to the prohibition:

(1) Anything for which the recipient pays the market value, or does not use and promptly returns to the donor.

(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

(3) Food or refreshments of nominal value offered other than as part of a meal.

(4) Benefits resulting from the business, employment, or Member, officer, or employee of the Senate, if such benefits are customarily provided to others in similar circumstances.

(5) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(6) Informational materials that are sent to the office of a Member, officer, or employee of the Senate in the form of books, articles, periodicals, other written materials, audio tapes, videotapes, or other forms of communication.

(c) GIFTS GIVEN FOR A NONBUSINESS PURPOSE AND MOTIVATED BY FAMILY RELATIONSHIP OR CLOSE PERSONAL FRIENDSHIP.—

(1) IN GENERAL.—A gift given by an individual under circumstances which make it clear that the gift is given for a nonbusiness purpose and is motivated by a family relationship or close personal friendship and not by the position of the Member, officer, or employee of the Senate, shall not be subject to the prohibition in subsection (a).

(2) NONBUSINESS PURPOSE.—A gift shall not be considered to be given for a nonbusiness purpose if the individual giving the gift seeks—

(A) to deduct the value of such gift as a business expense on the individual's Federal income tax return, or

(B) direct or indirect reimbursement or any other compensation for the value of the gift from a client or employer of such lobbyist or foreign agent.

(3) FAMILY RELATIONSHIP OR CLOSE PERSONAL FRIENDSHIP. In determining if the giving of a gift is motivated by a family relationship or close personal friendship, at least the following factors shall be considered:

(A) The history of the relationship between the individual giving the gift and the recipient of the gift, including whether or not gifts have previously been exchanged by such individuals.

(B) Whether the gift was purchased by the individual who gave the item.

(C) Whether the individual who gave the gift also at the same time gave the same or similar gifts to any other Member, officer, or employee of the Senate.

"2. (a) In addition to the restriction on receiving gifts from lobbyists, registered lobbyists under the Federal Regulation of Lobbying Act, lobbying firms, and agents of foreign principles provided by paragraph 1 and except as provided in this Rule, no Member, officer, or employee of the Senate shall knowingly accept a gift from any other person.

"(b)(1) For the purpose of this Rule, the term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"(2) A gift to the spouse or dependent of a Member, officer, or employee (or a gift to any other individual based on that individual's relationship with the Member, officer, or employee) shall be considered a gift to the Member, officer,

or employee if it is given with the knowledge and acquiescence of the Member, officer, or employee and the Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee.

"(c) The restrictions in subparagraph (a) shall not apply to the following:

"(1) Anything for which the Member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

"(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

"(3) Anything provided by an individual on the basis of a personal or family relationship unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal or family relationship. The Select Committee on Ethics shall provide guidance on the applicability of this clause and examples of circumstances under which a gift may be accepted under this exception.

"(4) A contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee, that is otherwise lawfully made, if the person making the contribution or payment is identified for the Select Committee on Ethics.

"(5) Any food or refreshments which the recipient reasonably believes to have a value of less than $20.

"(6) Any gift from another Member, officer, or employee of the Senate or the House of Representatives.

"(7) Food, refreshments, lodging, and other benefits—

"(A) resulting from the outside business or employment activities (or other outside activities that are not connected to the duties of the Member, officer, or employee as an officeholder) of the Member, officer, or employee, or the spouse of the Member, officer, or employee, if such benefits have not been offered or enhanced because of the official position of the Member, officer, or employee and are customarily provided to others in similar circumstances;

"(B) customarily provided by a prospective employer in connection with bona fide employment discussions; or

"(C) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such an organization.

"(8) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

"(9) Informational materials that are sent to the office of the Member, officer, or employee in the form of books, articles, periodicals, other written materials, audio tapes, videotapes, or other forms of communication.

"(10) Awards or prizes which are given to competitors in contests or events open to the public, including random drawings.

"(11) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

"(12) Donations of products from the State that the Member represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

"(13) Food, refreshments, and entertainment provided to a Member or an employee of a Member in the Member's home State, subject to reasonable limitations, to be established by the Committee on Rules and Administration.

"(14) An item of little intrinsic value such as a greeting card, baseball cap, or a T shirt.

"(15) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a Member, officer, or employee, if such training is in the interest of the Senate.

"(16) Bequests, inheritances, and other transfers at death.

"(17) Any item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

"(18) Anything which is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

"(19) A gift of personal hospitality of an individual, as defined in section 109(14) of the Ethics in Government Act.

"(20) Free attendance at a widely attended event permitted pursuant to subparagraph (d).

"(21) Opportunities and benefits which are—

"(A) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

"(B) offered to members of a group or class in which membership is unrelated to congressional employment;

"(C) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

"(D) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

"(E) in the form of loans from banks and other financial institutions on terms generally available to the public; or

"(F) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

"(22) A plaque, trophy, or other memento of modest value.

"(23) Anything for which, in an unusual case, a waiver is granted by the Select Committee on Ethics.

"(d)(1) Except as prohibited by paragraph 1, a Member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

"(A) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, officer's, or employee's official position; or

"(B) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

"(2) A Member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

"(3) Except as prohibited by paragraph 1, a Member, officer, or employee, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event.

"(4) For purposes of this paragraph, the term 'free attendance' may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, or food or refreshments taken other than in a group setting with all or substantially all other attendees.

"(e) No Member, officer or employee may accept a gift the value of which exceeds $250 under circumstances which make it clear that the gift is given for a nonbusiness purpose and is motivated by a close personal friendship and not by the position of the Member, officer, or employee of the Senate unless the Select Committee on Ethics issues a written determination that one of such exceptions applies.

"(f)(1) The Committee on Rules and Administration is authorized to adjust the dollar amount referred to in subparagraph (c)(5) on a periodic basis, to the extent necessary to adjust for inflation.

"(2) The Select Committee on Ethics shall provide guidance setting forth reasonable steps that may be taken by Members, officers, and employees, with a minimum of paperwork and time, to prevent the acceptance of prohibited gifts from lobbyists.

"(3) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

"3. (A)(1) Except as prohibited by paragraph 1, a reimbursement (including payment in kind) to a Member, officer, or employee for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, fact-finding trip or similar event in connection with the duties of the Members, officer, or employee as an officeholder shall be deemed to be a reimbursement to the Senate and not a gift prohibited by this rule, if the Member, officer, or employee—

"(A) in the case of an employee, receives advance authorization, from the Member or officer under whose direct supervision the employee works, to accept reimbursement, and

"(B) discloses the expenses reimbursed or to be reimbursed and the authorization to the Secretary of the Senate within 30 days after the travel is completed.

"(2) For purposes of clause (1), events, the activities of which are substantially recreational in nature, shall not be consider to be in connection with the duties of a Member, officer, or employee as an officeholder.

"(b) Each advance authorization to accept reimbursement shall be signed by the Member of officer under whose direct supervision the employee works and shall include—

"(1) the name of the employee;

"(2) the name of the person who will make the reimbursement;

"(3) the time, place, and purpose of the travel; and

"(4) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

"(c) Each disclosure made under subparagraph (a)(1) of expenses reimbursed or to be reimbursed shall be signed by the Member or officer (in the case of travel by that Member or officer) or by the Member or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

"(1) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

"(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

"(3) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

"(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

"(5) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in this paragraph; and

"(6) in the case of a reimbursement to a Member or officer, a determination that the travel was in connection with the duties of the Member or officer as an officeholder and would not create the appearance that the Member or officer is using public office for private gain.

"(d) For the purposes of this paragraph, the term 'necessary transportation, lodging, and related expenses'—

"(1) includes reasonable expenses that are necessary for travel for a period not exceeding 3 days exclusive of traveltime within the United States or 7 days exclusive of traveltime outside of the United States unless approved in advance by the Select Committee on Ethics;

"(2) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in clause (1);

"(3) does not include expenditures for recreational activities, or entertainment other than that provided to all attendees as an integral part of the event; and

"(4) may include travel expenses incurred on behalf of either the spouse or a child of the Member, officer, or employee, subject to a determination signed by the Member or officer (or in the case of an employee, the Member or officer under whose direct supervision the employee works) that the attendance of the spouse or child is appropriate to assist in the representation of the Senate.

"(e) The Secretary of the Senate shall make available to the public all advance authorizations and disclosures of reimbursement filed pursuant to subparagraph (a) as soon as possible after they are received.".

3. DEFINITIONS.—

(a) Lobbyist means any individual who is employed or retained by a client for financial or other compensation for services that include one or more lobbying contacts, other than an individual whose lobbying activities constitute less than 10 percent of the time engaged in the services provided by such individual to that client.

(b) Lobbying firm means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity including a self-employed individual who is a lobbyist.

(c) Agent of a foreign principal means the definition contained in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.)

4. MISCELLANEOUS SENATE PROVISIONS.—

(1) AUTHORITY OF THE COMMITTEE ON RULES AND ADMINISTRATION.—The Senate Committee on Rules and Administration, on behalf of the Senate, may accept gifts provided they do not involve any duty, burden, or condition, or are not made dependent upon some future performance by the United States. The Committee on Rules and Administration is authorized to promulgate regulations to carry out this section.

(2) FOOD, REFRESHMENTS, AND ENTERTAINMENT.—The rules on acceptance of food, refreshments, and entertainment provided to a Member of the Senate or an employee of such a Member in the Member's home State before the adoption of reasonable limitations by the Committee on Rules and Administration shall be the rules in effect on the day before the effective date of this title.

5. EFFECTIVE DATE.—This rule change shall take effect May 31, 1995.

NOTICE OF INTENTION TO AMEND THE STANDING RULES OF THE SENATE

Mr. WELLSTONE. Mr. President, pursuant to rule 5, paragraph 1 of the Standing Rules of the Senate, I hereby submit notice to amend rule 35 of the Standing Rules of the Senate; as follows:

S. RES. 275

Resolved, That rule XXXV of the Standing Rules of the Senate is amended by inserting the following:

SEC. ___. AMENDMENTS TO SENATE RULES.

The text of rule XXXV of the Standing Rules of the Senate is amended to read as follows:

"1. No member, officer, or employee of the Senate shall accept a gift, knowing that such gift is provided by a lobbyist, a lobbying firm, or an agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.) in violation of this rule.

"2. (a) In addition to the restriction on receiving gifts from registered lobbyists, lobbying firms, and agents of foreign principals provided by paragraph 1 and except as provided in this rule, no member, officer, or employee of the Senate shall knowingly accept a gift from any other person.

"(b)(1) For the purpose of this rule, the term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"(2) A gift to the spouse or dependent of a member, officer, or employee (or a gift to any other individual based on that individual's relationship with the member, officer, or employee) shall be considered a gift to the member, officer, or employee if it is given with the knowledge and acquiescence of the member, officer, or employee and the member, officer, or employee has reason to believe the gift was given because of the official position of the member, officer, or employee.

"(c) The restrictions in subparagraph (a) shall apply to the following:

"(1) Anything provided by a lobbyist or a foreign agent which is paid for, charged to, or reimbursed by a client or firm of such lobbyist or foreign agent.

"(2) Anything provided by a lobbyist, a lobbying firm, or a foreign agent to an entity that is maintained or controlled by a member, officer, or employee of the Senate.

"(3) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent on the basis of a designation, recommendation, or other specification of a member, officer, or employee of the Senate (not including a mass mailing or other solicitation directed to a broad category of persons or entities).

"(4) A contribution or other payment by a lobbyist, a lobbying firm, or a foreign agent to a legal expense fund established for the benefit of a member, officer, or employee of the Senate.~~;~~

"(5) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a lobbyist, a lobbying firm, or a foreign agent in lieu of an honorarium to a member, officer, or employee of the Senate.

"(6) A financial contribution or expenditure made by a lobbyist, a lobbying firm, or a foreign agent relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of members, officers, or employees of the Senate.

"(d) The restrictions in subparagraph (a) shall not apply to the following:

"(1) Anything for which the member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

"(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

"(3) Anything provided by an individual on the basis of a personal or family relationship unless the member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the member, officer, or employee and not because of the personal or family relationship. The Select Committee on Ethics shall provide guidance on the applicability of this clause and examples of circumstances under which a gift may be accepted under this exception.

"(4) A contribution or other payment to a legal expense fund established for the benefit of a member, officer, or employee, that is otherwise lawfully made, if the person making the contribution or payment is identified for the Select Committee on Ethics.

"(5) Any food or refreshments which the recipient reasonably believes to have a value of less than $20.

"(6) Any gift from another member, officer, or employee of the Senate or the House of Representatives.

"(7) Food, refreshments, lodging, and other benefits—

"(A) resulting from the outside business or employment activities (or other outside activities that are not connected to the duties of the member, officer, or employee as an officeholder) of the member, officer, or employee, or the spouse of the member, officer, or employee, if such benefits have not been offered or enhanced because of the official position of the member, officer, or employee and are customarily provided to others in similar circumstances;

"(B) customarily provided by a prospective employer in connection with bona fide employment discussions; or

"(C) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such an organization.

"(8) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

"(9) Informational materials that are sent to the office of the member, officer, or employee in the form of books, articles, periodicals, other written materials, audio tapes,

videotapes, or other forms of communication.

"(10) Awards or prizes which are given to competitors in contests or events open to the public, including random drawings.

"(11) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

"(12) Donations of products from the State that the member represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

"(13) Food, refreshments, and entertainment provided to a member or an employee of a member in the member's home State, subject to reasonable limitations, to be established by the Committee on Rules and Administration.

"(14) An item of little intrinsic value such as a greeting card, baseball cap, or a T shirt.

"(15) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a member, officer, or employee, if such training is in the interest of the Senate.

"(16) Bequests, inheritances, and other transfers at death.

"(17) Any item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

"(18) Anything which is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

"(19) A gift of personal hospitality of an individual, as defined in section 109(14) of the Ethics in Government Act.

"(20) Free attendance at a widely attended event permitted pursuant to subparagraph (e).

"(21) Opportunities and benefits which are—

"(A) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

"(B) offered to members of a group or class in which membership is unrelated to congressional employment;

"(C) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

"(D) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

"(E) in the form of loans from banks and other financial institutions on terms generally available to the public; or

"(F) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

"(22) A plaque, trophy, or other memento of modest value.

"(23) Anything for which, in an unusual case, a waiver is granted by the Select Committee on Ethics.

"(e)(1) Except as prohibited by paragraph 1, a member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

"(A) the member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the member's, officer's, or employee's official position; or

"(B) attendance at the event is appropriate to the performance of the official duties or representative function of the member, officer, or employee.

"(2) A member, officer, or employee who attends an event described in clause (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual if others in attendance will generally be similarly accompanied or if such attendance is appropriate to assist in the representation of the Senate.

"(3) Except as prohibited by paragraph 1, a member, officer, or employee, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event.

"(4) For purposes of this paragraph, the term 'free attendance' may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, or food or refreshments taken other than in a group setting with all or substantially all other attendees.

"(f)(1) No member, officer, or employee may accept a gift the value of which exceeds $250 on the basis of the personal relationship exception in subparagraph (d)(3) or the close personal friendship exception in clause (2) unless the Select Committee on Ethics issues a written determination that one of such exceptions applies.

"(2)(A) A gift given by an individual under circumstances which make it clear that the gift is given for a nonbusiness purpose and is motivated by a family relationship or close personal friendship and not by the position of the member, officer, or employee of the Senate shall not be subject to the prohibition in clause (1).

"(B) A gift shall not be considered to be given for a nonbusiness purpose if the individual giving the gift seeks—

"(i) to deduct the value of such gift as a business expense on the individual's Federal income tax return, or

"(ii) direct or indirect reimbursement or any other compensation for the value of the gift from a client or employer of such lobbyist or foreign agent.

"(C) In determining if the giving of a gift is motivated by a family relationship or close personal friendship, at least the following factors shall be considered:

"(i) The history of the relationship between the individual giving the gift and the recipient of the gift, including whether or not gifts have previously been exchanged by such individuals.

"(ii) Whether the gift was purchased by the individual who gave the item.

"(iii) Whether the individual who gave the gift also at the same time gave the same or similar gifts to other members, officers, or employees of the Senate.

"(g)(1) The Committee on Rules and Administration is authorized to adjust the dollar amount referred to in subparagraph (d)(5) on a periodic basis, to the extent necessary to adjust for inflation.

"(2) The Select Committee on Ethics shall provide guidance setting forth reasonable steps that may be taken by members, officers, and employees, with a minimum of paperwork and time, to prevent the acceptance of prohibited gifts from lobbyists.

"(3) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

"3. (a)(1) Except as prohibited by paragraph 1, a reimbursement (including payment in kind) to a member, officer, or employee for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, factfinding trip or similar event in connection with the duties of the member, officer, or employee as an officeholder shall be deemed to be a reimbursement to the Senate and not a gift prohibited by this rule, if the member, officer, or employee—

"(A) in the case of an employee, receives advance authorization, from the member or officer under whose direct supervision the employee works, to accept reimbursement, and

"(B) discloses the expenses reimbursed or to be reimbursed and the authorization to the Secretary of the Senate within 30 days after the travel is completed.

"(2) For purposes of clause (1), events, the activities of which are substantially recreational in nature, shall not be considered to be in connection with the duties of a member, officer, or employee as an officeholder.

"(b) Each advance authorization to accept reimbursement shall be signed by the member or officer under whose direct supervision the employee works and shall include—

"(1) the name of the employee;

"(2) the name of the person who will make the reimbursement;

"(3) the time, place, and purpose of the travel; and

"(4) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

"(c) Each disclosure made under subparagraph (a)(1) of expenses reimbursed or to be reimbursed shall be signed by the member or officer (in the case of travel by that Member or officer) or by the member or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

"(1) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

"(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

"(3) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

"(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

"(5) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in this paragraph; and

"(6) in the case of a reimbursement to a member or officer, a determination that the travel was in connection with the duties of the member or officer as an officeholder and would not create the appearance that the member or officer is using public office for private gain.

"(d) For the purposes of this paragraph, the term 'necessary transportation, lodging, and related expenses'—

"(1) includes reasonable expenses that are necessary for travel for a period not exceeding 3 days exclusive of traveltime within the United States or 7 days exclusive of traveltime outside of the United States unless approved in advance by the Select Committee on Ethics;

"(2) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in clause (1);

"(3) does not include expenditures for recreational activities, or entertainment other than that provided to all attendees as an integral part of the event; and

"(4) may include travel expenses incurred on behalf of either the spouse or a child of the member, officer, or employee, subject to a determination signed by the member or officer (or in the case of an employee, the member or officer under whose direct supervision the employee works) that the attendance of the spouse or child is appropriate to assist in the representation of the Senate.

"(e) The Secretary of the Senate shall make available to the public all advance authorizations and disclosures of reimbursement filed pursuant to subparagraph (a) as soon as possible after they are received.

"4. In this rule:

"(a) The term "client" means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is—

"(1) the coalition or association and not its individual members when the lobbying activities are conducted on behalf of its membership and financed by the coalition's or association's dues and assessments; or

"(2) an individual member or members, when the lobbying activities are conducted on behalf of, and financed separately by, 1 or more individual members and not by the coalition's or association's dues and assessments.

"(b)(1) The term "lobbying contact" means any oral or written communication (including an electronic communication) to a member, officer, or employee of the Senate that is made on behalf of a client with regard to the formulation, modification, or adoption of Federal legislation (including legislative proposals) or the nomination or confirmation of a person for a position subject to confirmation by the Senate.

"(2) The term "lobbying contact" does not include a communication that is—

"(A) made by a public official acting in the public official's official capacity;

"(B) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

"(C) made in a speech, article, publication or other material that is widely distributed to the public, or through radio, television, cable television, or other medium of mass communication;

"(D) made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);

"(E) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a member, officer, or employee of the Senate;

"(F) made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act;

"(G) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;

"(H) information provided in writing in response to a written request by a member, officer, or employee of the Senate for specific information;

"(I) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency;

"(J) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this subclause does not apply to any communication with a member, officer, or employee of the Senate (other than the individual's elected Senators or employees who work under such Senators' direct supervision) with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;

"(K) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989, under the Inspector General Act of 1978, or under another provision of law; or

"(L) made by—

"(i) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986, or

"(ii) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033(a),

if the communication constitutes the free exercise of religion or is for the purpose of protecting the right to the free exercise of religion.

"(c)(1) The term "lobbying firm"—

"(A) means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity; and

"(B) includes a self-employed individual who is a lobbyist; but

"(C) does not include a person or entity whose—

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed $2,500; or

(ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed $5,000,

(as estimated in accordance with standards issued by the Committee on Rules and Administration) in the preceding semiannual period of January through June or July through December.

"(2) The dollar amounts in clause (1) shall be adjusted—

"(A) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since the date of enactment of this title; and

"(B) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period,

rounded to the nearest $500.

"(d)(1) The term "lobbyist"—

"(A) means any individual who is employed or retained by a client for financial or other compensation for services that include one or more lobbying contacts, other than an individual whose lobbying activities constitute less than 10 percent of the time engaged in the services provided by such individual to that client; but

"(B) does not include an individual whose—

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed $2,500; or

(ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed $5,000,

(as estimated in accordance with standards issued by the Committee on Rules and Administration) in the preceding semiannual period of January through June or July through December.

"(2) The dollar amounts in clause (1) shall be adjusted—

"(A) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since the date of enactment of this title; and

"(B) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period,

rounded to the nearest $500.

"(e) The term "public official" means any elected official, appointed official, or employee of—

"(1) a Federal, State, or local unit of government in the United States other than—

"(A) a college or university;

"(B) a government-sponsored enterprise (as defined in section 3(8) of the Congressional Budget and Impoundment Control Act of 1974);

"(C) a public utility that provides gas, electricity, water, or communications;

"(D) a guaranty agency (as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1085(j))), including any affiliate of such an agency; or

"(E) an agency of any State functioning as a student loan secondary market pursuant to section 435(d)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1085(d)(1)(F));

"(2) a Government corporation (as defined in section 9101 of title 31, United States Code);

"(3) an organization of State or local elected or appointed officials other than officials of an entity described in aubclause (A), (B), (C), (D), or (E) of clause (1);

"(4) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

"(5) a national or State political party or any organizational unit thereof; or

"(6) a national, regional, or local unit of any foreign government.

"(f) The term "State" means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

ADDITIONAL STATEMENTS

AMERICA'S TEN DEADLY STRATEGIC GAMBLES: ARMS CONTROL OR UNILATERAL DISARMAMENT

• Mr. WALLOP. Mr. President, I rise today to bring a very important article to the attention of the Senate and the American people. The article, entitled "America's ten deadly Strategic Gambles: Arms Control or Unilateral Disarmament," was written by Mr. Sven F. Kraemer, an individual with vast experience and sound judgment.

Mr. Kraemer's assessments and policy recommendations are in startling contrast with the views prevailing in the administration, Congress, and the media. Mr. Kraemer served in the U.S. Government for 25 years, including 16 years at the National Security Council. His cogent article provides a critique of America's increasingly hallow strategies and forces. I strongly recommend it to anyone concerned about American national security.

I ask that Mr. Kraemer's article be included in the RECORD following my remarks.

The article follows:

[From the Strategic Review, Sept. 12, 1994]

AMERICA'S TEN DEADLY STRATEGIC GAMBLES: ARMS CONTROL OR UNILATERAL DISARMAMENT?

(By Sven F. Kraemer)

IN BRIEF

The United States is on the verge of taking a number of potentially dangerous strategic disarmament gambles. The Clinton Administration justifies these gambles on the basis of the Cold War's end, but the potential for real damage to U.S. security remains. These gambles include denying strategic threats from proliferation, Russia and China; dismantling the strategic "triad" and strategic defense programs, and resting U.S. security on fragile arms control agreements with unreliable partners. Each gamble has grave consequences for U.S. security. Cumulatively their impact could be catastrophic.

Much-debated recent American foreign policy ventures in Bosnia, Haiti and Somalia, reveal America as a confused, weak, and vulnerable superpower. Far less well known, and virtually undebated by the Congress, the media and the American people, are America's potentially far more dangerous strategic disarmament gambles, ten of them explored below. These high-risk gambles are put into bold relief by North Korea's emerging nuclear threat, the September 1994 U.S.-Russia summit, the Clinton Administration's Fall 1994 nuclear posture review and its 1994 and 1995 defense budget and arms control proposals.

In a world of gathering storms, these deadly gambles deny global strategic threats, dismantle America's strategic triad, our nuclear deterrent and our strategic defense programs, and rest our security on fragile arms control agreements with unreliable partners. Each gamble has grave consequences for America's security. Their cumulative impact confounds the Constitutional imperative to "provide for the common defense" and leaves America hostage to hollow strategies, hollow partnerships and hollow forces. They place America at the bull's eye of disaster.

IGNORING STRATEGIC THREATS

The First Gamble: Denying Strategic Threats from Proliferation

America's first strategic gamble is to deny the accelerating strategic impact of global proliferation in the post-Cold War period. The Clinton Administration's Department of Defense "Bottom Up Review" of 1993 and the Administration's 1994 and 1995 defense budget proposals acknowledge proliferation problems centered on "regional" or "theater" threats, but none are considered strategic in affecting our homeland and our vital interests, or as requiring urgent responses.[1] It is not as if America had not been warned.

Strategic Proliferation Dangers Are Greater Than Ever

Already early in the Clinton presidency, R. James Woolsey, the Director of the Central Intelligence Agency (CIA), testified that: "More than 25 countries, many of them hostile to the United States and our allies, may have or may be developing nuclear, biological and chemical weapons—the so-called weapons of mass destruction—and the means to deliver them."[2]

At the same time, the CIA's senior strategic force analyst, Lawrence Gershwin, warned that the danger may be greater, and deterence less effective, than at the height of the Cold War around the time of the Cuban missile crisis. According to Gershwin: "the potential capabilities of some of these countries are comparable to, and in some cases, *more lethal than the Soviet threat in 1960.* With leaders like Quaddhafi and Saddam Husayn, and in many cases weak, unstable, or illegitimate governments, *our classic notions of deterrence hold much less promise* of assuring U.S. and Western security." (Emphasis added.)[3]

As reported by Secretary of Defense Dick Cheney in 1992: "The threat is not limited just to weapons of mass destruction. The global diffusion of military and dual-use technologies will enable a growing number of countries to field highly capable weapon systems, such as ballistic missiles, stealthy cruise missiles, integrated air defenses, submarines, modern command and control systems, and even space-based assets. Unfortunately there are both governments and individuals willing to supply proliferating countries with both systems and technical expertise. As a result, *our regional adversaries may be armed with capabilities that in the past were limited only to superpowers.*" (Emphasis added.)[4]

Middle-East and Korean Lessons Unlearned

The threat exists now, not in some distant future. North Korea reportedly has four or five nuclear weapons and numerous missiles and in the Middle East alone, seven wars have been fought with missiles, including the Iran-Iraq inter-city missile shootouts of the 1980s, the 1991 Gulf War and the Yemen war in 1994. During the Gulf War, a single Iraqi SCUD missile killed 28 Americans and injured 97; other SCUD attacks might easily have caused far higher casualties in Saudi Arabia, Kuwait or Israel. A chemical or nuclear warhead might have killed hundreds or even thousands and changed the war's outcome with truly devastating results and strategic impact on America's vital interests, including its economy, its key allies and its global credibility.

Lack of Anti-Missile Defenses and Technology Controls

The Administration's "Counterproliferation Initiative" cannot be serious so long as the strategic implications of such threats continue to be denied through two current policies. First, advanced U.S. anti-missile programs, including "upper tier" Navy programs, air-borne systems, and all strategic systems, including those based in space, are being gutted or eliminated rather than accelerated (see Gamble #10 below). Second, no effective technology transfer control regime is in place since the Administration agreed in March 1994 to the elimination of the West's Committee on Multilateral Export Controls (COCOM) without a replacement regime. The U.S. is not able to enforce three voluntary arrangements: the Missile Technology Control Regime (e.g., against China), the Nuclear Suppliers Group "guidelines," and the Australia Group's information exchanges on chemical and biological weapons proliferation. The Administration's proposed Export Control Act permits the transfer of advanced technologies over Defense Department opposition and without effective controls over re-export to third countries.[5] The ultimate military and commercial costs to America are likely to be enormous, not only in future defense dollars but also in American lives.

The second gamble: Denying strategic threats from Russia

America's second strategic gamble is to deny the reality of current strategic threats from Post-Soviet Russia.[6] Here too, warnings and realities are being ignored.

Even when moonstruck about its hopes for Russia and a benign "new world order," the Bush Administration was able to distinguish the strategic threat *inherent* in Russia's political instabilities and its vast nuclear arsenals. In his 1992 report to the U.S. Congress, Secretary of Defense Dick Cheney pointedly warned that: "Today we face no adversary capable of posing a global challenge, *except with respect to strategic nuclear forces,...massive soviet nuclear arsenals, including some 30,000 tactical weapons are of serious concern.*" (Emphasis added.)[7]

Two years later, Russia is far from democratic or predictable and its inherent strategic threat remains very much alive. Russia remains a nuclear superpower with over 9,000 strategic nuclear weapons, most designed for use against us, while Russia's thousands of "tactical" and "theater" nuclear weapons are under uncertain control.[8] Dangerous? Vladimir Zhirinovsky warned during his 1991 presidential campaign: "What price Paris? How about London? Washington? Los Angeles? How much are you willing to pay so I don't wipe them from the face of the earth with SS-18s. You doubt me? Want to take a chance? Let's get started."[9]

Russia's reform at risk and its emerging militance

Nothwithstanding the efforts of Boris Yeltsin and other reform-minded Russians, Russia's problems have mounted and leading reformers have long been pushed aside as hardliners and criminal elements have gained far-reaching influence on Russian government agencies. The issue is not simply one of a Zhirinovsky, or of generals Rutskoi, Lebed or Gromov, to name three other hardliners who bear careful watching.[10] The Russian problem is far greater and more profound. Even on Bill Clinton's watch, Yeltsin may fall and America may face exceptionally dangerous chaos, coups and civil wars in Russia. We are more likely than not to see the emergence of an aggressive national socialist regime and the return of an evil empire.

Because Russia has a shaky economy and an $80 billion foreign debt, Russian officials

Footnotes at end of article.

seeking American aid invariably complain of severe hardships and shortfalls and point especially to Russia's military sector. At the same time, Russia clearly lacks effective democratic controls, economic reform strategies, or defense conversion programs likely to succeed against mounting obstacles. Yet Russia's generals are pressing ahead on costly programs to modernize their military forces. Yeltsin has clearly had to pay a high price for his bloody October 1993 showdown against the parliamentary hardliners, a price which includes the assertion by his generals of an aggressive new military doctrine and a defense commitment designed to assure Russia's nuclear superpower status, its primary military role throughout all of the lands of the former Soviet Union, and its special status throughout the former empire's sphere of influence.[11]

Russia's Strategic Programs

Russia is dismantling few if any warheads under the Strategic Arms Reduction treaties (START I and II), is violating biological and chemical weapons conventions and is conducting a robust strategic modernization program unmatched by the United States and extending far beyond any conceivable defensive needs.[12] While draconian U.S. defense cuts have ruled out any comparable new American strategic systems, U.S. intelligence officials reported Russia's strategic effort in 1993 to include numerous programs, which apparently still continue in 1994, as follows: "We expect that Russia will flight test and deploy three new ballistic missiles—a road-mobile ICBM, a silo-based ICBM, and an SLBM—during this decade. . . [and] a new ballistic missile submarine after the turn of the century."[13] Russia also continues work on improving its strategic anti-ballistic missile systems, an area wherein U.S. efforts are greatly curtailed.

The Russian generals' troublesome strategic activities include vetoing advanced U.S. strategic missile defense and having their Strategic Rocket Forces conduct large-scale strategic exercises against the United States.[14] Reportedly also continuing are Russia's programs to improve at least parts of its extensive system of several hundred deep underground blast shelters, hardened to let commanders and key industries survive a nuclear war. The United States has only one such hardened facility (the Defense and Space Command at Cheyenne Mountain, Colorado). Ironically, America's "continuity of government" facility, which was not superhardened, was closed down by President Clinton in 1994.[15]

Clinton Administration officials have said little about the Russian exercise or tunnelling programs, but following a major exercise in 1993, some reportedly drew sober strategic conclusions about the Russian military's strategic intentions: "These officials said the Russian nuclear exercise, along with signs of the continued construction and improvement of underground nuclear blast shelters around Moscow, are signs the Russian military are still making preparations to fight a nuclear war with the United States. 'You can't dismiss that threat,' one official said."[16]

Russian Nuclear Scenarios.

Given Russia's unpredictable path, no nuclear weapon in Russia can be assumed to be under assured democratic civilian control; all must be considered as potentially threatening to us and our allies. Russian General Staff investigators reported that during the August 1991 coup attempt against Gorbachev, generals working with Defense Minister Yazov (a trusted U.S. "reform" favorite) removed the strategic weapons chain of command from civilian control and that weapons could have been launched without presidential approval.[17] In addition, Russia's 18,000 or more *tactical* nuclear weapons, with an average destructive power equal to that of the Hiroshima bomb, are described by Boris Yeltsin and by U.S. officials, including the directors of the CIA (R. James Woolsey) and the FBI (Louis Freeh) as increasingly vulnerable to capture and proliferation by Russia's powerful criminal mafias.[18]

Woolsey's June 27, 1994 testimony to the House Foreign Affairs Committee is instructive as to the clear and present danger: "With organized crime, there is no possibility for diplomacy, demarches, hotlines or summits. . . . Complicating the problem . . . is the involvement of former KGB and military officers in organized crime. With their KGB and military background, special training, and contacts with former colleagues, these individuals offer valuable skills and access. . . . When the security of weapons of mass destruction—nuclear, chemical, biological, advanced conventional, as well as nuclear materials such as highly enriched uranium and plutonium—is factored into the equation, the stakes can become dangerously high for Russia itself and for the United States. . . . Organized crime groups certainly have the resources to bribe or threaten nuclear weapons handlers or employees at facilities with weapons handlers or employees at facilities with weapons grade nuclear materials."[19] In August, July and May 1994, German authorities seized plutonium and enriched uranium being smuggled into Germany, possibly headed for the Middle East, from sources they reported to be in Russia, possibly involving "disgruntled members of the security services."[20]

Russia's Intelligence Activities and Further Strategic Reach

Russia is active in a broad range of troublesome activities with strategic implications, including intensive intelligence activities reported by the FBI and CIA chiefs as directed against the United States and focused particularly on the acquisition of advanced military and commercial technologies.[21] The Ames espionage case is no exception and may prove the tip of an iceberg. In June 1994, Boris Yeltsin pointedly noted that: "The absence of the idea of a 'main opponent' does not mean a curtailing of our intelligence-gathering activities in the traditional areas, mainly with regard to the United States and the NATO member states."[22] In addition, Russia's strategic reach during the past year has also included opposition to U.S. policy initiatives for Bosnia (air strikes against Serbs, lifting the embargo against Bosnians), North Korea and Libya (tough sanctions) and NATO (East European membership); sales of submarines to Iran and North Korea; and peacekeeping units in Bosnia (extending Russian military presence toward the Adriatic).

In actions praised as "stabilizing" by President Clinton,[23] but conducted in violation of the Conventional Forces in Europe Treaty, elite Russian military units and mercenaries are engaged in civil wars in Georgia, Moldova, Tajikistan, etc., implementing a "peace enforcement" role reminiscent of the infamous Brezhnev Doctrine of 1968, and intended to "reintegrate," by force if necessary, the post-Soviet independent republics into the Moscow-dominated Commonwealth of Independent States. Even the relatively "liberal" senior Russian official, Foreign Minister Andrei Kozyrev, publicly declared on December 7, 1993: "Anyhow, everything will get back to its old place."[24]

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The Third Gamble: Denying Strategic Threats From China

America's third strategic gamble is to deny the reality of a strategic threat from China, whose strategic modernization efforts, reportedly aided by hundreds of Russian specialists, are clearly designed to guarantee China's role as a nuclear superpower in the next century.

Even now, China's CSS-4 intercontinental ballistic missiles (ICBMs) can reach the United States and China's strategic activities continue apace. They include development of a new mobile ICBM, extensive espionage directed against us and three recent nuclear weapons tests, including a one-megaton test in 1992 and tests in October 1993 and June 1994, while the U.S. and Russia stopped testing and even as China pays lip service to joining the Non-Proliferation Treaty (NPT) and a new Comprehensive Test Ban Treaty.[25] China also has one of the world's worst records on proliferation, exporting sensitive military items notably to Iran, North Korea, and Pakistan and consistently opposing tough sanctions against North Korean's NPT violations.

[25]

Rewarding Militance

China's assertive strategic posture raises potential dangers to America and her allies substantially greater than her much discussed trade and human rights abuses. Yet these dangers have been ignored as China was rewarded on May 25, 1994 not only with Most Favored Nation status but also with the transfer of advanced technologies with very high military and proliferation potential, including advanced computers, engines and satellites.[26] On June 10, 1994 China rewarded the latest U.S. concessions by exploding an H-bomb in an underground test; the White House managed to say that "The United States deeply regrets this action," and called on China to stop its nuclear testing program.[27]

ARMS CONTROL OR UNILATERAL NUCLEAR DISARMAMENT?

The Fourth Gamble: Unilaterally Implementing START I and II

America's fourth strategic gamble is the Clinton Administration's unilateral implementation of the flawed Strategic Arms Reduction Treaties.

Three years after the July 1991 signing of the first Strategic Arms Reduction Treaty (START I) by Presidents Bush and Gorbachev, the treaty was still not in force pending resolution of Russian-Ukrainian disputes and its reductions were being only very slowly implemented by Russia. Yet the Clinton Administration declared in January 1994 that the United States had by then already *unilaterally* implemented 90 percent of the U.S. reductions proposed for the treaty's seven-year period, the remainder to be completed in 1994.[28]

START I: Fundamental Flaws and Poison Pills

The START I treaty is fundamentally flawed by outdated Cold War concessions made by the Bush Administration to the hardline Soviet generals who determined Gorbachev's arms control positions, concessions manifest in provisions whose risks are significantly magnified by Russia's current

strategic programs and political uncertainties.[29] Thus, for example, START I does not require the dismantlement of a single one of the Russian warheads to be reduced, retired or "off-loaded" under the treaty. Thus, key treaty provisions on mobile missile limits, "retired" systems, bomber loadings and sea-launched cruise missiles, cannot be verified effectively (i.e., with high confidence) and, in a reversal of a major Reagan START position, hundreds of Russia's intercontinental range Backfire bombers are not counted as strategic. In another reversal of a key Reagan START position, his proposed ban on mobile missiles, START permits over a thousand warheads to be deployed under the treaty on such hard-to-find, strategically destabilizing missiles, of which Russia has many hundreds and the United States has none.[30]

START I's gambles are doubly dangerous because the treaty involves a poison pill declaration of June 13, 1991, through which Moscow officially makes its START I compliance explicitly dependent on U.S. compliance with the Anti-Ballistic Missile (ABM) Treaty of 1972. Yet, this Cold War treaty bars the advanced defenses against strategic missiles that could uniquely safeguard the American people and the world against Russian cheating or global proliferation.

START II's fatal flaws

START II, signed in January 1993, is being implemented unilaterally by the United States by way of the Clinton Administration's budget proposals and planned strategic cuts. Yet START II, on which the U.S. Senate has permitted no critics to testify, has been ratified neither by Russia's parliament nor by the U.S. Congress and START II has not corrected START I's basic flaws. START II's own flaws, including "downloading" and "conversion" provisions which cannot be effectively verified and which are reversible, are compounded by Russia's political unpredictability. Furthermore, START II cannot legally come into force until START I has done so.

But even if START II were ratified by the U.S. Congress, were legally in force and were fully implemented by Russia, Russia would still retain 3,000 to 3,500 strategic nuclear weapons by the year 2002, or by the year 2000 if the U.S. provides substantial moneys and assistance to Russia. Most of these Russian weapons would be mobile and reloadable to high-level multiple-warhead configurations. This inherently threatening strategic reality would remain as described by former Chairman of the Joint Chiefs of Staff, General Colin Powell, speaking to senior Russian generals in Moscow when START I was signed in 1991: "Even with the START treaty you will have the capability to destroy us in 30 minutes."[31] Against this threat, the Clinton Administration's strategic disarmament gambles leave the American people with questionable deterrent power and without the safeguard of protection against strategic missile attack.

The Fifth Gamble: Forcing Unilateral Nuclear Disarmament on Ukraine

America's fifth strategic gamble is that in implementing the START treaties, the Administration has added to Russia's strategic pressure on Ukraine and Eastern Europe.

With Ukraine, as Zbigniew Brzezinski has noted, Russia can be an empire, without Ukraine it cannot. Russian officials understand this, refuse to acknowledge full Ukrainian sovereignty if Ukraine retains nuclear weapons, and uniformly demand the "reintegration" of Crimea and all of the rest of Ukraine, a 52-million-strong nation the size of France, into Moscow's "Commonwealth." Toward that end, Russia demands that all nuclear weapons in Ukraine be rapidly surrendered to Russia, and Russia has rattled its nuclear saber at Ukraine and demonstrated its ability to cut off Ukraine's vital energy supplies.

The Strategic Costs of Ukraine's Surrender

Having given up 2,000 tactical nuclear weapons to Russia in 1992 in a futile effort to trade weapons for assured peace and security, Ukraine's president and parliament have sought two critical security steps in signing on to START I in Lisbon in May 1992 and in ratifying START and preparing to accede to the Nuclear Non-Proliferation Treaty: 1) "step by step" Ukrainian nuclear reductions, with international fiscal support and with internationally supervised dismantlements of the more than 1,600 strategic weapons in Ukraine demanded by a Russia which already had a five-to-one nuclear strategic superiority over Ukraine; and 2) international security guarantees of Ukraine's independence, e.g., through Ukraine's membership in NATO.[32] Russia strongly opposed both of these conditions and in the January 1994 Trilateral Agreement between Russia, Ukraine and the United States, President Clinton joined Russia's generals in imposing rapid unilateral nuclear disarmament on Ukraine.[33]

A U.S. offer of $300 million came with nonbinding "security" arrangements offered through the "Partnership for Peace" and the terminally weak Nuclear Non-Proliferation Treaty. In return, Ukraine is to surrender the only decisive lever it possesses to assure its future sovereignty and the West loses a potent strategic buffer and deterrent against a likely renewal of Russian military pressure on Eastern Europe. As for NATO, Russia itself wants to be a member, but with NATO to be placed under the consensus-determined Conference on Security and Confidence Building in Europe (CSCE) and thus rendered militarily ineffective.

The Sixth Gamble: Counting on Legislation and Nuclear Purchases to Close the START Gap in Russia

The sixth strategic gamble is to rely on recent Congressional legislation and U.S.-Russian nuclear materials agreements to close START's arms reduction gaps and to assure the early dismantlement of Russia's strategic arsenals.

The visionary "Nuclear Threat Reduction" Act initiated in 1991 and sponsored by Senators Sam Nunn and Richard Lugar attempts to close the huge arms reduction gaps left by the START treaties. Under this act, the United States Congress had appropriated $1.2 billion by 1994, with $400 million more to come in FY 1995, to dismantle nuclear (and chemical) weapons in Russia and other successor states. But chemical weapons dismantlements have made only a small dent in Russia's CW stockpiles and the U.S. taxpayers' support for storage and transportation of Russian nuclear weapons and materials has thus far *enhanced* Russia's nuclear capability. Bureaucratic confusion in Washington and Moscow and lack of U.S. insistence on American presence during the nuclear dismantlements we are paying for in Russia mean that few, if any, nuclear weapons have been *or are likely to be verifiably dismantled in Russia* in the near future.[34] Under the principles that "we pay therefore we should inspect," and that Russia lacks the assurance of America's democratic civilian controls, we should insist on the physical U.S. supervision of Russian dismantlements, without granting reciprocal inspections in the United States.

U.S.-Russian Nuclear Materials Deals

January 1994 agreements with Russia for the U.S. purchase of $12 billion in fissile (nuclear) materials reflect a further effort to get beyond the flawed START treaties.[35] But while the new agreement potentially provides billions of U.S. taxpayer dollars to Russian officials, many of whom are likely to be inefficient or corrupt, it does *not* provide for continuous American presence at nuclear plants or dismantlement facilities and thus cannot come close to assuring that we will have accurate data on inventories, activities, violations, etc. Furthermore, even if fully implemented, the agreement would have only a marginal impact on Russia's vast nuclear weapons stockpiles over the next decade. As described below, the agreement also marks a dangerous first step toward the international control and elimination of *American* nuclear weapons production.

The Seventh Gamble: Denuclearizing America's Deterrent Forces

The seventh strategic gamble leaves the United States incapable of producing or testing any nuclear weapons, relying instead on fatally weak international arrangements and the goodwill of other nations. Like the muddle-headed anti-defense "nuclear freeze" proposals of an earlier day, an intended result is to *eliminate* America's nuclear deterrent in the foreseeable future. The unintended result will be to increase global proliferation incentives.

U.S. Nucler Weapons and Nuclear Materials Production Halts

The United States stopped producing nuclear weapons materials in 1991, has no active production capacity and no longer makes the critical element tritium, without which many of our weapons will be unuseable in some ten to twenty years. As the base dissipates for our nuclear weapons materials, experts, labs and industry, and in violation of informed American opinion,[36] America will lack a credible deterrent or a timely strategic nuclear reconstitution capability at the very time we can expect new nuclear buildups and proliferation threats across the globe.

Banning Fissile Materials

The January 1994 U.S.-Russian fissile materials agreement reflects the Clinton Administration's high-risk intention soon to place U.S. nuclear weapons facilities, and thus U.S. security, under multilateral international control going well beyond current limited voluntary U.S. participation in a number of non-military International Atomic Energy Agency (IAEA) safeguards. The new agreement provides U.S. visits to Tomsk in Russia and, reportedly to the Pentagon's surprise, Russian visits to the Pantex nuclear weapons plant in Texas; it is seen as ". . .'the beginning of an international control regime over plutonium,' the basic building block of nuclear weapons, an Administration official said."[37] The Administration formally supports negotiation, at the Geneva Conference on Disarmament, of a multilateral fissile material production ban which would "halt the production of plutonium and highly enriched uranium for nuclear weapons in the five declared nuclear-weapons states."[38]

U.S. Denuclearization Increases Proliferation Dangers

The Clinton Administration argues that U.S. denuclearization and new anti-testing

regimes foster international arms control "norms" which reduce proliferation incentives.[39] Yet the opposite result is far more likely since U.S. nuclear disarmament could prove a very strong incentive for aggressive rogue state leaders (e.g., in North Korea, Iraq, Iran, Libya) or for criminal groups in Russia confident that even a limited arsenal of nuclear weapons and longer-range missiles would gain them enormous leverage in deterring and paralyzing us and our allies.

For friendly nations (e.g., Japan, Germany, South Korea and Taiwan) which have forgone nuclear weapons because they could depend on an effective American nuclear umbrella, U.S. denuclearization will inevitably produce increasing worry about the U.S. umbrella's sufficiency and credibility. In such circumstances, our friends, (and not just Israel) are likely to believe it increasingly critical that they have their own nuclear weapons to deter proliferating nuclear threats.

The Nuclear Non-Proliferation Treaty

Iraq, North Korea and other states, and those who assist them, have demonstrated that the "norms" supposedly established by non-proliferation and anti-nuclear-testing treaties are easy to violate or circumvent and can neither deter nor protect against, those determined not to abide by them. Yet, "the President attaches the highest importance to indefinite and unconditional extension" of the fatally weak Nuclear Non-Proliferation Treaty (NPT) of 1968 at an April 1995 review conference.[40] Here America's strategic gamble is compounded by not insisting on first strengthening the twenty-five year-old NPT and the NPT-related International Atomic Energy Inspection Agency (IAEA) with inspections and sanctions teeth to include *compulsory* inspection and enforcement power against non-compliant states. The abuse of NPT membership by such states, and their continuing deception and denial activities, plus the reality that scores of *non-signatory* nations and *non-state* terrorist or criminal organizations would remain beyond the pale of the treaty, expose the NPT treaty as one of the single least effective arms control arrangements in history.

The Comprehensive Test Ban Treaty

Even weaker, less enforceable and more fateful than the Nuclear Non-Proliferation Treaty is the illusory Comprehensive Test Ban Treaty (CTBT) which the Clinton Administration wants the United States to join no later than 1996. The CTBT would permanently extend the high-risk U.S. policy "temporarily" halting even the small underground tests permitted by the 1974 Threshold Test Ban Treaty (TTBT). Even in the post-Cold War period, senior U.S. defense officials, reportedly including President Clinton's Deputy Secretary of Defense, John Deutch, have considered such tests indispensable to maintaining the safety and effectiveness of the nuclear weapons on which the U.S. and those relying on its nuclear umbrella will continue to depend for deterrence in the foreseeable future.[41] Yet the ineffective CTB would come into force and would bind the United States to stop testing, and thus rapidly to denuclearize, even if adopted by only a third of the world's nations. This would reverse the understanding of past American presidents and other senior officials that the CTB's lack of effective verification and enforcement mechanisms against violators would bring enormous instabilities, further increased by America's expected unilateral CTB compliance in a dangerous nuclear world.[42]

The Eighth Gamble: "Banning" Chemical and Biological Weapons

The eighth strategic gamble is the failure to strengthen *existing* treaties on chemical weapons (CW) and biological weapons (BW), while supporting ineffective, but very expensive new steps likely to weaken American defenses against such weapons.

The United States has forsworn the use of chemical weapons, no longer produces them, and is dismantling its stocks. Meanwhile, some twenty-five nations are officially estimated to have chemical weapons, and Iraq, Libya, and Russia have notably violated the weak existing CW conventions of 1925 and 1972 forbidding CW use. Russia, which has a poor record on CW and BW compliance and officially admits it cannot implement the treaty's dismantlement schedule, has recently imprisoned some of its own experts for telling the world about *current* Russian CW/BW coverups.[43]

Notwithstanding the fateful strategic implications of such cheating, which has continued since the Bush Administration over-optimistically signed a weak new treaty, the Clinton Administration is pressing the U.S. Senate to ratify the exceptionally expensive and fatally flawed convention for a supposedly "comprehensive" global ban on possession of such weapons and their precursors.

Neither Comprehensive Nor Effective

As detailed by defense experts, the proposed CW treaty will be neither comprehensive nor effective; in today's world, its illusions and its price would, indeed, be dangerous to our security.[44] It excludes major chemical warfare agents used in World War I (chlorine and hydrogen cyanide), lacks mandatory sanctions, does not require inspection of *suspect* sites, and would bind the United States even if adopted by only 65 of the world's nations, thus leaving numerous rogue regimes outside it nominal scope. Although the treaty cannot be effectively enforced abroad, it would surely be fully, even if unilaterally, implemented by the U.S. and would call into question the possession of even a small U.S. CW stockpile required for defensive anti-CW testing. Treaty implementation would require extraordinarily intrustive and expensive regulations and inspections of the U.S. chemical industry and would require massive U.S. technical and financial support of Russia's multi-billion-dollar CW dismantlement costs.

The United States long ago forswore development of biological weapons, but has had no demonstrated success in enforcing the existing 1925 and 1972 BW conventions against violators such as Russia (as admitted by Boris Yeltsin), Iraq, Iran and Libya. Now, the Geneva-based Conference on Disarmament is to consider twenty-one "confidence building measures" to strengthen the BW conventions. But although none of the proposed measures could make a "ban" effectively verifiable or enforcable, the Clinton Administration is placing much confidence in this fatally illusory effort "to strengthen the international norm against a scourge that could well become the next weapon of mass destruction of choice."[45]

DISMANTLING THE STRATEGIC TRIAD, DENYING STRATEGIC DEFENSES

The Ninth Gamble: Dismantling America's Strategic Triad

The ninth strategic gamble is to cut deeply into the marrow of America's strategic triad of air-, land-, and sea-forces which have maintained strategic peace for four decades and which remain an indispensable deterrent in a nuclear world, particularly one which includes another, quite turbulent, nuclear superpower.[46]

The entire U.S. strategic nuclear bomber force is off alert and will be reduced to at most 20 nuclear-armed B-2 "stealth" bombers, of which only two were operational in mid-1994. The United States is planning no new bombers and the bulk of the nuclear weapons to be carried by U.S. bombers will be old-style gravity bombs rather than precision guided missiles. Fewer than 50 B-52H bombers and 72 B-1B bombers will remain operational, but all will be converted from nuclear-armed strategic roles to conventionally-armed *non-strategic* aircraft. "Reconstitution reserve" bombers will lack ground crews, training programs and spare parts.[47]

The U.S. land-based intercontinental ballistic missile (ICBM) force is losing its ability to deter potential Russian nuclear blackmail by holding most of Russia's missile force at risk. It could also have a future problem deterring a strategically robust China. All 50 U.S. MX ICBMs, each with 10 advanced warheads capable of defeating Russia's hardest silos, are being eliminated, as are all 350 U.S. Minuteman II ICBMs. Only 500 Minuteman IIIs will remain deployed, each "downloaded" from three warheads to a single warhead and vulnerable to a first-strike threat, since none will be mobile and none will be protected by strategic defenses. China, in contrast, is developing mobile ICBMs and Russia will retain many of its mobile ICBMs, has SA-10 and mobile SA-12 strategic anti-missile systems developed around Moscow, and has the production base for deploying more mobile missiles and a national strategic defense system.

U.S. Strategic Ballistic Missile Submarines (SSBNs) dropped from 33 in 1990 to 16 in 1994 and may drop further to only 10 or 11. Through elimination, retirement and "downloading," the total warheads carried on these submarines' missiles will be reduced by about half, not all of which will be the modern Trident D-5 system which can hold even the hardest silos at risk. The United States is planning no new ballistic missile submarines or new submarine-launched ballistic missiles while Russia is reported to be developing a new submarine-launched ballistic missile, had 66 ballistic missile submarines deployed in 1992 and was expected to retain 24 Delta IV an 6 Typhoon submarines under START I. U.S. attack submarine numbers are being cut in half to the low 40s, with only one or two new Seawolf submarines assured, while Russia will maintain a far larger, modernized fleet. Even with START II, according to Rear Admiral Thomas Ryan, director of the U.S. Navy's submarine requirements office: "in ten years we are likely to face a Russian submarine force that is comparable in quality to our own and may exceed ours in numbers by about 40 percent."[48]

C^{3}I, Launch Capacity, Computer Security

Major U.S. command, control, communications and intelligence (C3I) and satellite and satellite launch rocket programs that support our triad are being cut or eliminated, including advanced technology systems based in space.[49] The United States no longer even maintains "Looking Glass," its flying strategic command post, constantly airborne. In strategic intelligence, according to CIA Director Woolsey: "The Intelligence Community has reduced its resources devoted to Russian military development across the board. But, in reality, there are now no fewer questions being put to us by the Executive Branch and Congress. . . ."[50]

A serious new danger to U.S. security, according to the Senate Arms Services Committee, is that through the Internet "information highway": "Over the last six months, unknown intruders have repeatedly gained entry into computers and computer networks at numerous, sensitive military installations. The intruders took control of computers that directly support deployed forces and research and development, installed capabilities to ensure they could reenter the computers at will, read and stole data files (including software under development for future weapons systems) and, in some cases, destroyed data files."[51]

Detargeting, Retargeting

While visiting Moscow on January 14, 1994, President Clinton agreed to order the "detargeting" of all U.S. strategic missiles away from Russia—with the targeting information removed from the Trident I and Trident II sea-based missiles and the MX ICBM, and with the Minuteman III ICBM set to ocean-area targets. Intended to be only "symbolic," "confidence-building" measure this is, in fact, a *high-risk, step* which sharply reduces U.S. strategic confidence and deterrent capability, since the United States has no effective verification or enforcement mechanisms to ensure corresponding retargeting by Russia's generals.[52] America's democratic political system makes it very difficult to contemplate resumption of U.S. targeting of Russia's missile bases, even in a crisis. Russia's military commanders, in contrast, lack comparable democratic civilian oversight or debate. They can either continue to target us at will or can retarget temporarily "detargeted" missiles against us again in a matter of minutes.

Keeping Bombers Off Alert and Removing Tactical Nuclear Weapons

In a 1991 decision that should reexamined, the Bush Administration took all U.S. strategic bombers off alert and removed all land- and sea-based tactical nuclear weapons from operational forces, a substantial loss of U.S. contingency options. Corresponding Russian actions, if any, cannot be verified with confidence and, even if fully implemented, would be politically very much easier for Russia's generals to reverse than would be the case in the United States.

The Tenth Strategic Gamble: Clinton's "MAD" Opposition to Strategic Missile Defenses

The tenth U.S. strategic disarmament gamble is the President's radical opposition to strategic defense systems and to the increased protection and strategic stability they could uniquely provide to the American people and their friends and allies around the globe.

This deadly gamble rests on the Clinton Administration's faith in the long-broken[53] and long-obsolete Anti-Ballistic Missile (ABM) Treaty of 1972 and its associated Cold War doctrine of Mutual Assured Destruction (MAD). During the Cold War, MAD supporters such as Robert McNamara and the self-styled arms control lobby argued that the threat of mutual nuclear annihilation was the most effective deterrent to nuclear war. This awful Cold War theory assumed the dubious ethics of nuclear suicide and gambled on the existence of rational authorities in Moscow and an unbreakably tight control over the nuclear chain of command. The Strangelovian MAD theory was bad for defense during the Cold War and today remains the Cold War's single most dangerous strategic relic. MAD cannot account for Russia's breach of the ABM treaty in 1983, the lack of assured control of Russia's nuclear weapons, the breakdown of deterrence in recent Middle East wars, or the accelerating global risks of proliferation.

Gutting Strategic Defenses

Bound by the missile-Maginot line ABM Treaty and its MAD theory, and joining the Russian generals in walking back Boris Yeltsin's 1992 endorsement of a global defense system,[54] the Clinton Administration has cut by more than half the anti-missile program requests of the Bush Administration for the next five years. Bush proposed $39 billion to field a global defense system against limited attack beginning in the mid-1990s, as required by the Missile Defense Act of 1991 passed by the U.S. Congress in the wake of the Gulf War. The Clinton Administration has cut this to $18 billion or less to pay for a very restricted (reduced THAAD) system barely able to counter even limited tactical or theater threats and rendered deliberately incapable of defending the American people and key allies against strategic missile attack, whether purposeful, unauthorized or accidental.[55] In little-noticed negotiations leading up to the September 1994 U.S.-Russia summit, the Administration granted Russian generals at the Standing Consultative Commission in Geneva veto over advanced "theater" defenses based on the ground and on any advanced defenses, theater or strategic, based on the sea, in the air or in space.[56]

The ABM Treaty provides that a signatory can withdraw from it with six months notice on grounds of jeopardized supreme interests.[57] Given mounting nuclear dangers and the long lead times required to deploy strategic missile defenses, such a step would end MAD and would surely be the logical post-Cold War strategic update of the Missile Defense Act of 1991 calling for early defenses and a secure response to volatile missile threats in Russia and other global hot spots.

BOTTOM UP, BELLY UP, OR BOTTOM LINE AMERICAN DEFENSES?

The Clinton Administartion's strategic gambles reflected in its 1993 "Bottom Up Defense Review," its FY 1994 and FY 1995 defense budgets, its nuclear posture reviews and its missile defense and arms control proposals, turn out to be more like a "Belly Up Review." They are deadly in their unrealistic perspective of the post-Cold War world and in their "emperor's-new-clothes" illusions about what amounts to a "lowest common defense denominator" policy which underlies their "cooperative defense" and disarmament approach even toward the world's non-democratic and rogue regimes. If, as is more likely than not, these strategic assumptions are proved wrong, and the strategic gambles are lost, America will lack the necessary defense safeguards.

America and the American people are worth protecting. They urgently require in-depth, blinders-off reviews of global realities, of U.S. options, and of the means of reversing our nation's deadly strategic gambles. Independent red-team reassessments and critical Congressional hearings would help, supported by a Congress awakening to new global dangers and by the concerns of an increasingly security conscious public. In the tenth straight year of declining U.S. defense investment and at a time of a MAD strategy and of precipitous further cuts which are reducing U.S. defense investment below pre-Pearl Harbor levels, it is time to recall that weakness invariably provokes aggression and that the task of providing for our people's common defense must quickly get the priority attention and resources it deserves.[58] Given the very real threats we face and the catastrophic risks of national defense failures, anything less will catapult America into the deadliest of the globe's gathering storms.

FOOTNOTES

[1] The Clinton Administration's *Bottom Up Review: Forces for a New Era*, published on September 1, 1993 by Secretary of Defense Les Aspin's Pentagon, begins as follows: "The Cold War is gone. The Soviet Union is no longer. The threat that drove our defense decision-making . . . is gone." Its maps of potential crisis or threat areas around the globe *exclude* the entire area of the former Soviet Union. The Administration's first *Secretary of Defense Annual Report to the Congress*, published in January 1994, follows this pattern.

[2] R. James Woolsey, Testimony to Governmental Affairs Committee, United States Senate, February 24, 1993. More recent assessments by Woolsey and other senior officials contain essentially the same numbers.

[3] Lawrence Gershwin, Senior Analyst for Strategic Forces, Central Intelligence Agency, Center for Security Policy, Washington, DC, symposium on strategic defense, March 23, 1993. Prepared statement.

[4] Secretary of Defense Dick Cheney, *Annual Report to the President and the Congress*, Department of Defense, February 1992, p. 5.

[5] William Clements, Director, Nonproliferation and Export Controls, National Security Council and Barry E. Carter, Acting Under Secretary for the Bureau of Export Administration, U.S. Department of Commerce; statements at American Bar Association conference on "Nonproliferation of Weapons of Mass Destruction," Washington, DC, June 10, 1994. Among numerous criticisms of the Administration's laxity, is one entitled "Don't Sell our Spy Technology," which states that "the Administration went too far in liberalizing sales of satellite imaging technology itself, as well as sophisticated machine tools and large-rocket technology, which are likely to be put to military use. And it missed a chance to require companies to disclose the sales now exempted from licensing, as well as the identity of ultimate buyers, enabling it to keep track of technology flows. . . . The Administration has not just waived controls on many dual-use exports. It has also established new administrative procedures to expedite licensing decisions. . . . There is need for vigilance. . . ." *New York Times*, March 12, 1994, p. 20. On congressional concerns, see Philip Finnegan and Theresa Hitchins, "Control of Dual-Use Exports Splits Two House Committees," *Defense News*, June 20–26, 1994, p. 10.

[6] See Note 1 above.

[7] Cheney, *DoD Annual Report—1992*, op. cit., p. 2. A year later, Cheney's *DoD Annual Report—1993* set it as U.S. policy to preclude "the reemergence of a global threat," (p. 3), and to have sufficient "reconstitution" capability to "cope with" a "global threat from a single aggressor or some emergent alliance of aggressive regional powers" (p. 6).

[8] Because of continued Russian military secrecy, and inadequate U.S. intelligence, the potentially life-or-death issue of the number of nuclear weapons now in Russia (and the other nuclear successor republics) remains a mystery, but is likely to be greater than the 9,000 strategic and 18,000 tactical/theater weapons numbers generally used by U.S. officials. In 1993, Russia's Minister for Atomic Energy, Victor Mikhailov, revealed that the Soviet Union's mid-1980s nuclear arsenal included 45,000 warheads, i.e., 15,000 *more* than had been estimated by the U.S. Central Intelligence Agency. See Bill Gertz, "Russia's Nuclear Admission Confirms Hawk's Fears," *Washington Times*, October 7, 1993.

[9] "New Foe on Right May Challenge for Presidency," *Washington Times*, December 14, 1993, p. A–1. Zhirinovsky has similarly publicly threatened Germany and Japan with nuclear annihilation.

[10] The charismatic General Alexander Lebed commands Russia's 9,000-man 14th Army in Moldova in support of pro-Russia elements in the "Trans-Dniester Republic," an enclave in Moldova just west of Ukraine. Using the pseudo "Republic" as a military base, the 14th Army has pulled, or pushed Moldova back into union with Russia through Moscow's Commonwealth of Independent States. General Boris Gromov, considered by some a future "Red Napoleon," is currently Russia's Deputy Defense Minister. Alexander Rutskoi, better known in the United States as Boris Yeltsin's former Vice

President, who led the parliamentary revolt and coup attempt against Yeltsin in October 1993, is a former Soviet general. All three are so-called "Afghanistan" generals, war heroes who energetically pursued the Soviet Union's aggressive war from 1979 to 1989.

[11] The doctrine, an apparent payoff to Russia's hardline military and KGB elements, was approved by President Yeltsin and Russia's National Security Council on October 4, 1993, as street battles were raging between forces backing Yeltsin and those backing the hardliners. The doctrine was publicized in November 1993, but few Western officials have commented on it. The author's analysis is based, *inter alia*, on Radio Free Europe/Radio Liberty's invaluable Daily Reports. The doctrine includes the reversal of Brezhnev's pledge not to be the first to use nuclear weapons against a non-nuclear power. In addition to strategic programs, other payoffs to the military reported by RFE/RL include Yeltsin's support of doubled military wages, exemption from income taxes, and major procurement programs to equip modern, highly mobile forces.

[12] On Russia's chemical and biological weapons violations, see discussion in Gamble #8 and in Note 43.

[13] Gershwin, op. cit. Also see Lt. General James Clapper, Jr., Director, Defense Intelligence Agency: "Currently, the strategic forces are relatively well financed and adequately trained to perform their mission, and their modernization efforts are continuing," public testimony to the Senate Committee on Intelligence, January 25, 1994.

[14] On Russia's strategic defense veto, see Gamble #10. On Russian strategic exercises, see William Gertz, "Russian Nuclear Exercises Include Mock Hit on U.S.," *Washington Times*, September 14, 1993, pp. 1, 24.

[15] Russia's network of superhardened deep tunnels and command and control bunkers is designed for nuclear war-fighting and survival and remains strategically significant. In January 1994 President Clinton ordered the October 1, 1994 shut down of the single (non-hardened) U.S. "Continuity of Government" facility established by President Reagan in 1983. See Tim Weiner, "Pentagon Book for Doomsday is to be Closed," *New York Times*, April 18, 1994, pp. A1, 12.

[16] Gertz, op. cit., p. 24.

[17] See Michael Dobbs, "During the Soviet Coup, Who Held Nuclear Control: Gorbachev Lost Command, Probers Say," *Washington Post*, August 23, 1992, pp. A1, 24. According to Dobbs, the Russian General Staff "investigators argue that it also would have been technically possible for nuclear commanders to launch a first strike without the president's permission."(p. 24).

[18] In 1993 Yeltsin labeled Russia "a superpower of crime," and in 1994 described the situation as having gotten worse. (See e.g., Candice Hughes, "Yeltsin: Russia a 'Superpower of Crime',") *Washington Times*, June 7, 1994, p. A12. Freeh has testified to the Senate Government Affairs Committee that these organized crime groups pose "a mounting threat to the safety and well-being of Americans, not only because of the crimes but also because the groups could obtain nuclear weapons materials or a completed nuclear bomb. Such stolen weapons could be sold potentially to terrorists who could use them against us." Cited by R. Jeffrey Smith, "Freeh Warns of a New Russian Threat," *Washington Post*, May 26, 1994.

[19] R. James Woolsey, Director, Central Intelligence Agency, House Foreign Affairs Committee, June 27, 1994, prepared remarks, pp. 3, 4, 9.

[20] Craig R. Whitney, "Germans Seize 3rd Atom Sample, Smuggled by Plane from Russia," *New York Times*, August 14, 1994, pp. 1, 12.

[21] The Bush Administration's FBI Director, William Sessions publicly spoke out on intensified Russian intelligence activities, but Clinton Administration officials, optimistic about Russia and burned by the Ames case, have said little in public. A detailed assessment demonstrating that little has changed since Soviet days, is provided in "The KGB & Its Successors," an article by J. Michael Waller, Senior Fellow, American Foreign Policy Council, in *Perspective*, a publication of the Institute for the Study of Conflict, Ideology and Policy, Boston University, April/May 1994, pp. 5–9.

[22] Friedrich Kuehn, "New Aims Keep East European Spies Busy," *Washington Times*, June 6, 1994, p. A13.

[23] Zbigniew Brzezinski points to the invidious problem as follows: ". . . the joint Clinton-Yeltsin communique at the January [1994] summit did not dispute Russia's interpretation of its 'peacekeeping' mission in the 'near abroad.' Going still further, President Clinton, addressing the Russian people, not only described the Russian military as having been 'instrumental in stabilizing' the political situation in Georgia, but even added that 'you will be more likely to be involved in some of these areas near you, just like the United States has been involved in the last several years in Panama and Grenada near our area'." Brzezinski, "The Premature Partnership," *Foreign Affairs*, March/April 1994, p. 70.

[24] Cited by Brzezinski, ibid., p. 76.

[25] China's nuclear tests have been widely reported. On China's strategic programs, note: "The Chinese have deployed a small force of nuclear-tipped ICBMS, some of which are aimed at the United States, as well as a small force of intermediate-range ballistic missiles, that could be targeted against our allies and our forces in Asia. China plans to update this force with new missiles. We expect that a new mobile ICBM and additional regional nuclear forces will probably be fielded during the 1990's." Lawrence Gershwin, CIA, Center for Security Policy symposium, March 23, 1993, op. cit.

[26] E.g., on the Administration-approved sale of advanced engines: "Within the Department of Defense Technology Security Administration, specialists are worried that the engine is perfectly suited to powering a long-range cruise missile. CIA studies have warned that . . China will gain high-quality military technology, which could be used for a new generation of cruise missiles . . . [which] would put most of the rest of Asia within range of Chinese nuclear attack." Elaine Shannon and Kenneth R. Timmerman, "Confounded by the Chinese Puzzle: A Prospective Arms Sale Leaves Beijing and Much of Washington Mystified About U.S. Policy," *Time*, April 25, 1994, p. 39. Neither President Clinton's statement nor Secretary of State Christopher's report of May 26, 1994 on the renewal of MFN trade status for China, mentions nuclear tests, arms trade, sanctions weaknesses, etc., as issues of concern to the United States.

[27] Patrick E. Tyler, "China Explodes H-Bomb Underground as Test," *New York Times*, June 11, 1994, p. 7. According to Tyler, "the overall improvement of China's strategic weaponry only adds to regional and Wesern concerns about the nature of China's political-military development in the future."

[28] Les Aspin, *Annual DoD Report* 1994, op. cit., p. 45.

[29] For a detailed critique of the START I and START II treaties and the Catch-22 relationship between these treaties and other agreements, see Sven F. Kraemer, "START; Advise, Don't Consent," *The Nataional Interest*, Fall 1992. The realities of the hard-line Soviet military's stance, later manifested in their 1991 coup attempt but neglected by the Bush Administration as it was pressing towards START, are described in Sven F. Kraemer, "Soft-pedaling Soviet Stance Ignores Confrontation Peril," *Signal*, December 1990.

[3] Mobile missiles are ideal for cheating and breakout scenarios and for launching attacks with good chances of escaping counter attack. In violation of the Intermediate Nuclear Forces (INF) Treaty of 1987, the Soviet Union successfully hid 72 shorter-range mobile SS-23 missile launchers (and probably twice that many missiles) in East Germany, Czechoslovakia and Bulgaria—missiles not discovered until after the anti-Communist revolutions. In Iraq, some 5,000 U.S. Air Force anti-SCUD sorties were unable to discover a single one of Iraq's mobile SCUD launchers. In Russia's eleven time zones it is relatively easy to hide extra mobile missiles and to confuse the START categories of which are "retired," "reduced" on "exercises," etc.

[31] Quoted by Eleanor Randolph, "Powell: Soviet Military 'Oversized'," *Washington Post*, July 25, 1991.

[32] See text of Lisbon Protocol to START Treaty and accompanying side letter from Ukrainian President Kravchuck. On ratification issues also Paul Bedard, "Clinton Warns Ukraine on START Pact," *Washington Times*, November 30, 1993, pp. A1, 8.

[33] The Ukrainian surrender to the two nuclear superpowers is notably clear in the opening remarks of Presidents Clinton and Kravchuck at a January 12, 1994 press conference in Kiev and in the text of the Trilateral Statement and Annex issued by the Presidents of the United States, Russia, and Ukraine in Moscow, January 14, 1994. See U.S. Department of State, *Dispatch Supplement*, January 1994, Vol. 5, Supplement 1, pp. 13–19. The Partnership for Peace concept explicitly rejected NATO-type guarantees; the false security of the NPT is discussed in Gamble #9. Ukraine's new President, Leonid Kuchma, who took office in July 1994, is considered pro-Russian.

[24] On non-fulfillment of Nunn-Lugar's promise see, *inter alia*, the most recent "Semi-Annual Report on Weapon Activities to Facilitate Weapons Destruction and Nonproliferation in the Former Soviet Union," dated April 30, 1994 and sent to Vice President Gore and the U.S. Congress on May 14, 1994 by Secretary of Defense William Perry. The report indicated that as of April only $130 million of the funds had even been obligated, that "the FSU states still have the ability to produce weapons of mass destruction and their components," that "conversion" funds were just "seed money," that the Moscow International Science and Technology Center [to seek peaceful nuclear research] was just beginning its work and that the Ukrainian center had not yet been established.

[35] See statement issued by White House, Office of the Press Secretary, Moscow, January 14, 1994. U.S. Department of State, *Dispatches*, op. cit., pp. 25–26.

[36] According to a scientific poll conducted between June 1993 and March 1994 of 1,226 scientists at U.S. nuclear laboratories and of 1,155 members of the Union of Concerned Scientists: "59 percent thought it was not feasible to eliminate nuclear weapons in the next 25 years. But if that occurred, 85 percent thought it would be extremely difficult to keep other countries from rebuilding them. The threat of nuclear terrorism now and in the future also was rated high." See Associated Press report, cited in "Nuclear Fears Rise Among Americans Despite Soviet Fall," *Washington Times*, July 8, 1994.

[37] On the Pentagon's surprise on the Russian inspections, see Thomas W. Lippman and R. Jeffrey Smith, "Arms Wrestling with the Pentagon," *Washington Post*, August 4, 1994, p. 29. On the Administration's building block view, see Thomas W. Lippman, "Accord Set on Nuclear Inspections," *Washington Post*, March 16, 1994, p. 14.

[38] John D. Hollum, Director, U.S. Arms Control and Disarmament Agency, Address to the Geneva-based Conference on Disarmament, January 25, 1994, U.S. Department of State, *Dispatches*, Vol. 5, No. 5., p. 44.

[39] Ibid, pp. 43–44.

[40] U.S. Arms Control and Disarmament Agency, Issues Brief, "Comprehensive Test Ban Treaty," March 13, 1994, p. 4.

[41] "Deutch has pressed for a continuation of small-scale nuclear tests and wants the Energy Department to invest immediately in a new facility to produce tritium, a key nuclear weapons ingredient, on the assumption that the U.S. arsenal will not go much lower than current projected levels." Thomas W. Lippman and R. Jeffrey Smith,"Arms Wrestling . . ." op. cit. In a letter to the Clinton Administration's anti-nuclear Secretary of Energy, Hazel R. O'Leary, it is reported, "Deutch questioned whether the Energy Department was allocating enough money to the weapons program 'to maintain the technological capability that is required for future nuclear weapons missions'." Ibid.

[42] The Reagan and Bush Administrations, for example adhered to the ultimate goal of a CTB only in the context of a world of effective verification and in which America no longer needed to rely on nuclear deterrence, conditions they and most of their senior defense colleagues understood as essentially utopian. The Bush Administration's last major policy position on nuclear testing was announced in July 1992 and described as follows by Secretary of Defense Cheney in his Annual Report to the Congress in January 1993, pp. 15–16. "The policy stated that as long as nuclear weapons and nuclear deterrence continue to be important elements of U.S. and NATO security strategy, the United States would need to conduct an underground nuclear testing program. However, we would restrict the purpose . . . to maintain and improve the safety and reliability of our forces. We do not anticipate under currently foreseen circumstances conducting more than six nuclear tests per year. We also do not anticipate conducting more than three tests per year above 35 kilotons." Cheney also reported the Administration's *opposition* to September 1992 Congressional restrictions proposing a five test per year limit until October 1996 and a ban on tests after that date unless another state tested after that time. Said Cheney: ". . . the United States must conduct a modest number of nuclear weapons tests to ensure the safety and reliability of our forces."

[43] Each of the Reagan and Bush Administration's Congressionally mandated annual reports on Soviet/

Russian noncompliance with arms control agreements identified serious violations of the CW and BW conventions. In 1993 the Russian scientist Vil Mirzayanov was imprisoned for revealing Moscow's continued development of binary weapons. See J. Michael Waller, "Trials of a New Russian Dissident," *Wall Street Journal*, February 4, 1994. In March 1994 Valery Menshikov, a consultant of Russia's Security Council, exposed a major Russian military cover up of hidden stocks and false data. See Marcus Warren, "Russian Admits Deception on Chemical Arms Stocks," *Washington Times*, March 21, 1994, p. 8. Also see Associated Press report, "Russia Lags on Destroying Chemical Weapons, GAO Reports," *Washington Post*, April 11, 1994, p. 20.

[44] In his September 1993 United Nations address President Clinton urged that the treaty enter into force by January 1995, requiring ratification and deposit of treaty instruments with the U.N. Secretary General by July 17, 1994. Critics, all former senior Department of Defense officials, were for the first time permitted to testify on the treaty before the Senate, at a Foreign Relations Committee hearing on June 9, 1994. See the testimony of Kathleen Bailey, Amoretta Hoeber and Frank Gaffney. Detailed treaty critiques are available through the Center for Security Policy (Issues Papers) and The Heritage Foundation (a study by Baker Spring).

[45] John Hollum, Director ACDA, op. cit., p. 45.

[46] The cited numbers in this section of text are derived from official sources including Secretary of Defense briefings on the "Bottom Up Review," the Secretary's Annual Report to the Congress, the Department of Defense Budget Briefings and Congressional hearings on the U.S. defense budget.

[47] The general numbers on bombers are provided in the Clinton Administration's Bottom Up Review, Annual Defense Report, budget proposals, etc. A comprehensive discussion of roles, options, shortfalls, etc. was provided by Air Force officers and private defense experts at a "Roundtable on the Future of the Manned Bomber" sponsored by the Center for Security Policy, in Washington, D.C. on June 8, 1994.

[48] Cited by Robert Holzer, "U.S. Fears New Russian Sub Threat," *Defense News*, June 20–26, 1994, p. 3.

[49] To take one example, according to the Senate Armed Services Committee's *Report on the National Defense Authorization Act for FY 1995*, June 14, 1994, at p. 87: "The Secretary [of Defense] responded by limiting additional defense support program (DSP) satellite procurement to one satellite; cancelling the follow-on early warning system (FEWS); initiating a cheaper alternative to FEWS . . . and reduced the scope of the Brilliant Eyes mid-course tracking program."

[50] R. James Woolsey, Director, Central Intelligence Agency, Testimony on START Treaty, Senate Foreign Relations Committee, June 24, 1993.

[51] Committee on Armed Services, United States Senate, *Report on the National Defense Authorization Act for FY 1994*, June 14, 1994, p. 111.

[52] The official U.S. statement issued in Moscow provides this information along with the note that "Russia has *told* the United States that their detargeting measures are comparable." (Emphasis added).

[53] For the details of the Soviet violations of the ABM Treaty and a discussion of continued U.S. weakness and self-deception in failing to insist on compliance with valid existing arms control treaties, see Sven F. Kraemer, "The Krasnoyarsk Saga," *Strategic Review*, Winter 1990, pp. 25–38.

[54] On January 29, 1992 Yeltsin stated that "the time has come to consider creating a global defense system for the world community. It could be based on a reorientation of the U.S. Strategic Defense Initiative. . . ." For an extended discussion, see Keith Payne, et al., "Evolving Russian Views on Defense . . .," *Strategic Review*, Winter 1993, pp. 61–72. While Yeltsin's position, subsequently rejected by his generals, endorses a joint U.S.-Russian program rather than an American program, it reflects mutual concerns about global proliferation, unauthorized launches, etc.

[55] America's future THAAD will have less capability than Russia's currently deployed SA-12, or the commercial version of the SA-12, the S-300, a fact touted by Russian arms salesmen. (See U.S. Government publication JPRS-TAC-94-L, March 31, 1994, p. 34 quoting an article by Aleksander Savelyev.) Strategic ballistic missiles have velocities over 7 km/sec as they attack their targets on the ground. The Russian SCC proposal (which the U.S. negotiator agreed to in May 1994), limits defensive missiles to a velocity of only 3 km/second and to an ability to counter missiles coming at us at the rate of less than 5 km/sec. This U.S. concession, if approved by the U.S. Senate, and as now reflected in U.S. development and testing programs, would mark a deliberate MAD decision permanently to prevent our government from protecting the American people against strategic missile attack.

[56] See "Wallop Says U.S. Offered Russia a Permanent Space Defense Ban," *Aerospace Daily*, May 4, 1994, p. 185B; and Theresa Hutchins and Robert Holzer, "DoD Protest Mars Missile Talks With Russia," *Defense News*, June 20–26, 1994.

[57] In a May 9, 1972 U.S. Statement on "Withdrawal from the ABM Treaty," Ambassador Gerald Smith declared that: "If an agreement providing for more complete strategic offensive arms limitations were not achieved within five years, U.S. supreme interests could be jeopardized. Should that occur, it would constitute a basis for withdrawal from the ABM Treaty." (U.S. Arms Control and Disarmament Agency, *Arms Control and Disarmament Agreements*, 1990, p. 165.) Twenty-two years later, Russia was still modernizing rather than eliminating large numbers of strategic offensive arms under the START treaties (which are not in force), and no strategic offensive arms limitations were being achieved with regard to *global* proliferation. These extraordinary developments very clearly jeopardize our supreme national security interests and require putting aside the long-breached ABM Treaty and committing to the accelerated deployment of U.S. strategic defenses.

[58] U.S. defense funding, materiel and readiness short-falls are becoming increasingly evident. Bill Clinton's pre-election declaration to cut an additional $60 billion from the already much-reduced U.S. defense budget over the next five years was subsequently doubled to at least a $129 billion cut. Military procurement is cut by 60%, as Army divisions and Navy ships are cut by one-third and Air Force wings are reduced by half. These cuts result in forces below those called for by the Administration's own, September 1993 "Bottom Up Review," and far below the Joint Chief's 1992 proposals for a post-Cold War "Base Force" able to handle potential future contingencies. In July 1994, Secretary of Defense Perry stated publicly that the U.S. military could not fight and win two near simultaneous regional wars and the U.S. General Accounting Office informed Congress that funding for the Perry Pentagon's new five-year plan was now $150 billion short of the real costs, thus requiring even more draconian military cuts. (The Pentagon officially acknowledged a $40 billion shortfall; others considered the GAO estimate close to the mark.) See Bradley Graham and John F. Harris, "Can the Pentagon Afford its Future? Goals of 'Bottom Up Review' in Doubt Because of Budget Gap," *Washington Post*, August 8, 1994, pp. A-1, A-6.●

A CONVERSATION WITH MARTHA MINOW

● Mr. SIMON. Mr. President, I confess, I was not even aware that a magazine called Humanities existed until I had the pleasure of listening to Gwendolyn Brooks deliver the annual Jefferson Lecture for the National Endowment for the Humanities, and someone handed me a copy of the magazine.

In fact, it is 15 years old.

It is a solid, constructive journal.

In the current edition, there is an interview by Sheldon Hackney, who chairs the National Endowment for the Humanities with Prof. Martha Minow.

I confess some prejudice in the matter because she is the daughter of two longtime friends of my wife and me, Newton and Jo Minow.

The interview talks about the divisions in our society; where we are, where we must go and how to get there.

Martha Minow recently authored a book titled, "Making All The Difference: Inclusion, Exclusion, and American Law."

That book, undoubtedly, stimulated Sheldon Hackney to have this interview.

Because it contains so much common sense, in a period where we don't have an abundance of that quality, I ask to insert the interview into the RECORD at this point.

The interview follows:

A CONVERSATION WITH MARTHA MINOW

SHELDON HACKNEY: History has a way of confusing things. You've written a good bit about the dilemmas of difference in this country. One in particular speaks to me because of my experience on a college campus, where I saw this in action—the paradox of how trying to do something about the problems that arise because of differences actually exacerbates those problems.

MARTHA MINOW: Yes. When you are in a community in which people with certain kinds of traits or identities have been less advantaged or less well regarded than others, the dilemma that is created is that paying attention to that trait against the same backdrop may further accentuate precisely what has disadvantaged people, and yet ignoring it against the same backdrop may leave those people unassisted in an environment, a school, or other institution that wasn't designed with them in mind. I think that an obvious example in the academic context is, should there be special welcoming or academic support programs for people of color or women? If you create those kinds of programs, there is a danger that you are singling those people out and saying that somehow they're not full and equal members of the community—they need something special. On the other hand, if you don't do something and you leave the existing operations as they were, those people may well look around and feel as if no one has even noticed that they're there, and indeed that some of the mores of the place seem exclusionary. That's the kind of problem.

HACKNEY: Precisely. I felt that keenly every day. I didn't find a good solution to that. Do you have one?

MINOW: Well, it's not one solution, but it's an approach at a somewhat abstract level. Figuring out how to make it operational is, of course, the big challenge. The abstract insight is that the background norms themselves have to change.

In that way, you won't have to single people out or create special programs because you'll have changed the institution. The easiest image for me to describe this is with regard to disability. Rather than having a separate entrance for the student who uses a wheelchair, you make the front entrance wheelchair accessible. Rather than having a separate building with classrooms that are wheelchair accessible, you make all the buildings wheelchair accessible. Now, how you translate that across the range of differences that we encounter in this society is the challenge. The nature of a physical disability is different from gender difference, which is different from racial difference, which is different from linguistic difference.

HACKNEY: Yes.

MINOW: And then, of course, we have people who are in many of those categories, overlapping with each other.

Another example that I use in my book is in an elementary school classroom in which there is a student who is hearing disabled. A case that went up to the Supreme Court posed the question, does that student have a

right to have the state pay for a full-time sign-language interpreter? The Supreme Court said no, it's too costly, and, in any case, the student is smart enough that she's making progress without much assistance. I thought that was an inadequate response: nothing needs to change because this student was talented enough to make progress while missing one-third of what was said in class. Maybe she would make much more progress if she had a fuller accommodation. I understand the cost problem, however, and no doubt that explained the school's opposition.

Yet there is another alternative besides giving or denying a paid sign language instructor. An alternative solution should ask what if every student in the class learned sign language? Some people say, "How impractical," and yet other people have written me to say that is exactly what they've done in their schools, which is very encouraging. One of the things I like about that particular example is that not only is it the humane thing to do, but those students will have an enormous benefit from learning about language generally as well as learning how to make a place that's inclusive.

So, again, it's not the details of this solution that I would advocate in every place, every time, but that's the kind of idea I have. The background assumption in this classroom should be "not everybody can hear"; the background assumption in that classroom should be "everyone has a right to be communicated with however they need to be communicated with," and you figure out what it takes.

HACKNEY: It does provide a theoretical framework. In the case of racial differences on campus, one can imagine a time when the differences by race won't matter but then, how do you get there?

MINOW: What do you mean by "there"? By saying racial differences won't matter, I think we mean several things. One, we mean that for any of the things that we categorize as benefits and burdens, the differences are irrelevant. On the other hand, we don't mean therefore no one has an identity related to their background. We don't mean that everyone is operating behind a screen and no one sees anyone else. What we mean is that race can matter to people along with other kinds of personal and group characteristics that, again, don't carry significant burdens in terms of institutional treatment or opportunities.

So how do we get there? And I think it's a very complex process of joining together to tack against the wind. It's trying to figure out what mix of special programs will actually change the background norms and what changes in the curriculum will ensure that not just the black students are taking courses that expose them to African-American studies, but the changes occur in other parts of the curriculum, so they don't feel like "Well, only we are learning about this, and the dominant curriculum excludes our experience, and other students are never expected to learn about it." The important thing is to look at the university from the perspective of *all* the students.

On the issue of gender, imagining and constructing methods for inclusion prompt painful discussions. Women's groups have been divided over precisely this question. Usually it is put in the form of a conflict over equal treatment or special treatment, which is itself, I think, an unfortunate formulation. A good example is in the workplace with regard to pregnancy and childbearing. Should a woman have a right to maternity leave that a man does not get? For years, many women's groups said yes and many others said no, contending such a leave disadvantages women when they are trying to get a job, and it stigmatizes them at the workplace. I think the solution that the law has developed is the right one, which is, the employer has to accommodate both men and women and make it possible for both men and women to have a job and to raise their children, and if that means a parenting leave or a dependent-care leave, that's the right answer.

HACKNEY: Parenting leave is the solution for a lot of institutions. But in the abstract, that is to say, "Well, we will make both groups, both parties, the same."

MINOW: We will make both parties the same by changing the institution. What I think that example so nicely illustrates is that most of our institutions, our workplaces and so forth, took for granted a kind of societal practice that said everything surrounding children is women's jobs; therefore, anything that women have to do in order to take care of children should take away from their place in the paid work force. Whereas, if you stand back and say, anything to do with children is an obligation of both parents, then the workplace itself has to change. It means all or most employees will have some family obligations, not just this odd little group called women. It is treating both women and men the same, in a sense, by the institution's saying there is a dimension of our workers' lives that the workplace has to accommodate. If it turns out in practice that none of the men take the parenting leave, you may have a problem of stigma or tracking for the women who do, but at least we're going down the right road.

HACKNEY: What I find interesting is this solution—much like the solution of having all children in the school where there are hearing-impaired children learn to sign—to give men a parenting leave that is the same as what's available for women. You are treating them the same.

MINOW: That's exactly right. I think that is the only way out of the dilemma of difference, because the dilemma creates this danger of stigmatizing the people who seem different without changing the underlying institutions that produce the differences. If you change the underlying institutions, then you can treat everyone the same.

HACKNEY: Now, if you translate that into race and ethnicity, might it not mean that one works toward a society in which group differences may still be significant in some way, but in which no group is privileged and no group is disadvantaged?

MINOW: I think that is a perfect way to say it. It is still very hard to figure out operationally what does that mean. Does that mean bilingualism, trilingualism? I'm not sure. I think we'd have to look at different circumstances and see what makes sense. Does it mean that the basic U.S. history course for everyone should have a heavy component of African-American and gender studies? My own sense is probably yes, but not to the exclusion of other dimensions, too.

HACKNEY: How do traits get selected by society to categorize people, anyway?

MINOW: It's a marvelous question. One thing we know is that they change over time, and yet there always are some traits selected. For example, throughout American history, race has been used, although there is a relatively modern conception of it since the late nineteenth century. Before that, it wasn't really race per se. Even at the turn of this past century, when race was very much in the air, people didn't know what to do with various categories. For a time in California, there were racial categories that didn't have a place for Chinese, so they were alternately placed in categories of Caucasian and Negro. Moments like that reveal the way in which the categories are not natural or inevitable.

I think that I don't want to make any vast claims about human nature and the need to categorize "the other," but it does seem that at least in American history there has been a continual struggle between groups and among groups to define a place of privilege and a place of exclusion, and in part to define who is American by reference to who's not American. Yet there's been a shifting definition of the in and the out, the boundaries. Sometimes it is ethnicity, sometimes language, sometimes it is national origin.

HACKNEY: Sometimes religion.

MINOW: Often religion. Sometimes skin color, which is really quite a different category. Sometimes it is just shared historical experience: Did you live through the blizzard of 1978? One of the hopeful signs for me is this very mutability in the categories. It is not as though it is always the same categories.

HACKNEY: That is something that everyone should bear in mind; the categories do change over time. And also one's membership in a group. Even if the category doesn't change, individuals move into and out of those groups.

MINOW: Move into and out of, and also simultaneously occupy several, which again helps to demonstrate why these are, at least for most important purposes, socially-invented categories. Again, if you look at American history, there was a period of time in some parts of the country when German immigrants were the most despised people. It's a hard thing for people today to remember that, but it puts in perspective some of the issues.

I think what is very crucial to this discussion, though, is the history of slavery and the unique place of people who have that in their historical experience. I think it is an important and critical subject to address, because too often people who came from the wave of immigrants in the twentieth century say, "My family made it. Why can't you?" I think that that is a pointed question, but it is in some senses an ignorant question, because as much as I find hope in the mutability of these categories, one group has been consistently at the bottom.

Having said that, we shouldn't ignore the fact that in terms of economic gains, there has been a dramatic shift in the last fifty years for African Americans. Still, the vast over-representation of African Americans in the class of people who are defined as poor, in the prisons, in the most undesirable places to live in this country, has to be looked at.

HACKNEY: Is it possible that Americans might feel the need to categorize a bit more than other countries because of the absence of another source of identity?

MINOW: It certainly has struck me that in many other nations, there is a group sense that predates the creation of the political boundaries, and we don't have that in this country.

HACKNEY: That's right. And we also have this ideological commitment to equality.

MINOW: Well, I think I talked with you once before about a book that I have admired by R. Lawrence Moore called *The Religious Outsider in America*. It goes chapter by chapter about each of the religious groups in

America and examines how they have defined themselves as outsiders, and how in a curious, paradoxical way, helped them all be Americans, moving through the Mormons and the Quakers, and then the Jews, and then the Catholics, and then even the mainline Protestants. There is both the struggle to say we are outsiders, and that is why we are uncomfortable, and at the same time a way of saying, this makes us truly American, because we *are* all outsiders. There are no insiders. In a sad and tragic way, the Native Americans, who might be considered the insiders, of course, have never been treated that way by the occupiers of this country.

HACKNEY: It does make equality a problematic concept. What does equality mean in a system where there are all these differences?

MINOW: Equality is itself a very curious commitment. We are far better able to define what we mean by equality when we talk about the political sphere—equal access to the vote, equal participation in other aspects of the political process, equal opportunity to serve on a jury—because then we are talking about access to the instruments of the state, and that state has, for the most part, the possibility of entire control over those instrumentalities. When we talk about equality in the aspects of the society in which the state is a regulator but not the creator of the activity—take, for example, the workplace or perhaps even the schools, although that may be a special instance of a public institution that reflects private family and property systems—it is a more complicated problem. Do we mean, then, social equality? Do we mean equality in the realms of life in which we also cherish freedom, freedom of association? That is one reason that I think equality is a very difficult notion in this country.

Another reason, though, is that equality is for the most part an empty concept, as some theorists have described. It is almost like a mathematical equation. If so and so gets this, then you get this. But what's the "this"? There is no substantive context that tells us "same as what"—same as some background norm, same as what someone else gets. One of the great tragedies of efforts to use the commitment to equality to bring about the practice of equality, is that a state can say, "Okay, you want us to treat you equally? We'll take away the benefit from everybody. Now you're all equally disadvantaged." It is surprising and disappointing, obviously, to people that that is what equality has at times meant, at least in legal and sometimes political matters. In most people's hopes and dreams, equality carries with it not just this brute sameness, but also some vision of access, participation, inclusion, opening up into the realms of opportunity.

HACKNEY: I think you're exactly right. I've been doing a number of trial conversations about pluralism with people in different parts of the country, and after those groups have been talking for a good while, if I press them to try to identify some core American shared values or concepts, they very easily come up with the political system, the Constitution, that nexus in the political realm, and say, "Yes, that's something that we all believe in or should believe in. And even if we don't realize the high ideals in the Declaration and the Constitution, we aspire to them, and everyone should." If I press a little bit further and say, "What else outside the political sphere, the governance, would you think of as being very American?" equal opportunity almost always comes up. But struggling to define what that means is very difficult.

MINOW: It is difficult, and yet I am not surprised that equal opportunity seems to many people to be so essentially American. In a very, very simple-minded sense—I'm worried about saying this to a historian—I usually think about the United States as the first country to try to create itself without feudalism.

HACKNEY: That's true, yes. Born free.

MINOW: Born free. I think that is well understood even by people who have never studied history—that you are not assigned a status here by birth. And though feudalism is supposedly long dead in other parts of the world, its legacy is there, and certainly many, many important institutions reflect it. In contrast, there is a deep feel for individual possibility in this country, which, of course, is what has attracted so many people from around the world.

HACKNEY: Almost every group came to America to find economic opportunity.

MINOW: That's right, and economic opportunity, of course, usually requires a means to other kinds of opportunities and freedoms—an ability to be independent from a state and independent from oppressive groups, or ability to exercise religion freely and the chances for self-fulfillment and self-affirmed identity. I think that is important—that equal opportunity for economic success is for most people a means to other ends, not an end in itself. All the freedoms that are necessary to produce economic equality, not just coincidentally but necessarily, involve other kinds of freedoms that people want as well—freedom of speech, freedom of association.

It has always struck me as somewhat ironic that many immigrant groups came here and, within a generation, seemed to abandon many of the characteristics that had held them together. But it is also interesting to watch, then, as several generations go on, and the younger generations try to reclaim aspects of that identity. It is another expression of the freedom of being an American. It need not be costly to retain or regain the language of your ancestors. You can make it economically and still celebrate the holidays and rituals of your religion. Those reclaimings of identity seem to me as much an expression of the freedom here as the abandonment of them. Both are crucial.

Albert Otto Hirschman, the economist, describes it well. He says, "exit," "voice," and "loyalty" are the three ways in which individuals can express their relationships with groups. This country has been very big on exit and voice, making those real possibilities for people, and yet loyalty is crucial to people's identity as well.

HACKNEY: I think that, in Hirschmanesque terms, that is the conversation, basically, exploring those options.

MINOW: Yes.

HACKNEY: What is the relationship between equality and tolerance? Is there one? I think most Americans would think of themselves as being tolerant of people with differences. Is that enough to achieve equality?

MINOW: Tolerance is certainly something to be admired compared with the alternative of intolerance. It is an advance over intolerance. It suggests a willingness to put up with people who are quite different from yourself and to refrain from regulating them or criticizing them in some active way. Yet it seems to fall short of what it is we hope for from equality and from the conception of individual liberty that we've just been alluding to. Tolerance itself implies, I think accurately, that there is a power differential, that the group that is expressing itself as tolerant has the ability to withhold that tolerance and to express intolerance. Tolerance implies that there is a continuation of background norms that make some groups privileged and other groups not privileged, and the privileged groups are willing to tolerate the others. But that means that the privileged ones still hold the keys to the door, they still in some sense run the shop. They will let other people in, but it's still their house. I think that is why to many groups, tolerance sounds unacceptable, or at least inadequate. And I think I would share that view if tolerance means the failure to challenge background assumptions and to preserve institutions that were designed without some people in mind—again, our discussion of our universities is a good example. "Tolerance" here does not suggest the kind of change it takes, so that the institutions really belong to everyone, including those who were previously excluded.

HACKNEY: So they can be successful.

MINOW: Exactly. It seems to me the great moments of pride for institutions like the University of Pennsylvania and Harvard are when there are alumni associations of African Americans and women who say, "This is our place. This is ours, and we are committed to it, and we are committed to its past and to its future." That's when you should feel very good, because then this means that the institutions haven't just tolerated them, the institutions have changed. The newcomers change what they find, that is what participation means.

HACKNEY: Let us leap from that parochial setting to the same sort of relationship on the national level. I would assume that when alumni say, "This place belongs to me," they, in that statement, recognize there relationship to other alumni. This is a question or a subset, a form of the general question: What do Americans owe to each other because they are citizens? Do I owe anything different, either more or less, to a person because he or she is a member of my racial group, or because that person is not a member of my racial group?

MINOW: Well, it's back to exit, voice, and loyalty. What's the loyalty part? Is the loyalty to a subgroup or to a larger group, or can it be to both, and what if there is a tension between them or a conflict between them?

I think one of the negative aspects of the dominance of legal and political ideology in the binding of Americans to one another is that it tends to use individual liberty as the organization framework rather than a notion of responsibility or duty. I don't think it has to, and I think in other periods of American history, there has been a greater informal culture of responsibility and duty rhetoric. Yet, if you look simply at the language of the political documents, it's not there. So wherever a since of duty came from, it wasn't written down, and it hasn't been transmitted as well as some of the other aspects of our Constitutional heritage.

HACKNEY: This may come also from the born-free nature of this. We're bound together by a contract rather than by natural relationship.

MINOW: And perhaps the very legalism of the contractual idea is corrosive of bonds that otherwise would exist. That's a worry that some people have.

That said, I think it is fair to say that the framers of the Constitution felt strongly that duty and loyalty and commitment and responsibility were crucial aspects to the

pursuit of happiness, the same way they believed that maintaining one's family in safety and security were crucial to the pursuit of happiness. Again, they didn't write that down. I guess I think it is important to rescue and revitalize those unwritten aspects of our traditions alongside the written aspects.

It is still not answering your question, though, about the relationship between those sentiments and commitments vis-a-vis your immediate group. With regard to that, I guess I do believe that some of the teachings about family bonds are relevant here. You cannot order people, because of family membership, to be loyal, caring, or responsible, but you can imbue them with a sense that that is the right thing to do both by example and by winning their loyalty. That, I think, is the same challenge to the nation.

HACKNEY: With respect to family responsibilities, a person is more likely to feel those and to act them out if the entire society expects him to.

MINOW: Yes. Reinforced by the social messages and cultural messages.

HACKNEY: If he doesn't, people disapprove of him.

MINOW: It's true. Peer and cultural pressures are extraordinarily powerful and able to be mobilized. But it is interesting to me how ready people are to accept certain kinds of responsibilities when they are made visible to them.

An example to me is these programs like City Year and others through which people, after high school, can go and serve the country, not in a military fashion but doing other kinds of service. These youth service programs are springing up around the country. There are people for whom, in their peer group, such service work is the thing to do; it's the right thing to do. And it's not just peer pressure; it resonates in some place that is deeper. If you can mobilize both the peer culture and the larger culture, I think that there is something to summon up here in the sense of giving back to the community.

HACKNEY: One could also argue that that sort of service freely given is of long-term self-interest.

MINOW: I absolutely agree. I think it is one of those debates like nature versus nurture in human psychology. Is philanthropy or charity selfish or altruistic? It is one of those endless debates that probably we should put aside, because it is both, and it should be both, and that is why it works.

HACKNEY: But it only works if people really identify with the society, think of themselves as owning it.

MINOW: I think that's one way it works, but it may be that the very process of engaging in this kind of service can give one a sense of participation and ownership.

HACKNEY: Excellent point.

Let me give you a brief vignette from one of my discussions in which a very diverse group of people was exchanging stories about the particular values of their group, what held them together, what they valued as members of this group, how important group loyalty was, how important their group identity was to them—these are racial groups—and how they felt a sense of obligation to do something for the group, to give back, to help build it. So I posed the question: What would they do if they happened to own a factory that employed, say, five hundred people, and they wanted to help their community and decided that they would hire only people from their racial group? Would that be good? It really stumped them. They were surprised at the question because they had never thought about it in those terms. We actually have some law in this area, I guess.

MINOW: Yes, we do, which would not allow that practice. But I think that it's a fascinating question, and it probably challenged them to imagine that they have access to greater resources than they usually imagine.

HACKNEY: That may be right.

MINOW: Many of the usual ways of thinking about group loyalty are expressed by people who feel that they are at the margins of the society and they are struggling as outsiders. When you pose the question, "Let's imagine you're actually more of an insider, now what do you do?" my suspicion is that more people would feel the obligations that come with power—the obligations not to replicate the patterns of exclusion that they find so offensive.

HACKNEY: I think you're right. In this group, there were a couple of small shop owners and when pressed about whom they employed, they talked about hiring people from groups different from their own. But they talked about it almost entirely in practical terms. "I hired that person who's not from my group because some of my customers are from that other group, and I found it very useful." It was very difficult to get them to think about an abstract right.

MINOW: That's another example of why I think that economic freedom so nicely requires other forms of freedom in this country. The virtue of the marketplace is not merely that it is a solvent of our differences, if money is the coin of the realm. More importantly, to be successful in the marketplace, you have to produce an environment of equality and multilingualism, if that's what you need as well. Though I also wonder—and this is an important and difficult topic—when people are working in small mom-and-pop type shops, oftentimes they feel that it's an extension of their family, their community.

HACKNEY: Indeed, the law recognizes that.

MINOW: The law does recognize it. This is an environment in which it is their own comfort level that is crucial to them, and, as you say, the law has exempted small operations from most of the coercive powers of the civil rights laws, probably for that reason. The same is true of our small landlord-tenant relationships. But as much as face-to-face communication and small settings are appealing, that's where many forms of prejudice are most likely to be expressed. More importantly, we are increasingly not a society where those are the building blocks. We're increasingly a society where the building blocks are large entities, commercial enterprises owned by other commercial enterprises. In that kind of world you cannot, I believe, let the personal comfort level of the managers operate. That is why the abstract commitment to rights is crucial.

HACKNEY: I couldn't agree more.

Let me double back to something you were saying earlier, and ask you if you can imagine a society in which Americans are equal with each other—in whatever sense that is going to come to mean—yet a society that does not require people to shed their racial or ethnic identities.

MINOW: I must be able to imagine it because it is what I hope we can achieve. I am sure of this: that it will be different from the world that we live in right now in fundamental ways, and yet continuous in other fundamental ways. It is always that problem of imagining a future, that sometimes we fear it won't resemble us at all. The future can only proceed one moment at a time, each step making possible the next. Our future must resemble us; otherwise we'd have to give up everything we know. On the other hand, there will be some changes that we can't quite imagine.

Somebody was recently talking with me about Hawaii and how it is the future of America. I've never been to Hawaii, but my understanding is that, certainly with regard to racial composition, Caucasians are a minority. I'm not sure it that's the future that we're imagining, but it is certainly not what most people think of when they imagine the future for America.

I guess I am hopeful. I look at how younger people are comfortable having friends from different kinds of backgrounds, but also more comfortable than perhaps their parents in saying, "Yes, this is who I am, and this is what I am." At the same time, every year I'm being educated by my students. I had a student this year who wrote a paper about rejecting racial classification when your parents are from different races, which was her own experience. That is another way to think—that at some point over time the significance of many of the classifications, particularly race, will diminish. There will be a relinquishing of the tendency to say, "Any drop of black blood means you're black," which is a rule you come up with in a racially oppressive society. If you reject that rule, then the significance of racial identity will diminish and there will be many, many different kinds of identities that people can lay claim to. As this particular student says, "Look, I'm black and I'm white. I am my mother's daughter and I am my father's daughter. Why do I have to pick?"

Indeed for me, the great hope and promise for this country, and indeed for the world, is not just from these younger generations, who always give us hope, but also from the sense that identity can be more complex than the rigid categories we presently use tend to suggest. As individuals and societies grow more comfortable with that, I think that the vision that you've described could be achieved.

HACKNEY: That's a wonderful note on which to end.

Let me thank you very much.•

KIWI

• Mr. LUGAR. Mr. President, I rise today to recognize the Kids Involved With Indiana Program, better known as KIWI, at Spring Mill Elementary School in Washington Township, IN. KIWI is an innovative public school program designed to teach fourth grade students about the rich history of our State.

Created in 1983, the year-long program provides Spring Mill students with concrete experiences in their study of Indiana history, geography, sociology, and the economy. For example, students learn about native history by visiting the Angel Mounds in southwestern Indiana, learn the ways of the Amish by sitting down to dinner with an Amish family, and learn of our State's industrial history by traveling to the steel mills in northern Indiana. These hands-on activities are supplemented throughout the year by a wide variety of speakers and cultural performances, as well as field trips to nearby parks and historical buildings.

I congratulate the dedicated teachers and parents at Spring Mill for their initiative and hard work in making this program a reality for the students. KIWI serves as a shining example for other communities interested in a creative way of teaching the valuable lessons of history to the youth of our Nation.•

TRIBUTE TO THE PRADER-WILLI SYNDROME ASSOCIATION (USA)

• Mr. ROCKEFELLER. Mr. President, I know our time in the 103d Congress is running short, however, I could not allow this Congress to end without commending the Prader-Willi Syndrome Association (USA).

First discovered by Drs. Prader and Willi in Switzerland in 1956, Prader-Willi syndrome is a condition that affects an unknown number of children each year. The syndrome has many common symptoms, so it is often misdiagnosed. Those who suffer from Prader-Willi syndrome are retarded, have weak facial muscles, are sterile, have an insatiable appetite, have stunted growth, are slow to walk, and never become fully coordinated. Although some children survive to early adulthood, their life expectancy does not extend beyond adolescence.

The Prader-Willi Syndrome Association (USA) is an all-volunteer organization of parents, grandparents, friends, and health care providers. The association endeavors to raise the public's awareness of Prader-Willi Syndrome and provides a network of support and information to those who love and care for children with this syndrome. For their self-sacrifice and dedication, the Prader-Willi Association of America (USA) deserves our thanks and appreciation. With their continuing efforts, I hope that one day a course of treatment will be developed for Prader-Willi syndrome and eventually a cure will be found. Again, thank you to the Prader-Willi Association (USA).•

"15 YEARS FOR A 17-YEAR-OLD'S FIRST DRUG SALE"

• Mr. SIMON. Mr. President, my colleagues are, perhaps, tired and clearly unmoved by my repeated admonitions against mandatory minimums. The political advantage of supporting mandatory minimums, I do not question. The wisdom of supporting mandatory minimums, I seriously question.

Recently, Nat Hentoff had a column in the Washington Post that deals with the question of mandatory minimums and one 17-year-old girl. I urge Members and their staffs, who have any questions in this area at all, to read the Nat Hentoff column.

I ask to insert it into the RECORD at this point.

The article follows:

[From the Washington Post, Sept. 10, 1994]

15 YEARS FOR A 17-YEAR-OLD'S FIRST DRUG SALE

(By Nat Hentoff)

NEW YORK.—Nelson Rockefeller, the late governor of New York, is remembered by many in the art world as an enthusiastic, sophisticated collector. For many New Yorkers in prison, however, he is remembered as the author of the 1973 Rockefeller Drug Sentencing Laws whose harsh mandatory minimums helped lead the way nationally to reducing judges' discretion in sentencing.

Some years ago, I ask Gov. Mario M. Cuomo if he might try to move the legislature to make those laws more humane. He said he didn't think the legislature could be budged. But, as a political leader, shouldn't he try? No comment. Nor, certainly, is there a chance now to make the Rockefeller drug laws more flexible when fear of crime is chronic.

Recently, several lower court judges in New York did take the risk of softening a young woman's long prison term because they were appalled at the damage the Rockefeller law would have done to the rest of her life. Their attempt failed when they were reversed by the Court of Appeals, the state's highest court.

What has happened to Angela Thompson is hardly unique. In 1988, when she was 17, she was arrested after making a single sale of crack cocaine to an undercover police officer. (There was no other criminal activity on her record.) The sale took place at the residence of her uncle, Norman Little, who, according to the dissenting opinion in the Court of Appeals, was "running a major drug-selling operation in Harlem."

The 17-year-old "had grown up in a variety of places and under several different custodial arrangements" until she was employed by her uncle. Her drug sale to the police agent qualified as an A-1 felony because it weighed 2.3 grams—less than one-tenth of an ounce over the next lower level crime.

On a plea bargain, she was offered four years to life, but she insisted on her right to trial. She was convicted. The penalty for an A-1 felony is a mandatory indeterminate sentence, with a minimum of not less than 15 years. The maximum is life imprisonment.

The trial judge, Juanita Bing-Newton, rebelled. The minimum mandatory sentence, she ruled, would be cruel and unusual punishment under the Eighth Amendment. Instead, she sentenced Angela Thompson to eight years to life. The judge acknowledged that the legislature had decreed a tougher minimum, but she added: "I think it is still the law of this country that the punishment must fit the crime." After all, this was "a single transgression of the law."

The case went up one level to the Appellate Division. A majority on that bench also refused to go rigidly by the book and upheld the lower sentence of the trial judge. Said Appellate Justice Sidney Asch:

"A system of justice which mandates a 15-year prison sentence, as a minimum, on a 17-year-old girl, who was not cared for by her parents and [was] under the domination of her uncle also mandates a lifetime of crime. And [it] imposes on the community, upon release, a woman who may be incapable of anything but criminal activity. If we do not attempt to rehabilitate such young people, we condemn ourselves as well."

Again, the prosecution appealed this lower sentence in the name of the people. The New York State Court of Appeals agreed with the prosecution. The chief judge, Judith Kaye, is an often compassionate jurist who has written some notable First Amendment opinions, among others. In this case, she was part of the majority that overturned the lower courts and resentenced Angela Thompson to a mandatory minimum of 15 years to life imprisonment.

Writing for the two dissenters, Judge Joseph Bellacosa said of his majority colleagues—who have locked up Angela Thompson for at least 15 years—that they have tied themselves to "the will of the legislature. A will expressed more than 20 years ago as part of the frustratingly decried, yet intractably operative, Rockefeller Drug Sentencing Laws."

But, Bellacosa added, "It is judges who bear the singular awesome duty of facing defendants in open court on the day of reckoning to declare the law's sentencing judgment."

Joseph Bellacosa is often described as a conservative; Chief Judge Kaye is decidedly regarded as a liberal. It was Bellacosa, however, who tried unsuccessfully to remind his colleagues that "constitutional adjudication is a dynamic, evolving process—not a static set of revered relics."

And Angela Thompson will become an unrevered relic.•

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION TECHNOLOGY INVESTMENT ACT OF 1994

• Mr. BURNS. Mr. President, I am pleased to express my support for passage of the National Aeronautics and Space Administration Technology Investment Act of 1994. This bill is designed to encourage the National Aeronautics and Space Administration [NASA] to strengthen the link between their programs and economic growth and jobs for Americans, and in my case, Montanans.

The bill provides a framework for NASA to move in the direction of a more business-like approach with the aerospace industry. The bill does two basic things: Gives NASA a direction for its role in technology investment and requires the United States to prepare a strategy for developing world class aeronautics testing facilities.

It is important to support our aerospace industry because of its key role in offsetting deficits in U.S. trade with other countries. One of the areas the industry lacks is adequate facilities to test new concepts.

My work with a company in Butte, MT, revealed to me that the United States does not have adequate wind tunnels and must rely on foreign wind tunnels for our Nation's future aeronautics testing. Our aerospace companies' reliance on these foreign wind tunnels could result in advances to other countries' aircraft competing directly with U.S. commercial aircraft.

The bill establishes a competitive, cost-sharing technology program for eligible companies. It is designed to work with existing Federal policy to

encourage industry-led groups to develop new technologies on a more efficient basis.

I commend my good friend Senator ROCKEFELLER, chairman of the Science, Technology, and Space Subcommittee of the Commerce, Science, and Transportation Committee, for his leadership on this legislation.•

TALE OF TWO NATIONS

• Mr. SIMON. Mr. President, the Richmond Times-Dispatch of Richmond, VA, recently had an editorial titled, "Tale of Two Nations," which talks about our inconsistency in supporting democracy in Haiti but not supporting democracy in Asia.

The point they make in the editorial absolutely valid.

I urge my colleagues to read the editorial, and I ask to insert it into the RECORD at this point.

The editorial follows:

[From the Richmond Times-Dispatch, Sept. 26, 1994]

TALE OF TWO NATIONS

The Clinton administration is committing hundreds of millions of dollars, and potentially the lives of many American military personnel, to the "restoration" of democracy in Haiti. If that third-rate nation's brutal politicians and policemen suspend their practice of murdering their critics and oppressing the populace, the United States may reward the country with generous economic aid for years to come. And, of course, its diplomats will continue to receive invitations to White House soirees.

Meanwhile, how does the Clinton administration reward an old American ally that is democratizing by choice, that has established a commendable record on human rights, that has embraced the free enterprise system, and that does enough business with the United States to support more than 300,000 American jobs? By throwing it a few crumbs and telling it to keep its officials away from the White House and the State Department.

That about explains the Clinton administration's new and supposedly improved policy on the Republic of China on Taiwan. The President has condescendingly allowed Taiwan to rename its unofficial mission here from "The Coordination Council for North American Affairs" to "The Taipei Economic and Cultural Representative's Office in the United States," which more clearly describes the mission's function.

He also has removed the ban on direct contacts between American economic and technical officials of non-Cabinet rank and Taiwanese government officials in Taipei, but Taiwanese officials stationed in the United States will not be permitted to visit the State Department. And the President may support Taiwan's membership in certain international organizations, such as those concerned with trade, when he can do so without implying diplomatic recognition of that country.

In other words, Taiwan is to remain a diplomatic pariah whose president is not even permitted to land on American soil long enough to play a round of golf.

Taiwan deserves better treatment. It is the United States' sixth-largest trading partner. It stood shoulder to shoulder with the United States during the darkest and most dangerous phases of the Cold War. It has used the United States as a model in building its economic and political structures. Voluntarily and enthusiastically, it is developing exactly the kind of democracy that the United States advocates.

The United States withdrew diplomatic recognition from Taiwan during the Carter administration, and denies it still, in an effort to cultivate the friendship of mainland Communist China, which asserts sovereignty over Taiwan and vows to reclaim that island someday. Taiwan is also committed to eventual reunification. The two countries have developed important commercial ties in recent years, but they are far from agreement on the terms for merging politically into a new united China.

Strong arguments based on both principle and political reality can be made against the United States' eagerness to appease Communist China at the expense of an old American friend. Tomorrow Senator Robb will convene a hearing of his Subcommittee on East Asian and Pacific Affairs to review the administration's China policies. The exchange promises to be vigorous.

Democratic Senator Paul Simon of Illinois considers it wrong as a matter of principle for the United States to disdain a country that has "a multi-party system, free elections, and a free press—the things we profess to champion—while we continue to cuddle up to the mainland government whose dictatorship permits none of those." Heritage Foundation China analyst Brett Lippencott suggests that by developing closer ties to Taiwan the United States could promote the reunification of China. The reason, essentially, is that the failure to enhance Taiwan's "international status could weaken those in Taiwan who favor eventual reunification . . . and strengthen those who seek an independent Taiwan."

Obviously, the actual existence of two Chinas creates a difficult and delicate problem for the United States. But in dealing with it, our leaders should occasionally do what is right instead of always doing what they think will please the tyrannical rulers of the world's last remaining major Communist stronghold.•

THE 13TH ANNIVERSARY OF UNITED STATES HONORARY CITIZENSHIP TO RAOUL WALLENBERG

• Mr. MOYNIHAN. Mr. President, yesterday marked the 13th anniversary of Swedish Holocaust hero Raoul Wallenberg's honorary United States citizenship. This honor had been bestowed by Congress only once prior to 1981, on Sir Winston Churchill in 1963, and has been granted only once since then, on William & Hannah Penn in 1984. From July 1994 until July 1995, we will be observing the 50th anniversary of Raoul Wallenberg's heroic effort to save the last remaining Jews of Hungary from Nazi atrocities.

As many of my colleagues know, in 1944, Raoul Wallenberg gave up the comfort and security of his home in Stockholm to go to Budapest, risking his life to save people he did not even know. This truly courageous man is credited with rescuing tens of thousands of Jews directly, by issuing protective passports or by negotiating with Nazi officials for their release.

Most unfortunately, we are also approaching the 50th anniversary of Raoul Wallenberg's disappearance at the hands of Soviet military personnel. Over the past half century, Mr. Wallenberg's family, the Swedish Government and others worldwide have pressed for answers about his fate. In 1957, in response to evidence of eyewitness sightings, the Soviet Government reversed its claim of August 1947 that Wallenberg was not to be found in the Soviet Union. While not contradicting the eyewitness accounts, the Soviets stated that Wallenberg died of a heart attack in Lubyanka Prison in 1947. This was based on a handwritten note-to-file known as the Smoltsov Document. Mr. President, there are no official documents to support this claim or to account for Mr. Wallenberg's whereabouts.

The collapse of the Soviet Union has led to the declassification of foreign ministry files. It has also led to the release of Mr. Wallenberg's arrest order signed by then Deputy Minister of Defense, Bulganin, and has given researchers access to the files of other diplomats who were arrested in Budapest at the same time as Wallenberg, but who were eventually returned. Combined with the testimonies accumulated by the Swedish Government over the years, and recently discovered documents in our own National Archives, there is now an impressive body of new knowledge on this compelling case—knowledge which must be enhanced and put to good use.

Presently, an official Swedish-Russian working group, which also includes American representatives, is working side-by-side with independent human rights researchers, in a dedicated effort which has not only laid the foundation for understanding Mr. Wallenberg's fate, but now serves as a model in the search for other foreign prisoners in the Gulag.

These efforts are to be highly commended. However, the dictates of time call for an accelerated effort on Mr. Wallenberg's behalf. Since his reported death in 1947, there have been a number of sightings sufficiently documented to require a thorough search of the psychiatric facilities, prisons and labor camps in the Gulag system where Mr. Wallenberg is said to have been held. The Honorable Sergei Kovalyev, chairman of the Presidential Human Rights Commission of the Russian Parliament and Mr. Vyacheslav Bakhmin, chief of the Department of Human Rights and Global Affairs of the Foreign Minister are presently working with the Russian Ministry to Health to make such a systemic search possible. Further cooperation will be needed from the Ministry of Internal Affairs that governs the prison system if Mr. Wallenberg is to

be found or if an accurate, more historical record is to be established.

This long awaited initiative, personally led by Mr. Wallenberg's half-brother, Dr. Guy von Dardel, will build upon the previous efforts of the ARK Project, the Independent Psychiatric Association of Russia, and Memorial, three human rights organizations whose findings in the Gulag have substantiated the claim that Mr. Wallenberg could indeed be languishing as an anonymous foreign prisoner or may have died more recently under another name. To focus this search, the team will make use of the most advanced forensic techniques as well as supporting material from recently declassified CIA documents, thanks to the efforts of our colleague Senator CARL LEVIN.

To be successful, Dr. von Dardel's initiative needs our full support and that of the concerned international community. As we press President Yeltsin to allow access to the files and archives of the Serbsky Institute related to special prisoners, we must continue our own process of declassification and call upon other nations to do the same so that all evidence in this case may be made available to the international experts.

Mr. President, Mr. Wallenberg took on a most dangerous and important mission 50 years ago. We should mark the 50th anniversary of his mission by redoubling our efforts to learn his fate.•

FOREST HEALTH ACT OF 1994

• Mr. BURNS. Mr. President, I would like to voice my support for the Forest Health Act of 1994. This bill is desperately needed for the areas which experienced fires this summer in Montana.

This bill would allow for salvaging in fire areas this summer. It would give the Forest Service, the professional land managers, the ability to actively manage these areas. Salvaging in these areas is proper land management activity. And, the Forest Service should be given the opportunity to manage these areas. It is the right thing to do.

Also, this bill would provide needed jobs to the people of Montana. Timber harvesting in Montana has decreased by 50 percent in recent years, this puts our 15,000 timber jobs at great, and unnecessary risk. In addition, 46 percent of western Montana's economy is timber based. This bill would help protect that portion of our economy.

While I know there is not enough legislative time to pass this bill, I hope the Congress will consider similar legislation next year.•

"A TALE OF TWO FACES, RIGHT OF PASSAGE IN ISTANBUL"

• Mr. SIMON. Mr. President, recently, I had a chance to catch up on my reading and had the opportunity to go through the magazine published by the Armenian General Benevolent Union.

In it is an article titled, "A Tale Of Two Faces, Right of Passage in Istanbul" written by Sahan Arzruni. He is an internationally acclaimed pianist, who lives in New York City.

What I found interesting was the small bit of hope that as an artist of Armenian background, he received a warm welcome in Istanbul. In his article he writes: "Perhaps it was by chance that during my short stay in Istanbul an infusion of Armenian artists, invited by the Ministry of Culture, presented concerts in the main auditoriums of the city: The Chilingirian String Quartet from the United Kingdom and the Beaux Arts Trio with violinist Ida Kavafian from the United States."

In another part of the article he writes: "What blew me away, however, was the reception given on the occasion of the publication of Hagop Mntsouri's collected works (1886–1978), in translation, by a Turkish establishment. At the soiree in which various Armenian literati and progressive Turkish intellectuals extolled the qualities of Mntsouri's work, their explication of the events of 1915 astonished me. Having been raised at a time in a culture where no mention of the Genocide was made either in school or at home, I was taken aback by such a frank exchange of ideas concerning its historic events."

Germany has faced the problems of her past and is emerging as a highly respected member of the international community.

I know that Turkey wants to join the European community more fully, and I believe that part of that will come with Turkish acknowledgement that in the past, their country—as other countries, including ours—has committed some gross violations of human rights.

I believe my colleagues will find the article by Mr. Arzruni of interest. At this point, I ask unanimous consent to insert it into the RECORD.

A TALE OF TWO FACES

(By Sahan Arzruni)

"When elected to the House, I will erect the bust of Garabed Bayan in front of the Dolmabahce Palace," pronounced congressional candidate Hayati Asilyazici to a mostly Armenian audience in Istanbul, Turkey, recently. He was referring to an illustrious member of the Balyan dynasty that served the Ottoman Sultans and built some of the most splendid edifices in Constantinople during the eighteenth and nineteenth centuries. Ironically, until the Turkish edition of an exhaustive study of the Balyan family by the Armenian art historian Pars Tuglaci, the architect of the magnificent seraglio was officially identified as "an Italian named Baliani."

Since my last visit to Istanbul two years ago, things have changed considerably. While state-controlled Turkish television now refers to our kin in the homeland as "savage Armenians," the officialdom in Istanbul coaxes the local folk to an engaged relationship. I had been invited to Istanbul to present a piano recital devoted entirely to Khachaturian's music on the occasion of his ninetieth anniversary. The sold-out concert held at the Ataturk Cultural Center in a 550-seat auditorium was received with kudos, particularly from the Turkish press. The response was so overwhelming that soon after the recital the State Conservatory extended an invitation to me to repeat the program and introduce Khachaturian's "wonderful" music to the graduating class. Indeed I was also asked to deliver a previously scheduled lecture on Armenian music in Turkish for the benefit of the wider public.

Perhaps it was by chance that during my short stay in Istanbul an infusion of Armenian artists, invited by the Ministry of Culture, presented concerts in the main auditoriums of the city: The Chilingirian String Quartet from the United Kingdom and the Beaux Arts Trio with violinist Ida Kavafian from the United States.

The number of cultural activities taking place in Armenian community centers were also astounding. In addition to the events already mentioned, the Armenians celebrated the 125th anniversary of Komitas, Odian and Toumanian, the commemorations often including insightful commentary by author Robert Haddeler. These occasions were attended by young and old alike, audiences eager to absorb their cultural traditions. The Komitas celebration was particularly impressive, for it was organized by the new generation which is now experiencing a compelling awareness of its Armenian heritage. The keynote speaker, married to a young woman from Yerevan where they have made their home, discussed Komitas's cultural contribution with knowledge and conviction. An ensemble of three talented musicians presented arrangements of some of Komitas's lesser-known songs. One student recited poems about Komitas.

The Armenian community in Istanbul is indeed remarkable. Reportedly 50,000 strong, they display a clear sense of belonging and an unshakable belief in their national traditions. Their support for the religious and educational institutions is perhaps peerless. On designated Sundays, a large contingency attends one of the nearly 30 churches, gathering around the "siro seghan" (love feast) to raise the funds needed to balance the yearly budget of the church and the adjacent school. No tax deductions here!

The venerable Surp Prgich National Hospital, originally designed to help the Armenian needy, now serves both Armenian and Turkish patients. In fact, Turks in the neighborhood seem to prefer this hospital's medical expertise and care to some of their own institutions, despite the relatively steep price schedule. Its four operating rooms feature the latest technical equipment available in the Balkans. The hospital serves an additional, perhaps more significant function: Since Turkish law prohibits the bequesting of personal properties to minority organizations, many Armenians now sell their real estate holdings and donate an amount not less than $10,000 to the hospital while living, with the understanding that the hospital will take care of them for the rest of their lives in attractive, semi-private accommodations on its grounds.

Although there is no official restriction regarding use of the American language in

Turkey, the younger generation finds it easier to speak Turkish. As in the United States, daily life dictates the use of the local language. Yet, Zahrad and Khrakhuni, two internationally acclaimed poets, work with a group of interested youngsters several evenings every week, teaching them advanced Armenian and literature. There are also two Armenian-language dailies, Marmara and Jamanak, that help keep the mother tongue alive. To stimulate readership, each paper includes coupons, good for free Armenian books. At the time of my visit, Vartan Gomigyan's collection of short stories, Hamrichi Hadigner (Rosary Beads), just off the press, and a recently-published, lavish four-color reproduction of Kristin Saleri's paintings were among the offered titles.

What blew me away, however, was the reception given on the occasion of the publication of Hagop Mntsouri's collected works (1886–1978), in translation, by a Turkish establishment. At the soiree in which various Armenian literati and progressive Turkish intellectuals extolled the qualities of Mntsouri's work, their explication of the events of 1915 astonished me. Having been raised at a time and in a culture where no mention of the Genocide was made either in school or at home, I was taken aback by such a frank exchange of ideas concerning its historic events. That the Armenians were exiled was mentioned as a matter of course; that they were murdered was spoken without dispute. Only when the Armenian moderator suggested that there would have been many more Mntsouris had it not been for the 1915 events, did one of the Turkish editors assert somewhat irately that they were there to celebrate what was and not what could have been.

It was a revealing journey for me. In my youth I was ignorant of the Ottoman Turkish atrocities; in my formative years here in America I was hateful and intolerant of Turks; and now, in my old age I am prepared to take advantage of the opportunities presented there. The diplomatic skills of the Turkish government are well known. That they want to present a kinder, gentler face to the world in order to participate in the European Common Market is well established. That they are quite cognizant of the reality of the new Republic of Armenia on their Eastern border is obvious. Ever vigilant and alert, I shall enter into an artistic dialogue with my colleagues in Turkey and reiterate purposefully my culture, my art my civilization. Perhaps it is foolhardy to expect that Balyan's monument will be placed in a public square in Istanbul, but it certainly is not foolish to press the case.

Sahan Arzruni enjoys an international reputation as a pianist, ethnomusicologist and author. In his efforts to disseminate Armenian musical arts, he has recorded numerous albums, written in scholarly and popular publications, and participated in academic symposia. He lives in New York City.●

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. tomorrow; that there be a period for morning business from 9:30 until 10:05 a.m. tomorrow, with 20 minutes of that time under the control of Senator GRAMM, of Texas, and 15 minutes under the control of Senator SPECTER; that at 10:05 a.m. tomorrow, the Senate resume consideration of the conference report accompanying S. 349, the Lobbying Disclosure and Gift Reform Act; that there be 1 hour for debate on the motion to invoke cloture on that matter, with the time equally divided and under the control of the majority and the minority leaders; and that at 11:05 a.m. tomorrow, the Senate vote on the motion to invoke cloture on the conference report accompanying S. 349.

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

ORDERS FOR TOMORROW AS MODIFIED

Mr. FORD. Mr. President, I ask unanimous consent that we convene tomorrow at 10 a.m., that morning business run from 10 a.m. to 10:35 a.m. and the first vote then occur at 11:35 a.m.

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

RECESS UNTIL FRIDAY, OCTOBER 7, 1994, AT 10 A.M.

Mr. FORD. Mr. President, in accordance with the previous order, I ask unanimous consent that the Senate stand in recess.

There being no objection, the Senate, at 12:15 a.m., recessed until Friday, October 7, 1994, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 7, 1994:

EXECUTIVE OFFICE OF THE PRESIDENT

ALICE M. RIVLIN, OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

A. J. EGGENBERGER, OF MONTANA, TO BE A MEMBER OF THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD FOR A TERM EXPIRING OCTOBER 18, 1998.

HERBERT KOUTS, OF NEW YORK, TO BE A MEMBER OF THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD FOR A TERM EXPIRING OCTOBER 18, 1997.

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

BILL ANOATUBBY, OF OKLAHOMA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM OF 6 YEARS.

TERRENCE L. BRACY, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM OF 4 YEARS.

MATT JAMES, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM OF SIX YEARS.

KENNETH BURTON, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM OF 2 YEARS.

D. MICHAEL RAPPOPORT, OF ARIZONA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM OF 2 YEARS.

ANNE JEANETTE UDALL, OF NORTH CAROLINA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM OF 4 YEARS.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

PAUL L. HILL, JR., OF WEST VIRGINIA, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF 5 YEARS.

PAUL L. HILL, JR., OF WEST VIRGINIA, TO BE CHAIRPERSON OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF 5 YEARS.

DEVRA LEE DAVIS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF 5 YEARS.

GERALD V. POJE, OF VIRGINIA, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF 5 YEARS.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

LUISE S. JORDAN, OF MARYLAND, TO BE INSPECTOR GENERAL, CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.

ANDREA N. BROWN, OF MICHIGAN, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 1 YEAR.

THOMAS EHRLICH, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 3 YEARS.

CHRISTOPHER C. GALLAGHER, SR., OF NEW HAMPSHIRE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 4 YEARS.

REATHA CLARK KING, OF MINNESOTA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 5 YEARS.

CAROL W. KINSLEY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 5 YEARS.

LESLIE LENKOWSKY, OF INDIANA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 4 YEARS.

MARLEE MATLIN, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 2 YEARS.

ARTHUR J. NAPARSTEK, OF OHIO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 4 YEARS.

JOHN ROTHER, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 2 YEARS.

WALTER H. SHORENSTEIN, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF 3 YEARS.

FARM CREDIT ADMINISTRATION

MARSHA P. MARTIN, OF TEXAS, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD, FARM CREDIT ADMINISTRATION, FOR THE TERM EXPIRING OCTOBER 13, 2000.

DEPARTMENT OF COMMERCE

MARTHA F. RICHE, OF MARYLAND, TO BE DIRECTOR OF THE CENSUS.

DEPARTMENT OF DEFENSE

BERNARD DANIEL ROSTKER, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF THE NAVY.

FREDERICK F.Y. PANG, OF HAWAII, TO BE AN ASSISTANT SECRETARY OF DEFENSE

SELECTIVE SERVICE SYSTEM

GIL CORONADO, OF TEXAS, TO BE DIRECTOR OF SELECTIVE SERVICE.

PANAMA CANAL COMMISSION

CLIFFORD B. O'HARA, OF CONNECTICUT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE PANAMA CANAL COMMISSION.

ALBERT H. NAHMAD, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE PANAMA CANAL COMMISSION.

NATIONAL INSTITUTE OF BUILDING SCIENCES

H. TERRY RASCO, OF ARKANSAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL INSTITUTE FOR BUILDING SCIENCES FOR A TERM EXPIRING SEPTEMBER 7, 1997.

CHRISTINE M. WARNKE, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL INSTITUTE OF BUILDING SCIENCES FOR A TERM EXPIRING SEPTEMBER 7, 1995.

MARY ELLEN R. FISE, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL INSTITUTE OF BUILDING SCIENCES FOR A TERM EXPIRING SEPTEMBER 7, 1996.

SECURITIES INVESTOR PROTECTION CORPORATION

JAMES CLIFFORD HUDSON, OF OKLAHOMA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 1994.

JAMES CLIFFORD HUDSON, OF OKLAHOMA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 1997. (REAPPOINTMENT)

FEDERAL EMERGENCY MANAGEMENT AGENCY

GEORGE J. OPFER, OF VIRGINIA, TO BE INSPECTOR GENERAL, FEDERAL EMERGENCY MANAGEMENT AGENCY.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

LORI ESPOSITO MURRARY, OF CONNECTICUT, TO BE AN ASSISTANT DIRECTOR OF THE U.S. ARMS CONTROL AND DISARMAMENT AGENCY.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

JAMES H. ATKINS, OF ARKANSAS, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 1996.

SCOTT B. LUKINS, OF WASHINGTON, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING OCTOBER 11, 1995.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

DAVID S. TATEL, OF MARYLAND, TO BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT.

CATHERINE D. PERRY, OF MISSOURI, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI.

DOMINIC J. SQUATRITO, OF CONNECTICUT, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT.

ROBERT J. CINDRICH, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

DAVID H. COAR, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

PAUL E. RILEY, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS.

DEPARTMENT OF JUSTICE

LOIS JANE SCHIFFER, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT ATTORNEY GENERAL.

EDDIE J. JORDAN, JR., OF LOUISIANA, TO BE U.S. ATTORNEY FOR THE EASTERN DISTRICT OF LOUISIANA FOR THE TERM OF 4 YEARS.

ROBERT HENRY MCMICHAEL, OF GEORGIA, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF GEORGIA FOR THE TERM OF 4 YEARS.

WILLIAM HENRY VON EDWARDS III, OF ALABAMA, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF ALABAMA FOR THE TERM OF 4 YEARS.

REGINALD B. MADSEN, OF OREGON, TO BE U.S. MARSHAL FOR THE DISTRICT OF OREGON FOR THE TERM OF 4 YEARS.

JOHN EDWARD ROUILLE, OF VERMONT, TO BE U.S. MARSHAL FOR THE DISTRICT OF VERMONT FOR THE TERM OF 4 YEARS.

RICHARD THOMAS WHITE, OF MICHIGAN, TO BE A MEMBER OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES FOR THE TERM EXPIRING SEPTEMBER 30, 1996.

U.S. SENTENCING COMMISSION

RICHARD P. CONABOY, OF PENNSYLVANIA, TO BE A MEMBER OF THE U.S. SENTENCING COMMISSION FOR A TERM EXPIRING OCTOBER 31, 1999.

RICHARD P. CONABOY, OF PENNSYLVANIA, TO BE CHAIRMAN OF THE U.S. SENTENCING COMMISSION.

DEANELL REECE TACHA, OF KANSAS, TO BE A MEMBER OF THE U.S. SENTENCING COMMISSION FOR A TERM EXPIRING OCTOBER 31, 1997.

WAYNE ANTHONY BUDD, OF MASSACHUSETTS, TO BE A MEMBER OF THE U.S. SENTENCING COMMISSION FOR A TERM EXPIRING OCTOBER 31, 1999.

MICHAEL GOLDSMITH, OF UTAH, TO BE A MEMBER OF THE U.S. SENTENCING COMMISSION FOR A TERM EXPIRING OCTOBER 31, 1997.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE INDICATED WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, AND TO BE APPOINTED AS CHIEF OF STAFF, UNITED STATES AIR FORCE UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 8033:

To be Chief of Staff, U.S. Air Force

To be general

GEN. RONALD R. FOGLEMAN, [redacted] U.S. AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be general

GEN. ROBERT L. RUTHERFORD [redacted] U.S. AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. JAMES E. CHAMBERS [redacted] U.S. AIR FORCE

UNITED STATES ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. OTTO J. GUENTHER [redacted] U.S. ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. WILLIAM H. FORSTER [redacted] U.S. ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

LT. GEN. DANIEL W. CHRISTMAN [redacted] U.S. ARMY

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, FOR ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY AS FOLLOWS:

To be general

LT. GEN. JOHN J. SHEEHAN, [redacted] U.S. MARINE CORPS

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, FOR ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY AS FOLLOWS:

To be lieutenant general

MAJ. GEN. RICHARD I. NEAL, [redacted] USMC

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING THOMAS O. WILDES, [redacted] AND ENDING THOMAS E. SAWNER II, [redacted] WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 26, 1994.

AIR FORCE NOMINATIONS BEGINNING MAJ. TOMMIE S. ALSABROOK, [redacted] AND ENDING MAJ. DONALD W. TIPPLE, [redacted] WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 26, 1994.

AIR FORCE NOMINATIONS BEGINNING BRET D. ANDERSON, AND ENDING SARAH H. YANG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 26, 1994.

AIR FORCE NOMINATIONS BEGINNING FRANCIS L. ABAD, JR., AND ENDING BASIL TUPYI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 26, 1994.

AIR FORCE NOMINATIONS BEGINNING MAJ. FRANCES M. AUCLAIR, [redacted] AND ENDING MAJ. LESLIE KARNS, [redacted] WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 3, 1994.

AIR FORCE NOMINATIONS BEGINNING DAVID W. ABATI, AND ENDING MICHAEL J. WARD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 3, 1994.

IN THE ARMY

THE FOLLOWING NAMED OFFICER, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTIONS 624 AND 628, TITLE 10, UNITED STATES CODE.

ARMY

To be lieutenant colonel

MICHAEL D. FURLONG, [redacted]

IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE REGULAR ARMY AND PROMOTION TO THE GRADES OF MAJOR AND LIEUTENANT COLONEL IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 1552, TITLE 10, UNITED STATES CODE. THE SECRETARY OF THE ARMY WILL DETERMINE THE DATES OF RANK.

BRIAN M. MCWILLIAMS, [redacted]

ARMY NOMINATIONS BEGINNING KRISTINE CAMPBELL, AND ENDING SIDNEY E. MCDANIEL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 3, 1994.

ARMY NOMINATIONS BEGINNING PETER M. ALLEN, AND ENDING EARL S. WOOD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 3, 1994.

ARMY NOMINATIONS BEGINNING DANIEL G. AARON, AND ENDING 8012X, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 4, 1994.